

**POST-COMMUNIST BROADCAST MEDIA:  
A CASE STUDY OF ESTONIA'S 1994 BROADCAST LAW**

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**By**

**Max V. Grubb, Ph.D.  
Assistant Professor  
Southern Illinois University Carbondale**

**Ph.D. Ohio University 1999  
M.A. Kent State University 1994  
B.S.C. Ohio University 1979**

**Max V. Grubb, Ph.D.  
Assistant Professor  
Department of Radio and Television  
MAILCODE: 6609  
Carbondale, IL 62901-6609  
OFFICE: (618) 453-6987  
HOME: (618) 351-1576  
EMAIL: mgrubb@siu.edu**

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## **ABSTRACT**

The world in the late twentieth century experienced a third wave of democratization. Most notable was the collapse of the Soviet Union and the demise of communism in Eastern Europe. Among the challenges confronting these countries was the development and enactment of legislation that would create independent democratic broadcast systems. This study utilized a case study approach to examine the development and enactment of broadcast legislation in a post-communist country, Estonia. The study found that the law enacted exacerbated tensions between public and private broadcasters, and inhibited the development and growth of private broadcasting in Estonia.

## **RUNNING HEAD: Post-Communist Broadcast Media**

## **INTRODUCTION**

The world in the late twentieth century experienced a third wave of democratization. Since the 1974 coup in Portugal, over forty countries experienced a transition from non-democratic to democratic political systems (Huntington, 1996, p 4). Most notable was the collapse of the Soviet Union and the demise of communism in Eastern Europe. These post-Soviet societies found themselves in an awkward position caught between the old state-centered

totalitarian system and democracy and its rules, between the old command economy and a competitive market economy.

Burdened with the baggage and relics of a state-managed political, economic, and social system, these societies followed a route to democracy influenced by both the legacy of their recent past and by their future goals (Frentzel-Zagorska, 1993, p 177). As these countries made this transformation, they democratized their institutions and liberalized their economies. Russell J. Dalton (1996) noted that “for the first time we are witnessing a transition from communism to democracy, and the nature and destination of this transition is unclear (p 1).”

These newly democratic countries provide an excellent opportunity to study the effects and outcome of radical political and economic changes in a mass media system. These post-communist countries faced many challenges as they politically and economically transformed their institutions and societies. Among the challenges confronting these countries was the development and enactment of legislation that would create independent democratic broadcast systems. This study utilized a case study approach to examine the development and enactment of broadcast legislation in a post-communist country, Estonia.

After gaining its independence in 1991, Estonia had no electronic media legislation to guide its Ministry of Culture and Ministry of Transport and Telecommunications in the licensing of radio and television stations. The existing state-run broadcasting structure was a relic inherited from the Soviet Union. In 1994, the Estonian Riigikogu (Parliament) enacted a broadcast law that addressed such issues as the licensing, ownership, and programming of private radio and television stations and the operations of its public broadcasting stations. This law combined with the 1991 constitution affected the nature of the state-broadcast media relationship in Estonia and its democratic character. Issues and questions arose during the legislative process and, later, after the broadcast law was enacted. For example: What was the new role for state broadcast media? What were the prospects for the development of privately owned and operated broadcast media? What was the relationship between state and private broadcast media?

For this study, the most important question and focus concerned the development of Estonia’s broadcast law? What were the challenges and outcome of the development of Estonia’s broadcast legislation in terms of public broadcasting, private broadcasting, and democratization?

## **REVIEW OF THE LITERATURE**

A country's mass media system mirrors the political, social, economic, and geographic conditions of that nation, revealing the character and nature of that society (Head, 1985). Research approaches in studying mass media systems include historical, descriptive, comparative, and critical perspectives. Much of the research on mass media systems normally incorporated two or more of these approaches. This study utilized historical and descriptive research approaches in examining the development and enactment of Estonia's 1994 Broadcast Law.

Historical research of mass media systems examines the historical context or development of a particular mass media system. Studies include areas such as the development of a specific medium in a mass media system, the evolution of a particular mass media entity, and a review of a particular historical period for a mass media system. Examples include Smeyak's (1973) historical examination of the development of broadcasting in Guyana, Smith's (1974) history of British broadcasting, Ellis's (1979) study of the evolution of Canadian broadcasting, Brigg's (1985) study of the BBC's first fifty years, McDowell's (1992) examination of the history of the BBC broadcasting in Scotland, Cathcart's (1984) history of the BBC in Northern Ireland, and Criswell's (1997) recent study of British Broadcasting history. Historical examinations contribute to an understanding of the contextual issues surrounding the development of mass media systems.

Descriptive research contributes information on various factors and attributes of a mass media system. Many of these studies involve comparative research, comparing various mass media systems by a set of descriptive factors, and most include brief historical overviews of a mass media system's development. The research incorporating these approaches examines a number of mass media dimensions. Alan Wells (1996) sets forth five key factors upon which a media system can be examined and studied. He believes that an analysis of a media system should begin with the following questions: "How is the media controlled?, How is it financed?, What is its purpose?, Whom does it serve?, and How does it ascertain the effect it is having? (p 7)." Wells observes that control is a key factor in studying media systems. He cites A. Namurois' classification scheme composed of four types, state-operated, public corporation, public interest partnership, and private enterprise, as an adequate beginning to study control (p 5-6).

Some descriptive studies of mass media systems include Ploman's (1976) description of broadcasting in Sweden, Hallman's and Hindley's (1977) study of broadcasting in Canada, Sanders' (1978) research on broadcasting in Guyana, Fisher's (1978) study of broadcasting in Ireland, Noriega and Leach's (1979) examination of broadcasting in Mexico, and Chatterji's (1987) description of broadcasting in India. Early descriptive research was conducted in the

1970s on radio and television in Eastern Europe while these countries were still communist (Paulu, 1974). In addition, research was done incorporating both descriptive and historical approaches with Porter and Hasselbach's (1991) study of Germany's broadcast regulation. Recent descriptive research on African countries was conducted by Carver (1995) on Malawi and South Africa, by Lauriciano (1995) on Mozambique, by Lush (1995) on Namibia, and by Maja (1995) on Kenya, Tanzania, Uganda, Zambia, and Zimbabwe.

