Washington International Law Journal

Volume 5 | Number 3

7-1-1996

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CHANGING THE "FOURTH CHANNELS": TAIWAN TUNES IN TO A NEW CABLE TELEVISION LAW

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Abstract: Threatened with potentially massive trade sanctions by the United States, Taiwan enacted the Cable Television Law in 1993 to regulate the so-called "Fourth Channels," hundreds of private cable operations that transmitted programming pirated from the United States and other sources. This Comment identifies the roots of the Fourth Channels and examines the U.S. and Taiwanese forces that gave rise to the cable law. The Comment analyzes major provisions of the law and explores the law's effects on both U.S. and Taiwanese interests.

I. INTRODUCTION

In the late 1980s, at the end of four decades of martial law, Taiwan's government languished in a leadership vacuum. Legislators and policymakers struggling to adapt to newly democratized procedures were unable to keep up with the rapid pace of technology and the increasing demands of international commerce. In a dizzying context of greater societal freedoms and evolving politics, unregulated cable television—a popular and lucrative enterprise—grew unchecked. Among other problems, a lack of cable regulation contributed to widespread violation of motion-picture copyrights. But under pressure from the United States to curb this rampant piracy, Taiwan enacted the Cable Television Law[1] in 1993 as part of an effort to rein in copyright violators.

This Comment reviews the forces, American and Taiwanese, which ultimately prompted the enactment of cable legislation that had languished for more than a decade, and examines the subsequent impact of the law on U.S. and Taiwanese interests. Specifically, Part II outlines the political setting in which regulation was finally promulgated, and examines major provisions of the cable law and its early implementation. Part III analyzes the law's demonstrated and potential effects on U.S. trade interests, including declining video piracy and new trade barriers. Part III also discusses the law's potential to restrict free expression in Taiwan, as well as

[1] Cable Television Law (July 16, 1993) (ROC) (Chinese-language law and English translation on file with the author) [hereinafter Taiwan Cable Television Law].

the measure's contributions toward achieving the Republic of China's ("ROC") technology goals.

II. BACKGROUND

A. History of Cable Television in Taiwan

When the ROC government withdrew to the island of Taiwan in 1949 following the communist takeover of mainland China, the ruling Kuomintang ("KMT" Nationalist Party) strictly enforced communications restrictions to ensure that the media complied with anti-communist policies and KMT nation-building goals.[2] The KMT insisted that until it was restored to rule on the mainland it would enforce "Three Nos": no contact, no negotiation, and no compromise with the mainland.[3]

In the past forty years, however, the KMT's claim to mainland rule has deteriorated.[4] Since martial law was lifted in 1987, the KMT has abolished many longtime communications restrictions, including a ban on new publications and electronic media, and has ceased to enforce policies against reporting favorably about mainland China or calling for Taiwan's independence from the mainland.[5] Along with this political evolution came veritable revolutions in economics and technology, and these three forces spurred major growth in news and entertainment media.[6]

Print media achieved greater liberty than electronic media, however.[7] The island's three broadcast television stations remain heavily influenced by the KMT and are substantially owned by the party, the military and the provincial government of Taiwan—all politically intertwined entities.[8] Not surprisingly, these broadcast stations present a homogenous, pro-KMT view

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2 Bonnie Peng, *The Regulation of New Media in Taiwan*, 4 ASIAN J. COMM. 97, 98 (1994); *see also* JOHN VANDEN HEUVEL & EVERETTE E. DENNIS, THE UNFOLDING LOTUS: EAST ASIA'S CHANGING MEDIA, A REPORT OF THE FREEDOM FORUM MEDIA STUDIES CENTER AT COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK 41 (1993).

3 VANDEN HEUVEL & DENNIS, *supra* note 2, at 41.

4 VANDEN HEUVEL & DENNIS, *supra* note 2, at 41.

5 VANDEN HEUVEL & DENNIS, *supra* note 2, at 44.

6 Peng, *supra* note 2, at 98, 100.

7 Peng, *supra* note 2, at 98, 100.

8 Glen Lewis et al., *Television Globalization in Taiwan and Australia*, 21 MEDIA ASIA 183, 184 (1994).

of news.[9] As for entertainment, one correspondent has described the stations' fare as "cheap variety shows and saccharine melodramas [that don't] relieve the boredom."[10]

It was boredom with the government-owned stations, in large part, that led to the rise in the 1970s of what quickly became the most dynamic players on the Taiwan media scene: "Fourth Channels," so named because these illicit cable television entrepreneurs presented news and entertainment alternatives to the three government broadcasters.[11]

Until July 1993, only about 120 cable stations were legal in Taiwan, authorized merely as "community television" delivery systems to relay signals from the government broadcast stations to outlying communities with poor reception.[12] The existing Broadcasting and Television Law did not allow cable transmission of additional, nongovernment programming.[13] Nevertheless, by the early 1990s there were an estimated 300 to 600[14] illegal Fourth Channel stations in Taiwan providing about fifty channels via videotape and, as the technology became more available, via satellite signals from Japan, Hong Kong and the United States.[15] At their height, the larger operations served about 200,000 customers each, while the smaller enterprises served just a few thousand, with about thirty percent of the island's approximately four million households receiving cable service.[16] One reporter described the urban skyline as web-like, criss-crossed with

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9 VANDEN HEUVEL & DENNIS, *supra* note 2, at 51.

10 Julian Baum, *Untangling the Wires*, FAR E. ECON. REV., Oct. 27, 1993, at 74, *available in* WESTLAW, FEER Database.

11 *Id; see also* VANDEN HEUVEL & DENNIS, *supra* note 2, at 51.

12 Jeremy Mark, *Taiwan Seeks to Legalize Cable-TV Firms*, ASIAN WALL ST. J., July 14, 1992, at 1; *see also* Peng, *supra* note 2, at 102.

13 Peng, *supra* note 2, at 102.

14 The numbers vary from source to source for no discernable reason other than the difficulty of quantifying an unregulated, illegal industry for which there are no "official" numbers.

15 *Taiwan's Cable Industry,* ASIAN CENTURY BUS. RPTS., Feb. 1, 1995, *available in* WESTLAW, ACBR Database; *see also* GOVERNMENT INFORMATION OFFICE, REPUBLIC OF CHINA YEARBOOK 1995, 355 (1995). Fourth Channels typically invested in "minimal equipment—a satellite dish, a few VCRs, videotapes and cable—worth at most US$500,000." *Id.*

16 Philip Liu, *Taiwan: Cable TV Law—A Milestone for the Island's Mass Media*, BUS. TAIWAN, Aug. 2, 1993, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File. *See also* Baum, *supra* note 10 (some analysts predict that by 1996, 60% of households will subscribe to cable—the subscriber level in the United States and other mature cable markets); *Taiwan's Cable Industry, supra* note 15 (the cable industry believes it can attract three million more households, which would give Taiwan the highest cable density in Asia).

