5-1-1993

Channels of Communication are Opening in Eastern Europe

Anne Moebes

UNIVERSITY OF MIAMI
ENTERTAINMENT & SPORTS
LAW REVIEW

ARTICLES

CHANNELS OF COMMUNICATION ARE OPENING IN EASTERN EUROPE

ANNE MOEBES*

Table of Contents

I. INTRODUCTION

In the mid-1980s more than ninety-three percent of households in Eastern Europe had television and radio, and significant

* B.A., 1979, Appalachian State University; J.D., 1985, North Carolina Central University; LL.M., 1992, Georgetown University Law Center. Currently Attorney-Advisor, Office of Chief Counsel, National Telecommunications and Information Administration, U.S. Department of Commerce. (Attorney-Advisor with the Federal Communications Commission, 1987-1991; Attorney with the law firm of Womble, Carlyle, Sandridge & Rice in Winston-Salem, North Carolina, 1986.).

The views expressed by the author may not necessarily reflect the position of the National Telecommunications and Information Administration.

This article was made possible by a Career Development grant from the American Association of University Women.

numbers tuned in to broadcasts from outside the region.[1] Cable and satellite reception was growing, with Poland estimated as having about 150,000 satellite dishes by 1991.[2] By early 1990 only four commercial radio stations and two commercial television stations were on the air in Hungary.[3] One of the radio stations, Radio Danubius, had been on the air for four years.[4] In Gdansk, Poland a local private radio station began broadcasting in late 1990.[5] At that time, the Eastern European market for broadcasters was estimated at 400 million people, which was still not considered particularly ripe for profit-making.[6]

Now, however, Rupert Murdoch would like to acquire a satellite to serve Eastern Europe.[7] Turner Broadcasting System's Cable News Network is broadcasting its programming in Poland and Hungary and is negotiating to provide its service in Yugoslavia.[8] MTV Europe, fifty percent owned by the late Robert Maxwell and the remainder held by Viacom International and British Telecom, now offers twenty-four hours of light entertainment and music to cable television homes in Hungary and Yugoslavia and is negotiating with most other countries in Eastern Europe.[9]

The above synopsis illustrates the steady growth taking place in Eastern Europe across all media, a phenomenon which would appear to make Eastern Europe attractive for U.S. media investors. What is not readily apparent, however, are the possible hidden limitations on such investment. Part II of this Article examines, on an industry-specific basis, investment opportunities in Eastern Europe for U.S. media enterprises, focusing on the specific circumstances that make a particular media industry in a given Eastern European country attractive to U.S. investors. Part III of the Article then explores the climate for foreign entry into Eastern Europe. Political, legal, financial, and competitive aspects of the Eastern European market are examined, in that such considerations may present barriers or inhibitors to entry into this market or make entry more favorable in certain countries for one media

1. Elaine Attias, *Liberation on the Airwaves*, CHRISTIAN SCI. MONITOR, Feb. 14, 1991, at 12.

2. *Id.*

3. *New Kids on the Bloc: Commercial Broadcasting Struggling for Toehold in Eastern Europe*, BROADCASTING, Jan. 8, 1990, at 101.

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

industry over another.

II. Investment Opportunities in Eastern Europe for U.S. Media Enterprises

Potential markets in all media industries are expected to continue to grow all over Eastern Europe, creating a wealth of opportunities for U.S. investors. Such investors are presented with a choice when deciding how to go about producing and distributing media properties in Eastern Europe. They may produce and distribute through companies already set up in the region, companies which may have been previously controlled by the governments of the countries. Alternatively, such investors may operate through the establishment of new companies. This section outlines the various opportunities available in the following industries: film, broadcasting, cable, and print media. It is also useful to discuss some of the events that have precipitated these opportunities, as these may serve as a guide to U.S. investors in predicting future opportunities.

A. The Film Industry

There is ample evidence that Eastern Europeans are interested in continuing to produce films. The climate appears to be more favorable in some countries than in others, however, and the goals of Eastern Europeans are different now than they once were. While Eastern Europeans want to maintain their cultural identity, they may be forced to adopt foreign standards as their need for foreign investment grows. This need provides U.S. investors with a unique entre to produce and distribute films in Eastern Europe.

Unlike other media industries in Eastern Europe, the film industry has declined as the countries have become market economies, thereby creating opportunities for U.S. investors. In Hungary film production declined from twenty films annually in the 1970s to barely a handful in 1992.[10] Ticket sales are down fifty percent in recent years.[11] Czechoslovakia's main Barrandov film studio made twenty-five movies a year under communist rule, but only fourteen in 1991.[12] Bulgaria's film production declined from twenty-five

10. Carol J. Williams, *New Picture for Hungary's Filmmakers*, L.A. TIMES, Mar. 3, 1992, at F1.

11. John Rockwell, *A Film Festival Where the Offbeat Reigns*, N.Y. TIMES, Feb. 18, 1992, at C13.

12. Mark Heinrich, *Berlin Film Festival Reflects Europe Movie Industry in Trouble*, Reuters, Feb. 11, 1992, *available in* LEXIS, Europe Library, Reuter File.

films in 1991 to three in 1992.[13]

There are several reasons for this decline. First, state subsidies have decreased.[14] For example, in 1991 the Hungarian government infused eleven million dollars into film production, equaling its 1990 subsidy, but buying considerably less, given the thirty percent inflation rate.[15]

Another reason for the decline of the film industry in Eastern Europe is the higher costs of production. Although the average cost per film in Hungary is under one million dollars, with only ten million viewers in the country, Hungary has not been able to recoup its costs.[16] The average price of a movie ticket in Hungary is about 80 forints, or one U.S. dollar. Ticket prices cannot be raised without turning moviegoers away, as the average monthly income is less than 200 dollars.[17] Even if a successful film attracts 100,000 people, each paying 50 forints (66 cents), amounting to total revenues of five million forints ($71,428), such a film might cost 20 or 25 million forints (between $285,000 and $357,000) to produce.[18] Hungarian television, which is also struggling, is therefore not a good customer for Hungarian films.[19] Even the head of the National Motion Picture Foundation in Hungary has stated that films will never be self-financing in Hungary because of the small population.[20]

Similarly, Poland is facing increased costs for materials, and advertisers prefer western-style people in advertisements.[21] It costs the same to screen a one-minute advertisement for a movie on state television as the state will pay a filmmaker for the right to screen the whole film, 20 million zlotys or around 2,000 dollars. The average wage in Poland is around 160 dollars a month.[22]

Still another factor of the decline is that Eastern European filmmakers have heretofore focused on style rather than entertainment, the former becoming less palatable to their own audiences.[23]

---

13. *Id.*
14. Williams, *supra* note 10, at F1.
15. *Id.*
16. *Id.*
17. *Id.*
18. Peter Nagy, *Box Office Blues*, HUNGARIAN OBSERVER, Aug. 1991, *available in* LEXIS, Europe File, Hunobs File.
19. *Id.*
20. Williams, *supra* note 10, at F1.
21. Rick Richardson, *Poles Apart: the Polish Film Director Andrzej Wajda Talked to Rick Richardson*, THE INDEPENDENT, Mar. 29, 1991, at 18.
22. *Id.*
23. Williams, *supra* note 10, at F1.

For example, in Hungary filmmakers have always implicitly challenged the government with films paid for with government funds, even when the same could not be done explicitly through the print media.[24] Now, more commercial entertainment fare will be needed.