### **Post-Communist Mass Media Transformations**

Studies concerning the political and economic changes of mass media systems in post-communist Eastern Europe and the newly independent countries the demise of the Soviet Union involved various aspects of the transition itself, and the role of the mass media in these transformations. The few studies done in the last decade included: snapshot reports of the mass media in transition, the lack of changes in some mass media systems, the aspects of changes occurring in the mass media systems, the barriers and limitations to changes in the mass media, the processes of change in a mass media system, the mass media's role in political development, the descriptions of mass media in post-Communist countries and the development of a transitional press concept to supplement the Four Theories of the Press.

Hester, Reybold, and Conger (1992) edited a series of articles that provided sketches of various media at the onset of democratization in 1991. A year later Hester and Reybold (1993) provided further snapshots of journalistic and mass media activities and the challenges in Eastern and Central Europe during democratization. In his examination of Belarussian mass media, Oleg Manaev (1993) noted that despite democratization there had been no change in the mass media's political and economic status. The mass media still remained dependent on government authorities based on the principle of social management. Changes in the mass media systems of post-Communist countries were examined in an analysis of East Germany's media system as unification and democratization occurred (Robinson, 1995). A study of Romania noted that improvements and dramatic increases in broadcast competition and freedom in that country were attributed to the "development of alternative networks, access to Western-style programming and production techniques, the rise of private, independent broadcasters, and the international exchange of broadcast content (Mollison, 1998, p 127)." Barriers and limitations to changes in mass media systems were observed in studies of the Ukraine, Hungary and Germany (Pryliuk, 1993). Observations concerning media and change in Hungary concluded that creating a democracy and its institutions was difficult when a people's history and socialization did not include the expectations and assumptions needed to accomplish it (Kováts & Whiting, 1995).

Peter Humphreys (1994) examined the development of German media policies since 1945. Part of this study included the imposition, upon unification, of West Germany's pluralistic media policies and system on East Germany. While studying the process of change in a mass media system, Kleinwaechter (1997) studied the transition of broadcasting in Eastern and Central Europe. The role of the mass media in political and economic development were examined in Romania, and in a study of the comparison of Brazilian and Eastern European mass media (Gross, 1996). Gross (1993) also researched the role and effect of the mass media in forming public opinion in Romania, noting that the media's efforts produced mixed results.

Mass media's role in the process of democratic transition was compared in Brazil and Eastern Europe (Busato, 1993, Gross, 1996). Janice Overlock (1996) offered a descriptive overview of media developments in newly independent post-Communist countries, providing a brief description of the number and programming of radio and television stations and the status of developing broadcast laws. John Downing (1996), using Poland, Hungary, and Russia as his focus, examined the multiple roles of the media in the political, economic, and cultural transitions taking place in these countries between 1990 - 1995. In studying the rapid changes occurring in Bulgaria's media structure, it was discovered that the prescriptive concepts of authoritarian, libertarian, Communist, social responsibility and democratic socialist coexist. Media developments in post-communist Bulgaria were examined leading to the development of a descriptive transitional press concept (Ognianova, 1996).

The transformations in Eastern Europe and in the independent post-Soviet nations furnished new opportunities to study the democratization of mass media systems (Bruck, 1993). They have had to redesign themselves politically and economically. As one of the new post-Soviet nations, Estonia's transformation was significantly different from that of the Eastern European nations, because its political and economic structures were highly integrated with the Soviet Union. Upon gaining its independence in 1991, Estonia embarked on an aggressive campaign of political and economic changes. One major focus of these changes concerned its broadcasting system.

### **Estonia**

Estonia is situated on the eastern shores of the Baltic Sea, bounded in the north by the Gulf of Finland. It shares borders in the east with Russia and in the south with Latvia. The northern most of the three Baltic Republics, Estonia is larger than Denmark, Netherlands, Belgium, or Switzerland. The country covers 45,226 square kilometers

with another 2,315 sq. km in dispute with Russia (Fjuk & Kaevats, 1994). By comparison, its is approximately the size of New Hampshire and Vermont combined (Cannon & Hough, 1995).

In August 1991, upon gaining its independence from the Soviet Union, Estonia immediately began changing the political and economic system imposed upon them by the Soviets. Left with the remnants of a fifty-year communist political system and centrally planned economy, Estonia proceeded to restore its democracy with a new democratic constitution and institutions.

The reform and development of independent broadcast media began with protections provided for by the new constitution, ratified in June 1992, guaranteeing freedom of the speech and of the press. Section 45 secured the right to freely circulate ideas, opinions, persuasions and other information by word, print, picture and other means. It stated that there was no censorship. In addition, Section 41 of the constitution provided rights for everyone to have their own opinions and persuasions. With these protections, the development of a democratic broadcasting system in Estonia began.

The initial lack of legislation guiding the licensing and regulation of both public and private broadcasting presented a major challenge for the development of Estonia's broadcast system. Estonia's state-owned broadcasting system had served as a tool of the state and communist party. Now as Estonia's 'public' broadcasting system, financed and operated by the state, its role and operations were now unclear without legislation to give direction. Also, the lack of legislation from August 1991 to June 1994 was problematic in the development of private broadcasting in Estonia. The process, procedures, and criteria for getting a license were ambiguous, often resulting in conflict. Legislation was needed to specify the criteria of how licenses were to be assigned and to regulate broadcasters. It would not be until the June 1994 Broadcast Law that legislation was enacted regulating broadcasting in Estonia.

### **RESEARCH QUESTIONS**

Estonia gained its independence in August 1991. Like many of the newly independent post-Soviet countries and post-Communist countries of Eastern Europe, Estonia restructured and changed its political and economic systems. Unlike post-Communist Eastern Europe, Estonia had the burden of shedding the shackles of fifty years of Soviet occupation and control. An important part of this transformation was the democratization and privatization of its broadcast media system. A major step towards this transformation was the development and enactment of legislation establishing regulations for a democratic broadcast system.

The following research questions guided this investigation:

- What issues dominated the development of a democratic broadcast law for Estonia?
- What was the final outcome of the enactment of Estonia's 1994 Broadcast Law?
- What were the consequences of the enactment of Estonia's 1994 Broadcast Law?