"[jury-rigged] cables [hanging] from street lights and telephone poles in almost every district."[17]

Service costs averaged about US$65 for hookup plus US$6-$25 per month,[18] not prohibitive for the Taiwanese, who earn an average of US$1,000 per month.[19] For their money, subscribers received a feast of programs, most of which were pirated, including CNN International, Chinese-language films,[20] karaoke, stockmarket quotes,[21] hard-core pornography,[22] and newly released U.S. movies—even as they were still playing in Taipei theaters.[23] Entertainment wasn't the only attraction of the Fourth Channels, however. About 200,000 households in 1993 subscribed to "Democracy Television," a group of about fifty cable stations that specialized in political speeches and current-affairs programs favorable to the political opposition.[24]

Despite a vigorous anti-cable campaign, the ROC government could not stamp out the Fourth Channels.[25] In 1991, in its most concentrated crackdown, the government ripped out 370,000 kilograms (814,000 pounds) of transmission lines in four months—to no avail.[26] Cable operators restored their connections as fast as the police could cut them,[27] and operators quickly learned that penalties would be minimal. The self-described "father" of illicit cable recounted numerous arrests but only brief

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17 Baum, *supra* note 10.

18 Lewis et al., *supra* note 8; *see also* Alan Shih, *Spoiling the Party*, CABLE & SATELLITE EUR., Nov. 1992, at 43.

19 Kirby Chien, *Taiwan's GDP Growth Rate Slows Amid Stagnant Property Market*, ASIAN WALL ST. J., Aug. 21, 1995, at 3. *See also Taiwan Sees Stable GDP Growth*, ASIAN WALL ST. J., Dec. 19, 1995, at 9 (citing a leading Taiwanese official's estimate that annual per capita income will be $20,000 within five years); *Taiwan Struggles With Change*, ASIA MARKET PAC., Mar. 1, 1994, *available in* WESTLAW, PTS Database. Telephone survey regarding ownership of large-ticket items indicates the depth of Taiwan's middle class. *Id.* For example, by 1992 virtually every household owned a color television set, 68% owned VCRs, 99% owned regrigerators, 90% owned washing machines, 95% owned telephones, 12% owned personal computers and 56% had air conditioning, up from just 5% in 1977. *Id.*

20 Baum, *supra* note 10.

21 Mark, *supra* note 12.

22 Liu, *supra* note 16.

23 Mark, *supra* note 12.

24 Mark, *supra* note 12.

25 Lewis et al., *supra* note 8, at 184.

26 Mark, *supra* note 12.

27 Julian Baum, *Broadcasting Buccaneer*, FAR E. ECON. REV., Oct. 7, 1993, at 78, *available in* WESTLAW, FEER Database.

detentions and small fines during his twenty-three years as a "broadcast buccaneer."[28] Another longtime illegal operator described the Fourth Channels as embodying a "gentlemen's agreement" between the stations that "we keep to our areas and don't compete with neighboring systems."[29] But officials viewed the illegal operators as more akin to gangsters than gentlemen, and the cable systems as not just underground but underworld.[30]

ROC officials blamed continuing enforcement failures on the absence of laws to specifically address illegal cable operators, though some observers maintained that the authorities simply lacked the will to enforce existing statutes and crack down on a thriving industry that had gained widespread popular support.[31] Indeed, it requires little imagination to believe that ROC administrators subscribed to and enjoyed the variety of cable programming every bit as much as the general public, and therefore hesitated to shut down the industry. But when the U.S. government began threatening trade sanctions in retaliation for copyright infringement by the Fourth Channels, the ROC government found its will—and a way—to rein in the maverick cable operators.[32]

B. Major Provisions of the Cable Television Act

In attempting to come to terms with the Fourth Channels—which the ROC government realized it could not simply eradicate—lawmakers first moved to bring the illicit operators under state regulation in the 1980s.[33] Legalization and regulation were recommended to the government by a university study it commissioned in 1985, and legislation was first drafted in 1989.[34] But not until July 1993, on the chaotic last day of the Legislative Yuan, did legislators finally enact the controversial Cable Television Law.[35]

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28 *Id.*

29 Baum, *supra* note 10.

30 Mark, *supra* note 12.

31 Mark, *supra* note 12.

32 Mark, *supra* note 12.

33 Lewis et al., *supra* note 8, at 185.

34 Lewis et al., *supra* note 8, at 185.

35 Taiwan Cable Television Law (July 16, 1993) (ROC). The Legislative Yuan is one of five branches of national government and is the highest legislative organ of the state, constituted of popularly elected representatives who serve three-year terms. Among other powers, the Legislative Yuan exercises general lawmaking powers on behalf of the citizens. GOV'T INFO. OFFICE, REPUBLIC OF CHINA YEARBOOK 1994, 104, 109 (1994).

The landmark law ended forty-four years of virtual government monopoly in legal electronic media, and, ironically, initiated strict government control over a heretofore unrecognized and unregulated medium.[36]

The government had delayed legalization of private cable TV mainly out of political considerations and uncertainty about the potential impacts of regulation.[37] The chairman of the Telecommunications Department of the World College of Journalism and Communications told the Taipei Satellite and Cable Convention in 1992 that the government was primarily concerned about its ability to control the medium once it was legally recognized.[38] Under the law as it was adopted, however, the ROC government clearly has far more substantive and procedural control over authorized cable stations than it had over the freewheeling Fourth Channels.

The law does not provide for a single, central regulatory agency similar to the U.S. Federal Communications Commission ("FCC");[39] rather the designated regulatory authorities are the Government Information Office ("GIO") in the central government, the Department of Information in the provinces, and the local Department of Information in the counties and cities.[40] However, the Taiwan law does provide for a centralized Review Committee, which one commentator describes as having the potential to act as an FCC-like agency.[41] The Committee has the authority to review the revocation of permits for cable systems, the issuance or renewal of licenses for operators, and other items regulated by the law or requested by the GIO.[42]

During debate on the measure, many legislators expressed concerns that the Committee not be overrepresented by government officials.[43]

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36 Julian Baum, *We Interrupt This Broadcast: Taiwan Moves to Rein in Cable-TV Operators*, FAR E. ECON. REV., July 29, 1993, at 61, *available in* WESTLAW, FEER Database.

37 Lewis et al., *supra* note 8, at 185.

38 Alan Shih, *Spoiling the Party*, CABLE & SATELLITE EUR., Nov. 1992, at 42.

39 *See* Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 98 Stat. 2779 (codified in scattered sections of 47 U.S.C.) [hereinafter U.S. Cable Communications Act].

