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I. Introduction

What if one day you woke up, turned on the radio and could not find an American song? What if you went to the movies and the only films were foreign? What if you wanted to buy a book, and you found that the only American works were located in a small "Americana" section of the store? Furthermore, what if you came home to find your kids glued to the television for back-to-back reruns of a French soap opera and two German police dramas?¹

This seems foreign, even silly to an American. However, it is becoming reality in Europe. Europeans recognize a "cultural invasion" and are concerned about their economic power and sovereignty in the face of the infiltration of U.S. products and programs and the values which are promoted along with them. Despite the differences among nations, the nations of the European Union (EU) have joined to promote economic prosperity.

The EU has shown a desire to boost cultural awareness among European nations by promoting cross-cultural visits and competitions in literary translation to enhance language skills and familiarize them with the cultural heritage of other EU nations.² The need for cultural protection justifies the regulation of informational products, the vast majority of which are produced in a foreign language and represent a foreign culture. However, this rationale may disguise the more important desire for economic protection

from the domination of Hollywood and the mass production of U.S. audiovisuals.³

France has been a staunch advocate of tightening restrictions on U.S. audiovisual imports and regulating its own programming to ensure that radio and television stations play a certain percentage of French programs.⁴ The French are stereotypically closed to foreigners and have recently passed a language law, la loi Toubon,⁵ which attempts to regulate the use of French in certain sectors.

Though the law purports to protect the French consumer and worker, the measure has undertones of economic protectionism and defensive hostility. Regardless of the underlying motivations, it is important to consider what this law accomplishes and whether legislation is appropriate in this area. The French have been criticized for harboring anti-American sentiment, for adopting a protectionist stance in foreign affairs, and recently for enacting this language law which attempts to constrict the use of English terms.

This Comment will explore the relationship between language and culture, the need to protect culture in Europe, and the means of doing it. Part II explores the connection between language and culture. This part presents the French history of protectionist measures and explains how recent infiltration of U.S. media threatens the cultural identity of France today. Part III analyzes the language laws of 1975 and 1994 to determine whether legislating language is appropriate and constitutional. Further, it considers the effectiveness of a language law, the difficulties of enforcement, and the consequences of language legislation. Finally, Part IV compares France’s regulation of language to protect culture with EU efforts to regulate culture. This part discusses the paradox of

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³. In 1992, American audiovisual revenues in the European Union were $3.7 billion, whereas European Union revenues in America were $290 million. Thus, the EU suffered a deficit of $3.4 billion. Joao de Deus Pinheiro, *European Audiovisual On the Move*, Address Before the European Institute (June 20, 1994), THE REUTER EUR. COMMUNITY REP., June 21, 1994. The audiovisual industry is “both a symbolic arena and an economic one,” and this ambiguity “allows one to make a cultural and economic argument at one and the same time.” Philip Schlesinger, *On National Identity: Some Conceptions and Misconceptions Criticized*, 26 SOC. SCI. INFO. 219, 228 (1987).

⁴. Recently, the French suggested that pay TV and theme channels invest a certain percentage of their turnover into the production of European programs. *Audiovisual Policy: Mixed Response From EU Culture Ministers To French Proposals*, EUR. REP., Apr. 27, 1994.

⁵. Loi No. 94-665 of Aug. 4, 1994, J.O. of Aug. 5, 1994 at 11392 [hereinafter Loi. No. 94-665]. It is named after Jacques Toubon when he was the Minister of Culture. Presently, he is the Justice Minister.
regulation in a democratic society and then whether the French law is enforceable by the EU.

II. Culture and Language

Individuals who speak the same language acquire a collective understanding which creates a group consciousness and cultural identity. Because language greatly influences personal and cultural identity, language rights have a high priority.

The word "culture" is defined as "the ideas, customs, skills, arts . . . of a given people in a given period; civilization." It is only through language that individuals discover their true personality and develop the ideas, skills, and customs necessary to function in society. For example, the expression "speak one's language" is defined as having "the same beliefs, attitudes . . . as another." Protecting language relates to the protection of culture.

Different cultures may say the same thing in different ways. Idiomatic expressions evolve through the use of familiar terms expressing an idea. Such terms vary from region to region. A person from one linguistic community would not necessarily understand a local phrase or concept in another community without first understanding its cultural evolution. When French people

7. Language rights are defined in two ways: as a positive right, which is an absolute human right to use one's own language individually or collectively; or as a negative right, which protects an individual or group from discrimination on the basis of language, but does not provide the right to use one's own language. Id. at 516. The French language law of 1994 states that the French people have a positive right to speak French. Loi No. 94-665, supra note 5, art. 1.
8. WEBSTER'S NEW WORLD DICTIONARY (2d ed. 1986).
10. WEBSTER'S NEW WORLD DICTIONARY (2d ed. 1986).
11. For centuries scholars studied all the world's languages, living and dead, in a valiant effort to prove that once upon a time, we all spoke the same tongue. The premise is a beautiful lie. Our only solace is knowing that even though we never shared the same language, we have often shared the same thoughts, [and] . . . these shared thoughts are so often expressed in different ways.
12. For example, chou is the French word for cabbage, but the expression mon petit chou, literally translated as "my little cabbage", is a term of endearment. Chou is also used in the expression for "teacher's pet", or le chouchou du prof. Id. at 49-50.
watch U.S. television programs, they learn English expressions which have a cultural history of their own. The French then adopt these phrases for lack of an equivalent expression.