The answers to the research questions provided insight into the challenges that confronted Estonia, and generally other post-communist and post-Soviet countries, in drafting and enacting legislation that would regulate its broadcast system in a market oriented democracy. In addition, they disclosed the issues and challenges that still remained for the broadcast media in this new democratic country.

### **METHODOLOGY**

This research employed a case study approach, which study the development and enactment of Estonia's 1994 Broadcast Law. A case study approach was adopted since it focuses on understanding the dynamics existing within a single environment or setting (Arneson, 1993). Although the case study relied on the judgement of the researcher, it offered the advantage of triangulating sources of information, including personal interviews, newspaper reports, documents, and independent reports (Feagin et al, 1991). Estonia was chosen as a case study since it was recognized as the most advanced of the newly democratic states of the post-Soviet societies (Barnard, 1997).

One method used to study Estonia's broadcast system was historical. Startt and Sloan (1989) recognized that "one purpose of good history is to provide understanding of change (p 20)." Historical research furnished a "contextual foundation for identifying and understanding (Arneson, 1993, p 163)" issues and problems of the subject under study. Primary sources were used such as documents in conjunction with interviews to provide a historical view of the problem or experience of a situation. The major requirements for historical research were that evidence had come substantially from primary sources and that they had been checked for authenticity and credibility. Close examination and comparison of information gathered through primary sources contributed to establishing credibility and authenticity (Smith, 1981).

This research involved policy considerations in studying the political and economic reform of Estonia's broadcast system. Patton and Sawicki (1993) observed that descriptive policy analysis involved a historical examination of past policies or an evaluation of new policies as they were implemented. Portney (1986) provided two approaches relevant to this study: one involved research into the policy making process and the other, similar to Patton



and Sawicki's (1993) descriptive analysis, looked at the causes and consequences of public policies. Studying the policy making process acknowledged that public policy was not a "product of government action but as a political process (Portney, 1986, p 4)." Understanding this process revealed institutional participants' positions, values, and resources, explaining how decisions were made. Research on the causes and consequences of public policies focused on the intended or unintended impact of government non-decisions or decisions. The focus was on the results of public policy (Portney, 1986).

There were three sources from which to study a nation's media system and policy. One involved the "official statements about the goals and means embodied by the legislation, regulations, reports, of commissions and committees, parliamentary speeches, regulatory decisions, and the like (McNulty & Martin, 1983, p 95)." Another set of sources consisted of interviews with relevant actors in the policy making process and media system.

Purposeful sampling methods were used to select informants for in-depth interviews. For this study a snowball sampling method was used to recruit informants for interview. According to Babbie (1992), when a purposive sampling method was used, such as snowball, the researcher selected a sample of individuals that he "believe(s) will yield the most comprehensive understanding of [the] subject of study (p 292)." Some participants were interviewed for information they possessed, while others were interviewed for whom they knew. The latter respondents did not have information for study, but directed the researcher to someone who did. The researcher started the snowball by approaching individuals in Estonia's broadcast media. Then respective government ministries of culture and telecommunications were selected for interview for their knowledge of the development of Estonia's broadcast system and laws. Each informant was asked to suggest others to be interviewed. The Estonians interviewed for this research can be found in the appendix.

Research concerning Estonia's broadcast media policy necessarily included accounting for all groups and interests that sought to influence its development. This included the following actors: government officials, members of parliament, former and current public and private broadcast owners and operators, broadcast interest groups or associations, and other interested parties such as journalists and consultants. The nature of the issues raised by the media policy influenced the "range of actors, the extent, depth, and effectiveness of their involvement, and their various motivations and behavior (Humphreys, 1994, p 6-7)."

Estonia's new constitution, government laws, and private documents were studied and compared for information and their contribution to the development of this new democratic broadcast system. Information also was gathered from the Baltic English language newspaper, *The Baltic Independent*, now *The Baltic Times*, reviewing issues for the five year period under examination. Estonian language newspapers *Eesti Päevaleht* and *Postimees* were also studied for relevant articles with the help of an Estonian. In addition, information provided by *Baltic Media Facts* and reports by the European Community contributed to the findings found in this dissertation.

The researcher spent approximately five weeks in Estonia interviewing various respondents, including government officials, parliament members, public broadcasters, private broadcasters, and consultants. Interviews provided the opportunity to gain information from different actors concerning Estonia's broadcast media policy and system. For this study the researcher enlisted a native Estonian versed in both the subject and the English language to serve as an interpreter or to clarify questions or answers.

### **Treatment of the Data**

Qualitative methods generated a tremendous amount of data. The information provided depth and detail on the research topic through direct quotation and description of situations, events, and interactions. Identification and organization of relevant data often was difficult yet important for successful analysis. Interpretation followed as the researcher studied the data for ideas, causes, and relationships. Then the analysis concluded with the researcher establishing trust in the interpretations by reviewing the data for alternative explanations (Patton, 1987). Analysis of the data collected in Estonia was enhanced by the constant review that occurred during the comparing and contrasting of information. Often additional ideas and information emerged that enriched the findings.

## **RESULTS**

### **Broadcast Law: Draft and Enactment**

From 1991 until June 1994, Estonia lacked a law guiding the regulation of the broadcast media. Broadcast licensing and regulation was carried out by government acts through the Ministry of Culture and Education. The development of Estonia's broadcast system, especially the private sector, was hindered since no clear policy existed to provide for its establishment. Issues arose as a result, and tensions increased between state and private broadcasters as political and economic reforms in Estonia proceeded. The following sections examine the development and results concerning Estonia's 1994 Broadcast Law.

### **The Working Group**

In 1993, the Minister of Culture and Education appointed a working group to develop and draft a broadcast law for The Riigikogu to consider and enact. Various interests and their representatives were represented in this working group. These included private broadcasters such as Rein Lang of AS Trio, and ETV General Manager Victor Seilas; Vice-President of RTV Andres Jõesaar, public broadcasters such as Eesti Raadio Managing Director Herkki Haldre and Eesti Televisioon Managing Director Hagi Shein, representatives from the Ministry of Culture and Education such as Paul-Eerik Rummo and Minister of Culture and Education deputy Marju Laur, a representative from the Ministry of Transportation and Communication, representatives from the film makers union, and members of The Riigikogu's Committee for Cultural Affairs. (P. Rummo, personal communication, December 1996; M. Laur, personal communication, November 1996).