In addition, language barriers have encouraged the decline of the film industry. Hungary has not been successful in marketing films abroad because the films are all in Hungarian and generally unpalatable to American audiences.[25] Further, there had been no need to market Hungarian films before or play to a mass audience when the state was deciding how to spend the available funds.[26] In addition, there have been fewer directors in Hungary in recent years, because many Hungarian directors have begun taking their talents abroad.[27] Moreover, producers do not have the financial skills needed to operate in a market economy.[28]

From this decline, however, emerge opportunities for U.S. entrepreneurs. It is apparent that the Eastern European film industry may have to sacrifice its unique identity, at least partially, in order to save itself. The industry must now rely on foreigners for capital and know-how. U.S. film investors are in a unique position to meet the needs of the Eastern European film industry that are outlined above and at the same time reap phenomenal benefits. Taking advantage of these venture capital opportunities in the film industry in Eastern Europe, in both production and distribution, makes sense for several reasons.

First, U.S. media companies continue to be successful in marketing U.S. films in Eastern Europe, a prime example of the demand in the region for U.S. product. The International Film Exchange (IFEX) is the leading independent distributor of U.S. produced English-language films to Eastern Europe and a joint venture partner in film distribution companies in Poland, Hungary, and Czechoslovakia, where 160 films were being distributed by 1991.[29] At its last report, IFEX expected revenues for the year ending June 30, 1991 of approximately $18.2 million and net income per share just below 21 cents.[30] According to the Hungarian

24. *Id.*
25. *Id.*
26. *Id.*
27. Nagy, *supra* note 18.
28. *Eastern Bloc Moves Slowly in a Commercial Direction*, SCREEN FINANCE, June 26, 1991, *available in* LEXIS, Entert Library, Srnfin File.
29. *International Movie Group Enters into Agreement in Principle to Sell Assets of International Film Exchange*, BUS. WIRE, Sept. 13, 1991, *available in* LEXIS, Nexis Library, Bwire File.
30. *Id.*

Motion Picture Foundation, eighty percent of box-office receipts last year, about $15 million, were earned in Hungary from U.S. films.[31] Ninety percent of the films presently screened in Hungary are U.S. films.[32]

Moreover, the United States as a film market is itself declining. The 1991 summer box office was down eleven percent. Because of the current recession, the rise of home entertainment options, and a proliferation of unsuccessful movies, the American market has generated far less revenue than expected, while the international market for American movies has been booming.[33]

Hungary has become the first major target of U.S. investors for film production. American investors are attracted by Hungary's incredible scenery, unspoiled by pollution, as well as its low costs, efficient crews, and lack of union concerns.[34] Moreover, production costs, while higher than Hungarian filmmakers can bear alone, are as much as fifty percent lower in Hungary than in the United States, a result of the now less powerful trade unions and the need for hard currency.[35] In fact, one Hungarian-American investor has recently negotiated a deal to build a movie production center in Hungary.[36]

From Hungary's point of view, co-productions with Western filmmakers could be a solution to their financing problems. Hungarian filmmakers, however, would have to be willing to make their films more palatable to Western audiences in order for Western filmmakers to have an incentive to invest there.[37] Unfortunately, Hungarian filmmakers may instead conduct business with European Community film investors, who have expressed a desire for Hungary to retain its culture through film, especially now that the country's films are not censored.[38]

Ultimately, the goal should be to develop a symbiotic arrange-

---

31. Williams, *supra* note 10, at F1.

32. *Id.*

33. Lewis Beale, *Ways and Means: Lean Hollywood Fattens Up in European Theaters*, CHI. TRIB., Nov. 10, 1991, at C22.

34. Peter Maass, *Hooray for . . . Hungary?: For Filmmakers, a Low-Cost Alternative to Hollywood*, WASH. POST, Dec. 1, 1991, at G1. Recent American movies made in Hungary include *Music Box* with Jessica Lange, *The Josephine Baker Story* by HBO, and *Hudson Hawk* with Bruce Willis, to name a few. *Id.* at G2.

35. *Id.*; *see also* Williams, *supra* note 10, at F1.

36. Maass, *supra* note 34, at G2.

37. Williams, *supra* note 10, at F1.

38. David Lister, *Film Makers Cast in New Role for a Commercial World*, THE INDEPENDENT, June 17, 1991, at 4 (statement of Hungarian film director Janos Zsombolyai at a film seminar held in London on cinema in Eastern Europe).

ment, whereby movies are produced that are palatable to audiences in both markets and around the world. This is where U.S. investors have an advantage. More than any other potential foreign investors, U.S. filmmakers have long-standing expertise in packaging, distribution, and technical knowledge. Further, U.S. investors can take advantage of the fact that Eastern European audiences (unlike their European Community counterparts) are more inclined to demand American-style films. Another key advantage of U.S. investors is language. Eastern European directors have expressed interest in making English-language films and dubbing them back into the native language for local consumption.[39] While service deals tend to be more prevalent in Hungary,[40] co-productions and wholly owned U.S. subsidiaries throughout Eastern Europe should not be overlooked.

B. *The Broadcasting Industry*

Like the film industry, the broadcasting industry in Eastern Europe is suffering from high costs and a lack of subsidies. Although there are some barriers to U.S. entry in the broadcasting field, there are many opportunities for U.S. entrepreneurs. These opportunities are the result of the broadcasting market's potential growth from privatization, along with the inability of the Eastern European countries to meet that growth themselves.

Evidence of the need for foreign assistance is ever-present. For example, when the Finance Ministry in Czechoslovakia ceased subsidizing the media, Czechoslovak Radio began to require capital and therefore doubled the price of a radio license.[41] Ironically, money from those who listen only to private radio stations will help fund state radio.[42]

Eastern European broadcasters also have technical needs that can be met by U.S. entrepreneurs. In Albania, broadcasts are constantly in financial jeopardy because of shortages in spare parts and the lack of printing paper.[43] The government cannot subsidize the broadcast industry because it has no hard currency.[44] Albania

---

39. *See Eastern Bloc Moves Slowly in a Commercial Direction, supra* note 28.

40. *Id.*

41. *Private Broadcasting Licenses Granted*, SUMMARY OF WORLD BROADCASTS, Apr. 2, 1991, at EE/1035/B/1, *available in* LEXIS, Nexis Library, BBCSWB File.

42. *Id.*

43. *Radio Tirana Director Appeals for Aid to Avert Closure*, SUMMARY OF WORLD BROADCASTS, Feb. 28, 1992, at EE/1316/B/1, *available in* LEXIS, Nexis Library, BBCSWB File.

44. *Id.*

Radio-Television needs the most basic equipment from other countries, as well as broadcast experience, new features, and advertising expertise.[45] There are at least three ways for Albania Radio-Television to survive: government credit to cover the post-election period, concrete activities between radio and television stations of other countries, and backing by the Albanian diaspora.[46]

Similarly, in Romania there did not appear to be any foreign support for independent television as of June 1991, except for some recording equipment donated by stations in the European Community.[47] Timisoara TV, the only independent television station, would have to have its own transmitter in order to broadcast during the day and directly challenge state-run television, theoretically, which is still not allowed.[48] This one station has had many obstacles, including the loss of facilities due to government pressure, no new constitution, and no new law changing the old communist-era statutes which give the government a broadcasting monopoly.[49] Although these conditions are slowly changing, Romanian independent TV can compete with the state-run channel only when the state channel is off the air.[50] Interestingly, the programming on Timisoara TV is expanding into areas more similar to those of the U.S. Its programming includes news and discussion of issues such as economy, health, and education, as well as game shows and quizzes.[51] The programming is now more objective and focuses on Romanian culture and history, as well as music, movies, and youth problems.[52]

The obstacles to Eastern European broadcasters are numerous. Nonetheless, the growth of the market continues. In 1990 there were no reports of independent radio or television in East Germany, Bulgaria, Romania, Czechoslovakia, or Albania.[53] That picture, however, is rapidly changing. An examination of the broadcasting market's growth on a country-by-country basis reveals not only the extensive role that broadcasting plays in Eastern Europe's evolution into a market economy, but also the potential places for foreign entry into that market.

