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Building the Korean Film Industry's Competitiveness: Abolish the Screen Quota and Subsidize the Film Industry

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BUILDING THE KOREAN FILM INDUSTRY'S COMPETITIVENESS: ABOLISH THE SCREEN QUOTA AND SUBSIDIZE THE FILM INDUSTRY

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Abstract: Under Korean law, local theaters in Korea must show Korean films for at least 146 days each year. In 1998, this screen quota became the subject of heated debate between the United States and the Korean film industry when the United States demanded that Korea abolish it. The United States believes the quota violates free trade principles, while the Korean film industry argues that cultural products such as films cannot be equated with other commercial commodities. Cultural identities must be protected because a diversified global culture benefits all. Domestic film industries should be protected because films constitute a vehicle for transmitting cultural values. One way to promote Korean culture is to encourage the production of films that portray Korean culture and to ensure that these films are commercially viable. Korea's screen quota does not ensure that Korean films will depict Korean culture; instead, it merely requires films made in Korea to be shown in theatres. The screen quota is also problematic because it encourages complacency on the part of the Korean film industry toward domestic and global competitors. Government subsidies tied to film quality and cultural content, on the other hand, would promote Korean culture and ensure that Korean films are commercially viable. In Europe, subsidies have proven to be effective in stimulating domestic film industries to produce quality films that are commercially viable. Through subsidies, the Korean government can ensure that Korean culture will be preserved and promoted through film.

I. INTRODUCTION

Since 1966, Korean law has mandated that Korean theaters show Korean-made films for a certain number of days each year.[1] This screen quota was originally promulgated to "filter out Western influences."[2] The law has undergone a series of amendments and currently requires theaters to show Korean films for at least 146 days each year.[3] Despite this law, Korean films only accounted for fifteen to twenty-five percent of theater

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[1] Kim Wan-soon, *2000nyun Round (Millenium Rounduh) Service Hyupsangkwa Screen Quotaje [Year 2000 Round (Millennium Round) Service Negotiation and Screen Quota System]*, *in* SCREEN QUOTAWA MOONWHA JOOKYON [SCREEN QUOTA AND CULTURAL SOVEREIGNTY] 175, 179 (Won Yong Jin et al. eds., 1999) [hereinafter SCREEN QUOTA AND CULTURAL SOVEREIGNTY].

[2] Song Jung A, *Film: Protect or Destroy: A Screen Quota System in South Korea Has Helped Its Film Industry Flower; but a Proposed Reduction and a Potential Flood of Hollywood Productions Threatens the Industry's Future*, FAR E. ECON. REV., Feb. 4, 1999, *available in* 1999 WL-FEER 8684397.

[3] Enforcement Decree of the Promotion of the Motion Pictures Industry Act, Presidential Decree No. 15085 (adopted June 29, 1996, amended Oct. 2, 1997) art. 19(1), *translated in* 7 KOREA LEGISLATION RESEARCH INST., STATUTES OF THE REPUBLIC OF KOREA 881, 889 (1998) [hereinafter Presidential Decree]; *see also* Hwang Jang-jin, *Debates Flare up over Plan to Reduce Mandatory Showing of Local Movies*, KOREA HERALD (June 14, 1999) <http://www.koreaherald.co.kr>.

ticket sales in Korea between 1993 and 1998.[4] Furthermore, the law has not helped the Korean film industry promote Korean culture.[5]

The screen quota has become a controversial issue in Korea because the United States is demanding that it be abolished.[6] The entertainment industry is the second-largest export industry in the United States,[7] and the United States wants its film industry to enjoy free access to global markets.[8] By requiring that Korean films be shown for 146 days each year, the screen quota reduces the number of days that U.S. films can be shown in Korean theaters,[9] and thus prevents the American film industry from enjoying full, unobstructed access to the Korean market. Some Koreans view the U.S. demand to abolish the screen quota as an attempt to inundate the Korean market with films that reflect American values[10] and accuse the United States of engaging in "cultural imperialism."[11] In response to U.S. pressure, the Korean film industry has mounted a strong lobbying effort to keep the screen quota intact.[12] The Korean government, however, has sent mixed signals on the screen quota.[13]

This Comment examines the history and effectiveness of Korea's screen quota law and argues that the screen quota should be replaced with government subsidies to the film industry. Part II describes the history of the screen quota in Korea, examines relevant statistics on the Korean film

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[4] Song Jung A, *supra* note 2; Park Jiwon, Address at the "Younghwa Jinhung Jungchak" (Motion Picture Promotion Policies) Announcement Press Conference, *available in* Ministry of Culture and Tourism Homepage (Mar 30, 2000) <http://www.mct.go.kr/uw3/dispatcher/data_room/speech/speech_s.html?oid=@35578|4|5)>. In 1999, Korean films accounted for 36% of ticket sales. The surge in the Korean film industry's market share in 1999 is attributed to external factors, such as the lack of Hollywood box office hits. *See infra* Part II.C.1.

[5] *See infra* Part II.C.3.

[6] Hwang Jang-jin, *Film Industry Disputes Free-Market Policy*, KOREA HERALD (July 2, 1999) <http://www.koreaherald.co.kr>.

[7] Thomas M. Murray, *The U.S.-French Dispute over GATT Treatment of Audiovisual Products and the Limits of Public Choice Theory: How an Efficient Market Solution Was "Rent-Seeking"*, 21 MD. J. INT'L L. & TRADE 203, 207 (1999). The U.S. entertainment industry "generates foreign revenues of approximately $18 billion annually and has produced a trade surplus of $4 billion in 1992 alone." *Id.* The largest export industry in the United States is the aerospace industry. *Id.*

[8] Jung Jae Hyung, *Hollywood-ui Segye Shijang Jullyak* [*Hollywood's Global Strategy*], *in* SCREEN QUOTA AND CULTURAL SOVEREIGNTY, *supra* note 1, at 243, 257.

[9] CHUNG JOONG HUN, WOO RI YOUNG HWA SALLIGI [RESCUING OUR MOVIES] 6-30 (1999).

[10] Sim Kwang Hyun, *Hangook Younghwa Sanupui Baljunul Ouihan Pilyochogunkwa Screen Quota* [*Screen Quota and the Necessary Preconditions for the Development of the Korean Film Industry*], *in* SCREEN QUOTA AND CULTURAL SOVEREIGNTY, *supra* note 1, at 19, 41.

[11] *Id.*

[12] Kim Si-moo, *Screen Quotuh Sasso Toojang-ui Pilyosung-kwa Tangoui-song* [*The Need for and Legitimacy of the Fight to Keep the Screen Quota Law*], *in* SCREEN QUOTA AND CULTURAL SOVEREIGNTY, *supra* note 1, at 116, 121-30.

[13] *Ministries Dissent on Screen Quota System for Local Films*, KOREA HERALD (Dec. 19, 1998) <http://www.koreaherald.co.kr> [hereinafter *Ministries Dissent*].

industry, and explores the screen quota debate between the United States and Korea. Part III examines screen quotas and film subsidy programs in other parts of the world. It argues that subsidy programs have been more effective than screen quotas in promoting the production of quality films that are commercially viable. Part IV argues that to protect and promote Korean culture, the Korean government should invigorate the Korean film industry and encourage it to produce quality cultural products that appeal to the public and thus will be watched by the public. To achieve these goals, the Korean government should repeal the screen quota and replace it with government subsidies that are tied to the quality, Korean cultural content, and commercial viability of domestic films.

II. THE SCREEN QUOTA AND SUBSIDIES: THE KOREAN EXPERIENCE

The screen quota has a thirty-year history in Korea.[14] Since its enactment in 1966,[15] the screen quota law has undergone a series of changes[16] and now requires Korean movie theaters to show Korean films for at least 146 days each year.[17] Despite its long history, the screen quota has neither helped the Korean film industry to compete against foreign films nor effectively promoted Korean culture.

A. The History of Screen Quotas in Korea

In 1961, Korean President Park Chung Hee promulgated the Motion Picture Law.[18] Under the Motion Picture Law, the government exerted control over the film industry by (1) establishing criteria for setting up film companies, (2) requiring all film companies to register with authorities, and (3) reorganizing existing film companies.[19] Most of the Motion Picture

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[14] Kim Hyu-jong, *Screen Quotuhjewa Hangook Younghwa Samup* [*The Screen Quota and the Korean Movie Industry*], *in* SCREEN QUOTA AND CULTURAL SOVEREIGNTY, *supra* note 1, at 64, 77.