Why is it that certain expressions cannot be translated into or do not exist in the French language? Perhaps French culture did not require them in the past. However, increasing foreign influence creates a desire to understand foreign cultures. More importantly, cultural blending creates a need to understand international technical terms. The French language has difficulty keeping up with the changes in the scientific community because technical vocabulary has evolved in English. In the modern age of technological innovation and commercialism, France has difficulty competing with more advanced, economically dominant nations.\(^\text{13}\)

It may be difficult for Americans to understand the European attitude regarding cultural preservation. Americans do not feel threatened by infiltration of films, audiovisuals, books and other cultural media in a language other than English because English is the preferred language. Alternatively, the French feel threatened by the infiltration of American words and phrases into their language. They are concerned about the "vulnerability of cultural identity to attack from the exogenous forces of foreign communication empires."\(^\text{14}\)

A. **History of French Regulation to Protect Linguistic Culture**

Historically, France was a great power. Since World War II, it has struggled to regain recognition on the European continent.\(^\text{15}\) Meanwhile, the U.S. emerged from World War II as a superpower. This role reversal affects France's pride and has the French government concerned with losing its national identity. However, in this modern society of mass consumerism, media, and interdependence,

\(^\text{13}\) In 1954, an independent Study Commission for French Technical Vocabulary was set up to improve the Frenchness and precision of specialist technical science terms. The findings were published in 1973. **HERMANN & COMBET, **[TERMES TECHNIQUES FRANÇAIS, ESSAI D'ORIENTATION DE LA TERMINOLOGIE](#) (1973).


\(^\text{15}\) **Diana Quintero, **[American Television and Cinema in France and Europe](#), 18 **FLETCHER F. WORLD AFF.** 12 115, 123 (1994).
why is France more aggressive than other nations in legislating to protect the French language from foreign influence?\(^\text{16}\)

This question can be answered in part by considering France's history. In 813 A.D., an order to preach in a romanized version of the French language was the first legal recognition that people should be preached to in a language that they understood instead of traditional Latin.\(^\text{17}\) In 1400, the French Royal Administration began to advocate the use of French in legal matters and other matters where it was important that both parties clearly understand each other. By 1510, King Louis XII prohibited the use of Latin in criminal trials and required the use of regional vernacular.\(^\text{18}\) Then, in 1539, King Francois I proclaimed French to be the official language of the law.\(^\text{19}\) In 1635, Cardinal Richelieu created the Académie Française to define the rules of the French language.\(^\text{20}\) The purpose of the Académie was “to labour with all care and diligence to give certain rules to [the French] language, and to render it pure, eloquent and capable of treating the arts and sciences.”\(^\text{21}\) The Académie was also charged with creating a dictionary which attempted to cleanse the language from the common mouths, from lawyers’ jargon, from ignorant courtiers, and abuses of the pulpit.\(^\text{22}\)

Over the past two centuries, France nearly destroyed all peripheral languages used in various regions by the Britons.\(^\text{23}\)

\(\text{16. This Comment will not compare the French language laws with those of Canada or Belgium, which are also French-speaking nations. Rather, this Comment focuses on the recent trend of European cultural blending with American values and language and how the Language Law of 1994 is a reaction to that, justified as a bona fide attempt to protect the rights of French consumers and workers. The French use the language law as a defense, much like the European Union uses regulation of the audiovisual market to protect from the domination of Hollywood.}\)


\(\text{18. Id.}\)

\(\text{19. Id.}\)

\(\text{20. Id.}\)

\(\text{21. Id.}\)

\(\text{22. Munday, supra note 17, at 223.}\)

\(\text{23. Id.}\)

\(\text{24. In 1532 a treaty between Brittany (a region in the Northwest of France) and the French Government gave them each independent status. Kalvez Tugdual, Au Courrier du “Monde” Breton Hors La Loi, LE MONDE, Mar. 19, 1994. However, in 1539, the territory was taken by Francois I. Id. Toubon sees France as a victim of international pressure similar to Britons when they were subjected to French imperialism and were forced to defend their languages. By passing the language laws, France not only acts against the “enemy”, but also against the}\)
Alsacians, Corsicans, and Basques.\textsuperscript{25} Aside from the impurities of local dialects, a larger problem arose after the Industrial Revolution\textsuperscript{26} when foreign words were introduced in spoken French.\textsuperscript{27} The greatest influence was the English language, and by 1946 the use of "franglais."\textsuperscript{28} was widespread.\textsuperscript{29} The author Etiémble attracted much attention to the phenomenon of this bizarre language with his book, \textit{Parlez-vous franglais}?\textsuperscript{30}

In 1966, the Committee for the Defense and Expansion of the French Language was established to study ways to expand the language, acquire ties with private organizations in technical and cultural areas, and promote all initiatives associated with the defense and expansion of the French language.\textsuperscript{31} Then, in 1972, a decree\textsuperscript{32} established a mission to identify gaps in the French vocabulary, recommend terms necessary to either describe a new meaning, or replace an undesirable foreign term which had been borrowed.\textsuperscript{33} These lists of terms, however, applied only to government agencies and organizations.\textsuperscript{34} Further, there was no means of enforcement, so the terms had minimal impact on the linguistic community.\textsuperscript{35}

\textsuperscript{25} Matthew Fraser, \textit{Manipulating Nationalism; The Parallels of France and Quebec}, \textit{Gazette} (Montreal), Aug. 7, 1994, at B1.

\textsuperscript{26} The Industrial Revolution began in England in 1760 and continued into the Nineteenth Century throughout Europe. \textit{Webster's New World Dictionary} (2d ed. 1986).