45. *Id.*
46. *Id.*
47. R.C. Longworth, *Romania's Free TV Scrapes Up Broadcasts*, CHI. TRIB., June 13, 1991, at 29.
48. *Id.*
49. *Id.*
50. *Id.*
51. *Id.*
52. *Id.*
53. *See New Kids on the Bloc, supra* note 3, at 102.

In Albania, where general elections were held on March 22, 1992, radio and television are very important to the country's transformation, more so perhaps than in Hungary, Poland, Bulgaria, and Romania, which have enjoyed easier overall transitions.[54]

A United States Information Agency (USIA) study published in December 1990 reported that the national radio station was at that time broadcasting eighteen hours a day and another radio station was on the air from 9:30 a.m. to 1:00 p.m.[55] Albanian TV broadcasts only from 5:00 p.m. to 9:00 p.m. and on Sunday morning.[56] Thus, while broadcasts were limited, evidence of demand was immense in Albania, where, as is generally true of all Eastern European countries, the population is well-educated and highly literate.

Albanians tend to turn to international radio broadcasts for information.[57] The Voice of America (VOA) is one of few western stations broadcasting in Albania.[58] In fact, as late as December 1990, shortwave transmissions were the only means possible to reach Albanian audiences.[59]

In Hungary, while both television and radio were under state control as of December 1990, private broadcasting had begun to emerge, including Nap-TV (Sun-TV), which broadcasts on one of the state channels.[60] A moratorium on the allocation of new broadcasting frequencies is in effect until the new proposed broadcasting legislation is passed.[61] The bill, the third draft of which was still being considered as of March 1992, was expected to maintain state ownership of the existing two television and three radio networks in order to ensure public broadcasting, while providing for the establishment of private, commercial stations.[62] Recently, it was reported that Hungarian radio and television could operate in the form of public foundations, with provisions for independence, while commercial stations would be managed by the Radio and TV Office.[63] Hungarian Television (MTV) operates on two channels;

---

54. *Radio Tirana Director Appeals for Aid to Avert Closure, supra* note 43.
55. Martha Mac Iver et al., The Broadcast Media Environments of Europe and the USSR 26 (U.S. Information Agency Working Paper, Dec. 1990).
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.*
60. *Id.* at 30.
61. *Id.*
62. *Id.*
63. *Radio-TV Bill Proposes Ownership Changes*, Foreign Broadcast Info. Service Daily Rep., Mar. 18, 1992, at 12.

there are five regional stations, sixty local television studios, three state-controlled radio stations, and twenty-six commercial radio stations in the country, four of which are operating.[64] For example, Radio Juventus Balaton can broadcast to a million and a half people.[65] Also, Calypso began broadcasting in 1990 and serves outlying areas of Budapest.[66] While some foreign ownership restrictions are expected in the newspaper industry, they have not been anticipated in broadcasting. However, in 1990, there were scores of applications for commercial radio stations, only four of which were accepted.[67] Because Hungarian state-run television is financially handicapped, two commercial television stations emerged in Hungary in 1990.[68] Balaton Channel in Siofok was the first commercial station in Eastern Europe and was a joint venture by several Hungarian companies offering programs for German-speaking audiences.[69] Nap-TV, which went on the air in Budapest in 1990, is jointly owned by Movi, the Hungarian Cinema and Video Company, and the Mai Nap Corporation, publisher of the newspaper Mai Nap (Today).[70] Radio Bridge operates with Canadian and Swedish capital and caters to the business community living in Hungary.[71]

In Czechoslovakia, state monopoly in radio broadcasting will soon come to an end. The federal government granted licenses for test broadcasting, which were valid until the end of 1992, to nine private or mixed companies that started broadcasting at the end of 1991.[72] Unlike that of Hungary, Czechoslovakia's media law, adopted in October 1991, made clear that foreign ownership interests in broadcasting would be unrestricted. Thus, for broadcasting, Czechoslovakia appears to be wide open.

Virtually everyone (ninety-six percent of the population) watches TV several times a week, and eighty-six percent of the people listen to radio several times a week.[73] While ninety-four percent own radios and ninety-eight percent own television sets, less than one in ten (seven percent) own a VCR. The VCR owners

---

64. *See* MAC IVER ET AL., *supra* note 55, at 30; *see also New Kids on the Bloc, supra* note 3, at 102.

65. *See New Kids on the Bloc, supra* note 3, at 102.

66. *Id.*

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Private Broadcasting Licenses Granted, supra* note 41.

73. *See* MAC IVER ET AL., *supra* note 55 at 29.

watch western entertainment videos more frequently than they do domestic entertainment or educational videos.[74] Only four percent have access to satellite dishes.[75]

Demand in Czechoslovakia for western programming was already evident before the new media law. Czechoslovak television broadcasts western television programs.[76] Channel 3 (OK 3) continues to broadcast foreign television programs seven hours daily. Programming from La Sept and TV 5 of France, RTL Plus of Germany, Screensport of Britain, and CNN and Worldnet of the United States reach approximately thirty percent of the viewing population and most of the major cities.[77] Although a few independent stations were operating prior to the new media law, full-scale privatization was not possible until its passage.[78]

With privatization, 140 applications were received for radio and television licenses.[79] Two independent radio stations, FUN Radio in Bratislava and Europa Plus in Prague, are joint foreign ventures which had operated semi-legally.[80] The amount of foreign programming broadcast is about 1,300 hours, although it is expected to increase as new stations begin to air.[81] In Poland commercial broadcasting is emerging, but revenues from advertising are presently limited. Poland has signed European conventions that limit television advertising to eight minutes per hour.[82] However, pursuant to Poland's law that permits the establishment of independent, advertiser-supported radio stations, Radio-Market, a private radio station owned by an independent company, began operating in the Gdansk region in 1990.[83]

Independent television in Romania may be weaker than anywhere else in Eastern Europe. In 1991 the only independent television station in Romania, Timisoara Television, began its ninety-minute broadcast day.[84] There are also two national television networks in Romania.[85] In Bulgaria there are only thirty-two radio

---

74. *Id.*
75. *Id.*
76. *Id.* at 28.
77. *Id.*
78. *Id.*
79. *Id.* at 29-30.
80. *Id.* at 30.
81. Motion Picture Ass'n of Am., Mid-1990 VCR Population (Memo. No. 90-22, June 26, 1990).
82. *Id.*
83. *See New Kids on the Bloc, supra* note 3, at 102.
84. Longworth, *supra* note 47, at 29.
85. *See* Motion Picture Ass'n of Am., *supra* note 81.

stations, of which three are broadcast nationally.[86] Bulgarian TV broadcasts only two programs daily, and the availability of satellite television broadcasts is also limited.[87] These limitations may be the result of the fact that the overseeing body, Bulgarian Radio and Television, is still under the direct control of the Bulgarian Grand National Assembly.[88] Thus, the opportunities for privatization of broadcast facilities in Bulgaria are severely limited.

Despite the lack of availability, Bulgarians are avid media consumers. Nine in ten listen to radio and watch TV several times a week, while seven in ten read newspapers several times a week.[89] To meet this demand, foreigners have been able to broadcast into Bulgaria from their facilities elsewhere.

In 1990, while operating on an *ad hoc* basis without legislation, the Bulgarian government wanted to begin broadcasting programs from the United States four hours a day on a commercial basis.[90] Canal France International gave Bulgarian TV a dish and in December 1990 sent four hours of programming a day.[91] Twelve foreign radio stations currently broadcast to Bulgaria, of which Radio Free Europe and the BBC are the leading stations with weekly audiences of about eight percent.[92] VOA Bulgarian draws a weekly audience of about five percent.[93] These percentages are comparable to the average United States license market audience share. Thus, while it may be premature to plan entrepreneurial broadcasting activities in Bulgaria, there has been some movement in the Bulgarian market that suggests a receptiveness, and certainly a need for, foreign investment.