[15] *Id.*

[16] *Id.*

[17] Presidential Decree, *supra* note 3, art. 19.

[18] LEE YONG-IL & CHOE YOUNG-CHOL, THE HISTORY OF KOREAN CINEMA 145 (Motion Picture Promotion Corporation ed., Richard Lynn Greever trans., 2d ed. 1998) [hereinafter LEE & CHOE]. Park Chung Hee rose to power in 1961 after the successful military coup. Despite Park's iron-fisted rule, many in Korea agree that he brought much-needed economic vitality to a war-ravaged Korea and lifted Korea from obscurity. His authoritarian regime lasted for nearly two decades and came to an end when Park was assassinated by his intelligence chief in 1979. *See* Chon Shi-yong, *Thousands Pay Tribute to Former President Park*, KOREA HERALD (Oct. 27, 1999) <http://koreaherald.co.kr>; *Historians Oppose Planned Park Chung Hee Memorial*, KOREA HERALD (Oct. 26, 1999) <http://koreaherald.co.kr>.

[19] LEE & CHOE, *supra* note 18, at 145-46.

Law's provisions were promulgated to restrict the film industry.[20] Under this law, Park's dictatorial regime censored Korean films and discouraged the production of anti-establishment films and films containing criticism of the government.[21]

Since its enactment, the Motion Picture Law has undergone a series of amendments.[22] The original Article 19 of the Motion Picture Law stated that the government was to support international relations and development through motion pictures by encouraging the production of excellent motion pictures.[23] On August 3, 1966, in order to filter out unwanted Western influences,[24] the Korean government amended Article 19 and added a provision that designated how many foreign films could be shown in proportion to Korean films.[25] In 1970, the law was amended to state that Korean films must be shown for at least thirty days each year.[26] In 1973 and 1985, this requirement was raised to 121 and 146 days, respectively.[27]

In 1995, the government passed the Promotion of the Motion Pictures Industry Act ("the Act"), which replaced the Motion Picture Law.[28] Article 1 states that the purpose of the Act is "to contribute to the improvement of a citizens' cultural life and the promotion of the national culture by striving to improve the quality of the motion picture art and driving forward the fostering and development of the motion picture industry."[29] Article 16 of the newly enacted Promotion of the Motion Pictures Industry Act preserved the essence of Article 19 of the old Motion Picture Law.[30]

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[20] KIM SOO NAM, HANGOOK YOUNGHWA-UI JANGJUMKWA SAYOU [CONTROVERSY SURROUNDING AND REASONS FOR KOREAN MOVIES] 288 (1997).

[21] LEE & CHOE, *supra* note 18, at 145. The Motion Picture Law empowered the Korean government to strictly censor films in Korea. The government created a censorship board that had the authority to censor film scripts before and after shooting and confiscated many films that were deemed pro-Communist or obscene. For example, "Byo Sok-ui Yo-ja" (The Woman in the Wall, 1969), "Nae si" (The Eunuch) and "No-ui Irumun Yo-Ja" (Your Name is Woman) were each confiscated on the charge of being obscene. The government banned "O Bal Tan" (Aimless Bullet) and confiscated "Chil In-ui Yo Poro" (7 Female Prisoners) for portraying pro-Communist sentiments. *Id.* at 147.

[22] Kim Hyu-jong, *supra* note 14.

[23] LEE & CHOE, *supra* note 18, at 272.

[24] Song Jung A, *supra* note 2.

[25] LEE & CHOE, *supra* note 18, at 272-73.

[26] Kim Hyu-jong, *supra* note 14.

[27] *Id.*

[28] Younghwa Jinhung Bop [Promotion of the Motion Pictures Industry Act] (adopted Dec. 30, 1995, amended Apr. 10, 1997), *translated in* KOREA LEGISLATION RESEARCH INST., *supra* note 3, at 861, 869 (1998); *see also id.* addenda, art. 3.

[29] *Id.* art. 1.

[30] *Id.* art. 16.

B. *The Current Screen Quota Law*

Article 16 of the Act and Article 19 of the Enforcement Decree of the Promotion of the Motion Pictures Industry Act ("Enforcement Decree") together establish what is commonly known as the screen quota.[31] Article 16 of the Act states that "The person who operates a public performance place where the motion pictures are screened . . . shall screen the Korean motion pictures for more than such number of days as determined by the Presidential Decree."[32] According to Article 19 of the Enforcement Decree:

> (1) Any manager of a theatre who screens motion pictures as prescribed in Article 16 of the Act, shall show Korean motion pictures for not less than two fifths of the annual screening days.
> (2) If it is deemed particularly necessary to do so in consideration of the supply and demand situation of Korean motion pictures, the Minister of Culture and Tourism may, notwithstanding the provision of Paragraph (1) of this Article, reduce the number of the annual screening days of Korean motion pictures . . . .[33]

Thus, under the current screen quota law, Korean movie theaters must show Korean films for at least 146 days each year.[34] The law gives discretion to the Minister of Culture and Tourism to reduce the required number of days to 106 in certain circumstances.[35]

Theaters that violate the screen quota may have their business privileges suspended. If a theater fails to show films for the mandated number of showing days and the violation is for a deficiency of less than twenty days, its business privileges will be suspended one day for every day of the deficiency.[36] If the deficiency exceeds twenty days, the suspension is three days for each day of the deficiency.[37] Local and regional governments

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[31] Kim Wan-soon, *supra* note 1.
[32] Promotion of the Motion Pictures Industry Act, *supra* note 28, art. 16.
[33] Presidential Decree, *supra* note 3, art. 19.
[34] *Id.* art. 19(1); *see also* Hwang Jang-jin, *supra* note 3. Two fifths of 365 is 146.
[35] Presidential Decree, *supra* note 3, art. 19(2). The Minister of Culture and Tourism can reduce the number of annual screening days of Korean motion pictures by 20 to 40 days depending on the size of the town. *Id.*
[36] *Id.* art. 20(1).
[37] *Id.* art. 20(3).

oversee the implementation and enforcement of the screen quota requirements.[38]

C. *The Current Status of the Korean Film Industry*

1. Market Share

Market share statistics for the Korean film industry suggest that the Korean people prefer to see foreign films. For example, American films accounted for 64% of total box office ticket sales in Korea in 1997, while domestic productions accounted for 25.5%.[39] Hong Kong and European films accounted for the remainder.[40] In 1997, Korean films and foreign films drew approximately 12 million and 55 million Korean moviegoers, respectively.[41] Table 1 shows the Korean film industry share of the domestic Korean film market from 1993 to 1999.

Table 1. Korean Film Industry Statistics[42]

Year	1993	1994	1995	1996	1997	1998	1999
Number of Korean films produced	64	65	64	65	59	43	-
Korean film industry market share (percent)	15.9	20.5	20.9	23.1	25.5	25.1	36.1
Admission (in millions)	7.69	9.93	9.44	9.77	12.12	12.60	-

In 1999, the Korean film industry's market share increased to 36%.[43] The industry attributes the increase to an improved distribution system, increased capital inflow into the industry from the business community, and

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[38] Kim Joongi, *The Viability of Screen Quotas in Korea: The Cultural Exception Under the International Trade Regime*, 26 KOREAN J. INT'L & COMP. L. 199, 233 (1998).

[39] Song Jung A, *supra* note 2.

[40] *Id.*

[41] Kim Joongi, *supra* note 38, at 239 tbl. 1.

[42] Kim Hyu-jong, *supra* note 14, at 73 tbl. 4; Kim Joongi, *supra* note 38, at 239 tbl. 1; Park Jiwon, *supra* note 4.