40 Taiwan Cable Television Law, art. 3.

41 Peng, *supra* note 2, at 104.

42 Taiwan Cable Television Law, art. 8; *cf.* U.S. Cable Communications Act (FCC is an independent federal agency charged with broad authority to license, adopt administrative rules and regulations, conduct administrative hearings, and assess fees and penalties in accordance with federal law. The Commission delegates some authority to local franchising authorities, usually municipal governments, to award cable franchises within its jurisdiction.).

43 Peng, *supra* note 2, at 104.

Consequently, the law calls for thirteen to fifteen part-time Committee members, of which eleven to thirteen shall be scholars or communications experts, one shall represent the Ministry of Transportation and Communications, and one shall represent the GIO.[44] No more than half the members may be from the same political party, and while serving on the Committee for a maximum of two three-year terms they are not allowed to participate in any party activities.[45] Despite these safeguards, one Taiwanese scholar is concerned about the Committee's ability to remain independent of government, parties and business.[46] Indeed, corruption is a widespread problem at all levels of government in Taiwan.[47]

Other major elements of Taiwan's Cable Television Law include:

- No cross-media ownership. Existing publications, broadcasters and directors, supervisors and managers of these media are prohibited from serving in any capacity at a cable TV station.[48] The three government broadcast stations, citing experience in electronic media and a desire to diversify, had wanted to enter the legal cable industry,[49] yet the government, despite its affiliation with the stations, refused to allow cross-ownership out of concern for unfair economic competition.[50]

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[44] Taiwan Cable Television Law, art. 9; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 154) (The FCC is composed of five commissioners appointed by the president with advice and consent of the Senate. Members shall not have any financial interest in any individual, business or entity engaged in communications industry. Unlike the Taiwan Review Committee, FCC positions are not allocated to particular fields, *e.g.*, academia and government.).

[45] Taiwan Cable Television Law, arts. 9-10; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 154) (FCC commissioners are appointed to five-year terms. The maximum number who may be members of the same political party is equal to the least number that constitutes a majority of the full membership of the Commission. Commissioners shall not participate in any profession or business or be otherwise employed while serving on the Commission.).

[46] Peng, *supra* note 2, at 105.

[47] Jeremy Mark, *Taiwan Reformers Warn KMT: Change or Wither,* ASIAN WALL ST. J., Aug. 12, 1993, at 1.

[48] Taiwan Cable Television Law, art. 20; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 533) (No one may be a cable operator who directly or through one or more affiliates owns or controls a broadcast television station that serves any portion of the community served by the operator's cable system. A state or local franchising authority may hold any ownership interest in any cable system; however, a state or local franchising authority may not prohibit the ownership or control of a cable system by a person who has ownership or other interests in other mass media.).

[49] Peng, *supra* note 2, at 105.

[50] Peng, *supra* note 2, at 105.

• No foreign investment. Despite pressure from U.S. officials and businesses, foreign individuals or entities may not invest in a Taiwanese cable company, the structure of which is limited to a corporation with widely distributed shares.[51]

• Limited ownership. Individuals are not allowed to own more than ten percent of a company's stock, and families (blood relatives, spouses and relatives by marriage) are not allowed to own more than twenty percent.[52]

• Programming. Twenty percent of programming must be domestically produced,[53] and ten percent of transmission time is reserved for public service and educational programs.[54] So-called "adult" programs are limited to encoded channels or post-midnight hours.[55] Programs shall not "adversely affect good social customs,"[56] and the GIO may, "if it deems necessary," request and review a cable program and related materials within fifteen days of transmission of the program.[57] This provision, which puts cable operators in the position of carefully policing their own content, gives the GIO substantial censorship powers without the political fallout and bureaucracy that would be associated with pre-transmission review and prior restraint of programs.

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[51] Taiwan Cable Television Law, art. 20; *cf.* U.S. Cable Communications Act (no ban on foreign investment).

[52] Taiwan Cable Television Law, art. 20; *cf.* U.S. Cable Communications Act (no limitations on individual or family ownership).

[53] Taiwan Cable Television Law, art. 35; *cf.* U.S. Cable Communications Act (no domestic programming quotas).

[54] Taiwan Cable Television Law, art. 23; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 531) (Local franchising authorities may require cable operator to designate channels for public, educational, or governmental use.).

[55] Taiwan Cable Television Law, art. 35; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 544(2)(A)) (Constitutionally protected programs are unrestricted by statute except that, upon the request of a subscriber, a cable operator must provide a device by which the subscriber can block personally objectionable programming.).

[56] Taiwan Cable Television Law, art. 35; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 559) (The only content regulation in the U.S. law provides that programs found by a court to be obscene or otherwise not protected by the Constitution may be terminated, and the cable operator responsible for transmitting such programs may be fined up to $10,000 and imprisoned up to two years.).

[57] Taiwan Cable Television Law, art. 37; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. §§ 533, 544) (No federal agency, state, or local franchising authority may prohibit or require certain cable programming unless the programming is not protected by the U.S. Constitution.).

• Advertising standards. Total advertising time is limited to no more than one-tenth the length of the proximate program.[58] Advertising shall be clearly distinguishable from programs,[59] though separate all-ad channels may be established.[60] As with programs, the GIO may review ad content within fifteen days of transmission.[61]

• Taxes. Two percent of gross revenues are to be paid to the government to fund public cultural projects, and an additional one percent is to be paid to the government to fund public television.[62]

• Contracts. Subscription fees are subject to annual government approval,[63] contracts between stations and customers are to be in writing,[64] and operator licenses are to be granted for nine years.[65]

Among the most controversial issues that arose in the legislative debate on the measure were how many cable districts would be established and how many operators would be licensed in each district.[66] Although a panel of experts recommended just one operator per district (similar to arrangements in most countries, including the United States), a majority of lawmakers opposed exclusive franchises, citing fears of a monopoly on political resources.[67] Thus the Legislative Yuan passed a law that

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58 Taiwan Cable Television Law, art. 38; *cf.* U.S. Cable Communications Act (no regulation of ad time).

59 Taiwan Cable Television Law, art. 41; *cf.* U.S. Cable Communications Act (no regulation of ad content).

60 Taiwan Cable Television Law, art. 39.

61 *Id.* art. 41; *cf.* U.S. Cable Communications Act (as with programming, there is no government review).

62 Taiwan Cable Television Law, art. 44; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 542. Cable operators may be required under the terms of any franchise to pay annual franchise fees of not more than 5 % of the operator's gross revenues.).

63 Taiwan Cable Television Law, art. 43; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 543) (If the FCC finds that a cable system is subject to effective competition, the system's subscriber rates are not subject to regulation by the FCC, state or local franchising authority.).

64 Taiwan Cable Television Law, art. 46.

65 *Id.*, art. 29.

66 Peng, *supra* note 2, at 105; *cf.* U.S. Cable Communications Act (codified in 47 U.S.C. § 541) (Local franchising authorities, usually municipal governments, may award at least one cable franchise within the jurisdiction. Most franchising authorities, however, award only one franchise within the jurisdiction.).