Finally, ongoing broadcasting activities in Yugoslavia also indicate a market potential. Although broadcasting had been a state monopoly, there are now a handful of independent radio and TV stations operating.[94] There are two national television channels and three national radio channels, but most broadcasting is done at the republic level. In Serbia the limited national television service (Yutel) is subject to clearance by republic authorities. Serbian officials have often prevented Yutel from being seen in that

86. *See* MAC IVER ET AL., *supra* note 55, at 27.
87. *Id.*
88. *Id.*
89. *Id.*
90. *Id.* at 27-28.
91. *Id.* at 28. The French government station, La Sept, and the Germans made similar offers. *Id.*
92. *Id.* at 27.
93. *Id.*
94. *See* MOTION PICTURE ASS'N OF AM., *supra* note 81.

republic.[95]

Macedonia now has an independent television station, Stip, broadcasting twelve hours a day. It carries commercials and operates as part of a firm called Teko, which in turn is owned by Petr Varbinov and Mile Kokotov, Yugoslavian citizens.[96]

In Eastern Europe the opportunities for U.S. investors in the area of broadcasting are becoming clearer as new media laws are passed. Assuming the legal climate and other possible barriers are not prohibitive, the potential is great. Audience viewership in Eastern Europe is high, production costs are low, and rules for foreign investments are often surprisingly liberal. Moreover, when radio and television broadcasts that are now in English, German, and French begin broadcasting in local languages, there will be an even greater demand.[97] One prime example of U.S. entry into the realm of international news broadcasting is the expansion by Cable News Network (CNN) into the global market.[98]

Another important reason U.S. investors are attracted to Eastern European broadcast markets is that in many cases broadcasting laws are more favorable in Eastern Europe than in the United States.[99] For example, in the United States the Federal Communications Commission, pursuant to its authority under the Communications Act of 1934, as amended,[100] has promulgated various prohibitions on the number of broadcast stations a licensee may hold in a given market.[101] The same rules also prohibit a licensee of a broadcast station from holding other media interests, such as in newspapers or cable, under certain circumstances.[102] Thus, to a great extent, Eastern Europe holds a promise of expansion for media interests unparalleled in the United States.

C. *The Cable Industry*

Perhaps the greatest opportunities in Eastern Europe thus far

---

95. *See, e.g., "Parliament of Journalists" Call for End to Media War and Ensuring Press Freedom*, SUMMARY OF WORLD BROADCASTS, Apr. 12, 1991, at EE/1044/B/1, *available in* LEXIS, Nexis Library, BBCSWB File.

96. MOTION PICTURE ASS'N OF AM., *supra* note 81.

97. Miklos Vamos, *Capitalist Takeover: Eastern Europe's New Press Lords*, NATION, Sept. 30, 1991, at 368.

98. Susan Moeller, *From Islamabad to Issaquah—How Turner's CNN Changed the World—A Year of TV Spectaculars for the Global Village*, SEATTLE TIMES, Jan. 5, 1992, at A13.

99. *See infra* notes 142-201 and accompanying text.

100. 47 U.S.C. § 151 (1992).

101. 47 C.F.R. § 73.3555 (1992).

102. *Id.*

for U.S. investors have been in the cable industry. Joint ventures with U.S. partners have already been set up to provide cable television service in Hungary and Poland. While cable penetration is not yet particularly high in Eastern Europe,[103] U.S. investors have shown the most interest in this industry. In contrast, U.S. entrance in the print media market is more difficult because of stiff competition from Western European entrepreneurs.

In Hungary, cable television (CATV) is expected to expand now that KabelKom has gone into business. KabelKom is jointly owned by the Time Warner subsidiary Home Box Office and United Communications International, itself a joint venture between United International Holdings and US West, the regional Bell operating company.[104] KabelKom has already signed an agreement with Global TV, the national association of community operators in Hungary, and will sign agreements with other local partners for fifty-fifty ventures as well.[105]

For investment purposes, it is interesting to note KabelKom's progress and why it chose this market for cable investment. First, the Hungarian regulatory climate for cable is seen as more receptive than that of other Eastern European countries.[106] Second, KabelKom's careful plan has entailed taking over the operation of local authority-owned systems in four towns: Debrecen, Pecs, Dunaujvaros, and Veszprem.[107] By late 1991 KabelKom was also finalizing talks with the local authority in Budapest.[108] These cities were chosen because few entertainment options were open to the residents.[109] Moreover, there did not appear to be much competition from satellite master antenna television (SMATV) systems, of which there are about 300 in operation in Hungary.[110]

This careful investment planning has paid off. In October 1991 this U.S.-owned Hungarian cable company had signed up 20,000

---

103. By 1990 cable had penetrated the Eastern European market only in Hungary, with between 400,000 and 600,000 subscribers, and Yugoslavia, where the estimated number of subscribers was over 250,000. A Canadian firm had a contract to extend cable to an additional 200,000 residences in Belgrade during 1991. *See* MOTION PICTURE ASS'N OF AM., *supra* note 81.

104. *First Pay-TV Channel Gets 20,000 Subscribers*, NEW MEDIA MARKETS, Oct. 24, 1991, *available in* LEXIS, Nexis Library, Newmed File.

105. *See* MAC IVER ET AL., *supra* note 55, at 30.

106. *See First Pay-TV Channel Gets 20,000 Subscribers*, *supra* note 104.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

subscribers for the country's first pay-television channel.[111] Its goal was to get 250,000 subscribers by the end of 1992.[112] KabelKom offers three services: Lifeline with five channels; a Basic Service including the Lifeline service plus five satellite channels; or the Expanded Basic service, which offers seventeen to twenty satellite channels.[113] The film channel shows three films per night (twenty-five films per month) mixing domestic and foreign productions, the latter being subtitled or dubbed into Hungarian.[114] It expects to have more channels and a higher signal quality and will offer a Hungarian-language channel.[115] Other channels carried on the network include two state-owned channels, as well as three German satellite services.[116]

The company has also vertically integrated other services. Its film service will be used as a marketing tool for the cable systems, and KabelKom is planning to launch other thematic channels if the film service is successful.[117]

Cable joint ventures have also been considered in other Eastern European countries. In 1990 a joint venture was announced by Chase Enterprises of Hartford, Connecticut and Polska Telewizja Kablowathe, an entity of the Polish government, to build and operate a twenty-five channel system.[118] The system will serve 1.8 million households in ten cities by 1995.[119] Chase Enterprises and Polska Telewizja Kablowathe are planning other cable systems throughout Poland.[120] Chase invested up to $900 million in the venture and owns seventy percent of it.[121] Reportedly, the venture has been delayed by economic conditions, although other reports indicate that construction is underway for CATV system in Gdansk.[122] The Katowice provincial government has entered CATV joint ventures with a U.S firm to provide cable service to Upper Silesia and with Greece's Intestra for "Upper Silesian Regional TV."[123]

---

111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *See New Kids on the Bloc, supra* note 3, at 101.
119. *Id.*
120. *Id.*
121. *Id.*
122. *See* MOTION PICTURE ASS'N OF AM., *supra* note 81.
123. *Id.*

D. The Print Media

To the extent that foreigners have taken advantage of opportunities in the print media in Eastern Europe, such investors have been largely Western Europeans rather than Americans. For example, a formerly socialist daily publication, *People's Freedom*, became a Hungarian-West German joint-venture company.[124] Indeed, in Hungary restrictions on foreign investment in the print media have been expected because of the quick formation of seven regional newspapers acquired by West German media magnate Axel Springer in March 1990.[125]

Some U.S. investment activity has been reported in Poland, however. Pentor Communications International, headed by Edward Giller from Altoona, Pennsylvania, has reportedly invested up to $2 million for joint ventures in Poland, including a woman's magazine with a circulation of approximately 200,000, a publication providing radio and TV listings, a market research firm, and a TV production firm.[126]

Czechoslovakia is more problematic. As late as December 1990 the print media was still state controlled, although dozens of publishing companies and underground papers have emerged.[127] In Bulgaria the print media is growing despite market-pricing of newsprint and despite the belief that the Communists were getting more favorable treatment in access to newsprint. There are eleven national daily papers, twenty-four regional daily papers, and seven weeklies.[128]

III. Climate for U.S. Entry in Eastern European Markets

While there is much potential market growth in all media industries in Eastern Europe and an increasing need for foreign investment, several types of barriers may remain for U.S. investors in some countries. Political instability may be a barrier to entry in one country, while legal restrictions may impose a barrier in another. A description of the investment climate, positive and negative, is summarized below.