Work began on a draft of the law in 1993. Expectations were that a law would be given to The Riigikogu and enacted by the end of the year (Barne, 1993). However, disagreements among the working committee delayed its consideration until the spring of 1994 (H. Haldre, personal communication, December 1996). Many interviewed for this research observed that Rein Lang of AS Trio, owner of Raadio KUKU, was one of the primary architects for the draft that the government would eventually submit to The Riigikogu. Andres Jõesaar (personal communication, December 1996) noted that Lang was responsible for about 90% of the draft.

Another version written by Enn Kopli, lawyer for ETV, was supposedly geared toward "more public service interests (Hunt, 1994)." However, this version was accidentally deleted by the author from his computer. Thus, Lang's draft, the only one available, was taken under discussion (Hunt, personal communication, December 1996). European Broadcast Union (EBU) Director for Legal Affairs, Werner Rumphorst, said that he was perplexed that an owner of a commercial radio station was one of the drafters of the broadcast law. He felt that "laws cannot be written by people who have a direct interest in the legislative effort (Tammerk, 1994, p 8)."

Work on a draft continued through 1993 and into early 1994. The draft that eventually was written went through the various ministries of government for review, such as the Ministry of Justice, the Ministry of Transport and Communications, and the Ministry of Culture (R. Lang, personal communication, November 1996). It was not presented and acted upon by the Riigikogu until Spring 1994, with a law being passed on May 19, 1994 ("The Estonian

Parliamentary Elections,” 1995) and enacted on June 15, 1994 (“Broadcasting Law in Force on 15<sup>th</sup>” June, 1994). The following section reviews the major issues dealt with by the working group.

### **Issues Addressed by the Working Group**

Several issues were to be dealt with in the new broadcast law. The primary issues included advertising on public broadcasting, the role of public broadcasting, the amount of foreign programming, foreign ownership of Estonian broadcast stations and control of Estonian state-owned transmission systems (R. Lang, personal communication, November 1996; M. Laur, personal communication, November 1996; A. Jõesaar, personal communication, December 1996; H. Haldre, personal communication, December 1996). Tõnis Palts (personal communication, December 1996), CEO and Chairman of LEVICOM, also observed that fundamentally, the new law needed to provide a process, procedure, and criteria for the application and granting of licenses for radio and television stations. This was easily apparent in the competition for television licenses granted in 1993 (Källu, 1993).

The respondents interviewed for this study agreed that these were the primary points addressed by the working group. For most of the points the working group members were close in their positions. They agreed primarily with regulation concerning local content and foreign ownership. The primary issue of major disagreement was advertising on public broadcasting. Private and public broadcasters were divided over this issue (M. Laur, personal communication, November 1996). The following section reviews the primary issues addressed by the draft.

### **Commercials on Public Broadcasting**

Lang (personal communication, November 1996) noted that private broadcasters wanted advertising banned from public radio and public television. They felt that public stations unfairly competed with private radio and private television since they were subsidized by the state. “Commercial radio stations claimed that R2 [public radio] was using state subsidies to offer lower advertising rates (Källu, 1993, p B2).” Jõesaar (personal communication, December 1996), Lang (personal communication, November 1996), and Laur (personal communication, November 1996) noted that the draft from the working group called for no commercials on state radio and television.

### **The Role of Public Broadcasting**

In conjunction with the issue of advertising, determining the role and organization of public radio and public television were important elements in the development of a broadcast law. The draft and eventual law officially changed and established state broadcasting as public radio and public television. However, the approach to organizing public radio and public television differed between the private and public representatives in the working group. Most, except the public broadcasters in the group, were for combining the public radio and public television into one organization, which was written into the draft (R. Lang, personal communication, November 1996).

In addition, a Broadcast Council would be established to oversee the operations of public broadcasting. The Riigikogu would appoint people to serve on the Broadcast Council. The council would appoint managing directors for both public radio and public television. The council's purpose was to isolate public broadcasting from pressure and interference from the government and The Riigikogu. However, the draft called for the Estonian government to continue direct subsidization to public broadcasting, rather than through the Broadcast Council. Furthermore, the role of public broadcasting in the draft, and the law that was eventually enacted, was broad and open to interpretation. (H. Haldre, personal communication, December 1996).

#### **Local Content and Imported Programming Provisions**

Fearing domination by imported programming, the draft legislation established minimum requirements for the broadcast of domestic programming. According to Jõesaar (personal communication, December 1996), the draft provisions were different for public and private broadcasters. In the draft, public broadcasters were required to have at least 51% local content programming, while the requirement was lower for private broadcasters, just 30%. Haldre (personal communication, December 1996) noted that these provisions were advocated by the Ministry of Culture and Education, filmmakers, authors and poets. They felt that this would support and encourage more local programming production.

#### **Foreign Ownership Provisions**

The domination of Estonian broadcasting by foreign capital was a major concern. The draft that eventually made it to The Riigikogu limited foreign ownership to 49% of an Estonian broadcast station. The working group was in general agreement concerning this provision (R. Lang, personal communication, November 1996).

#### **Transmitter Ownership and Control**

Another element in the discussion was to transfer control of the transmitters to public broadcasting's Eesti Raadio and Eesti Televisioon. The transmitter system had been under control of government owned Eesti Telekom since independence. The draft sent to The Riigikogu transferred control to public radio and public television (H. Haldre, personal communication, December 1996).

### **Changes to The Draft and the Law That Was Enacted**

The working draft the government eventually sent to The Riigikogu was considered pro-private broadcasting. Provisions in the draft prohibited commercials in public broadcasting stations, a major issue between public and private broadcasters. In addition, public radio and public television were combined into one organization in the draft law. For private broadcasters, the draft served to support the development and growth of private broadcasting in Estonia.

The 1994 Broadcast Law passed by The Riigikogu was significantly different from the draft the working group had prepared. Laur (personal communication, November 1996) noted that private broadcasters lost the battle in The Riigikogu. What occurred was a strong lobbying effort that promoted changes favoring public broadcasting. Haldre (personal communication, December 1996) believed that The Riigikogu did not understand the impact of the changes that were being made. In addition, The Riigikogu acted on the legislation late into the night, a time when most legislators' primary concern was getting home. Laur (personal communication, November 1996) stated that

It was weird because if the law came out from the government before going to parliament [and] it had all the proposals the commission made . . . it means that [Prime Minister] Mart Laar favored those proposals as head of the government. . . it was changed in the parliament even though his party was in power. There was not strong party discipline . . . this is because the democracy at that time was very young and there was no real political experience and no political behavior in the sense of Western democracies (1996).