\textsuperscript{27} Examples of this are \textit{paquebot} (packet boat), \textit{biftek} (beefsteak), and \textit{redingote} (riding coat). Carbonneau notes that the French language is particularly vulnerable to integration of foreign terms because it has a limited vocabulary and has acquired new terms by adding meanings to those already existing. Thomas E. Carbonneau, \textit{Linguistic Legislation and Transnational Commercial Activity: France and Belgium}, 29 \textit{Am. J. Comp. L.} 393, 396 (1981).

\textsuperscript{28} "Franglais" is French, \textit{français}, plus English, \textit{(an)glais}, and refers to the adoption of English (especially American) words and phrases into the French language. \textit{Webster's New World Dictionary} (2d ed. 1986).

\textsuperscript{29} \textit{Id.}

\textsuperscript{30} \textit{Etiémble, Parlez-Vous Franglais?} (1973). This book is a satirical work written entirely in "franglais" explaining the phenomenon he refers to as the \textit{sabir atlantique}, (jargon of mixed foreign terms which in this case refers to the Atlantic states), while discussing its history and grammatical usage.


\textsuperscript{32} Décret No. 72-19 of Jan. 7, 1972, J.O. of Jan. 9, 1972 at 4678, [hereinafter Décret No. 72-19].

\textsuperscript{33} For example, "show business" was replaced with the obligatory term \textit{l'industrie du spectacle} and \textit{exclusivité} was a recommended replacement for "disc jockey."

\textsuperscript{34} Décret no. 72-19, \textit{supra} note 32, art. 6.

\textsuperscript{35} Carbonneau, \textit{supra} note 27, at 396.
B. Cultural Identity in the Face of the American Invasion of Television Programs, Films, and Values

Technological advancement and investment abroad have transformed the global economy. The existence of the EU shows recognition of the need for interdependence and for Europe to unite and pool its resources. However, the differences in language, culture, and ideology have made this venture quite a task. The EU’s success to date is probably attributable to the fact that each member has difficulty competing with the U.S. individually, and each has a common interest in preserving its unique cultural history. A collective European identity includes collective memory, shared traditions, common past, and heritage. The common interest and identity among Europeans may be viewed as an “us” versus “them” mentality. The U.S. is considered the “alter ago,” or what Europe is afraid it will become; it is considered to be a nation with no real past and no real culture. Some, particularly the French, perceive a “cultural erosion” and a threat of “coca-colonization”. France feels threatened by U.S. influence because it views the U.S. as an aggressor and a counter-identity. To France, the U.S. represents mass production, cheap products, and materialism. The lifestyle and spending patterns in the U.S. offend French cultural values. In France, having and being are contrary notions. On the other hand, the U.S. consumer is preoccupied with being “cool”, which means having “cool” things. This is where the French protest. Unfortunately, however, the French like to imitate Americans, and they get drawn into the mass consumerism and compromise their own satisfaction and leisure. This is how their distinctive culture erodes and why they are defensive.

Most legislation protecting “cultural identity” in the EU is directed toward the audiovisual market. France has been a

36. Schlesinger, supra note 3, at 261.
37. Carbonneau, supra note 27, at 401.
40. Id.
41. Id.
42. Id.
43. Id.
44. Quintero, supra note 15, at 123.
45. “Audiovisual products are not just commercial goods. They are the expression of the identity of each people, the vehicle for their language, of their
leader in EU legislation protecting culture, and exemplifies its defensive stance with the 1994 language law, *la loi Toubon*. The law attempts to protect the French language from influence by foreign languages (though it is directed at English specifically) in television, radio, advertising, trademarks, and international scientific or political conventions. Though France has traditionally protected its language, *la loi Toubon* was inspired by the threat of the U.S. monopoly in the audiovisual sector and the influence of American values through its movies, television shows, and other informational products. Although the law purports to protect the right of French consumers and workers to contract in their own language, it may actually be an attempt to protect against foreign competition.

III. Legislating Language

The Law of 1994 is neither original nor unusual in France. It echoes provisions of the Law of 1975, and is consistent with France’s history. However, it does raise the issues of constitutionality and practicality. As to the constitutional merits, the Law of 1994 was challenged by the Constitutional Council because it infringed the fundamental freedoms of expression and communication. As to practical aspects of the law, enforceability may be a concern, as well as its effectiveness in achieving its goal to protect workers and consumers.

Legislating language alters the linguistic community by unnatural means. Legislation may be ineffective, as well as repressive, because a nation’s language is constantly evolving to incorporate new and useful foreign terms. Legislation may not be an appropriate means to protect language because linguistic evolution is a natural process which should not be disturbed.

Perhaps the French continue to update and re-enact language laws because they recognize the need to accept certain foreign terms into their language. The French implicitly concede that they must...
accommodate this need by proposing the creation of French terms with meanings equivalent to foreign terms.

A. The Language Law of 1975

In 1975, President Pompidou issued a proposal to repair the damage done by assimilation of foreign terms into the French language. \(^{50}\) Proponents of the bill argued that integrating foreign vocabulary into the French language was the equivalent of "progressive cultural subservience". \(^{51}\) On December 31, 1975, the law was passed. \(^{52}\)

The supposed rationale for the law was to protect consumers. However, original drafts of the law suggested a defensive tone, containing aggressive, exaggerated language like "degradation" and "contamination" in reference to the influence of the English language. \(^{53}\) The law itself was milder in tone and required use of French in three areas of consumer interest: (1) marketing of goods and services destined for consumption by the French public; (2) offers of employment made in employment contracts to be carried out in France; and (3) use of public places, property, or services and in contracts with public bodies or establishments. \(^{54}\) The law specifically excluded commercial names and trademarks from regulation. \(^{55}\)