[43] Park Jiwon, *supra* note 4.

technical improvements.[44] However, some industry members argue that "external forces" are primarily responsible for this record performance in 1999.[45] They argue that the Korean movie industry benefited from the lack of Hollywood box office hits in 1999[46] and the Korean public's sympathy toward the Korean film industry in its struggle against U.S. demands to abolish the screen quota.[47]

2. *The Number of Film Productions in Korea*

Theater owners argue that they cannot comply with the screen quota without losing money because too few Korean films are made to enable them to meet the quota.[48] The number of Korean films made annually has decreased over the years and now averages about fifty per year.[49] The Asian economic crisis has contributed to the decline in film production in Korea.[50] Regardless of the annual output of the Korean film industry, the screen quota mandates that each theater show Korean films for at least 146 days each year.[51] Not all Korean films become box office hits,[52] but theater owners must show these films to meet the screen quota.[53] Thus, theater owners face losses because the limited number of Korean films makes it impossible for them to comply with the screen quota and make a profit.[54]

3. *The Quality of Korean Films*

Critics of the Korean film industry deplore the lack of quality in Korean films.[55] First, they argue that Korean culture is either

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[44] Choe Yong-shik, *Local Films Dazzle Audiences, Critics in 1999; Action Thriller "Swiri" Seen by Nearly One Seventh of Entire Population*, KOREA HERALD (Dec. 27, 1999) <http://koreaherald.co.kr>.

[45] Lee Myung Cho, *Hangook Younghwa Dooduruhjin Sungjangseh* [*Noticeable Growth of the Korean Film Industry*], DIGITAL CHOSUNILBO [DIGITAL CHOSUN DAILY] (Dec. 2, 1999) <http://www.chosunilbo.com>.

[46] *Id.*

[47] Choe Yong-shik, *supra* note 44.

[48] Hwang Jang-jin, *supra* note 3.

[49] *Id.*; Kim Hyu-jong, *supra* note 14, at 73 tbl. 4.

[50] Song Jung A, *supra* note 2.

[51] Presidential Decree, *supra* note 3, art. 19(1), (2); *see also supra* text accompanying note 34.

[52] Kim Joongi, *supra* note 38, at 234.

[53] Presidential Decree, *supra* note 3, art. 19.

[54] Hwang Jang-jin, *supra* note 3.

[55] KIM SOO NAM, *supra* note 20, at 208-27; CHOI JIN YONG ET AL., HANGOOK YOUNGHWA JUNGCHAK-UI HURUM-KWA SAEROUN JUNGMANG [THE DIRECTION AND THE PROSPECT OF KOREAN MOVIE INDUSTRY POLICIES] 142 (1995). The Korean film industry's history has been marred by extensive government regulation. Korean films were at times used as propaganda tools for certain dictatorial regimes. Now, the Korean film industry needs to overcome its weaknesses and build its strength in order to

misrepresented or absent in Korean films.[56] Second, in terms of technology and innovation, the critics argue that the Korean film industry has not kept pace with its counterparts in Europe or the United States.[57]

Korean films often ignore and/or misrepresent Korea.[58] For example, despite the fact that Korea does not allow citizens to own firearms,[59] the movie "Nooga Narul Michigae Hanunga" (Who's Driving Me Crazy), told the story of a man who takes revenge on his enemies with a shotgun.[60] According to film critic Kim Soo Nam, while many Korean people adhere to basic Korean ethics that emphasize harmony and proper order in society and view self-centeredness as the "primary root of evil,"[61] some Korean films legitimize extramarital affairs and ignore the social status of the characters.[62] Kim argues that even though Korean films are made, Korean culture is often wholly absent from these films.[63] Film critic Kim Jong-won agrees that Korean filmmakers are losing their social and historical awareness.[64]

The Korean film industry's history of plagiarism also supports the argument that Korean culture is not represented in Korean films. Many Korean films have been controversial because of their similarities to Japanese and Hong Kong films.[65] In 1997, the makers of the film "Contact,"

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regain its cultural identity and sovereignty. *Id.*; Hong Chansik, *"Moonwha" Udie Itna?* [*Culture, Where Is It?*], DONG A ILBO [DONG A DAILY] (Sept. 7, 1999) <www.dongailbo.co.kr>.

[56] KIM SOO NAM, *supra* note 20, at 225; *see* Hwang Jang-jin, *1997, Tough Year for Korean Film Industry; Sluggish Production, Lack of Quality Work Stir Crisis Debate*, KOREA HERALD (Dec. 22, 1997) <http://www.koreaherald.co.kr>.

[57] KIM SOO NAM, *supra* note 20, at 222.

[58] *Id.* at 213-16; *see also* Hong Chansik, *supra* note 55.

[59] The Law Controlling Firearms, Swords, and Explosives strictly limits the possession of firearms to public officials who are required to possess firearms in performing their duties; legally licensed manufacturers, dealers, importers, exporters, and the employees of such traders; and those who are designated as possessors of firearms by Presidential decree. Chongpo, Dogum, Hwayakryu dung Dansokbop [Law Controlling Firearms, Swords, and Explosives] (adopted Aug. 4, 1984, multiple amendments) art. 10, *reprinted in* 12 HYUNHAENG BOPLYUNGJIP [STATUTES OF THE REPUBLIC OF KOREA] 475 (1999).

[60] KIM SOO NAM, *supra* note 20, at 214.

[61] Michael C. Kalton, *Korean Ideas and Values*, *in* KOREAN LAW IN THE GLOBAL ECONOMY 99, 101 (1996); *see also* KIM SOO NAM, *supra* note 20, at 216. Adopted in 1392 as a state ideology, Confucianism is still strong in Korea. Confucian norms still dictate Korean people's daily lives. Erin Cho, *Caught in Confucius' Shadow: The Struggle for Women's Legal Equality in South Korea*, 12 COLUM. J. ASIAN L. 125, 125 (1998).

[62] KIM SOO NAM, *supra* note 20, at 214. The movie "Manura Jukyigi" (Wife Killing) portrayed a husband killing his wife in a manner that is lighthearted and comedic; "Ummaegye Aein yi Sanghiut-u-yo" (Mama Has a Boyfriend) legitimizes having extramarital affairs to satisfy one's sexual frustrations; Kim Sunghong's "Sontop" (Fingernail) ignores the main characters' social status in order to dramatize its story line. *Id.*

[63] *Id.* at 222.

[64] Hwang Jang-jin, *supra* note 56.

[65] Hwang Jang-jin, *'Contact' Entangled in Plagiarism Debate; Producer to File Lawsuit Against Critic, Magazine over Allegations*, KOREA HERALD (Nov. 15, 1997) <http://www.koreaherald.co.kr>.

the year's highest grossing Korean film, became embroiled in a plagiarism debate because of the film's similarities to the Japanese film "Haru."[66] The makers of "Holiday in Seoul" were accused of copying Hong Kong films.[67] These plagiarism problems lend support to the argument that Korean films are not focusing on Korean culture.

Some commentators on the screen quota debate argue that by protecting Korean films with this type of "artificial protection," the government has failed to encourage technological innovation in the Korean film industry.[68] For example, when the Korean film "301 302," which originally only cost 280 million won (approximately $330,000)[69] to produce,[70] was exported to the United States in 1996, the studio that produced the film had to spend an additional 1.6 billion won (approximately $1.9 million) in order to fix technological problems.[71] Subtitles also cause many technological problems.[72] The outdated technology that is used by many Korean film studios to imprint subtitles onto films makes editing subtitles very difficult.[73] These technological problems often cause major embarrassment for Korean films that are entered in foreign film festivals.[74] Critics of the screen quota argue that it only guarantees that a certain quantity of Korean-made films will be made, and that it has discouraged technical innovation in the film industry, preventing the industry from achieving global appeal.[75]

The current status of the Korean film industry suggests that the screen quota has not been effective in promoting the industry. Thirty years after the screen quota came into effect, the Korean film industry is still struggling to compete against foreign film companies. The lack of quality in Korean films also suggests that the screen quota has not promoted Korean culture.

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[66] *Id.*

[67] Hwang Jang-jin, *supra* note 56.

[68] Lee So-Yon, *Movie Trade Dispute Draws on Many Characters*, BUS. KOREA, Jan. 1, 1999, *available in* 1999 WL 12435390.

[69] At the end of 1996, the exchange rate was 844.15 won to 1 U.S. dollar. INT'L MONETARY FUND, 52 INTERNATIONAL FINANCIAL STATISTICS YEARBOOK 17 (1999).

[70] KIM SOO NAM, *supra* note 20, at 222.