Laur (personal communication, November 1996), Lang (personal communication, November 1996), Haldre (personal communication, December 1996), and Jõesaar (personal communication, December 1996) noted that public broadcasters were stronger than the private broadcasters and had better influence in The Riigikogu. Holmberg (personal communication, April 1998) observed that Eesti Televisioon had strongly lobbied and influenced The Riigikogu. In addition, he noted that EBU Director for Legal Affairs, Werner Rumphorst, had lobbied on behalf of public broadcasters. Mr. Rumphorst had earlier infuriated private broadcasters by indicating that

the country should first set-up a strong public service operation. Commercial stations should be encouraged only after they have attracted enough advertising revenue to live on. He said overdue influence of the commercial stations would drive out Estonian-language programming, which would not be produced as much by commercial operators intent on drawing the biggest audience at minimal cost (Tammerk, 1994, p 8).

While it was acknowledged that public broadcasters had greater influence with The Riigikogu, others indicated a lack of party discipline in The Riigikogu as another reason for changes in the draft. Both Rummo (personal communication, December 1996) and Veidemann (personal communication, December 1996) also observed that since Estonia was a new democracy, The Riigikogu lacked party loyalty.

In addition, although Prime Minister Mart Laar and his Fatherland Party had aggressively sought to transform and liberalize the economy through privatization, things had changed by the time the draft of the Broadcast Law had come up for debate. During the year since the group had worked on the draft, 1993 to 1994, the economy was in poor shape, the government's budget was limited, and the effects of the reforms had been economically hard on the Estonian population (R. Veidemann, personal communication, December 1996). The effects of these items had been hard on Estonia and its people. The Riigikogu's mood had changed and their zeal at privatizing state enterprises had waned (H. Haldre, personal communication, December 1996).

The ensuing section highlights and reviews issues covered by the 1994 Broadcast Law and how they were either similar or different from the draft submitted to The Riigikogu.

### **Advertising**

Section 35 of the 1994 Broadcast Law enacted provided that the income for public stations Eesti Raadio and Eesti Televisioon would be composed of 1) taxes determined by law; 2) amounts directly allocated from the state budget; 3) advertising, the procedures, prices, usage and volume of which shall be decided by the Broadcasting Council, whereby the volume of advertising must not exceed 5 per cent of the broadcast volume of the daily program on the one channel for Eesti Televisioon and on the two channels for Eesti Raadio, of which one is in a foreign language; and 4) amounts from foundations, sponsorship, rental from transmitter networks and other sources (Estonian Broadcast Law, 1994). In addition to tax subsidies, point three above permitted advertising on public radio and public television to supplement their budgets.

The issue of advertising on private radio and private television stations was covered in Chapter 3 of the 1994 Broadcast Law. Besides covering issues such as honesty, children's advertising, and identification, Section 17 of the Broadcast Law limited advertising volume for private broadcasters. It stipulated that

The volume of advertising in a program must not exceed 20 per cent of the daily volume of the program, whereas: 1) the volume of advertising in a television program - 15 percent of the daily volume of the program, and 12 minutes in any one hour segment of the program; [and] 2) the volume of advertising in a television program in the form of direct offer of sale, purchase of goods, or rental of services - one hour per day (Estonian Broadcast Law, 1994).

Those interviewed indicated that the most significant change in the draft made by The Riigikogu permitted commercials on public broadcasting stations. Rummo (personal communication, December 1996) observed that

The draft was a little bit balanced, especially if we speak about balance between public and private broadcasting activities; as well as about budgetary [financing] process for financing public broadcasting. But [the draft was] made very different by amendments by parliament. . . Main difference is there . . .was no advertising in the public channels. . . But that is not the case now.

### **Public Broadcasting's Role in Estonia**

The 1994 Broadcast Law addressed the issue of the role of public broadcasting in Estonia. The Broadcast Law's Chapter 5 section 25 provisions on Public Broadcasting Organizations specified that

The tasks of Eesti Raadio and Eesti Television shall be:

- 1) fostering, promoting Estonian national culture, and the recording, preservation and introduction of its best achievements;
- 2) being intermediary for the best achievements in world culture;
- 3) creation and transmission of varied and balanced programs, on a high journalistic, artistic and technical level;
- 4) satisfaction of the information need of all national groups, including minorities;
- 5) creation of mainly information, cultural educational, training and entertainment broadcasts (Estonian Broadcast Law, 1994).



When The Riigikogu acted on the issue of public broadcasting, Laur (personal communication, November 1996) observed “that public radio and TV were separated into two separate companies, not as proposed by the commission [working group]; to put them together into one holding company.” She believed that Veidemann convinced The Riigikogu that if public radio and public television were combined into one organization, they would not be able to be a member of the EBU anymore. This information was incorrect. According to Laur, the holding company that would have been formed could have maintained EBU membership.

Although separated, both public radio and public television would be overseen by an independent body, the Broadcast Council. Section 31 of the 1994 Broadcast Law provided that the Broadcast Council be composed of nine members who would meet at least once every two months. Members of the Broadcast Council were to be appointed by The Riigikogu. Its primary duties included the appointment of the managing directors for public radio and public television, confirming of public radio’s and public television’s budgets, and confirming the principle direction of public broadcasters (Broadcast Law, Appendix B).

### **Ownership Provisions**

The issue of ownership in the 1994 Broadcast Law was covered in Chapter 4, Ownership Rights to Broadcasting Technical Resources and to Broadcasts and Programs. Two sections in particular address the issue of ownership. Section 21 provisions for private ownership of Estonian radio and television stations stated

Broadcasting transmitters may be owned by, and have direct proprietorship by:

- 1) Legal entities registered in Estonia where over half of the votes determined according to shares or stocks belong to Estonian citizens [and] 2) Estonian citizens who are permanently resident in Estonia (Estonian Broadcast Law, 1994).