Article 1 of the 1975 law required that French be used in the sales of goods or services to the French public. \(^{56}\) It mandated that French appear in the entire written form of documents and wording included in packaging, on merchandise itself, and in oral and written advertising. \(^{57}\) Article 1 applied to receipts, warranties,
labels, delivery orders, instructions, and quality certificates.\textsuperscript{58} Liability was imposed on the French importer or foreign exporter who sold the goods directly on the French market.\textsuperscript{59} Therefore, the French importer who utilized foreign languages on labels had to include a translation on the product label.\textsuperscript{60} This placed a financial burden on French importers of technical merchandise due to added time and labor.\textsuperscript{61} Most technical training is in English, it is expensive to translate certain technological terms, if at all possible, and lengthy literature usually accompanies the equipment.\textsuperscript{62} Application of the law had the most impact on the technological and commercial sectors because that is where "Franglais" was most prevalent.\textsuperscript{63}

Article 1 further mandated the use of French in all information, radio, and television programs, except when intended expressly for a foreign public.\textsuperscript{64} Documentation in French could be accompanied by several translations, but use of any foreign term which had a French equivalent was prohibited.\textsuperscript{65} This provision exemplifies the difficulties in legislating language due to the inevitable problem of enforcement.

Courts were left to determine whether a foreign term had a French equivalent,\textsuperscript{66} and no standard or procedure was mentioned.\textsuperscript{67} Factors the court will consider are: (1) whether a word came into French usage through oral or written use; (2) whether it is included in only some dictionaries, and what quality and reputation those dictionaries have; (3) whether the French spelling and pronunciation differ enough from its original form to give it a bona fide French tone and character; and (4) whether exclusive use of the word in a technical sector exempt it from the law without hurting the rationale of consumer protection.\textsuperscript{68} However, courts could exceed the boundaries of their authority and thereby implement linguistic changes.\textsuperscript{69}

\textsuperscript{58} Loi No. 75-1349, \textit{supra} note 52, art. 1.  
\textsuperscript{59} \textit{Id}.  
\textsuperscript{60} \textit{Id}. art. 6.  
\textsuperscript{61} Carbonneau, \textit{supra} note 27, at 396.  
\textsuperscript{62} Technical equipment includes, for example, computers and airplane components.  
\textsuperscript{63} Carbonneau, \textit{supra} note 27, at 396.  
\textsuperscript{64} Loi No. 75-1349, \textit{supra} note 52, art. 1.  
\textsuperscript{65} \textit{Id}.  
\textsuperscript{66} \textit{Id}.  
\textsuperscript{67} \textit{Id}.  
\textsuperscript{68} \textit{Id}.  
\textsuperscript{69} \textit{Id}.
Article 2 exempted transactions between foreign exporters and French importers and transactions where the goods or services were intended for consumers outside France. Article 3 prescribed fines from 80 francs to 160 francs for failure to comply, and up to 5,600 francs could be imposed for repeated violations. Articles 4 and 5 pertained to labor law, article 6 pertained to the use of French on public buildings, places and property, and article 7 provided that the failure to observe article 6 would result in loss of government funding. Article 8 required the use of French in all contracts between a French public entity and any person, but translations were allowed.

B. The Language Law of 1994

In 1986, renewed efforts to enrich the French language resulted in promulgation of a decree. Since 1986, the French have persisted in their objective of strengthening French language and culture. In reaction to the recent “cultural invasion” in the entertainment industry, the law of August 4, 1994, la loi Toubon, was proposed.

La loi Toubon distinguishes between public and private use of language. The law only applies to personnes morales de droit public, (public entities), and personnes morales de droit privé (corporations) engaged in public activities. It does not apply to

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70. Loi No. 75-1349, supra note 52, art. 2.
71. Id. art. 3.
72. Id. arts. 4-7.
73. Id. art. 8.
74. Décret No. 86-439 of Mar. 11, 1986 Relatif a L’Enrichissement de la Langue Francaise, J.O. Mar. 16, 1986 at 4255. This decree established four missions: (1) to establish the lacunae, or gaps in the French vocabulary which need to be filled; (2) to collect, revise terms, and create new terms necessary for contemporary usage; (3) to work closely with the international counsel of the French language and the National Institute of the French language in harmonizing given terminology and neologisms (new words or new meanings for words) to enrich the French spoken in other countries; and (4) to promote new terminology and awareness necessary for the evolution of the French language.
76. Personnes morales are associations or entities and not individuals. Personnes morales de droit public include public services such as the post office, water, culture, public transportation and health department. They include profit organizations such as certain bus and public transportation services, and non-profit administrative organizations such as hospitals, museums, and universities. Personnes morales de droit privés include business partnerships in the commercial and industrial sectors. Personnes privées are individual citizens and personal businesses such as the boulanger, restaurant owners, and shop owners. This law
individuals and their personal businesses. Some of the provisions were struck down as unconstitutional, and what remains seems unnecessary and repetitive in light of existing legislation.\textsuperscript{77}

Article 1 states: "[t]he French language is a fundamental element of the patrimonie and personality of France. It is the language of teaching, working, exchange and public service. It is the privileged tie between the States constituting the Francophone\textsuperscript{78} community."\textsuperscript{79} Article 24 repeals the Law of 1975 except for similar provisions which are replaced by articles 2 and 3 of the Law of 1994.\textsuperscript{80} Interestingly, provisions of the 1975 law requiring use of a French equivalent term were originally included in the 1994 law, but were declared unconstitutional in 1994 and thus omitted.\textsuperscript{81} The provisions of articles 8 and 10 regarding the employment code are comparable to those of the Law of 1975.\textsuperscript{82} Article 4 of the 1975 law and Article 8 of the present law similarly provide that work contracts must be in French and any foreign terms must be explained in French, including a foreign salary.\textsuperscript{83} However, the 1975 law pertains to work contracts executed specifically "in the French territory."\textsuperscript{84}

only applies to public entities and corporations. The Conseil Constitutionnel placed emphasis on this distinction.