[71] *Id.* Under common practice, filmmakers around the world record background music, sound effects, and actors' voices separately. However, because of the filmmakers' ignorance of this simple rule, the sound effects used in "301 302" had to be re-dubbed, adding significant extra costs for the production studio. *Id.*

[72] *Id.*

[73] *Id.*

[74] *Id.*

[75] *Id.*

D. The Screen Quota Debate

The screen quota became controversial when the United States demanded that it be abolished.[76] To counter the claims of the United States that the screen quota constitutes government manipulation of the marketplace, has the effect of meddling in the affairs of consumers, and thus violates free trade principles,[77] the Korean film industry has argued that the law is needed to protect and promote Korean culture.[78] Faced with the U.S. demands and the Korean film industry's resistance to these demands, the Korean government initially failed to take a firm stance on the issue. Recently, however, it announced that it would keep the screen quota and also provide subsidies to the Korean film industry.[79]

1. Pressure to Abolish the Screen Quota

The United States continues to pressure Korea to repeal the screen quota.[80] The United States has a strong interest in pursuing the complete opening of global entertainment markets because the entertainment industry is its second largest export industry.[81] In 1998, when Korea initiated the negotiation of the Bilateral Investment Treaty ("BIT") with the United States, the United States seized the opportunity to demand that Korea abolish the screen quota.[82] The screen quota was a major obstacle to reaching an agreement in August 1999, when Korean President Kim Dae-Jung visited the United States for another round of negotiations on the BIT.[83] In response to mounting pressure from the United States, the Korean government proposed reducing the quota to ninety-two days.[84] The United

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[76] *See* Kim Hee Kyung, *Ban Hollywood Gongdong Junsun Goochuk* [*Establishing Allied Forces Against Hollywood*], DONG A ILBO [DONG A DAILY] (May 20, 1999) <www.dongailbo.co.kr>. Korean filmmakers assembled to protest the U. S. demand that the Korean screen quota be abolished. *Id.*

[77] The United States' argument is not based on the General Agreement on Tariffs and Trade ("GATT"); GATT exempts cultural products from its provisions. *See* General Agreement on Tariffs and Trade, Oct. 30, 1947, 61 Stat. A-11, T.I.A.S. 1700, 55 U.N.T.S. 194, art. IV [hereinafter GATT].

[78] *See Tto Screen Quota Homulgiinga* [*Abolishing Screen Quota Again?*], CHOSUN ILBO [CHOSUN DAILY] (June 15, 1999) <www.chosunilbo.com> [hereinafter *Abolishing Screen Quota*].

[79] *See Ministries Dissent*, *supra* note 13; Hong Chansik, *supra* note 55.

[80] Hwang Jang-jin, *Film Industry's Plea for Screen Quota Turns Emotional*, KOREA HERALD (June 18, 1999) <http://www.koreaherald.co.kr>; CHUNG JOONG HUN, *supra* note 9, at 20.

[81] Murray, *supra* note 7.

[82] Kim Hyu-jong, *supra* note 14, at 76.

[83] Lee Hae-Young, *Shin Jayoujouijuk Jiguhwawa Hanmitooja Hyupjung (BIT)* [*Neo-Democratic Globalization and Bilateral Investment Treaty (BIT)*], *in* SCREEN QUOTA AND CULTURAL SOVEREIGNTY, *supra* note 1, at 133, 133 (1999).

[84] Hwang Jang-jin, *supra* note 3.

States wanted a complete abolition of the quota, however, and rejected the proposal.[85]

The U.S. film industry has also played a major role in pressuring the Korean government to repeal the screen quota. American film moguls have voiced their disapproval of the screen quota[86] and have also offered more investment in the Korean film industry in return for the abolition of the screen quota.[87] Most U.S. films that ranked in the top ten in terms of Korean box office ticket sales reaped close to fifty percent of their total profits from overseas markets.[88] U.S. films cannot do well financially without maintaining these overseas markets.[89] Because of the U.S. film industry's success in marketing its products overseas, the film industry has become one of the most important trade industries in the United States.[90] To ensure their unlimited access to the Korean market, U.S. filmmakers reportedly offered to invest $500 million in the Korean domestic film and theater business in exchange for the removal of the screen quota.[91] The head of the American Film Producers Association, Jack Valenti, has also urged that the quota be repealed.[92] During a recent visit to Korea in March 1999, Valenti suggested that American filmmakers would provide the training necessary for the Korean film industry to become more competitive.[93]

The U.S. government and film industry rely on the principles of free markets, free trade, and free speech in arguing that the screen quota should be abolished.[94] They argue that open competition would stimulate the Korean film industry to produce better products and would benefit the industry in the long run.[95] Opening the market, they argue, would induce more foreign investment that would help the Korean industry flourish.[96] After the initial shock of the abolition wears off, the industry would adjust to

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[85] *Id.*

[86] Gregg Jones, *Korean Director Fights to Keep Movie Quota System*, DALLAS MORNING NEWS, Apr. 21, 1999, *available in* 1999 WL 4115187.

[87] *Hollywood Set to Invest $US500 MLN in South Korea*, ASIA PULSE, Apr. 18, 1998, *available in* 1998 WL 2956660.

[88] Jung Jae Hyung, *supra* note 8, at 252.

[89] *Id.*

[90] *Id.*

[91] *Fostering the Visual Arts*, BUS. KOREA, June 1, 1998, *available in* 1998 WL 14378521.

[92] Jones, *supra* note 86.

[93] Hwang Jang-jin, *supra* note 80.

[94] Judith Beth Prowda, *U.S. Dominance in the "Marketplace of Culture" and the French "Cultural Exception"*, 29 N.Y.U. J. INT'L L. & POL. 193, 208 (1997). "The debate over the 'cultural exception' juxtaposes the European notion of the necessity for some form of cultural protectionism and the profound American belief in freedom of expression, choice and what Justice Oliver Wendell Holmes termed the 'free trade in ideas.'" *Id.*; *see also* Kim Joongi, *supra* note 38, at 228.

[95] Kim Joongi, *supra* note 38, at 228.

[96] *Id.*

the new environment and eventually gain its competitive edge.[97] The United States also argues that consumers, as "the ultimate arbiters of the market place,"[98] should be given the freedom to choose what they want to see,[99] and that artists should have the freedom to propagate their art.[100] In other words, an ideal cultural market is one in which both consumers are free to choose and artists are free to express themselves. In short, the U.S. government and the U.S. film industry see films in economic terms; films are commercial products that should be subject to market forces.

2. *The Korean Film Industry's Reaction*

Korean filmmakers, actors, and their supporters have banded together and pursued radical actions to raise public awareness on the screen quota issue. Their campaign to educate and inform the public about the screen quota controversy began in earnest in July 1998, when the Emergency Committee to Protect the Screen Quota ("Emergency Committee") was formed by film industry members.[101] With the support of various civic organizations, filmmakers and actors began taking to the streets to protest the government's proposal to cut the quota.[102] Some shaved their heads as a symbolic gesture.[103] The Emergency Committee issued a statement in which it likened the Korea-United States BIT talks to the annexation of Korea by Japan.[104] Activists went on a hunger strike in opposition to the

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[97] Lee So-Yon, *supra* note 68.

[98] Kim Joongi, *supra* note 38, at 228.

[99] *Id.*

[100] *Id.*

[101] Kim Si-moo, *supra* note 12, at 121-22.

[102] *Id.* at 126. On July 30, 1998, 500 people from the film industry attended a rally supporting the measure. *Id.* On December 1, 1998, 1,000 film industry members held an overnight rally at Myong-Dong Cathedral. *Id.* Seven hundred people who belonged to various civic organizations and the film industry held an overnight vigil at Kwang Hwa Moon Road on December 10, 1998. *Id.*

[103] *Id.* at 122. On June 16, 1999, eight prominent filmmakers shaved their heads in protest of demands by the United States that Korea abolish the screen quota. *Id.* In Soonrye, a film director, was quoted as saying, "My hair will grow back, but the Korean movies, once destroyed, will never regenerate." *Id.* Following his lead, 101 more people shaved their heads on June 18, 1999. *Id.* Later in the month, as 11 more film industry members shaved their heads, skirmishes with the police caused two people to be hospitalized in critical condition. *Id.*

[104] *Id.* at 126. In 1905, following the Russo-Japanese War, Korea signed a treaty with Japan making itself a Japanese protectorate and delegating its foreign affairs power to Japan. Korea remained under Japanese rule until 1945. Therefore, drawing similarities between the annexation of Korea and the signing of the BIT with the United States has powerful symbolic meaning for Koreans. *See* Edward J. Baker, *The Role of Legal Reforms in the Japanese Annexation and Rule of Korea* 1905-1919, *in* INTRODUCTION TO THE LAW AND LEGAL SYSTEM OF KOREA 185, 185-86 (1983); Gregory Henderson, *Human Rights in South Korea* 1945-1953, *in* HUMAN RIGHTS IN KOREA 125, 125-26 (1991).