---

124. Vamos, *supra* note 97, at 368.

125. *See* Mac Iver et al., *supra* note 55, at 30.

126. *See* Motion Picture Ass'n of Am., *supra* note 81.

127. *See* Mac Iver et al., *supra* note 55, at 28.

128. *See* Motion Picture Ass'n of Am., *supra* note 81.

A. *Political Instability*

Political instability can take several forms. When funding is the issue, some governments may still exert bias in their decisions, thereby inhibiting the financial constitution of a joint venture. Further, unlike other industries, the media industry has a phenomenal potential for influencing attitudes, culture, and political change in a society. Because of the power media holds, foreigners may feel pressures from the people themselves who may fear that the oppression once felt at the hands of the government will simply be supplanted by foreigners. In the Hungarian film industry, the National Motion Picture Foundation (NMPF) continues to make the decisions regarding how limited state funds will be disbursed.[129] It is unclear to what extent U.S. firms would be affected by these decisions, especially where U.S. investors undertake joint ventures with state-funded companies. However, the form of the NMPF was chosen to boost foreign investment so that the state can gradually withdraw funding.[130] Within the nine-member advisory board of the NMPF, some members are clearly associated with political parties but are accepted in intellectual circles.[131] While some filmmakers are critical of the advisory board's exercising too much control, the board has certainly made great strides: censorship has ceased; distributors do not have to report what they wish to screen; and the money is distributed to professionals by a cultural administration.[132]

In Romania the only independent television station, Timisoara TV, almost went bankrupt in 1991 when the government suddenly quintupled its transmitter charges from 100,000 to 500,000 leit (from about $1,700 to $8,500).[133] However, viewer contributions saved the station from bankruptcy, even though the average wage is barely $100 per month.[134] Still, broadcasting in Romania seems to be more at the mercy of government forces than in other Eastern European countries.

Still another example of government instability can be found in Yugoslavia where relations between the legally elected government of Bosnia-Hercegovina and the media, and primarily Radio-Television (RTV) Sarajevo, are tenuous at best. Workers of RTV

---

129. Williams, *supra* note 10, at 1.
130. Nagy, *supra* note 18.
131. *Id.*
132. *Id.*
133. Longworth, *supra* note 47, at 29.
134. *Id.*

announced a strike if the government did not assist in overcoming their financial difficulties.[135] After the election government money was exchanged for placing information about the ruling parties in the late news.[136] The government also allegedly requested the withholding of subscription payments, usurped RTV's transmitters, and tried to influence RTV's editorial policy.[137] Similarly, the Croatian media is subject to censorship under Croatian President Franjo Tudjman's decree.[138]

As with the electronic news media, the foreign print media is particularly vulnerable to volatile political climates. This is because foreigners, who are used to having complete independence from censorship, may experience less freedom in Eastern European countries despite free press reforms. Conversely, Eastern Europeans may fear a new kind of censorship imposed by foreign owners. For example, when Robert Maxwell bought the daily *Magyar Hirlap (Hungarian News)*, there was an outcry from the Hungarian media who feared political pressure, censorship, and loss of their newly obtained freedom of speech.[139] However, as was the case with other media investors, Maxwell's name did not appear on the masthead.[140] Similarly, the Hungarian editor-in-chief of *Mai Nap* insists that the paper is independent of its majority owner, Rupert Murdoch.[141]

B. *Legal Climate*

Generally, Eastern European countries are far more open to foreign media investment than is the United States. In the United States, section 310(b) of the Communications Act of 1934, as amended, prohibits the grant of a broadcast license to foreigners or any corporation of which any officer or director is a foreigner or in which a foreigner holds more than twenty percent of the capital stock.[142] This provision was the result of national security concerns that may no longer be relevant in the United States, but that are

---

135. *Croatian Radio Comments on Possible Coalition of RTV Sarajevo*, SUMMARY OF WORLD BROADCASTS, Feb. 15, 1992, at EE/1305/C1, *available in* LEXIS, Nexis Library, BBCSWB File.

136. *Id.*

137. *Id.*

138. *Other Reports on Croatia: Serbian People's Party Warning on Crimes Against Serbs in Croatian Towns*, SUMMARY OF WORLD BROADCASTS, Dec. 16, 1991, at EE/1256/C1, *available in* LEXIS, Nexis Library, BBCSWB File.

139. Vamos, *supra* note 97, at 368.

140. *Id.*

141. *Id.*

142. 47 U.S.C. § 310(b) (1991).

far less relevant, if at all, in Eastern Europe.

The Serbian Federal Republic of Yugoslavia has among the most restrictive legal climates for foreign investors. Serbia's Law on Enterprises specifically states that a foreign subject may set up a new company in Yugoslavia on his own, except in the areas of publishing and mass media.[143] Moreover, certain existing businesses, including publishing and the mass media businesses, are excluded from foreign investment.[144]

Aside from foreign investments, activities of the foreign media are restricted further by Yugoslavia's Media Law.[145] Part VI, article 34 of the Media Law provides that the introduction of foreign printed materials for distribution and other types of public media and performing foreign media activities in the Republic of Serbia is carried out in accordance with the federal Law on the Introduction and the Distribution of Foreign Mass Media and on Foreign Media Activities in Yugoslavia.[146] Article 35 of the Media Law states that under the federal law noted above, approval is granted to: (1) a printing firm to print foreign printed materials; (2) an importer of foreign printed materials; and (3) foreign legal parties and individuals for making of television and informational films.[147] Conversely, other media activities are prohibited: (1) broadcasting by radio or television of foreign video or audio materials and (2) the introduction, distribution and public reproduction of foreign materials.[148] Thus, it would appear from these sections that foreign firms would not be able to broadcast their materials in Serbia or produce materials in the United States and export them to Serbia

143. Law on Enterprises, Official Gazette of the SFRY Nos. 77/88, 40/89, 46, 61/90 (*cited in Wholly Foreign-Owned Companies*, E. EUR. BUS. L., July 1991, *available in* LEXIS, Europe Library, EEBLAW File). *See also* Ivan Sipkov, Library of Congress document on Yugoslavian Law, Dec. 1989.

144. Law on Foreign Investments § 21.1, Official Gazette of the SFRY No. 77/88 (*cited in Wholly Foreign-Owned Companies, supra* note 143). Generally, the Foreign Investment Law, which became effective Jan. 8, 1989, allows foreign persons to invest resources for the purpose of pursuing economic and social activities. Law on Foreign Investments § 21.1. *See also* Sipkov, *supra* note 143; *Investing in Yugoslavia: Challenges and Opportunities: The Foreign Investment Law: The Enterprises Law* 1989 (document published by Yugoslavenski Pregled).

145. Serbian Law No. 16 on Public Media, DOC/NTIS PB91-961217 (1991), *available from* U.S. Dept. of Commerce, Office of General Counsel. Art. 2 defines the public media as including the press, radio and television programming, the news agency, and audiovisual and other means of public media. *Id.*

146. *Id.* at part VI, art. 34. The federal Law on the Introduction and the Distribution of Foreign Mass Media and on Foreign Media Activities in Yugoslavia is not currently available.