67 Peng, *supra* note 2, at 10; *see also* Lewis et al., *supra* note 8, at 185.

authorizes up to five operators in each of fifty-two districts, an "overbuilt" framework that many experts believe will prove untenable.[68]

Some officials also are concerned about the impact of so many stations on the quality of service.[69] The Executive Yuan, for instance, has said that multiple stations per district will lead to costly overlapping investment in hardware,[70] a legitimate concern given Taiwan's ambitious national goals for upgrading communications tecnology.[71] The Executive Yuan had supported limiting each district to one operator to assure good returns on investments so operators would be able to afford the highest quality hardware and programming.[72] Exclusive franchises would have assured each cable operator of 80,000 potential customers; the current law will assure an average of only 16,000.[73]

But market forces probably will accomplish what political forces could not. Realistically, just one or two stations are likely to survive in each district following an early period of intense competition.[74] Indeed, many Fourth Channel operators and some well-financed newcomers began working on mergers even before the law was passed.[75]

C. *Early Implementation of the Cable Television Law*

In the face of its myriad failed attempts to shut down the Fourth Channels, and the time needed to set up legal franchises, the ROC government's strategy under the new cable law was to establish temporary legalization—an amnesty period—for the Fourth Channel operators.[76] In

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[68] Lewis et al., *supra* note 8, at 185; *see also* Taiwan Cable Television Law, art. 27 (authorizing no more than five systems per district, and authorizing the GIO to establish districts based on factors including population distribution and geographic environment).

[69] Liu, *supra* note 16.

[70] Liu, *supra* note 16.

[71] Peng, *supra* note 2, at 102.

[72] Liu, *supra* note 16.

[73] Liu, *supra* note 16.

[74] Liu, *supra* note 16.

[75] Liu, *supra* note 16.

[76] Mark, *supra* note 12.

November 1993, the GIO implemented interim provisions to legalize the Fourth Channels.[77]

The GIO required that existing illegal operators and other entrepreneurs wishing to set up legal cable stations apply for a government license or face heavy fines and an enforcement crackdown.[78] By the November 1, 1994 deadline, only about 200 operators had applied.[79] Operators are required to register their businesses and subscriber numbers with the local government information department.[80] If a cable operator is found to be unregistered or otherwise in violation of the regulations, such as by transmitting pirated programming, it is to be shut down.[81] The GIO charged local government information departments and police stations with strictly monitoring cable transmissions and apprehending operators not in compliance with the new regulations.[82] Under the cable TV law, violators are to lose their licenses, have their businesses closed and equipment confiscated, and be fined up to US$56,000.[83] To date, there have been no published reports of substantial violations or sanctions.

Most Fourth Channel operators support the interim regulation.[84] The plan at least gives them an opportunity to operate legally and compete in a potentially lucrative market, even if that means merging with competitors in order to raise the approximately US$7 million that most operators must invest to upgrade their facilities in accord with the law's strict engineering standards.[85]

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77 *Taiwan: Gov't Gives Cable TV Stations Chance to Become Legal,* CHINA ECON. NEWS SERV., Nov. 10, 1993, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File [hereinafter *Chance to Become Legal*].

78 *Id.* (reports 197 applications received); *see also* William Zarit, *Taiwan Mapping Out Plans to Build the Superhighway to Its Information Future,* E. ASIAN EXEC. RPTS., Jan. 15, 1995, at 18 (reports 204 applications received).

79 *Cable-TV Deluge in Taiwan,* ASIAN WALL ST. J., Nov. 3, 1994, at A15.

80 *Chance to Become Legal, supra* note 77.

81 *Chance to Become Legal, supra* note 77.

82 *Chance to Become Legal, supra* note 77.

83 *Taiwan's Cable Industry, supra* note 15.

84 *Chance to Become Legal, supra* note 77; *see also Taiwan's Cable Industry, supra* note 15; THE REPUBLIC OF CHINA YEARBOOK 1995, *supra* note 15.

85 *Taiwan's Cable Industry, supra* note 15.

D. U.S. Pressures to Regulate Cable Television in Taiwan

While the ROC government had studied plans to legalize and regulate cable television from almost the earliest days of the Fourth Channels,[86] it did not proceed with legislation until the proliferation of cable piracy sparked threats from foreign copyright owners.[87] In April, 1993, the Office of the U.S. Trade Representative ("USTR") targeted Taiwan as a major violator of intellectual property rights, including broadcast and motion-picture copyrights.[88]

The USTR, under unilateral authority of the "Special 301" provision of the Omnibus Trade and Competitiveness Act ("Trade Act") of 1988,[89] classified Taiwan as a "priority watch" country that failed to protect U.S. intellectual property ("IP") rights.[90] Nations on the priority watch list are considered less egregious violators of IP rights than those listed as "priority foreign countries."[91] Nevertheless, the USTR threatened Taiwan with substantial trade sanctions if it did not accelerate efforts to curb rampant patent, trademark and copyright violations.[92] Among the USTR's prime concerns were widespread piracy and copyright infringement by the Fourth Channels.[93] The International Intellectual Property Alliance ("IIPA")[94] estimated that in 1992 alone U.S. trade losses due to copyright violation in Taiwan were US$669 million.[95] In 1993, USTR again named Taiwan to the priority watch list and required it to complete an "immediate action plan" by the end of July or face sanctions.[96]

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86 Shih, *supra* note 38, at 43.

87 Shih, *supra* note 38, at 43.

88 Mark, *supra* note 12.

89 Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100-418, § 301; 102 Stat. 1164 (1988) (codified in 19 U.S.C. § 2411) [hereinafter U.S. Trade Act].

90 USTR Fact Sheet on Special 301, Apr. 30, 1993, *reprinted in* 10 Int'l Trade Rep. (BNA) 761 (May 5, 1993), *available in* WESTLAW, BNA-ITR Database [hereinafter Special 301 Fact Sheet].

91 *Id.*

92 *Id.*

93 *Id.*

94 IIPA is a trade association/lobbying organization in Washington, D.C.

95 Laurence Zuckerman et al., *Counterfeiting Crackdown: U.S. Trade Deadline Hangs Over Governments,* ASIAN WALL ST. J., Apr. 20, 1993, at 1.