government's proposal to relax the quota.[105] Some civic organizations campaigned to boycott American films.[106]

Screen quota advocates argue that Korean films must be protected and that the screen quota can effectuate this goal. The industry has made an impassioned plea that films can serve as a tool for promoting a nation's culture in the global community[107] and thus should not be sacrificed for purely economic considerations.[108] They also argue the screen quota is necessary because films require a unique medium, namely film screens.[109] According to the advocates, because films are worthless reels unless shown in theaters,[110] the screen quota is desperately needed to make sure that Korean films make their way onto the screen.[111]

The Korean film industry has found support for its position in international agreements that exempt cultural products from international trade rules.[112] In the Uruguay Round,[113] parties to the General Agreement on Tariffs and Trade ("GATT") recognized a cultural exception to trade rules that permits some protection of domestic film industries.[114] The use of screen quotas is explicitly condoned under Article IV of GATT, which states "[i]f any contracting party established or maintains internal quantitative regulations relating to exposed cinematograph films, such regulations shall take the form of a screen quota."[115] By using this cultural protection argument and engaging in street protests, the proponents of the screen quota successfully stimulated a public debate on the screen quota issue.

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[105] John Larkin, *Koreans Fear a Global Menace*, SYDNEY MORNING HERALD, June 26, 1999, *available in* 1999 WL 19375899.

[106] *Id.* The Korean film industry campaigned to have moviegoers boycott the movie "Star Wars" for one day on July 1, 1999. In 1998, Korean moviegoers boycotted James Cameron's movie "Titanic." *Id.*

[107] *See Movies and the Free Market*, KOREA HERALD (June 29, 1999) <http://www.koreanherald.co.kr>.

[108] Lee So-Yon, *supra* note 68. To use the economic concept of sacrificing the movie industry to conclude the BIT would be to ignore the promise made to the Korean people that the government would protect Korean culture. *See Abolishing Screen Quota*, *supra* note 78.

[109] CHUNG JOONG HUN, *supra* note 9, at 21.

[110] *Id.*

[111] *Id.*

[112] Lee So-Yon, *supra* note 68.

[113] The Uruguay Round was the eighth round of the GATT multilateral trade negotiations. The Uruguay Round produced the Agreement Establishing the World Trade Organization and the General Agreement on Tariffs and Trade 1994. Philip Raworth & Linda C. Reif, *Summary* to THE LAW OF THE WTO: FINAL TEXT OF THE GATT URUGUAY ROUND AGREEMENTS 2-3 (1995); RALPH H. FOLSOM ET AL., INTERNATIONAL TRADE AND INVESTMENT 70 (1994).

[114] *See* Kim Joongi, *supra* note 38, at 218.

[115] GATT, *supra* note 77, art. IV. However, subsection d states that "screen quotas shall be subject to negotiation for their limitation, liberalization or elimination." *Id.*

3. *The Korean Government's Response*

The Korean government has not responded uniformly to the screen quota debate. Different government agencies have had conflicting responses to the screen quota issue.[116] The Ministry of Foreign Affairs and Trade ("MFAT") called for a gradual phase-out of the quota in order to induce greater investment from the United States, which would provide a much-needed boost to the Korean economy.[117] In contrast, President Kim Dae-Jung expressed his support for the quota in a meeting with William Daley, United States Commerce Secretary.[118] The Ministry of Culture and Tourism ("MCT") first appeared to support the MFAT position, but later decided to maintain the current quota until domestic films command forty percent of the Korean film market.[119] In June 1999, the MCT announced that it would consider reducing the screen quota.[120] These conflicting messages from the government have frustrated the Korean film industry.[121]

Against this backdrop, the MCT again reversed its stance and announced that it would provide more protection to the Korean film industry.[122] On March 30, 2000, the MCT announced its "Motion Picture Promotion Policies," which are aimed at increasing the annual output of the Korean film industry to 150 films and helping the Korean film industry capture fifty percent of the domestic market by the year 2004.[123] In order to achieve these goals, the MCT has decided to give subsidies to the Korean film industry and vowed to keep fighting U.S. demands to abolish the screen quota.[124] The MCT is currently working on the details of the subsidy plan and will soon be announcing the specific provisions of the plan.[125]

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[116] *Ministries Dissent*, *supra* note 13.

[117] *Id.*

[118] *Id.*

[119] *Id.* The rift between the foreign affairs and trade officials and the culture minister became apparent in 1998. Han Duck Soo, the Korean chief negotiator at the bilateral talks with the United States, agreed to reduce the screen quota, but told film industry leaders that the culture minister would have the final say as to whether or not the quota would be scrapped. *Id.* The MCT supported Han's effort, only to change its stance and announce that it would retain the current screen quota. *Id.* At this news, the officials at the MFAT responded angrily that Korea had already agreed with the United States that it would reduce the screen quota. *Id.*

[120] Hwang Jang-jin, *supra* note 3.

[121] Hong Chansik, *supra* note 55.

[122] Lee Myung Cho, *'Hangook Younghwa Jinhung Jonghap Kyehoak' Balpyo* ['*Korean Motion Picture Promotion Policies' Announced*], CHOSUN ILBO [CHOSUN DAILY] (May 1, 2000) <www.chosunilbo.com>.

[123] *Id.*

[124] *Id.*

[125] *Id.*

Korea's screen quota became controversial when the United States and the U.S. film industry demanded that the Korean government abolish it. In response to mounting pressure from the United States, the Korean film industry launched a strong lobbying effort, arguing that films should be treated as cultural products and that the screen quota is needed to protect and promote Korean culture. However, critics argue that Korean culture is not reflected in Korean films and that the screen quota has actually hurt the nation's film industry by discouraging technological innovation and the production of quality films. Moreover, despite the screen quota's thirty-year history, Korean films continue to have difficulty capturing market share against foreign films. The MCT recently announced its plan to subsidize the Korean film industry. However, the details of the MCT's subsidy plan are unclear, and the MCT appears intent on maintaining the screen quota in addition to subsidies.

III. SCREEN QUOTAS VERSUS SUBSIDIES: THE EUROPEAN EXPERIENCE

Korea is not the only country that has provided support and protection for its domestic film industry. Many European countries protect their cultural identities by protecting their film industries.[126] The European Union ("EU") issued what is known as the Television Without Frontiers Directive, which sets quotas for televised audiovisual products.[127] Individually, many EU member states also provide support to their domestic film industries in the form of subsidies, screen quotas, or a combination of both.[128] The European experience provides some perspective on the screen quota debate in Korea. It suggests that subsidies more effectively protect and promote domestic film industries than screen quotas.

A. The European Union

The EU protects European culture from the influence of American films with its Television Without Frontiers Directive and by giving

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[126] *See* Kevin M. McDonald, *Would You Like Your Television: With or Without Borders and with or Without Culture—A New Approach to Media Regulation in the European Union*, 22 FORDHAM INT'L L.J. 1991, 1991 (1999); Michele Belluzzi, *Cultural Protection As a Rationale for Legislation: The French Language Law of 1994 and the European Trend Toward Integration in the Face of Increasing U.S. Influence*, 14 DICK. J. INT'L L. 127, 127 (1995).

[127] Howard M. Endelman, *Regulating Culture: The Audiovisual Controversy in the GATT Accord*, 18 B.C. INT'L & COMP. L. REV. 443, 445-46 (1995).