77. The Law of 1994 does not accomplish much more than the Law of 1975. Some of the 1994 provisions replace similar provisions of the 1975 law, and the 1994 law expands a few areas. However, some of the language taken from the Law of 1975 was declared unconstitutional in the 1994 law.

78. Francophone means French-speaking and is a term used to refer in general to all French-speaking persons in the world. Jacques Toubon bore the title "Minister of Culture of the Francophone Community."

79. Loi No. 94-665, \textit{supra} note 5, art. 1 (this author's translation).

80. Id. art. 24.

81. These terms were provided in the 1972 decree. Décret no. 72-19, \textit{supra} note 32.

82. Loi No. 75-1349, \textit{supra} note 52, art. 5; Loi No. 94-665, \textit{supra} note 5, arts. 8 and 10.

83. Article 8 replaces the last three paragraphs of Article L. 121-1 of the employment code with the following provisions:

Written work contracts must be in French. If the subject of a work contract can only be described in foreign terms, the contract must have an explanation of the term(s) in French. If a contract states a foreign salary, a translation may be included in the language of the employee at his/her request; the two texts have the same legality. In case of disagreement between the two, only the text in the foreign language will be enforced. The employer cannot take advantage of a discrepancy in salary where it does not accord with a clause of a work contract which has been determined in violation of this article.

Loi. No. 94-665, \textit{supra} note 5, art. 8. (This author's translation).

84. Loi No. 75-1349, \textit{supra} note 52, arts. 8 and 10.
As in the 1975 law, French is required in all advertising whether written, oral, or audiovisual, excluding names or denominations of foreign products which are well-known, such as "Nike" and "Coca-Cola." This provision also applies to names and words registered along with the trademark.

Furthermore, public entities and corporations involved in public service are liable for any writing which conveys public information placed by a third party on a good belonging to that entity. Therefore, it is the obligation of the public entity or corporation to enjoin the third party from conveying such information. If the writing is not removed within a specified time, the use of the good may be restricted according to the amount of authority which has been given to the party and depending on the severity of the act.

Article 4 of la loi Toubon limits the number of translations accompanying the French to two. In cases where the advertisements or writings mentioned in articles 2 and 3 of this law have one or more translations, the French must be as easy to read, hear, or understand as the foreign language.

Article 5 pertains to contracts. This article prohibits foreign words or phrases when there is an equivalent expression or term in French approved and set forth in the provisions regulating French usage. These provisions do not apply to contracts involving industrial or commercial activities or contracts pertaining to activities beyond the French borders. Where article 5 applies to a contract with one or more foreign co-contractors, the contract may contain, in addition to a French translation, versions in foreign languages which give the same meaning to the terms of the contract. A party to a contract who violates article 5 can not take advantage of any contract provision written in a foreign language that is prejudicial to the other party.

As prescribed by article 6, every participant in a political, scientific, or other convention or meeting organized by persons of

85. Loi No. 94-665, supra note 5, art. 2.
86. Id.
87. Id. art. 3.
88. Id.
89. Id. art. 4.
90. Loi No. 94-665, supra note 5, art. 4.
91. Id. art. 5.
92. Id.
93. Id.
94. Id.
the French nationality “has the right to speak French.” Document describing the program which are distributed to the participants during and after the presentation must be in French but may have translations in one or more languages. If preparatory or instructional documents or publications of regulations or work descriptions are distributed at these meetings in another language, these documents must be accompanied by at least a summary in French. These provisions do not apply to organized meetings that concern only foreigners or to promotions for commerce outside of France.

Other pertinent parts of the law are articles 7, 11, and 12. Article 7 requires documents in foreign languages to be summarized in French, article 11 pertains to use of French in schools, and article 12 modifies a law pertaining to freedom of communication. According to article 14, trademarks for goods or services using foreign terms are forbidden if a French term or equivalent exists. This prohibition does not apply retroactively.
to marks used before this law was enacted. Obstruction of the enforcement of article 2 invokes punishment proscribed according to article 433-5 of the Penal Code, which imposes a fine of 50,000 francs in punitive damages and six months imprisonment.

Article 21 states that "[t]he provisions of this law apply without prejudice to legislation and regulations regarding regional languages of France and does not inhibit their usage." The measure imposes fines between 1,000 francs and 20,000 francs (approximately $170-$3,500) on offenders.

In conjunction with the law, certain approved terms were proposed as required, and a dictionary was published in March of 1994 with 3,500 official terms.

1. The Constitutionality of the Language Law.—Article 11 of the French Declaration of the Rights of Man and of the Citizen of 1789 specifically pronounces the rights of freedom of expression and communication as fundamental rights. To determine the constitutionality of the language law, the Constitutional Council considered article 2 of the Constitution, which states, "The