96 Special 301 Fact Sheet, *supra* note 90.

The Trade Act's Special 301 sanctions may include withdrawing previously negotiated trade concessions and increasing import duties and/or restrictions.[97] The sanctions are not limited to industries involved in violating IP rights, but may be directed at any industry in the infringing nation.[98] For Taiwan, which has annual exports in excess of US$80 billion[99] and a US$9.6 billion trade surplus with the United States, such sanctions could have meant multibillion-dollar losses.[100]

Under this threat, which the Clinton administration indicated it was fully prepared to carry out, KMT leadership pushed for passage of the long-pending legislation to regulate cable television.[101] In a rush to meet the U.S. imposed deadline before the end of the Legislative Yuan session, the KMT rammed through, without debate, a version of the cable bill that included controversial provisions which had been previously deleted.[102] One provision allowed investment in cable by Taiwan's political parties while another banned direct foreign investment.[103]

At least one observer linked the heavyhanded U.S. threats with the lawmakers' decision to ban foreign ownership. "[All] foreigners have been a kind of victim in reaction to the American pressure," said legislative consultant James P.C. Liu.[104] "Legislators basically said, 'You (the U.S.) put a time limit on the bill and we'll stick a knife in your back.'"[105] Taiwan trade officials, however, justified the provision on the grounds that other nations, including Finland, the Philippines and Venezuela, also prohibit foreign ownership of domestic industries.[106] Despite the U.S. government's general satisfaction with Taiwan's cable law and efforts to regulate the

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97 U.S. Trade Act, *supra* note 89.

98 U.S. Trade Act, *supra* note 89.

99 THE REPUBLIC OF CHINA YEARBOOK 1995, *supra* note 15, at 200.

100 United States Trade Representative, 1995 National Trade Estimate Report on Foreign Trade Barriers 289 (U.S. Government Printing Office, 1995) [hereinafter 1995 Trade Estimate Report].

101 Mark, *supra* note 12.

102 Baum, *supra* note 10; *see also* Jeremy Mark, *Taiwan Forces Passage of Bill on Cable TV,* ASIAN WALL ST. J., July 16, 1993, at 1.

103 *Legislature Sees Usual Brouhaha Over Cable TV Law,* CHINA ECON. NEWS SERV., July 17, 1993, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File [hereinafter *Brouhaha*].

104 Mark, *supra* note 102.

105 Mark, *supra* note 102.

106 *Foreign Firms Still Barred From Cable TV Operations Here,* China Econ. News Serv., Jan. 15, 1994, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File.

Fourth Channels, it continues to pressure Taiwan to eliminate the foreign-investment ban, which it sees as tantamount to an illegal trade barrier.[107]

E. Taiwan's Internal Reasons for Enacting a Cable TV Law

In addition to appeasing the United States and maintaining a valuable trade relationship, Taiwan had other, internal, reasons for enacting a cable law. The ROC government long believed that state-of-the-art cable technology would help realize several domestic goals. Indeed, officials first explored the establishment of a legal cable TV system more than ten years ago because the martial law government believed widespread cable transmissions would further industrial and communications goals.[108]

A government-sanctioned cable system was expected to reduce the number of rural areas underserved by government stations, provide more channels to match the development of integrated services digital networks, as well as eliminate the regulatory problem of unregistered Fourth Channels.[109] Accordingly, the GIO assembled a group of scholars in law, economics and mass communications to draft a cable law in 1989.[110] More recently, the ROC government outlined official goals for economic development in the next century that include plans to establish Taiwan as a "regional operations center," one aspect of which would encompass Chinese-language television and film.[111] The 1993 cable law, with its engineering standards and domestic programming quota, was designed in part to be a key step toward that goal.[112]

In addition to expecting that a cable law would boost the private market economy through production of programming, hardware and software, the government saw the measure as an opportunity to enhance its taxing power and collect substantial public revenues.[113] And although

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107 Osman Tseng, *Warner Uses Back Channels to Enter Local Cable TV Market,* BUS. TAIWAN, Mar. 20, 1995, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File.

108 Peng, *supra* note 2, at 102.

109 Peng, *supra* note 2, at 103.

110 Peng, *supra* note 2, at 103.

111 *Economic Policy: Gov't Maintaining "Regional Operations Centre" Plan,* Economist Intelligence Unit Country Rep., May 15, 1995 [hereinafter *Regional Operations Centre Plan*].

112 *Id.*

113 Sally D. Goll, *Foreign Cable TV Firms Target Taiwan Market,* ASIAN WALL ST. J., July 23, 1993, at 8.

censorship was not a publicized goal for passage of the cable law, the measure clearly increases the potential for strict state control over cable programs and advertising[114]—a potential the KMT has not renounced.

III. ANALYSIS

A. *Impact of Taiwan's Cable Law on U.S. Interests*

Enactment and implementation of Taiwan's cable law has been a mixed blessing for U.S. government and industries. On one hand, the USTR got what it demanded: a statute that provides a substantially stronger legal basis to prosecute cable operators who distribute copyrighted programming without authorization.[115] On the other hand, the USTR also got trade barriers it hadn't bargained for: a ban on foreign investment in Taiwan cable systems and a requirement that one-fifth of programming be domestically produced.[116]

1. *Video Piracy Declines*

According to the IIPA in its last two annual reports to the USTR, Taiwan has made strong efforts and considerable progress in reducing piracy since the cable and copyright laws were enacted.[117] Total estimated U.S. losses to IP piracy in Taiwan were US$145 million in 1995, down from US$189 million in 1994 and US$669 million in 1992.[118] Most of these gains are credited to the ROC government's adoption of a broad copyright law in 1992 that brought Taiwan into compliance with a 1989 Bilateral Copyright Agreement.[119] However, the cable law is primarily responsible for Taiwan's stepped-up efforts to curb motion picture piracy, which

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114 Taiwan Cable Television Law, arts. 37, 41.

115 1995 Trade Estimate Report, *supra* note 100, at 293.

116 Tseng, *supra* note 107.

117 International Intellectual Property Alliance, 1996 Special 301 Recommendations and Estimated Trade Losses Due to Piracy [hereinafter 1996 IIPA Special 301 Submission]; International Intellectual Property Alliance, 1995 Special 301 Recommendations and Estimated Trade Losses Due to Piracy [hereinafter 1995 IIPA Special 301 Submission].

118 1996 IIPA Special 301 Submission, *supra* note 117, at 210; 1995 IIPA Special 301 Submission, *supra* note 117, at 147.

119 International Intellectual Property Alliance, 1994 Special 301 Recommendations and Estimated Trade Losses Due to Piracy 102 [hereinafter 1994 IIPA Special 301 Submission].

brought U.S.losses down from US$26 million in 1993[120] to US$21 million in 1994.[121]

While enforcement against illicit cable operators was inadequate in 1993, it improved and was sustained at the improved level in 1994 and 1995, according to the IIPA.[122] Some cable operators still illegally transmit copyrighted U.S. programming, but the video piracy rate has declined to about ten percent of Taiwan's cable programming.[123] Continued close monitoring of Taiwan is warranted, however, because legal loopholes and intense competition among cable operators could undercut the law's long-term effectiveness.

a. Loopholes and shortfalls in the law

While the U.S. government appears satisfied with current enforcement efforts, shortfalls in Taiwan's cable and copyright laws still contribute to substantial video piracy. One loophole, for instance, allows unauthorized redistribution of satellite signals.[124] In 1993, the Judicial Yuan determined that retransmitting satellite signals over cable systems without paying carriage fees did not violate copyrights.[125] The ruling was subsequently partially reversed to apply only to unencrypted signals.[126] In contrast, the IIPA and the USTR maintain that Taiwan's copyright law and the Bilateral Copyright Agreement prohibit unauthorized interception of

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120 *Id.* at 104.