147. *Id.* at part VI, art. 35.

148. *Id.*

for broadcast. The law is unclear as to what constitutes "foreign materials" and whether the introduction of materials co-produced with a foreign country would meet the conditions of the Media Law.[149]

In Poland, the Act on Radio and Television was adopted by the Sejm on November 25, 1991 but is currently ineffective because it was vetoed by Lech Walesa in December 1991. Instead, the Act of November 23, 1990[150] remains in effect until the new act becomes effective. The Act of November 23, 1990 does not allow the granting of broadcasting permits, but under the proposed Act, a National Council for Radio and Television would be established with a president empowered to grant such licenses.[151] A license could be granted to a natural or juristic person based in Poland.[152] In the case of a company with foreign participation, the foreign capital contribution could not exceed thirty-three percent and Polish citizens living in Poland should also have a majority of votes on the company's management and supervisory boards.[153] Thus, a foreigner could not apply for a license,[154] but could invest in a licensed broadcast entity.

If the legislation becomes effective, other restrictions should be considered by foreign investors as well. Regarding the type of programs broadcast, the licensee would have to present cultural and educational programs, entertainment, science, and technology and would have to support Polish-made audio-visual production.[155] In deciding whether to grant an application, the Council can also consider how many of the programs are to be Polish-made.[156] A license cannot be granted if the planned programming would be inimical to the values of the national culture, would be likely to give the applicant a monopoly, or endanger state security.[157] A cable TV network must give priority to transmission of the public

149. Assuming that such an arrangement were acceptable, art. 7 of the Media Law sets forth the administrative rule for beginning activities of the public media; art. 11 sets certain content parameters on the media; art. 17 specifies the reporter's responsibilities in letting persons who are being quoted review their statements for accuracy; and art. 29-33 prescribe the rules for reporting announcements and corrections. *Id.* at art. 7, 11, 17, 29-33.

150. Act of 23.11.90, DU No. 54/1984, item 275, *cited in Amber Light for Private Broadcasting*, E. EUR. BUS. L., Dec. 1991, *available in* LEXIS, Europe Library, EEBLAW File.

151. *Amber Light for Private Broadcasting*, *supra* note 150.

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. *Id.*

TV broadcaster's nationwide and local programs.[158]

In Czechoslovakia, there are several laws that affect media investors. Generally, foreign entrepreneurs, defined as those who are neither domiciled nor headquartered in the Czech Slovak Federalist Republics (CSFR), are now governed by the Commercial Code.[159] Under the Commercial Code foreigners are treated on an equal par with Czechoslovak citizens.[160] A condition precedent for a foreigner to engage in business is entry on the Commercial Register.[161] The most common way to do business in the CSFR is to participate in a Czechoslovak company; the foreign company may be a founder or participate as a shareholder in an existing Czechoslovak company.[162] A foreigner may start a Czechoslovak company of its own or become the sole member of such a company.[163] The company may be set up under Czechoslovak law or under other law.[164]

Under the new Czechoslovak Media Act, adopted October 30, 1991, the status of foreigners in relation to radio and television broadcasting was clarified.[165] Under article 3(1) of the Act, radio and TV stations may be operated by anyone holding a broadcasting license.[166] Any juristic person who has a place of business in the CSFR and who is registered there may apply for a licence, but a license may be granted even before registration if the company has already been founded.[167] When these two laws are read together, it would seem that unlike the Commercial Code, governing all business, the Media Law at least requires that the applicant have a place of business in the CSFR. A natural person must also have a permanent residence in Czechoslovakia in order to apply for a license.[168]

There is no limit to foreign participation in the media, and imports of foreign media programs are not limited.[169] The authori-

---

158. *Id.*

159. *Foreign Entrepreneurs*, E. EUR. BUS. L., Jan. 1992, *available in* LEXIS, Europe Library, EEBLAW File.

160. *Id.*

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *New Czechoslovak Media Act*, E. EUR. BUS. L., Dec. 1991, *available in* LEXIS, Europe Library, EEBLAW File.

166. *Id.*

167. *Id.*

168. *Id.*

169. *Id.*

ties consider only market share enjoyed by Czechoslovak participants or their control of other companies.[170]

The Media Law may be otherwise inhibitive of foreign media entrepreneurs. Applicants are granted a non-transferrable license by the Federal Council for Broadcasting based on their involvement in media and communications and their contribution to original domestic production.[171] While the requirement of providing original domestic production is likely not a barrier, the fact that the license is non-transferrable may create exit barriers, especially since the license is granted for a maximum of six years for radio or twelve years for television broadcasting.[172]

Further, no applicant may dominate the media sector.[173] While the law does not make clear how much group ownership, if any, would be considered non-dominant, this restriction must be considered by investors who would hope to expand their business in the CSFR in order to recoup their capital outlay. United States investors seek to avoid this type of restriction in U.S. communications regulations, which currently restrict a broadcaster's dominance in a given geographic or media-specific market.[174]

The foreign media investor's due diligence assessment should also include an examination of the advertising restrictions, which are the primary revenue-raising mechanism for broadcasters in the United States. Raising revenue in this manner anywhere in Eastern Europe is problematic because the businesses that would advertise are still getting on their feet. The Media Law in the CSFR provides that private radio stations may allocate up to twenty percent of their broadcast time for advertising, while television licensees are restricted to ten percent.[175] Generally, advertising on television may not exceed twelve minutes an hour.[176] Assuming that even this much advertising would be available, these restrictions are liberal by U.S. standards.

Another important law affecting the media in Czechoslovakia is its Federal Law on the Periodical Press and Other Mass Media,

170. *Id.*

171. *Id.* In the United States the Federal Communications Commission (FCC) imposes similar requirements that a licensee in a particular geographic market produce programming directed at the needs of the community it serves. *See* 47 C.F.R. §§ 73.3526(a)(8), (a)(9) (1991).

172. *New Czechoslovak Media Act, supra* note 165.

173. *Id.*

174. *See* 47 C.F.R. § 73.3555 (1992).

175. *New Czechoslovak Media Act, supra* note 165.

176. *Id.*

which was amended on June 20, 1990.[177] Part II, section 4 establishes that the periodical press can be published by Czechoslovak legal entities and citizens, and otherwise only by authorization of the appropriate government agency.[178] Under part III, section 10, the law delineates the responsibilities of the publisher, editor-in-chief, and other editors.[179] For example, the publisher or the editor-in-chief appointed by the publisher is responsible for ensuring that the contents of the mass medium do not infringe the legally protected interests of society, citizens, and organizations.[180] The statute does not, however, offer specifics as to what these interests are. Section 11 specifies that the editor-in-chief or the editor must be a citizen and a professional.[181] Section 12 indicates that editors are protected from pressures aimed at thwarting their activities.[182]

One particularly interesting provision that may affect foreign newspaper investors is section 23 of part VIII, regarding Foreign Press and News Agencies. This section places restrictions on the importation and distribution of foreign periodical press printed abroad and distribution of foreign periodical press printed in the Czechoslovak Socialist Republic (CSR), as well as the distribution of news by foreign news agencies and mass media.[183] The above is prohibited if its "contents promote violence and war, fascist or Nazi ideology, racial discrimination, or is in some other way in conflict with humaneness, or if it attacks the unity of the Republic and the basis of its constitutional order, or breaks international agreements."[184] This is the type of direct content regulation that is not generally permitted under the First Amendment in the United States.[185]

On December 11, 1991, Romania's Parliament began debates on its Audiovisual Bill.[186] Its provisions are fairly liberal, guaran-

177. Collection of CSSR Laws No. 81, Law No. 86/1990, *cited in* Foreign Broadcast Information Service, JPRS Report: East Europe Recent Legislation, Oct. 19, 1990, at 45.