103. Id. art. 14, § II.
104. Loi No. 94-665, supra note 5, art. 17. The court considered whether the fine was too strict and determined that it was not up to the Conseil Constitutionnel to decide what penalties are necessary. (According to the Declaration of Human Rights, Article 8, a law should impose only punishments which are strictly necessary). Décision No. 94-345 DC of July 29, 1994, Conseil Constitutionnel, Loi Relatif à L'Emploi de la Langue Française [hereinafter Décision No. 94-345].
105. Loi No. 94-665, supra note 5, art. 21.
107. For example, the French equivalent for "hit-and run" is ACTION ECLAIR (literally: brief act), for "barter", the equivalent is troc, and for "disketting" the equivalent is discopostage. Arrêté du 7 juillet 1994 Relatif à la terminologie économique et financière, J.O. July 31, 1994 at 11152.
108. Loi sur le français obligatoire: annulation de deux dispositions de la loi par le Conseil Constitutionnel, AGENCE FR. PRESS, July 30, 1994. The dictionary proscribes sac gonflable for "airbag", baladeur for "walkman", and écrasement for "crash". Some English words already have been accepted into the French language, such as "corner", "hot dog", and "football". Other terms have existing French equivalents and Toubon wants to bar using the foreign equivalent instead of the natural French term. For example, maison would be used for home, logiciel for software, and meneur for leader.
109. FRENCH DECLARATION OF THE RIGHTS OF MAN AND OF THE CITIZEN art. 11 (Fr. 1789). Article 11 provides: "[f]reedom of communication of thought and opinions is one of the most precious rights of man; each citizen may speak and write freely, except in those cases where abuse of this freedom is determined by law." Id. (This author's translation).
language of the Republic is French," and the Council decided that the legislature had the power to impose use of the French language on public entities and those in public service as the obligatory official terminology. However, the Council refused to give government officials the power to choose which words can be used. The Council noted that the supreme judge over linguistic matters should not be a court, but rather the Académie Française. Furthermore, the Council resisted the temptation that the government has had to regulate the audiovisual sector, recognizing that the media is a means of freedom of expression and that journalists should be guaranteed the same rights as citizens.

Certain provisions of the 1994 law were declared unconstitutional. One provision deemed unconstitutional was the portion of article 2 requiring the use of French in all writings describing usage, guaranties, conditions, and receipts for commercially manufactured products. Further, the article 3 provision concerning public places and public transportation was found unconstitutional insofar as it applied to private persons.

Additionally, a portion of article 7 was found unconstitutional because it would give the Minister of Research discretion to compel individuals who are subsidized by the government to publish, distribute, and translate their works in French. This provision would thus restrain instructors from the freedoms of communication and expression in teaching and research.

The Council also annulled a phrase appearing in articles 8, 9, and 10. These articles pertained to work relations and applied to work contracts, regulations or texts written in a foreign language.

110. *Loi sur le français obligatoire: annulation de deux dispositions de la loi par le Conseil Constitutionnel, supra* note 108.
111. Décision No. 94-345, *supra* note 104.
112. *Loi sur le français obligatoire: annulation de deux dispositions de la loi par le Conseil Constitutionnel, supra* note 108.
114. Article 3 requires that public entities and corporations involved in public service are liable for any writing which conveys public information placed by a third party on a good belonging to that entity. *Loi No. 94-665, supra* note 5, art. 3. The Constitutional Council emphasized the distinction between *personnes morales de droit public* (public entities) and *personnes privées* (private persons), but *personnes privées dans l'accomplissement d'un service public* are subject to the law because they are involved in public service. *Décision No. 94-345, supra* note 104.
116. *Id.*
Specifically, the articles contained language that would require these documents to be written in French if they contained a foreign expression that had a French equivalent.\(^{117}\)

The Constitutional Council stated that the power to regulate under article 34 of the Constitution\(^ {118}\) was misconstrued by the legislature insofar as it attempted to regulate corporations not charged with a public mission.\(^ {119}\) The Council also recognized “that the French language evolves like any living language and integrates into its practical vocabulary terms from many sources, that it is composed of expressions from regional languages, popular oral sayings or foreign words.”\(^ {120}\) Therefore, the Council acted in the spirit of personal freedoms and protected the rights of individuals which would otherwise be abridged by the legislation. In so doing, it limited the effect of the law.

2. The Effect of Legislating Language.—Jacques Toubon, the former Minister of Culture, says the law was proposed

...[s]o that employees can understand their work contracts and so that product instructions and safety warnings are written in the language of the consumer and the worker. So that a scientist at a colloquium is not asked to desist if he starts speaking in French in front of a majority of French-speakers. So that public documents are in the language of the country. Such a law therefore serves French citizens. It does not purport to police the language, since everyone may continue to speak as he chooses, as a living language ....\(^ {121}\)

He goes further, saying that “Americans, who are known for not being too open to foreign cultures and for pursuing their own cultural protectionism,” do not understand foreign languages; that “[m]any Americans, on the contrary, often forget that one has the right in other countries not to understand their language and to speak another one.”\(^ {122}\)

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117. Loi No. 94-665, supra note 5, arts. 8, 9, and 10.
118. Article 34 gives power to the legislature to regulate in affairs “concerning civic rights and the fundamental guaranties of citizens to exercise public freedoms.” CONST. art. 34 (France).
119. Décision No. 94-345, supra note 104.
120. Id.
122. Id.
Toubon, known as "Mr. All-Good," is criticized for this law, though an opinion poll of Spring, 1994 showed 65% support by the French. Certain advertising executives considered the law "nationalist" and "unjust" and said that it "killed freedom and creativity." The Academy of Science, for example, warned that the law would compromise French scientific influence in world science and that it would be practically impossible to have international scientific seminars and conferences because it would be too expensive and administratively burdensome. Some suggested that protection of the language should be left to the Académie Française, which has already accepted many English words into the French language, though Toubon would like to see those words replaced with French ones.

The effect of the law is that government officials will have to use French words while the rest of the country will not be required to do so. For example, they will have to use the term heures de grande écoute while the citizens say "prime time" because the limitations of the final law do not apply to radio, television, advertising, business, and science.