121 1995 IIPA Special 301 Submission, *supra* note 117. The IIPA's 1996 report actually estimates an increase in U.S. trade losses to motion picture piracy in 1995 to US$29 million. 1996 IIPA Special 301 Submission, *supra* note 117, at 215. However, the IIPA finds that criminal enforcement is "consistent and sustained," and video piracy by cable operators has decreased significantly. 1996 IIPA Special 301 Submission, *supra.* The IIPA attributes the increased trade loss in 1995 to unauthorized importation of laser discs that are smuggled into the country and sold by retailers, and to "unauthorized exploitation" of older motion pictures that are not subject to retroactive copyright protections. 1996 IIPA Special 301 Submission, *supra. See infra* note 130 and accompanying text.

122 1996 IIPA Special 301 Submission, *supra* note 117; 1995 IIPA Special 301 Submission, *supra* note 117.

123 1995 IIPA Special 301 Submission, *supra* note 117, at 149. The IIPA's 1996 report does not estimate a piracy rate; it merely states that video piracy "has dropped to a very low level." 1996 IIPA Special 301 Submission, *supra* note 117, at 215.

124 *Taiwan Cable Industry in Legal Quagmire,* SCREEN DIG., Nov. 1993, at 242 [hereinafter *Legal Quagmire*].

125 *Id.*

126 1994 IIPA Special 301 Submission, *supra* note 119, at 103.

both encrypted and unencrypted signals.[127] Practically speaking, however, initial concerns that this ruling would frighten off international networks appear to have been misplaced.[128]

Another loophole provides cable operators with not only an opportunity but also an incentive to violate some U.S. copyrights. This incentive arises because Taiwan does not protect copyrights on pre-1965 motion pictures, which are popular with cable stations and video stores.[129]

Given the highly competitive nature of the newly legalized cable industry, cash-strapped fledgling operators may choose to transmit substantially more pre-1965 programming precisely because they can use it for free without honoring copyrights and without risking sanctions for piracy. Such activities, which perhaps benefit startup cable operators, harm holders of both pre- and post-1965 copyrights. Holders of post-1965 copyrights, while protected by law, may lose a substantial amount of business to pre-1965 films, which are not protected and thus are more cost-effective for cable operators.[130] In fairness to holders of both pre- and post-1965 copyrights, the USTR should continue to pressure the ROC government to close this loophole and enact adequate retroactive copyright protection.

A shortfall in the cable TV statute that could undercut efforts to shut down piracy arises from the law's authorization of an "overbuilt" cable system; that is, one allowing more stations in each district than the potential subscriber base can realistically support.[131] It seems clear to most observers that eventually only one or two stations will serve each district, but in the

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127 1994 IIPA Special 301 Submission, *supra* note 119, at 103.

128 *See Walt Disney Co. to Launch Pay-TV Channel Here Next March,* CHINA ECON. NEWS SERV., Nov. 29, 1994, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File; *A Taiwan STAR Is Born,* S. CHINA MORNING POST, Apr. 24, 1994, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File (Hong Kong's STAR-TV is carried by cable operators in Taiwan as is Hong Kong's TVBS Superchannel and the American movie channel Home Box Office (HBO).); THE REPUBLIC OF CHINA YEARBOOK 1995, *supra* note 15, at 325 (Foreign satellite transmissions carried by cable include NHK from Japan, CBS, MTV and ESPN from the United States.); *NBC's Asia Channels Gain Access toTaiwan Cable Systems,* MEDIA DAILY, Aug. 9, 1995, *available in* WESTLAW, PTS-NEWS Database.

129 1995 Trade Estimate Report, *supra* note 100, at 294.

130 This argument may be purely academic and have little practical application, however. Professor Paul Liu, Ph.D., of the University of Washington School of Law, spent several months in Taiwan in 1995 and reports that he saw very few pre-1965 films. He attributes the lack of older, English-language programming to viewers' tastes, *i.e.,* the older generation is more interested in locally produced Chinese-language programs, and the younger "MTV generation" prefers flashy new programs. *Cf.* 1996 IIPA Special 301 Submission, *supra* note 117, at 215.

131 Liu, *supra* note 16.

meantime survival-of-the-fittest competition will be intense. Taiwan enforcement authorities and U.S. officials should expect that some operators might believe it worth the risk to continue pirating copyrighted programs as they pull out all the stops to stay in business.

2. *New Trade Barriers Erected*

At the same time Taiwan's Legislative Yuan appeased U.S. demands to crack down on video piracy by enacting the cable law, it unexpectedly added a provision that prohibited all direct foreign investment.[132] The U.S. government continues negotiations on this matter, but one U.S. investor, Warner Communications Inc., has found a clever way around the ban.[133]

Film giant Warner acquired rights to run a cable company in Taiwan in 1995 when it obtained 49 percent of shares of the Taichung-based Taihua Co. through a local holding company, for which there are no restrictions on foreign investment.[134] Upset that Warner had violated the intent if not the letter of the cable law, Taiwan legislators asked the GIO to take action to prevent Warner and other foreign companies from controlling cable operations, but GIO Director-General Jason Hu determined that Warner had done nothing expressly illegal, thus he would not issue sanctions.[135]

In response, some lawmakers now want an amendment to eliminate the holding-company loophole.[136] However, whether the ROC government will tighten the law to establish iron-clad protection against foreign investment in the cable market is not a foregone conclusion. In fact, the government, under commercial and diplomatic pressure from the United States, might well amend the law in the opposite direction to actually permit limited foreign investment in cable systems.

On one hand, some officials believe that limits on foreign competition are necessary to support the fledgling Taiwanese cable industry.[137] Despite years of illegal operations, cable technology remains in its infancy in Taiwan, and almost all companies lack superior management,

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132 Taiwan Cable Television Law, art. 20.

133 Tseng, *supra* note 107.

134 Tseng, *supra* note 107.

135 Tseng, *supra* note 107.

136 Tseng, *supra* note 107. However, there are no published reports of other foreign companies taking advantage of this loophole.