178. *Id.* Such authorization is obtained by registration made by the Ministry of Education and Culture; registration for other than the periodical press is made by the regional national committees. *Id.* at pt. II § 5(1)-(2).

179. *Id.* at pt. III § 10(1).

180. *Id.* at pt. III § 10(3).

181. *Id.* at pt. III § 11.

182. *Id.* at pt. III § 12.

183. *Id.* at pt. VIII § 23.

184. *Id.*

185. Another important requirement for foreign news agencies is that they may be active in the CSR only if their employees and permanent foreign correspondents are accredited to the Ministry of Foreign Affairs. *Id.* at pt. VIII § 24(1).

186. *New Audiovisual Bill to Guarantee Free Expression of Ideas*, SUMMARY OF WORLD BROADCASTS, Dec. 20, 1991, at EE/1260/B/1, *available in* LEXIS, Nexis Library,

teeing, among other things, the freedom of expression of ideas, pluralism of opinions, as well as the spread of information through radio and television.[187] There is also a right of access for public or private juridical persons to rent audiovisual communications networks that are the property of autonomous units or of state-capital commercial companies.[188] These persons can own broadcast stations, or they can broadcast through public networks by obtaining a program license.[189] The National Audiovisual Council, an independent authority, exercises its exclusive attributions with the primary objective being to ensure audiovisual freedom of expression.[190] There is no indication that foreigners will be precluded from holding licenses if they are established in Romania.

Foreigners should consider two other legal indications that would impact their businesses across media industries. First, current law, as of mid-1991, limits hard currency profit repatriation to fifteen percent, but offers a two- to five-year tax holiday. Second, in August 1991 a privatization law was passed transferring the value of 6,000 state firms to commercial enterprises. While thirty percent will be distributed as free, tradeable certificates to Romanian citizens, the remaining seventy percent are to be held by State Ownership Fund and auctioned to foreign investors, which process is to be completed in seven years.[191] The foregoing indicates that the general legal climate for foreign media entrepreneurs in Romania is promising. In Hungary, draft legislation on broadcasting was submitted in the fall of 1991 and is now being redrafted.[192] Radio and television remains under state control pending passage of the legislation, and there is currently a moratorium on the allocation and assignment of new broadcast frequencies. Notwithstanding, some private broadcasting (Nap-TV) has gained attention. There are reportedly about 100 applications pending for permission to operate private radio and television stations.[193]

It is believed that the new broadcasting law will lead to growth in local television and to at least three more national commercial networks; it may also make some state-controlled television net-

BBCSWB File.

187. *Id.*

188. *Id.*

189. *Id.*

190. *Id.*

191. *See* MOTION PICTURE ASS'N OF AM., *supra* note 81.

192. *Id.*

193. *See First Pay-TV Channel Gets 20,000 Subscribers, supra* note 103.

works autonomous networks.[194] To encourage foreign investment, the bill includes "tax concessions for joint ventures, and provisions for overseas investors to take their share of any after-tax profits out of the country in hard currency through the Hungarian National Bank."[195] The bill would "also grant local authorities more powers to award cable franchises and relax the ownership restrictions which at present restrict the number of systems an individual country can own."[196] The first draft of the Act on Media introduced an antimonopoly regulation, under which a company that owns a national newspaper cannot own a national TV or radio channel.[197] Thus, print media investors like Murdoch who want to get commercial broadcast channels in Hungary may be barred from doing so if this provision goes through.

In the cable industry, it is worth noting the government guideline that foreign interests cannot own more than forty-nine percent of a Hungarian company.[198] In 1990 this guideline precluded Chase Enterprises, which was building cable networks elsewhere in Eastern Europe, from buying an eighty-five percent interest in Kabel-TV, which would have been Hungary's largest private cable company with a capital investment of $200 million.[199] This guideline may be relaxed as well if the new media law passes.

In Bulgaria a number of laws dealing with telecommunications, mass media, banking, and private investment are pending until the new constitution is rewritten, which was expected in mid-1991.[200] To date, there is no indication that these laws have been passed. Additionally, Bulgaria and the U.S. government concluded a provisional trade agreement in October 1990, which, when implemented, will provide Most Favored Nation (MFN) status, upgrade intellectual property protection, and normalize commercial relations.[201] While this development signals Bulgaria's interests in pursuing free trade with the United States, it is yet unclear how specifically the media industry will be affected and how open Bulgaria will be to foreign media investors.

194. *Id.*
195. *Id.*
196. *Id.*
197. Vamos, *supra* note 97, at 368.
198. *See First Pay-TV Channel Gets 20,000 Subscribers, supra* note 104.
199. *Id.*
200. *See* MOTION PICTURE ASS'N OF AM., *supra* note 81.
201. *Id.*

C. *Financial or Investment Barriers*

Aside from legal barriers, there are other more practical considerations that might temper the foreign media's interest in Eastern Europe. First, Eastern European film and television producers are not seen as viable co-production partners or buyers of programming because of their financial problems.[202] Second, because of the attractiveness of Eastern Europe as a production location for western companies, costs for skills and facilities have sharply increased.[203] Increased costs are most noticeable in Hungary, which now ranks behind Yugoslavia in cost terms but ahead of Czechoslovakia, with Poland the cheapest.[204] Eastern European countries can still offer production cost savings of twenty-five to fifty percent as well as facilities and skilled film technicians, but co-production and service deals are not as attractive.[205]

D. *Competitive Barriers*

There are a number of barriers to foreign investment in Eastern Europe media industries in terms of competition. First, there is competition from Eastern European companies. For example, Hungarian companies are very active in the private cable market. In Hungary TV-Tele, owned by Telesystem RT, is a very successful Hungarian cable programmer.[206] TV-Tele, which provides programming to seventy-eight cable networks in Hungary, broadcasting to 588,740 households, is financed by advertising, which makes up ten percent of its programming.[207] There does not appear to be any competition between KabelKom, owned in part by HBO, a Time-Warner subsidiary, and TV-Tele, because KabelKom is a pay-television channel, whereas TV-Tele is a commercial-based television station.[208] However, this situation may change as existing companies diversify and new entrants emerge. Further, Hungarian investors may be advantaged by subsidies that foreign entrants are not offered.

Many Eastern European countries are also members of some of the projects sponsored by the European Community (EC) to en-

202. William Mahoney, *Poll Tracks Global TV Growth Areas*, ELECTRONIC MEDIA, Oct. 14, 1991, at 18.

203. *See Eastern Bloc Moves Slowly in a Commercial Direction*, *supra* note 28.

204. *Id.*

205. *Id.*

206. *See First Pay-TV Channel Gets 20,000 Subscribers*, *supra* note 104.

207. *Id.*

208. *Id.*

hance audiovisual opportunities for European companies, measures which have been criticized by some in the United States as protectionist. For example, Poland is a member of the EC's Eureka Audiovisual project which began in October 1989.[209] This project promotes professional radio and television networks and film production in Europe.[210] Poland will also be a member of the MEDIA project,[211] which has similar objectives.[212]

Under the Eureka project, Polish filmmakers can realize entire productions, including the script, the production, and the distribution of their work. Eureka has accepted fourteen projects to date.[213] Some of Eureka's objectives include project financing, training of Polish professional staff, and distribution of Polish films in Europe.[214] Another of Eureka Audiovisual's goals is the establishment of an all-European television program, called Euronews, which would compete with the American CNN network.[215] Euronews would provide nine hours of daily programming via satellite to reach all of Europe as well as northern Africa. Viewers can select one of five language channels: English, French, German, Italian, and Spanish.[216] Extensive funds are needed for broadcast of Euronews. These funds are expected to come from the governments of Germany, Italy, Finland, Spain, and France.[217]

There is also stiff competition in the East European media markets from other foreigners, especially in the newspaper industry, where Europeans have invested heavily. Hungary is the pioneer with new dailies and weeklies entering the market every week.[218]

On February 13, 1990, Robert Maxwell bought a forty percent share of *Magyar Hirlap ("Hungarian News")*, which was formerly wholly owned by the Communist government of Hungary and go-

---

209. *"Eureka Audiovisual" in Poland: "Euronews" Instead of CNN*, WARSAW VOICE, Mar. 31, 1991, *available in* LEXIS, Europe Library, Warsaw File.