Later Section 39, concerning application for broadcast licenses, provided that the application for a license must include a document showing the distribution of votes determined by shares or stocks, which proves the accordance of the entity with the requirements determined in §22, Point 1 of the present law (Estonian Broadcast Law, 1994).

According to these sections an owner of a private radio or private television station must be either an Estonian citizen or an Estonian majority-owned company. The idea of limiting foreign ownership was pushed primarily by private broadcasters. They feared that foreign broadcast companies with large amounts of capital would overrun Estonian broadcasters who lacked the financial resources to compete, forcing them out of business (Källu, 1993).

The 1994 Broadcast Law also provided provisions prohibiting cross-ownership of the media in the same geographic area. In Section 41, concerning the issuing of broadcast licenses, point 4 item 8 provided that

(4) The Ministry of Culture and Education shall refuse to issue a broadcasting license if:

8) the proprietor of the television or radio station or the responsible publisher of the daily or weekly newspaper would simultaneously become the responsible publisher of television, radio and daily or weekly newspapers on territory planned for the broadcast operations or on part of Estonian territory (Estonian Broadcast Law, 1994).

According to Haldre (personal communication, December 1996), if someone owned two out of three types of media in a market, they could not own the third. An example would be if someone owned a newspaper and a radio station, then they could not own a television station.

### **Programming Content Provisions**

The primary provision concerning domestic programming content in the 1994 Broadcast Law concerned public broadcasting. Under Section 25, the tasks of Eesti Raadio and Eesti Televisioon, point 2 item 2 stipulated that “Eesti Raadio and Eesti Television shall guarantee: 2) proportion of at least 51 per cent local product in their programs (Estonian Broadcast Law, 1994).”

Programming content provisions for private broadcasting were minimal and vague, despite what respondents had noted earlier when discussing the draft. For example, several broadcasting executives believed that the enacted Broadcast Law required private radio and television to have a minimum of 20% local programming content. However, the primary reference to local programming content found in Section 38 had no specified local programming requirement. The only programming requirement for private broadcasters was found in section 4, requiring that 5% of a program day must be news broadcasts (Estonian Broadcast Law, 1994). It appears that some broadcasters confused the temporary rules created by the Riigikogu’s Culture Commission, during the interim before a law was enacted, with the actual Broadcast Law.

The 1994 Broadcast Law focused more on local content provisions for public rather than private broadcasters. However, the law apparently left some discretion to the Ministry of Culture and Education to specify local content requirements when issuing individual licenses. In addition, it appeared that the amount of local programming planned could be used in the licensing process when two or more applicants were vying for the same broadcast license. Section

39 point 1 provided that the “planned program description and data . . . may be necessary to decide the issuing of the license (Estonian Broadcast Law, 1994).”

Jõesaar (personal communication, December 1996) noted that the intent of the content provision was to preserve Estonian production and filmmaking. The local content provision was pushed by the Ministry of Culture and Education and filmmakers. Public broadcasters used the content requirement to justify further the need for advertising on public stations. They said that additional money from advertising was necessary to help pay for local productions, especially while the economy was poor and still developing (M. Laur, personal communication, November 1996).

Haldre (personal communication, December 1996) noted that the local content provision could be broadly defined. Weather, news, traffic reports, and even Estonian language subtitled or dubbed foreign programs could be counted as local content. Since the 1989 Language Law required any foreign program to be either dubbed or subtitled in Estonian, then a broad definition of the content regulations would easily meet the requirements. Hunt (personal communication, December 1996) suggested that the broad definition of the content provision had been done purposely, noting that it was expensive to produce actual local programming for television.

### **Transmitters**

The 1994 Broadcast Law transferred control of the government owned transmitter system to public radio and public television. The law also provided in Section 22 for the private ownership of private stations' broadcast transmitters by permanent Estonian citizens or Estonian-registered legal entities with a majority of the voting stock owned by Estonians. The draft version of the Broadcast Law called for the transfer of the government transmitting system to the control of public radio and public television. Initially, Haldre (personal communication, December 1996) had pushed for the privatization of the transmitting system during early discussions on the draft. However, by Spring 1994 the mood and goals of The Riigikogu had changed. Similar to the situation with public radio Raadio2, the revenues from the transmitters produced badly needed financial resources. Lang (personal communication, November 1996) noted that the law enacted by The Riigikogu did transfer control of the transmitting system to public radio and public television. Private television broadcasters rented the government transmitters and thus would no be dependent on the public broadcasters for their transmission system. Private radio broadcasters owned their own transmitting facilities.

### **Post Broadcast Law Developments: 1995-1996**

By the time the Broadcast Law had been enacted, Estonia was confronting the challenges in reforming and developing its broadcast system. The 1994 Broadcast Law gave government ministries guidelines in granting licenses and in regulating broadcasters. However, the Broadcast Law also was ambiguous in some of the issues it covered and exacerbated the acrimonious relationship between public and private broadcasters. Since the 1994 Broadcast Law's enactment, the issue of commercialized public broadcasting was the primary focal point in the development of Estonia's broadcast system. Inherent in this issue was debate concerning the role of public broadcasting in Estonia. Other issues such as ownership and the transmitters were of lesser concern.

Through 1996, the acrimonious relationship between private and public broadcasters continued in Estonia. The advertising provisions, meant to supplement public broadcasting's revenues, angered private broadcasters. Loit (personal communication, November 1996) noted that while the idea was to get additional dollars to support cultural and educational programming for public broadcasting, they instead put it into entertainment and activities aimed at making them attractive commercially. He felt the programming was unbalanced towards entertainment, yet it was considered public service. Both Loit and Palts (personal communication, December 1996) believed that this unfairly competed with private broadcasters since public broadcasting was subsidized by the state.<sup>1</sup>

Ex-managing director of Eesti Raadio, Herkki Haldre (personal communication, December 1996) also noted that the law enacted left public broadcasting's role in Estonia ambiguous, especially since it permitted advertising on the public stations. He observed that as a result, public television looked like a typical commercial station that did some public service noting, "you can't tell the difference." Private television station Kanal Kaks, according to Haldre, did more to serve the Russian minorities than public television. He believed that public broadcasting should act more as an educator. Kanal Kak's Ilmar Taska (personal communication, December 1996) noted that public television was more concerned with ratings than public service, citing the game shows and entertainment programming as an example.