137 Tseng, *supra* note 107.

program production and service delivery.[138] For this reason, they argue that these companies should be at least temporarily protected from foreign competition.[139]

On the other hand, the pervasiveness of such industry weaknesses support a persuasive argument for allowing investment by experienced foreign companies to help the local enterprises more quickly and efficiently integrate state-of-the art technology and management. Indeed, several U.S. firms have said that unless they are allowed to take a "significant equity stake in local entities they will leave their experience, technology and expertise at home."[140]

But economic and technological arguments for toppling this trade barrier could carry little weight with some ROC lawmakers who continue to harbor great resentment toward the U.S. government because of its heavyhanded pressure to enact the cable law. These leaders simply do not want to enhance market opportunities for U.S. investors[141]—even if shutting out foreign investment also means delaying progress toward Taiwan's goals for communications and technology.

Perhaps a more significant provision—and one far less likely to be amended—is the cable law's requirement that one-fifth of all programming be domestically produced.[142] Most ROC officials believe that limits on foreign influence are necessary to preserve and promote Taiwanese culture, and for this reason alone the restriction almost certainly will not be compromised.[143]

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138 Tseng, *supra* note 107.

139 Tseng, *supra* note 107.

140 *Taiwan—Telecom, Cable TV Regs*, 1995 NAT. TRADE DATA BANK MKT. REP., Mar. 21, 1995 (derived from Apr. 7, 1994 report prepared at the American Institute in Taiwan, Taipei) [hereinafter *Cable TV Regs*]. Foreign investment likely would benefit Taiwan's domestic technology agenda as well as U.S. investors who are seeking a lucrative new market, discussed *infra* part III.B.2.

141 Mark, *supra* note 102.

142 Taiwan Cable Television Law, art. 36.

143 Tseng, *supra* note 107.

B. *Impact of Taiwan's Cable Law on Domestic Interests*

1. *Free Expression*

Several commentators confidently predict that Taiwan's cable law signals greater government openness and a trend toward political liberalization.[144] Professor Bonnie Peng, for example, notes that for the first time in Taiwan's history the cable law encourages widespread media participation without reserving channels for party or government interests.[145] But such encouraging steps and Taiwan's constitutional guarantee of free speech notwithstanding,[146] the cable law provides the government with statutory authority to significantly censor programs and advertising.[147]

The text of the law itself clearly provides for strict, direct government control of programming and advertising,[148] and while such power would not necessarily be used to repress political opposition, it could be. The law further specifies significant penalties, including license revocation, equipment confiscation and substantial fines for operators who violate various provisions, including content standards.[149] Whether the cable law would be relied on to block political dissent should not be blithely dismissed in a nation less than a decade removed from martial law and still facing substantial political instability. Among other tactics, the government could attempt to legitimize censorship by basing it in the ancient Confucian tradition, which many Taiwanese continue to regard as a primary moral authority.[150]

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144 Lewis et al., *supra* note 8, at 185.

145 Peng, *supra* note 2, at 103.

146 Constitution of the Republic of China art. 11, *reprinted in* CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (Gilbert H. Flanz ed., 1995). "The people shall have freedom of speech, teaching, writing and publication." *Id.* However, article 23 allows these rights to be restricted "as may be necessary to . . . maintain social order or to advance public welfare." *Id.* art. 23.

147 Taiwan Cable Television Law, arts. 35, 37, 40, 41.

148 *Id.*

149 Taiwan Cable Television Law, arts. 56-62.

150 *See, e.g.*, Herbert H. P. Ma, *American Influence on the Formation of the Constitution and Constitutional Law of the Republic of China: Past History and Future Prospects, in* CONSTITUTIONALISM IN ASIA: ASIAN VIEWS OF THE AMERICAN INFLUENCE 39, 46 (Lawrence W. Beer ed., 1988-89). A common Asian view is that freedom of speech should be protected, but only insofar as it does not disrupt the development of the political or economic order. *Id.* at 14-15. *See also* TEH-HOU JEN, THE

In addition to provisions that allow direct government intervention in programming and advertising, the law's strict engineering standards and high capitalization requirements also might implicitly control dissent.[151] The high cost of obtaining a license—and the high cost associated with violating the terms of the license—might lead operators to err on the side of politically safe blandness. At the very least, cable operators who have invested millions of dollars to obtain licenses, meet government standards for hardware and legally acquire programming, will be less likely to risk their investment by transmitting programs and advertising that oppose, threaten or otherwise displease the government.[152] Operators might not even be fully conscious of such choices.

While there apparently has been no overt censorship or prior restraint of cable transmissions, the possibility of government interference is far more likely now than when the Fourth Channels were unregistered, unregulated and unaccountable to the government for their livelihood. To the extent governmental police power enjoys public support because of the Confucian moral tradition, and government censorship can thus be legitimately rationalized, criticism is perhaps misplaced, if not altogether moot. However, if liberal Western standards of government and free speech have gained political validity in Taiwan, the level of government control authorized by the cable law likely will be judged excessive by the Taiwanese people as well as outsiders. One clear indication that the Taiwanese endorse Western-style free speech was the enormous popularity of the Fourth Channels. Further evidence of the public's values may be found in the recent rise of pirate radio stations, which have gained a significant following since cable operators became subject to regulation.[153]

CONSTITUTIONAL DEVELOPMENT OF THE REPUBLIC OF CHINA 1949-1975, LAW AND POLITICS IN TAIWAN 139-46 (1978).

151 Taiwan Cable Television Law, arts. 21, 23, 33.

152 Scott McDonald, *Taiwan's Cable TV Industry Tries to Change Image,* REUTER NEWS SERV., Apr. 26, 1994, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File.

153 Rajiv Chandra, *Renegade Radio Roils Taipei Airwaves,* INTERPRESS SERV., Dec. 15, 1994 (Many radio broadcasters, whose operating costs are far less than other electronic media, choose not to procure licenses, "revelling in their rebel status and helping spread the message of the opposition."); *see also* Jeremy Mark & Marcus Brauchli, *Taiwan Faces Violence Linked to Talks with China, Closing of Pirate Station,* WALL ST. J. Aug. 4, 1994, at A8 (In August 1994, a government crackdown on the popular pirate radio stations sparked widespread rioting in support of the broadcasters. A taxi driver explained that the public supported the illegal radio stations because "nobody censors the scripts before they go on the air."); Annie Huang, *Democracy Tops the Hit List on Taiwan's Pirate Stations,* NEW ORLEANS TIMES-PICAYUNE, May 29, 1994, at A23 (When the government levied large fines against radio stations that broadcast unauthorized call-in talk shows, the broadcasters raised the money from listeners.).