[128] David H. Horowitz & Peter J. Davey, *Financing American Films at Home and Abroad*, 20 COLUM.-VLA J.L. & ARTS 461, 481-87 (1996); Kim Joongi, *supra* note 38, at 210-12, 215-17.

extensive subsidies to the European film industry.[129] The Television Without Frontiers Directive requires that at least fifty percent of audiovisual products broadcast over European television be of European origin.[130] In addition to the quotas, some EU member states provide both national and regional subsidies aimed at protecting European culture.[131] Because the United States does not subsidize its domestic film industry, the availability of foreign government subsidies has prompted many American producers to invest in international co-productions with European companies.[132]

1. Television Without Frontiers Directive

The EU adopted the Television Without Frontiers Directive (the "Directive") in 1989 to curb the dominance of American films in Europe.[133] The Directive sets minimum requirements for the showing of European films on television.[134] Where practicable, member states must reserve a majority of entertainment broadcast transmission time for European films.[135] Although the Directive allows each EU nation to set stricter quotas,[136] France is the only member country that has tried to do so. France has eliminated the "where practicable" qualification and has established a forty-percent ceiling on the broadcast time on television for non-European films.[137]

Some EU member states have expressed their skepticism about the quota system.[138] The French government's effort to strengthen the quota, for example, has not gained popularity among EU member states.[139] As

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[129] *See generally* Craig R. Karpe, *European Cultural Protectionism and the Socioeconomic Forces That Will Defeat It*, 5 IND. INT'L & COMP. L. REV. 425 (1995).

[130] Prowda, *supra* note 94, at 195.

[131] Horowitz & Davey, *supra* note 128, at 482-83.

[132] *Id.* at 461-62.

[133] Kirsten L. Kessler, *Protecting Free Trade in Audiovisual Entertainment: A Proposal for Counteracting the European Union's Trade Barriers to the U.S. Entertainment Industry's Exports*, 26 LAW & POL'Y INT'L BUS. 563, 567 (1995).

[134] *Id.* at 568.

[135] Directive 89/552, Council Directive on the Coordination of Certain Provisions Laid Down by Law, Regulation or Administrative Action in Member States Concerning the Pursuit of Television Broadcasting Activities, 32 O.J. EUR. COMM. art 4. (No. L 298) (1989).

[136] Horowitz & Davey, *supra* note 128, at 486; *see also* Jonas M. Grant, *Jurassic' Trade Dispute: The Exclusion of the Audiovisual Sector from the GATT*, 70 IND. L.J. 1333, 1339 (1995).

[137] Kessler, *supra* note 133, at 568; *see also* Diana Quintero, *American Television and Cinema in France and Europe*, 18 FLETCHER F. WORLD AFF. 115, 118 (1994).

[138] Horowitz & Davey, *supra* note 128, at 486-87.

[139] *See* Stephen Bates, *Hollywood to Coach EU Young Guns*, GUARDIAN, Dec. 28, 1995, *available in* 1995 WL 9960985; *see also Rejection Likely for Tightening of TV Quotas*, HOLLYWOOD REP., Apr. 26, 1996, *available in* 1996 WL 16081186.

Denmark's Minister of Culture Jyette Hilden stated, "Quotas are for fisheries, not films."[140] Germany's representative was quoted as saying, "The vast majority (of ministers) don't think more quotas will work. This sort of protectionism won't save us."[141] Other than in France, which has aggressively pursued protection of its film industry through the use of quotas, screen quotas and other similar quotas seem to be disfavored in European countries.[142]

2. *Subsidies*

Subsidies play a vital role in the European film industry.[143] Each year, more than sixty percent of European films receive national and regional subsidies totaling $1 billion.[144] American film producers, lured by these generous government subsidies, are increasing their involvement in European productions,[145] and the steady decline in the number of European productions from 1980 to 1994 is now leveling off because of an increase in international co-productions.[146]

The EU has two important public bodies that provide funds to international co-productions.[147] Eurimages, established in 1988 with twenty-five member states including France, the United Kingdom, and Germany,[148] provides funds to co-productions that have at least three co-producers from member states.[149] As long as foreign participation does not exceed thirty percent of the total production cost, producers from non-member states may access Eurimages funds.[150] The European Convention on Cinematographic Co-production (the "Convention") is another body that provides funds for

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[140] Horowitz & Davey, *supra* note 128, at 487.

[141] *Id.*

[142] Sandrine Cahn & Daniel Schimmel, *The Cultural Exception: Does It Exist in GATT and GATS Frameworks? How Does It Affect or Is It Affected by the Agreement on TRIPS?*, 15 CARDOZO ARTS & ENT. L.J. 281, 313 (1997); *see generally* Bill Grantham, *America the Menace: France's Feud with Hollywood*, 15 WORLD POL'Y J. 58 (1998).

[143] Horowitz & Davey, *supra* note 128, at 481-82.

[144] *Id.* at 481.

[145] *Id.* at 462.

[146] *Id.* at 481.

[147] *Id.* at 485-86.

[148] *The Europe of Cultural Cooperation: Eurimages: A Support Fund, available in* Europe of Cultural Co-operation Homepage (visited Apr. 20, 2000) <http://culture.coe.fr/Eurimages/eng/eleaflet.html>.

[149] You Jeena, *EU-ui Younghwasangup Donghyangkwa Younghwa Jinhungchak [EU's Film Industry Status and Film Promotion Directives (1988-1997)]*, *in* SCREEN QUOTA AND CULTURAL SOVEREIGNTY, *supra* note 1, at 265, 272.

[150] *ECC: Eurimages: Regulations for the Support of Co-Production: Full Length Feature Films, Animation and Documentaries* sec. 1.5, *available in* Europe of Cultural Co-operation Homepage (visited Apr. 27, 2000) <http://culture.coe.fr/Eurimages/eng/eeurprof.lm.html>.

international co-productions.[151] The Convention requires that the co-productions be "European cinematographic work[s]" or at least "reflect a European identity."[152] These funds attract American producers who enjoy no national subsidies in the United States.[153]

B. *Subsidies and Quotas in Individual European States*

1. *France*

France has an extensive film subsidy program separate from that operated by the EU.[154] France's program is designed to promote domestic film production and distribution.[155] There are two main avenues to obtain film subsidies in France. First, a film producer can seek funding by applying to the French Center for Cinematography for a direct payment of up to four million francs.[156] The sources of funding include an 11% tax on cinema tickets, a reinvestment fund collected from a tax levied on television channel revenues, and a 2.5% tax on sales of blank videocassettes and rentals.[157] In 1996, the center had a $360 million budget.[158] Second, the producer can apply for funds from the Societe de Financement pour l'Industrie Cinematographie ("SOFICA"),[159] which is funded by tax benefits provided to individuals who invest in films through SOFICA.[160] SOFICA is responsible for the increase in the number of domestic film productions in France.[161]

The French film industry is in crisis in terms of attracting audiences, but the extensive subsidy program has encouraged innovation and creativity.[162] American films dominate the French market.[163] French market share plunged from 49.3% in 1987 to 27.8% in 1994.[164] One explanation for

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[151] Marc Thomas, *Financing Audiovisual Works in France and in Europe*, 20 COLUM.-VLA J.L. & ARTS 495, 500 (1996). Signatory states include the United Kingdom, Austria, and Denmark. *Id.*

[152] Horowitz & Davey, *supra* note 128, at 486.

[153] *Id.* at 462.

[154] Grant, *supra* note 136, at 1340.

[155] Kim Joongi, *supra* note 38, at 211.

[156] Horowitz & Davey, *supra* note 128, at 483.

[157] Kim Joongi, *supra* note 38, at 211.

[158] *Id.*

[159] Horowitz & Davey, *supra* note 128, at 483.

[160] Amy Barrett, *Investing: Reel Life: French Funds Have Star Potential*, WALL ST. J. EUR., Feb. 19, 1999, *available in* 1999 WL-WSJE 5508035.

[161] You Jeena, *supra* note 149, at 277-80. As a result of SOFICA, the number of films produced increased from approximately 100 films per year in the early 1980s to 140 films per year in 1995. *Id.*

[162] Prowda, *supra* note 94, at 202.

[163] Thomas, *supra* note 151, at 502.