According to Laur (personal communication, November 1996)

It is very difficult. So it's [an] like endless debate, because one issue is money and the other issue is programming. They are very closely tied together . . .the financing has always been a problem . . . it's

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<sup>1</sup> As of January 1998, Eesti Televisioon (ETV) stopped showing commercials. Its new managing director, Toomas Lepp, had signed an agreement with the three private stations agreeing to cease soliciting commercial advertising (Sinisula, personal communication, 1998).

very easy for the state broadcasters to say that we cannot produce this kind of programming [local content] which is exactly in the law because we don't have enough resources.

She added that The Riigikogu, at the time of the Broadcast Law's enactment, did not know and understand what public broadcasting's role should be, and it still doesn't have an idea. According to Laur, "there are some points about the mission of public radio and TV in the law, but they are too broad. So you can do everything and say we are following those principles ." She stated that "they are all the time debating . . . everyone in Parliament [understands] there is a problem. . . nobody has the courage to decide" on what the programming should be on public broadcasting.

Managing director of Eesti Television, Hagi Shein (personal communication, December 1996), also observed that political parties in Estonia did not have a clear position on public broadcasting. Palts (personal communication, December 1996) believed there was a need to state a clear mission for public broadcasting in Estonia, for it did not have one. According to Rummo (personal communication, December 1996), "almost all political sides are skeptical about the ambitions" of public television as well as public radio. There was a feeling that the large amount of money appropriated from the state budget to public broadcasting was not good, considering that private broadcasters had proved to be quite good and quite strong.

Rummo (personal communication, December 1996) noted that the Broadcast Council was charged with supervising public broadcasting, but under current law, was limited in its involvement to day-to-day activities. However, the council had strong ambitions for public broadcasting and desired to have more say about program policy. For example, Rummo observed that public broadcasting should "largely have more cultural programming and to give possibilities to the local producers." He went on to state that the focus for public broadcasting should have been on

More tradition and aims. The background is that today . . . our thinking is that almost every Estonian family would have satellite and cable. And [with] such a background its completely absurd to have public programs of entertainment and so on in Estonian TV and Estonian radio, because they have it without Estonian channels. And so Estonian channels have to concentrate more on local life and local culture [and] it should be more educational (P. Rummo, personal communication, December 1996).

Rummo (personal communication, December 1996) believed that the abundance of low quality entertainment programming on public television was there to have ratings for advertising dollars and thus, increase income. However,

he felt that since Estonia already had private television with its commercial entertainment fare, there was no need for government subsidized and advertising supported entertainment programs on public television and public radio.

Various ideas were being promoted as alternatives to financing public broadcasting. Spoken of often was that offered by the managing director of Eesti Raadio, Peeter Sookruus (personal communication, December 1996). It involved a fixed state subsidy of 1% of state revenues without advertising. This would have helped to isolate public broadcasters from the government and helped with long-term planning.

When the 1994 Broadcast Law was enacted, Ministry of Culture and Education Peeter Olesk declared that, as part of the implementation of the new law, frequencies and transmitters would be reallocated among Estonia's private television stations. In September 1994, the temporary licenses were substituted with permanent ones but with different frequencies and transmitters. Private television stations ETV and EVTV were furious. The new arrangement meant that private television station Kanal Kaks would cover 60% of the territory and 75% of the population. For EVTV and RTV, which shared the same frequency, this resulted in a signal that covered 60% of the territory and 81% of the population. Under the old arrangement, Kanal Kaks could only be received by 60% of the Estonian population while EVTV and RTV enjoyed access to 90% (Tammerk, 1994).

The decree resulted in EVTV and RTV losing the coverage that they once had in Southern Estonia. In addition, *The Baltic Independent* observed that Minister Olesk "incurred the wrath of thousands of viewers who could no longer get their daily fill of the immensely popular soap operas *The Bold and the Beautiful*, *Dirty Face*, *E-Street*, and *Paradise Beach* (Tammerk, 1994, p 7)." Kanal Kaks benefited in gaining coverage in the south where it had none before. Kanal Kaks owner Ilmar Taska stated that "the newly-created conditions of fair competition create equal opportunities for all private channels (Tammerk, 1994, p 7)."

However, believing that the decree violated the new broadcast law, both EVTV and RTV took the minister to court, resulting in a temporary suspension of the new arrangements and restoration of the original allocation of frequencies and transmitters on October 21, 1994. This initiated what was to become known as the 'TV War.' EVTV owner Viktor Siilar noted that his company experienced major financial losses due to the re-allocation and resulting confusion. The two television companies also made accusations of favoritism, observing that then Prime Minister Mart Laar hosted a popular history series on Kanal Kaks (Tammerk, 1994).

By the time of parliamentary elections in March 1995, the court case had not been resolved. Anger ensued from viewers who could not watch their favorite television programs when the new assignments were made. Accusations of discrimination and political favoritism were made by RTV and EVTV, who pointed out links between Kanal Kaks and then Prime Minister Mart Laar. This was thought to have influenced the March 1995 election results. After the election, Mart Laar stated that “This TV War has cost my party [Fatherland] 5% of the votes (“The Estonian Parliamentary Elections,” 1995, p 31).” In that election, the Fatherland party received only 7% of the votes, losing its dominant position in The Riigikogu.

The TV War finally concluded on October 3, 1995 when Ministry of Culture Jaak Allik wrote letters of apology to EVTV and RTV with an offer to rent the highest TV tower in Estonia, the Valgjarve tower, if they would drop the court case and pay the court fees. When the previous Ministry of Culture and Education had made the reassignments in September of 1994, EVTV and RTV had lost the rights to use Valgjarve TV tower, being assigned instead use of lower and less powerful Tartu and Koeru towers. Now EVTV and RTV regained its position through this agreement (E. Kokkota, personal communication, May 1998). Kanal Kaks retained its reassigned transmitters and frequencies.

Another conflict occurred in mid-January 1996 when EVTV and RTV merged to form TV3. TV3 Vice-President Andres Jõesaar (personal communication, December 1996) noted that both companies had experienced major losses in 1995, thus the need to combine resources. The result of the merger was better resources for higher quality programming. The new company had to compete with two other contestants for the license its previous unmerged parts once had. Although TV3 was seen as a favored applicant, the Ministry of Culture’s licensing Commission had voted by five to three to grant the license to AS Trio Ltd., owner of Raadio KUKU, but, this vote was not binding on the minister. Instead he granted it to TV 3, noting that “TV 3 as a legal successor of EVTV and RTV has “a certain established audience, a reputation among the viewers and continuity of programming (Oll, 1996, p 2).”