Yet despite its potential as a basis for censorship, the cable law also includes a variety of safeguards against government tyranny and corruption. Among these are the provisions for a politically diverse and objective Review Committee,[154] for compensation to landowners whose property is disrupted by the laying of cable,[155] for wide distribution and limited family holdings of cable company shares,[156] and for administrative review of rejected applications for cable operating licenses.[157]

2. *A Step Toward Technology Goals*

The Cable Television Law requires operators to acquire advanced systems technologies,[158] in part because only by improving cable technology will the nation progress toward the government's ambitious goals of establishing a National Information Infrastructure ("NII")[159] and developing Taiwan as a regional center for multimedia operations.[160] A government task force is drawing up plans to provide NII access in every

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154 Taiwan Cable Television Law, arts. 9, 15, 16, 17:

> No more than half of the members of the Review Committee shall have the same party affiliation. They shall not participate in the activities of political parties during their term in office . . . . Members . . . shall exercise their powers fairly and objectively and shall remove themselves from the case under review in the event of [conflicts of interest] . . . . An applicant for the operation of cable television may apply for the recusal of a member of the Review Committee should he/she have reason to believe that the said member is prejudiced or unqualified . . . . The chairperson shall adjudicate on the application [for recusal] . . . . Should a member of the Review Committee not remove himself/herself from application review whe he/she should do so, the [GIO] may annul the resolution(s) made at the committee meeting concerned [on its own initiative or upon petition].

155 Taiwan Cable Television Law, art. 6 ("[T]he site for and method of laying the cables shall be so selected as to cause the least damage, and compensation shall be paid . . . . In case of objections, an application may be filed with the . . . government for arbitration. Should the owners or occupants of the land or structure reject the resolution of the arbitration, they may file a civil lawsuit in accordance with the law.").

156 Taiwan Cable Television Law, art. 20 ("A shareholder and his/her related enterprises, spouse, directly related blood relatives, directly related relatives by marriage, and relatives by blood within the second degree of relationship shall together hold no more than 20 percent of the shares.").

157 Taiwan Cable Television Law, art. 24 ("The [GIO] shall state the reason(s) for rejecting applications for cable television operation that have been disapproved by the Review Committee . . . . If an applicant disagrees with the rejection . . . he/she may apply for a second review within thirty days of receipt of the written notification of rejection.").

158 Taiwan Cable Television Law, arts. 23, 33.

159 Zarit, *supra* note 78.

160 *Regional Operations Centre Plan, supra* note 111; *see also* Zarit, *supra* note 78, at 17.

school, office, factory and home in the country within the next decade.[161] Cable television is considered a key link to the NII because cable already is available throughout the country and is a familiar medium for most Taiwanese.[162]

But while the cable law requires operators to upgrade equipment, it does not require improvements sufficient to support interactive communications.[163] Cost considerations likely will keep operators from unilaterally initiating such improvements,[164] which are crucial for development of the NII and multimedia industry.[165] Thus, to meet the NII deadline, a cable law amendment may be needed to guarantee interactive capabilities and coordination of cable TV networks. To help defray the substantial costs to operators, however, the government also might want to offer an incentive (tax credits, for example) to operators who commit to a timely, state-of-the-art system upgrade.

Yet even as the cable law's hardware standards serve as an impetus for the industry to upgrade its technology, the law's provision against foreign investment may delay or limit improvements to cable systems, thus slowing progress toward the NII. Taiwan cable TV almost certainly could develop much faster and more efficiently in concert with foreign investors who are experts in the field, but major U.S. companies with the know-how and experience to help Taiwan modernize are not interested in sharing technology on a consulting or short-term basis.[166] Representatives of U.S. firms have said that nothing less than a twenty percent investment in individual system operations would make participation in the Taiwan cable market desirable to U.S. companies.[167] To the extent that Warner

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161 Zarit, *supra* note 78, at 18.

162 An important element of the NII is so-called distance learning, and already cable is providing limited educational services. Some cable stations began transmitting undergraduate and graduate courses from accredited U.S. universities in January 1995. *College By TV,* CHINA ECON. NEWS SERV., Sept. 15, 1994, *available in* NEXIS, NEWS Library, REUTER TEXTLINE File. Mind Extension University of the United States offers televised courses provided by 25 U.S. universities, including state universities in California, Colorado, Pennsylvania, Washington, and the New Jersey Institute of Technology. *Id.* The for-credit courses include: business administration, sociology, food sciences, marketing, financial mangement, and foreign languages. *Id.*

163 Zarit, *supra* note 78, at 18.

164 Zarit, *supra* note 78, at 18.

165 Zarit, *supra* note 78, at 18.

166 *Cable TV Regs, supra* note 140; *see also* Tseng, *supra* note 107.

167 *Cable TV Regs, supra* note 140.

Communications Inc. has finessed the investment ban, this concern may be overstated.[168] Nevertheless, a more certain answer to the problem, and one more likely to reassure potential foreign investors, would be an amendment to the cable law that explicitly allows limited foreign investment.[169]

IV. CONCLUSION

While the full effects of Taiwan's 1993 Cable Television Law may not yet be apparent, the measure clearly will be far-reaching. To begin with, holders of copyrights in the United States, Taiwan and elsewhere already have benefited significantly from the new regulations.[170] However, the USTR should maintain its pressure on the ROC government to enact retroactive IP protection that would extend these benefits to holders of pre-1965 copyrights.[171]

For its part, Taiwan's government benefits from the statutory authority to tax cable operators, and, viewed from a police-power standpoint, it benefits from the law's grant of express power to restrict content and thus control political dissent.[172] The ROC government also gains a structure by which to improve Taiwan's communications technology and achieve the goal of a NII. If it is serious about its timeline for the NII, however, the government should consider amending the cable law to require further technological upgrades, and should provide tax incentives to encourage operators to quickly install improvements.[173] An amendment that expressly allows at least some foreign investment would further speed modernization of cable systems, and would address USTR concerns about trade barriers.[174]

The people of Taiwan also benefit from the cable law in that additional tax revenue and updated communications technology improve their economic quality of life. It is less clear, however, whether they will continue to enjoy the full variety of entertainment and political programming to which they became accustomed with the Fourth Channels.

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168 *See supra* part III.A.2.

169 *See supra* part III.A.2.

170 *See supra* part III.A.1.

171 *See supra* part III.A.1.a.

172 *See supra* part III.B.1.

173 *See supra* part III.B.2.

174 *See supra* parts III.A.2, III.B.2.

That the people value free expression seems apparent from how they robustly embraced the Fourth Channels and subsequently tuned to pirate radio since the rise of cable regulation. If the ROC government intends to proceed on its avowed post-martial-law path of increased freedoms, it will expressly forbid censorship of political expression communicated via cable television as well as other media.[175]

Taiwan has made great strides in recent years to address international IP inequities, as well as to enhance its own democratic freedoms and economic progress. The cable law, although it is but one small piece of the nation's continuing complex political-social evolution, has demonstrated potential to be a valuable tool in these endeavors. Taiwan's task now is to use this tool effectively, guard against misuse, and where appropriate sharpen it to best address new issues as they arise.

175 *See supra* part III.B.1.