[164] Prowda, *supra* note 94, at 202.

this phenomenon is that French intellectuals view filmmaking as an art form, scorn American films for representing "vulgar commercialism," and continue to make films that people do not want to see.[165] The French government also views films as art, and it has saved the French film industry from extinction by providing subsidies that have encouraged "innovative films, art house cinemas, independent distributors, film festivals, film schools, and East European and African film production."[166] As a result, France now has a "small but viable film industry."[167]

2. *The United Kingdom*

The United Kingdom does not have screen quotas.[168] Instead, it maintains a subsidy system that is very different from that of France.[169] British Screen Finance, owned by four corporations (Rank, United Artists' Screen Entertainment, Channel Four, and Granada), provides a subsidy that has a "quasi-commercial character."[170] The organization uses an annual government grant to lend money to high-quality films and profitable filmmakers.[171] It requires the films to be "commercial, and not only from a UK perspective."[172] It also gives incentives for UK-linked international co-productions.[173] Under this system, the domestic market share of films made in the United Kingdom has risen from 3% in 1993 to 23% in 1997.[174]

3. *Spain*

Spain protects its film industry by using a screen quota, a distribution quota, and subsidies.[175] Spain's screen quota was enacted in 1941 to

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[165] *Id.* at 203.
[166] *Id.*
[167] *Id.*
[168] CHUNG JOONG HUN, *supra* note 9, at 18. The United Kingdom was one of the pioneers in protecting domestic film industries. It adopted protection quotas in 1927. Thomas, *supra* note 151, at 496. Since then, the United Kingdom has abolished the quota. CHUNG JOONG HUN, *supra* note 9, at 18. Geraldine Higgins of the British Council in Korea stated that because the United Kingdom does not have a measure similar to Korea's screen quota, the number of U.K. film productions has decreased. *Id.*
[169] Horowitz & Davey, *supra* note 128, at 482-83. The United Kingdom also taxed box office receipts and gave automatic support to its film industry. Thomas, *supra* note 151, at 496. The automatic support given to the film industry has since been replaced with British Screen Finance. *Id.* at 497.
[170] *Id.* at 482-83.
[171] *Id.*
[172] *Id.*
[173] *Id.*
[174] Kim Joongi, *supra* note 38, at 236.
[175] *Id.* at 211; You Jeena, *supra* note 149, at 277-80.

promote European films,[176] and it requires that twenty-five percent of the films shown in Spain be European.[177] Under the distribution quota enacted in 1946, a license must be obtained before a foreign film can be dubbed into Spanish.[178] In addition to the quotas, Spain provides its film industry with non-refundable subsidies of fifteen percent of the total box office receipts for the first two years any film is shown.[179] This fifteen-percent subsidy, adopted in 1994, has been instrumental in promoting the Spanish film industry.[180] Of these three measures, the subsidy scheme has proven to be most effective, as it was not until the Spanish government began subsidizing the film industry that it doubled its domestic market share.[181]

C. *Subsidies Are More Effective Than Screen Quotas at Promoting Domestic Film Industries*

The European experience suggests that subsidies as the only form of protection are more effective than screen quotas at strengthening domestic film industries. Subsidies are the only protective measure the United Kingdom utilizes to protect its domestic film industry.[182] Under this system, the U.K. film industry has been able to increase its share of the domestic film market.[183] The French film industry, on the other hand, which protected its market through both a screen quota and subsidies, is still struggling to maintain its market share.[184] The French film industry's recent success in producing creative and innovative films, however, has been attributed to French subsidy programs.[185] In the three years after the subsidy program was adopted in Spain, the Spanish film industry doubled its market share.[186] Spain has had a screen quota since 1941,[187] but Spain's film industry was able to markedly increase its domestic market share only after the subsidy program was put into effect.[188] In sum, the European experience with screen

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[176] Kim Joongi, *supra* note 38, at 212.
[177] *Id.*
[178] *Id.*; Karpe, *supra* note 129, at 431.
[179] Kim Joongi, *supra* note 38, at 212.
[180] *Id.*
[181] *Id.* The market share of domestic films in Spain increased from 7.1% in 1994 to 14% in 1997. *Id.*
[182] CHUNG JOONG HUN, *supra* note 9, at 18; *see also* Horowitz & Davey, *supra* note 128, at 482-83.
[183] Kim Joongi, *supra* note 38, at 242 tbl. 4.
[184] Quintero, *supra* note 137, at 116. "Assessing the U.S. film industry's penetration in France in the late 1940s and in the 1990s, it is clear that quotas have been an ineffective means of limiting American film dominance." *Id.*
[185] *See* Prowda, *supra* note 94, at 202.
[186] Kim Joongi, *supra* note 38, at 212.
[187] You Jeena, *supra* note 149, at 279.
[188] Kim Joongi, *supra* note 38, at 212.

quotas and subsidies indicates that subsidies are more effective at promoting creativity and innovation in filmmaking and helping domestic film industries increase their market shares.

IV. KOREA SHOULD REPLACE ITS SCREEN QUOTA WITH SUBSIDIES

In 1999, Korea's culture minister told the Korean film industry that it should endeavor to preserve Korea's cultural identity and propel Korean culture into the global arena and promised that the Korean government would support the film industry.[189] In March 2000, the MCT announced a comprehensive plan under which the MCT would continue to enforce the screen quota and would also provide subsidies to the film industry.[190] If the Korean government wants to see Korean culture protected and promoted, it must realize that its screen quota is only hurting the Korean film industry. The strengthening and dissemination of Korean culture through films can be achieved only through the production of quality Korean films that the public wants to see. The screen quota, by encouraging the production of poor quality films, has failed to stimulate the Korean film industry. Korea's screen quota should thus be abolished entirely. Moreover, any subsidies provided to the Korean film industry should be linked to the quality and commercial viability of the films. Subsidies without additional protection will help boost the Korean film industry's competitiveness.

A. Korean Films Must Be Protected

The variety of cultural attributes embodied in films[191] makes them a powerful medium through which to transmit cultural values and morals. Arguably, the world is experiencing a strong trend toward cultural globalization,[192] and no one nation is immune from the influences of the cultures of other nations because culture, in many respects, defies national boundaries.[193] However, different cultures must be preserved and allowed to flourish, for it is a diversified global culture, and not a uniform culture, that

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[189] Shin Nakyun, Address at the 37th "Younghwaui Nal" (Film Day) Celebration, *available in* Ministry of Culture and Tourism Homepage (Oct. 27, 1999) <http://www.mct.go.kr/uw3/dispatcher/data_room/.../speech_s.html?oid=@902|4|>.

[190] Lee Myung Cho, *supra* note 122.

[191] Some of these cultural attributes include language, custom, tradition, art, music, screenwriting, costume design, cinematography, and choreography. Kim Joongi, *supra* note 38, at 230.

[192] *See* W. Ming Shao, *Is There No Business Like Show Business? Free Trade and Cultural Protectionism*, 20 YALE J. INT'L L. 105, 139-41 (1995).

[193] *Id.* at 140. Many cultures cannot be defined according to national boundaries. *Id.*

benefits the world's collective well being.[194] Cultural diversification allows people to observe different views and attitudes, test their own biases, and learn from different experiences.[195] Unrestricted homogenization of cultures should be avoided, and diversification of cultures should be championed. Films that promote Korean culture and other cultures should thus be protected.

B. The Screen Quota Neither Protects nor Promotes Korean Culture

Korea's screen quota has no effect on the content or quality of Korean films, nor does it ensure that Korean films will reflect Korean culture. While Korean films do exist, Korean culture is rarely seen in these films,[196] and films that profess to depict Korean culture often misrepresent it.[197] The screen quota requires only that films made in Korea be shown 146 days out of each year at any given theater.[198] It does not guarantee that Korean films will reflect Korean cultural values.

The screen quota guarantees that Korean films will be shown regardless of their quality or commercial viability. If a film fails to generate enough public interest, its messages, goals, and aesthetic values will not reach the public. Films reflecting Korean culture do not help to achieve the government's goal of promoting Korean culture when they are screened in empty theaters. For this reason, the Korean government should find a mechanism that both promotes Korean culture and encourages the production of high-quality, commercially viable films.

The screen quota serves as an incentive for Korean film producers to produce low-quality "quota quickies" because the screen quota requires only that Korean theaters show Korean films. The Korean film industry currently produces approximately fifty films each year.[199] Many theater owners complain that they cannot comply with the screen quota because there

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[194] Mitchell Stephens, *Brave New World Pop Goes the World MTV in Prague, Pad Thai in Topeka-As the World Shrinks, Cultures Blend and Diversity Disappears*, L.A. TIMES MAG., Jan. 17, 1993, *available in* 1993 WL 2360578; *see also* McDonald, *supra* note 126, at 2011-12. "Diversity and balance between the forms of culture being offered are crucial to the development of a truly democratic broadcasting system." *Id.*

[195] Stephens, *supra* note 194. David Marbury-Lewis, Harvard anthropology professor, notes that "[i]t is important for us to understand the enormous variety of other ways humans can live their lives." *Id.* Physicist Freeman Dyson also notes that "[i]t is likely that in the future our survival and our further development will depend in an equally crucial way on the maintenance of cultural and biological diversity." *Id.*

[196] KIM SOO NAM, *supra* note 20, at 213-15.