In his opinion, Haldre (personal communication, December 1996) observed that the Minister of Culture could have saved himself some trouble by invoking the Broadcast Law’s provision prohibiting cross-ownership of the media. The broadcast law restricted cross-ownership to two out of three media types in the same area (Estonian Broadcast Law, 1994). Raadio KUKU was owned by AS Trio Ltd., whose owners included Hans Luik. Luik was a major player in Estonia’s media market. Besides AS Trio, he also owned a number of newspapers. Haldre believed that the cross-

ownership rules of the 1994 Broadcast Law would have prevented AS Trio from receiving a television license.

However, the Minister of Culture chose to cite other reasons.

During the interviews ownership was not a high concern among respondents. The more pressing issues were the commercialization of public broadcasting and its competition with private broadcasters. The regulations enacted left ways to get around this provision (H. Haldre, personal communication, December 1996). The draft and the final version of the enacted 1994 Broadcast Law limited foreign ownership of broadcast stations in Estonia to 49%, requiring the remaining 51% to be Estonian ownership. However, according to Loit (personal communication, November 1996) and Haldre (personal communication, December 1996) there were examples where the law was circumvented. While stations appeared to follow foreign ownership restrictions, they actually circumvented the law in various ways. Loit observed that a foreign company may own 49% of a station's shares, then can enter into further ownership by buying shares in an Estonian company or companies that owned the other 51% of the station. Another example was cited where a station actually was controlled by a foreign company. While not sure how it was legally done, Loit believed it was accomplished through some sort of formalized agreement or transfer of voting stock.

However, Rummo (personal communication, December 1996) felt that the issue of foreign ownership was only a little bit of politician paranoia. He believed that Estonia was too small a market to be of interest to international media companies. Haldre (personal communication, December 1996) said that the foreign ownership provision really did not work, but that overall it was not a problem. He also noted that Estonia was a small country, making it an unattractive media market for an international broadcast company to consider making a major investment.

The 1994 Broadcast Law had transferred control of the state-owned transmitters to public radio and public television. However, less than a year later the law was amended, transferring control back to Eesti Telekom (R. Lang, personal communication, November 1996; Rummo, personal communication, December 1996; Sookruus, personal communication, December 1996). But Rummo said that even this was not a good situation since Eesti Telekom was owned by the government and acted like a monopoly, charging high prices for transmitter rental to public radio and public television and private television broadcasters. According to managing director of Eesti Raadio, Peeter Sookruus, the transmitter system was in bad shape and in need of renovation. Rummo did acknowledge that the transmitters and technology were old and outdated and in need of updating and that takes money. Privatizing the transmitters would



have been the answer, but Rummo asked who would buy such an antiquated system. He observed that since Estonia was such a small country the transmitter system was a natural monopoly.

### SUMMARY AND CONCLUSION

Where the lack of legislation had hindered the development of Estonia's broadcast system, now a Broadcast Law existed. In the first two years of independence, Estonia did not have legislation for licensing and regulating broadcast stations. Initial direction came from The Riigikogu's Culture Commission, as a temporary arrangement until a law was enacted. A working group, composed of government, broadcast, program producers, and musician representatives, met and drafted a broadcast law for consideration by The Riigikogu (R. Lang, personal communication, November 1996).

The law that was enacted was clearly different from the draft. The provisions that were changed significantly impacted the development of Estonia's broadcast system, perpetuating and exacerbating issues that existed before the law. Both public and private broadcasters agreed that the 1994 Broadcast Law did not work (R. Lang, personal communication, November 1996). The law failed to clearly define a role for public broadcasting in Estonia. It also contributed to and exacerbated the ongoing conflict between private and public broadcasters over advertising on public stations. It permitted public broadcasting to supplement their government-subsidized budgets with advertising revenues, competing with private broadcasters for a share of limited commercial dollars. Lään (personal communication, May 1998) noted that commercials on public stations continued to be an issue that perpetuated the conflict between public and private broadcasters.

However, public broadcasting officials advocated a need for public broadcasting to have advertising to buy quality programming. Rebané (personal communication, December 1996) said that part of the strategy for public television was to program entertainment to attract audiences to the cultural and information shows sandwiched among them. Otherwise, he believed educational, cultural, and information programming alone would have attracted small audiences making the cost associated with the production and transmission of such shows a very high price for the size of viewership. But many among the private broadcasters felt that there was too much entertainment and that public broadcasting actually competed for audiences to attract advertising dollars.

What was important in looking at the development of Estonia's broadcast legislation was that it was accomplished democratically. Although the law itself is imperfect, the process involved discussions, deliberations, and

debate by various interest groups in Estonia. Overall, it was a good learning experience in the democratic approach to governing for the Estonians. Another point concerning the 1994 Estonian Broadcast Law was that it served to inhibit the development of an independent private broadcast system rather than promote one. By ambiguously defining public broadcasting system's mission, and allowing it to supplement government subsidies with advertising revenues, the law reinforced the dominant position of Estonia's public radio and television stations. The system of financing the public stations also open them to government interference due to their dependence on government subsidies and government owned transmitters. This dominance inhibited the growth and development of a private broadcasting system, independent of government control. Till these issues are resolved, the growth of an independent democratic broadcast media system in Estonia will be limited.

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## APPENDIX

For this study the following people were interviewed:

Eelmaa, Epp. Operations Manager, Kanal Kaks (Channel 2 TV). Interviewed December 1996.

Hausmann, Ilona. Eesti Raadio, International Relations Department. Interviewed December 1996.

Haldre, Herkki. Advisor, Hanasbank. Radio consultant. Past Director of Eesti Raadio. Interviewed December 1996.

Holmberg, Simon. Deputy Director, Baltic Media Centre. Interviewed December 1996. Telephone interview May 1998.

Hunt, Margus. Marketing Director, Eesti Telekom (Estonian Telephone Company Limited). Interviewed November and December 1996.

Jõesaar, Andres. Vice-President, TV3. Interviewed December 1996.

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