210. *Id.*

211. *Id.*

212. There are 20 or so media "action lines" under this program, including the European Script Fund, to develop scripts; the European Film Distribution Office, to support the distribution of European films; the Entrepreneurs de l'Audiovisuel Europeen programme, to develop producers' skills; and Groupement Europeen pour la Circulation des Oeuvres, the television production fund. *EC Deal with East European Countries Opens Door to Media Expansion*, SCREEN FINANCE, Dec. 11, 1991, *available in* LEXIS, Entert Library, Srnfin File.

213. *See "Eureka Audiovisual" in Poland, supra* note 209.

214. *Id.*

215. *Id.*

216. *Id.*

217. *Id.*

218. Vamos, *supra* note 97, at 368.

ing bankrupt.[219] In April 1990 Maxwell bought a forty percent share in *Esti Hirlap* (*"Evening News"*) and at the same time, because *Magyar Hirlap* was experiencing serious financial problems, the government allowed Maxwell to increase his capital share to give him a majority interest.[220] Rupert Murdoch, an American citizen, has a fifty percent interest in *Mai Nap* (*"Today"*), an afternoon paper and is a majority owner of the weekly *Reform*, which is published by the Reform Hungarian-American News Magazine Company, a member of the Murdoch News Corporation.[221] Robert Hersant, owner of one of the biggest French publishing groups, took over *Magyar Nemzet* (*"Hungarian Nation"*), a deal to which the Hungarian government consented. (The daily had been state-run and state-owned).[222] Axel Springer Verlag, a huge German media group, now owns the new daily *Reggel*.[223] Despite these other investors, Maxwell had a headstart over most foreign media investors, and now the Eastern European dailies he owns, either partially or wholly, sell more than five million copies.[224]

While the Hungarian newspaper market is quickly becoming saturated with foreign investment, radio and television are still seen as the most lucrative media in Eastern Europe. The dailies and magazines can be seen as a way to enter the radio and TV markets.[225] In this regard, however, the radio market presents several problems for foreign investors. How will radio attract and retain advertisers when deregulated television is doing the same thing and has the advantage of national reach? How will radio stations distinguish themselves in an increasingly crowded marketplace?

The answers are encouraging. In Eastern Europe there is one radio station per 40,000,000 people as compared to one per 27,000 people in the United States and one per 46,000 people in the European Community.[226] Thus, the Eastern European radio market is appealing to U.S. investors, especially because there are few radio stations in the United States that can still be purchased at reasonable prices.[227] In addition, the anticipated growth in European ad-

219. *Id.* at 370.
220. *Id.*
221. *Id.*
222. *Id.*
223. *Id.* at 370.
224. *Id.* at 370.
225. *Id.* at 372.
226. Larry Green, *Monday Memo: A European Radio Business Commentary*, BROADCASTING, Aug. 5, 1991, at 12.
227. *Id.*

vertisement spending will accelerate payback periods for the investor.[228] Still, this growth is tempered by minority ownership restrictions in most markets.[229] In the film industry, U.S. investors face stiff competition from European Community filmmakers. On December 16 trade agreements were signed between the European Community and Hungary, Poland, and Czechoslovakia to allow these Eastern European countries to participate in the EC's Media 95, the five-year audiovisual program described above,[230] which has an extensive budget.[231] The EC agreement with these countries still has to be ratified by all twelve EC national parliaments.[232] In the fall of 1991 negotiations on similar agreements were initiated by the EC with Bulgaria and Romania.[233] The EC wants a film presence in Eastern Europe in order to allow distribution of western films in Eastern Europe and to give Eastern European films greater access to the west, so as to share each other's audiences.[234]

An additional consideration for U.S. investors is the EC's Broadcasting Directive, which was adopted in 1989.[235] The directive requires, among other things, European broadcasters to reserve a majority of their broadcast time for programs "mainly made" by Europeans.[236] The definition of "European" would include Eastern Europe and would exclude U.S. productions to the extent that U.S. producers would be limited to participating in coproductions, and even in those to a more limited extent than Europeans. The disadvantage of the directive to U.S. investors is that Eastern European filmmakers would be able to sell their product, made in Eastern Europe, to the lucrative European Community market more freely than would U.S. filmmakers.

E. *Protection of Intellectual Property*

One of the most important considerations for U.S. investors in media industries is the extent to which a copyrightable product made in a foreign country will be protected by that country. With-

---

228. *Id.*
229. *Id.*
230. *See supra* text accompanying notes 211-12.
231. *EC Deal with East European Countries Opens Door to Media Expansion, supra* note 212.
232. *Id.*
233. *Id.*
234. *Id.*
235. Council Directive of 3 October 1989 the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, O.J. (L 298/23).
236. *Id.* at art. IV.

out such protection, investors cannot be assured of their projected return on investment. In countries where such protections are lacking, pirated copies are sold by the thousands, rendering enormous losses for investors.

This is a serious problem in Poland. In October 1991 a copyright bill was under consideration, which the United States saw as containing several flaws.[237] Its provisions did not cover existing products.[238] In October 1991 it was still unclear whether the new government would pass the law,[239] and to date it has not done so. Part of the United States' concern about piracy in Poland is Poland's ability to export pirated products all over Eastern Europe.[240]

More generally, members of the International Intellectual Property Alliance (IIPA) are increasingly looking to Eastern Europe as the market for the sale of media products.[241] However, the IIPA sees legal changes in these countries' intellectual property laws as being critical.[242] An IIPA study concludes that only two countries, Czechoslovakia and Hungary, protect U.S. sound recordings; most Eastern European countries regulate the terms of copyright licenses, including royalty rates; and there is practically no enforcement of piracy laws.[243]

F. Other Unforeseen Barriers

Finally, there are any number of other problems that may arise and that cannot be anticipated. United States investors, having attempted to predict these complications, will simply have to assume the risks and depend on good management to solve the problems. For example, incompetence of the state-run postal systems in parts of Eastern Europe in distributing newspapers has presented one of the greatest obstacles to the success of many newspapers.[244] As of September 1991, there was no private delivery and a paper cannot be sold exclusively through news carriers.[245] Thus, well-established newspapers are going out of business, and

---

237. Jeff Clark-Meads and Susan Nunziata, *U.S. Answers Call to Stem Poland's Piracy*, BILLBOARD, Oct. 26, 1991, at 1.

238. *Id.* at 79.

239. *Id.*

240. *Id.*

241. *U.S. Industry Calls on Eastern Europe to Improve Copyright Laws, Enforcement*, INTL. TRADE REP., Nov. 28, 1990, at 1811, *available in* LEXIS, BNA Library, Intrad File.

242. *Id.*

243. *Id.*

244. Vamos, *supra* note 97, at 368.

245. *Id.*

new newspapers are struggling in Eastern Europe.[246]

IV. Conclusion

From the foregoing, it is clear that Eastern Europe is opening its channels of communications to westerners slowly but surely. Some Eastern European countries are more open in a particular media industry than others. Few countries, however, bar media investments altogether. While Yugoslavia represents a risky environment for investment for many reasons, Hungary, Poland, and Czechoslovakia make progress every day in readying their countries for foreign investment.

Against this backdrop, U.S. media investors are uniquely qualified to take advantage of these opportunities. That U.S. media has persons qualified to manage these industries is illustrated by the fact that media products represent one of the few areas in which the United States maintains a trade surplus. This allows the United States a headstart over the rest of world, and we should take advantage of it.

246. *Id.*