[197] *Id.*

[198] Presidential Decree, *supra* note 3, art. 19.

[199] Kim Hyu-jong, *supra* note 14, at 73 tbl. 4.

simply are not enough Korean films to show.[200] Because violations of the screen quota carry heavy penalties,[201] theater owners gladly pay for cheap Korean films regardless of the films' quality or commercial viability. The film industry meets this demand by supplying cheap films made solely for the purpose of complying with the screen quota.[202] Furthermore, there is not enough domestic competition to induce Korean filmmakers to produce quality films. Since only about fifty Korean films are available during any given year[203] to fill the 146-day quota requirement,[204] Korean films need not compete vigorously with American films or with other Korean films. Korea's screen quota does not encourage the Korean film industry to produce quality films that will attract audiences.

In addition, the screen quota induces complacency on the part of the Korean film industry toward global competitors. In his speech to film industry leaders, the Korean culture minister emphasized the importance of "developing a new and diversified Korean culture that would lead the twenty-first century global culture."[205] As the Indian film industry's success in creating a wide fan base in the Middle East, Africa, and Southeast Asia shows, globalization does not necessarily require the creation of films that are similar in style to the American films that currently dominate the world market.[206] It is possible for Korean films reflecting Korean culture to become globally accepted. However, under the current quota system, Korean actors, screenwriters, and staff members can earn money regardless of the quality and global appeal of a film because the screen quota ensures the showing of Korean films in the Korean market. In short, the screen quota fails to encourage Korean filmmakers to produce quality films that will attract both domestic and global audiences. The screen quota thus hampers Korea's goal of promoting Korean culture through films.

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[200] Hwang Jang-jin, *supra* note 3.

[201] Presidential Decree, *supra* note 3, art. 20.

[202] *Id.*

[203] Kim Hyu-jong, *supra* note 14, at 73 tbl. 4.

[204] Presidential Decree, *supra* note 3, art. 19.

[205] Shin Nakyun, *supra* note 189.

[206] Carla Power et al., *Bollywood Goes Global: America Isn't the Only Country That Knows How to Spin and Export Fantasies. India's Pop Culture Is Huge*, NEWSWEEK INT'L, Feb. 28, 2000. Bollywood, India's film industry, has become a global industry. In Arab countries, fans prefer Hindi movies over Hollywood movies. Egyptian cinema critic Ahmed Kamal even suggests that Indian films "are now simply part of Arab culture." *Id.*

C. *Subsidies Would Better Protect the Korean Film Industry*

A Korean art-house film called "Spring in My Hometown," by Director Lee Kwangmo, exemplifies how a commercially viable film embracing cultural values can disseminate Korean culture to both domestic and global audiences. "Spring in My Hometown," released in 1998, gained both critical acclaim and moderate commercial success.[207] The film tells the story of two boys in the war-ravaged Korea of the 1950s.[208] It won the Gold Prize at the Tokyo International Film Festival and the Grand Prize at the Hawaii International Film Festival.[209] What is striking about this art-house film is that it gained such popularity, even among foreigners staying in Korea, that the film was shown in theaters often at the request of the foreigners.[210]

In order to encourage the production of more films like "Spring in My Hometown," the Korean government should provide subsidies to the film industry. The best way to promote the Korean film industry is to utilize subsidies without additional protection.[211] The experiences of European countries have proven that subsidies stimulate domestic film industries.[212] In France, subsidies have encouraged innovative and creative filmmaking.[213] The U.K. subsidy system appears to have helped the U.K. film industry to improve its market share.[214] Spain had a screen quota and a distribution quota for years, but it was only when the government began subsidizing the film industry that it doubled its market share.[215] The European experience seems to indicate that subsidies could improve both the quality and commercial viability of Korean films.

The quasi-commercial subsidy system in the United Kingdom and the EU regional subsidies can serve as models for Korea. While the French system has proven effective in promoting innovation and creativity in

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[207] KOREAN INFO. SERV., FACTS ABOUT KOREA 142 (1999).

[208] Song Jung A, *supra* note 2.

[209] KOREAN INFO. SERV., *supra* note 207, at 142.

[210] *Id.*

[211] *See* Robin L. Van Harpen, *Mamas, Don't Let Your Babies Grow up to Be Cowboys: Reconciling Trade and Cultural Independence*, 4 MINN. J. GLOBAL TRADE 165, 191 (1995). Subsidies without additional protection are the most efficient way to promote cultural industries because (1) subsidy costs are easier to determine and their distributive effects are more identifiable, (2) subsidies reduce the costs of local producers without interfering with the public's freedom of choice, and (3) the market continues to reward high quality and punish mediocrity. *Id.*

[212] *See supra* Part III.

[213] Prowda, *supra* note 94, at 205.

[214] Kim Joongi, *supra* note 38, at 215.

[215] *Id.* at 212.

French filmmaking,[216] it has failed to recognize the importance of the commercial viability of films.[217] The French film industry faces criticism that it is producing films that no one wants to see.[218] Spain utilizes both quotas and subsidies.[219] While the United Kingdom does not have screen quotas, it requires film projects to be of high quality and to show potential for commercial success in order to qualify for a subsidy.[220] This system helped the domestic film industry in the United Kingdom to increase its share of the U.K. market.[221] Because both quality and commercial viability are required for the films to effectively promote and disseminate culture, the U.K. system provides a good model for Korea to follow. Also, the EU regional subsidies demonstrate the importance of encouraging international co-productions;[222] Hollywood and independent filmmakers realize the benefits of tapping into these subsidies and have increased their investment in Europe.[223] As the Korean film industry needs more capital as well as access to advanced filmmaking technology, Korea should adopt a similar provision in its subsidy scheme to encourage co-productions.

Although Korea has announced a new film subsidy program, it has not released any details about the program and has decided to maintain its current screen quota. By maintaining the screen quota, Korea runs the risk that the production of low-quality films will continue. Moreover, although the announcement of a subsidy program is a positive step, Korea should tie such subsidies to film quality and cultural content. With little modification, Korea could successfully implement a U.K.-style system of quasi-commercial subsidies for Korean films. The Korean government could set up a body similar to British Screen Finance that would lend money to film projects that portray Korean culture and demonstrate potential profitability. Expert advisory panels could be assembled to assess the projects that would qualify for the loans. This system should be open to both domestic and foreign film studios to attract foreign investors with deep pockets. Access to public subsidies will encourage foreign investors to co-produce intercultural films in Korea. Co-productions with foreign investors, in turn, will expose the Korean film industry to advanced film production technologies. Through the enactment of a subsidy program, the Korean film industry could

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[216] Prowda, *supra* note 94, at 205.
[217] *Id.* at 203.
[218] *Id.* at 204.
[219] *See supra* Part III.B.3.
[220] Horowitz & Davey, *supra* note 128, at 482-83; *see also supra* Part III.B.2.
[221] Kim Joongi, *supra* note 38, at 215.
[222] *See supra* Part III.A.2.
[223] Horowitz & Davey, *supra* note 128, at 462.

accumulate capital, strengthen its infrastructure, and become globally competitive. By tying subsidies to film quality, cultural content, and commercial viability, the Korean government could create a competitive domestic film industry that promotes Korean culture.

V. CONCLUSION

Korea's screen quota should be repealed because it encourages the Korean film industry to produce films of poor quality that are not commercially viable. Moreover, the quota only requires that Korean companies make the films, not that the films reflect Korean culture. As a result, despite the fact that the screen quota has been in existence for more than thirty years, the Korean domestic film industry continues to be dominated by foreign films.

Government subsidies linked to film quality, cultural content, and commercial viability would encourage the Korean film industry to produce quality films that reflect Korean culture and values. Subsidized domestic film industries in Europe continue to strengthen their competitiveness. United States film production companies, lured by the advantages of accessing subsidies in Europe, have increased their investment in the European film industry. Government subsidies in Korea could energize the Korean film industry by promoting quality and profitability and by attracting foreign companies to invest in co-productions with Korean filmmakers. It is only through such a strengthened domestic film industry that the government can achieve its ultimate objective of preserving Korean culture through Korean films.