Further, the law may present legal problems in international capital markets, where the English language is predominant, because state firms and local authorities must write contracts in French. Contracts dealing with securities, bonds, and loans might not be enforceable due to problems of interpretation. Additionally, the use of the French language may bring the

123. "All-Good" is a literal translation of his name: tout bon.
125. Alan Riding, "Mr. All-Good" of France, Battling English, Meets Defeat, N.Y. TIMES, Aug. 7, 1994, § 1, at 6.
126. Nicholas Powell, French Bid to Stem Rising Tide of Language Imports, HERALD, Feb. 28, 1994, at 7. The final provision reflects the change to provide that French is not obligatory when a majority of non-French speakers are involved.
127. A 1995 edition of the "Petit Larousse" Dictionary will add only two new English words: "soft" and "hard." The editors claim they were not influenced by the language law. However, it conveys the meaning of certain English words in new French words such as zapper for changing television channels with the remote. Also, the dictionary includes several Spanish terms such as tapas and tortillas. "Soft" et "hard", les nouveaux mots anglais du "Petit Larousse" français, AGENCIE FR. PRESSE, Sept. 6, 1994.
128. Riding, supra note 125. Also, the Sports Minister will have to use the term jet du coin while the sports commentators say "corner kick."
129. Id.
131. Id.
contracts into a French jurisdiction. The overall effect is to deter foreign investors such as the Japanese, who are accustomed to dealing in English, and therefore close off low cost financing to those who need it. The confusion which this law may create in financial markets could ultimately harm the French economy.

IV. EU Attempts to Regulate Culture

France is not the only European nation concerned with protecting culture. In 1987, the Commission of European Communities issued a directive to increase cultural activity as a political and economic necessity, and a provision for improving knowledge of languages was proposed. The 1987 Commission proposal addressed the multilingual nature of the community which could potentially create misunderstanding among the nations. The proposal suggested enriching knowledge and substance of culture by introducing aids for communication such as language training, translation, dubbing, and sub-titling. Further, the proposal emphasized teaching young people by developing and improving language courses in schools.

U.S. radio and television programming has infiltrated Europe, particularly the minds of young television viewers, with American values, images, and attitudes. Television has become an important influence on culture, playing a certain role in Euro-

132. Id.
133. Id.
134. Id.
135. A Fresh Boost For Culture in the EC, supra note 2. Three areas of concentration were proposed: (1) improving knowledge of languages; (2) promoting culture in the regions by encouraging European cultural events and preserving Europe’s cultural heritage; and (3) establishing a “young people’s pass”.
136. Id.
137. Id.
138. Kaplan, supra note 1, at 262.
139. Kaplan discusses two theories of the attraction to audiovisual media and recognizes a connection between cultural domain and political sovereignty. Id. at 257-59. First, the “all-powerful television” theory explains television as a manipulative, ideological method of stifling imagination, thought, and curiosity. It is a vehicle to control political thought and influence values. Id. at 258. Two ways to describe this theory are “the power that controls television controls the nation” or “from the outset the system forms and shapes viewers’ consciousness.” Id. The four elements of the first theory include: (1) central location of power; (2) uniformity of message; (3) passivity in reception by the viewer; and (4) impossibility of reply. Kaplan, supra note 1, at 258. Examples of this theory are presidential debates, the Vietnam War, and politicians who lose
pean society. It is much less expensive to show U.S. programs in Europe than domestic ones because Hollywood's mass production and domination over the entertainment business makes it possible to create a greater volume of programs at lower cost. Europeans view the U.S. dominant position as a threat, and this proposition is supported by the theory that whoever controls television controls the nation. Europeans see a connection between the collective memory of their citizens, which is cultural, and national sovereignty, which is economic and political.

Regulation of the audiovisual sector has become a way to address this problem, but has brought about the issue of infringement upon human rights. Europeans argue that U.S. dominance with homogenous programming stifles freedom of choice and freedom of information and prevents a pluralistic media system from developing according to democratic ideals. However, what they may be denying is that freedom of choice is thriving, and Europeans are choosing U.S. products.

The objectives of a quota are to improve consumer choices by increasing competition within the EU and to preserve European work and cultural identity. However, a quota could hurt the EU interest. By limiting the amount of U.S. audiovisual programs, small stations would not survive. These small stations would be unable to afford the cost of commissioning European programs, yet they would not be able to use cheaper U.S. programs to fill the gaps. Also, a cultural paradox exists. Are EU states protected more by watching films produced in the EU rather than films elections and blame the media. Id.

The second theory is cultural uniformity. This theory states that television homogenizes people by depicting only a certain urban, middle-class lifestyle: the fact that they are watching television is the only thing the viewers have in common. Id. at 259. Television marginalizes language and cultural identities. Id. at 259. It isolates individuals and hinders relationships because people do not talk as much anymore. Id. at 259.

141. For example, Sylvio Berlusconi, an Italian television executive, found bargains in old television and movie libraries in Hollywood, and used these programs to fill the gap in programming after the privatization of television. Kaplan, supra note 1, at 271. Hollywood programs attracted viewers and provided inexpensive, top quality shows that crossed the language barrier. Id.

142. Id.

143. Id. at 263.

144. Id. at 272.

145. Kaplan, supra note 1, at 272.

produced outside Europe?\textsuperscript{147} If so, would that mean Germany is culturally closer to Spain or the United States?\textsuperscript{148} It is worth considering whether cultural similarities between nations are influenced more by language ties or by geographical proximity.

Some argue that countries across the globe which speak the same language have closer cultural ties than neighboring countries.\textsuperscript{149} Thus, the language barrier can be associated with a culture barrier. If geographical proximity was the stronger influence, then it would be logical to say that shows from Spain in Spanish protect German culture better than U.S. shows in English.\textsuperscript{150} The Directive would seem to support this because it focuses on U.S. imports.\textsuperscript{151} However, the flaws in the cultural argument lead one to believe that this is just a cover for a economic protectionism.

Similarly, the French argument that regulating language helps to protect culture may be flawed. The practicality of enforcing a language regulation is minimal because there is no way to monitor the language used in the privacy of one's home. Therefore, how much control can the government take over private affairs of citizens? It is unconstitutional to limit freedom of expression of individuals, so the government will be speaking French while the citizens can use any language they choose. If individuals are still using foreign words, their language is not effectively influenced by this law. As a result, the official language is not the language of the people.\textsuperscript{152} Jacques Toubon uses this argument as a rationale for the law which promotes one language for all. However, legislation does not produce this effect. The use of French should result from the desire of the French people to speak French, not because of the threats of fines or other penalties.

\textsuperscript{147} Id. at 550.
\textsuperscript{148} Id.
\textsuperscript{149} Jacques Toubon's title as Ministre de la Culture et de la Francophonie, or Minister of Culture and the French-speaking Community, supported the idea that language ties have a stronger influence on culture than geographical proximity.
\textsuperscript{150} Kaplan, supra note 1, at 272.
\textsuperscript{151} Id. at 285.
\textsuperscript{152} Jacques Toubon, Point de Vue la Langue de Tous, LE MONDE, Apr. 4, 1994. François I imposed the use of the French language "because he could not tolerate the fact that the statutory language, the official language, was not the language spoken by the people." Id.
A. The Paradox of Regulating to Preserve National Culture Based on Democratic Ideals

The same laws which define the democratic nature and national character prevent European nations from preserving that culture. Democratic nations which promote personal freedoms are at risk of influence by other cultures and languages and values. It is the fundamental principle Americans and Europeans share. To regulate what people choose to say and watch and read is to revert to a communistic society with authoritarian rulers.

The French Government has reason to monitor and enrich the use of the French language. However, the media represents freedom of communication and expression, and regulation of media contradicts freedom, which is an essential element of a democratic nation. Resisting the fluctuations, changes, and progression of language and culture can harm the natural processes by which they evolve and assimilate to new situations. Flexibility is essential in today's fast-paced world where change comes about so quickly and dramatically. For example, in the computer industry, new products are introduced monthly and new trends come before the former ones are outdated. The key to economic survival is keeping up with the changes in technology and communicating effectively in the international arena. The French might be better off by accepting change rather than fighting a losing battle. They will only lose respect from other nations and be left behind in a world which no longer exists.

B. The Potential Effect of the EU Law on France's Legislative Power

Currently, no clearly established international laws or treaties regarding language rights exist. The European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention) ensures the legitimacy of protective regulations.

154. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for
This European Convention states that "everyone has the right to freedom of expression." However, it limits these freedoms by stating that they may be subject to "restrictions or penalties as prescribed by law and are necessary in a democratic society, in the interests of national security . . . ." Therefore, legislative restrictions on individual freedoms can be justified as being necessary.

With legislative independence comes the utopian idea that a liberal society will not specifically define the common good it strives for through political action. The ideal of justice cannot always be reconciled with freedom of expression of ideas, opinions and information, and it may also justify the restrictions on the exercise of these rights. It is in the name of security, individual or collective, that one justifies restrictions on the diffusion of information, for example diffusion which threatens the national security. (emphasis added).

National security, however, was not the rationale for legislating language in France, nor would it justify restricting language use without a serious threat of propaganda or other means of threatening national security. Individual freedom is the backbone of a democratic society, but tension often exists between certain rights. "In a society which encourages simultaneously diversification of production of material goods and intellectual, cultural and spiritual goods, the interests of producing certain goods are sometimes at odds with the rights appointed to them." The European Convention recognizes that exercise of freedoms "carries with it duties and responsibilities," and, therefore, individuals should have responsibility to the State in return for the personal freedoms they exercise. However, one individual’s rights may be at odds with another individual’s rights. For example, the freedom of speech may conflict with the right to privacy. Which rights supersede? Should we enforce the right to speak French to the detriment of those who speak other languages within French
borders, or who contract with other nations in different languages?\textsuperscript{160} The French language law did not go quite so far as to deny citizens the right to speak other languages, as it only applies to public entities, but could it have?

Though the European Convention has drafted agreements to promote human rights and international harmony, the EU has no legal basis to interfere with national legislation. The national political programs and organization of internal affairs supersedes international laws and powers.\textsuperscript{161} The EU probably does not need the authority to regulate the national affairs because interdependence is the most effective power over nations.

However, if the EU had authority, the French law would probably have to be justified in terms of national security. Since the law which was passed only applies to government and public-related enterprises, leaving individuals free, it would most likely meet the requirements set forth above.

V. Conclusion

European nations have a legitimate reason to be concerned about cultural invasion and potentially negative effects of consumer culture, materialism, and extended television viewing time. Individuals and collective units have the right to a cultural identity and the right to share values, ideas, and understanding. When a foreign culture is imposed on them and gradually influences those common values, in some cases degrading the identity particular to that region and assimilating it into a \textit{mélange}, this concern is justifiable. Because Americans are descendants of Europeans and other nations, their identity is derived from many cultural influences and they are not as protective. Also, the U.S. is not threatened economically by other national powers to the same extent as European nations.

The interests of the individual and of the sovereign state are sometimes at odds, and in the modern democratic world, human rights must take precedence. It is ironic that France, claiming to be the cradle of human rights,\textsuperscript{162} sought such a restrictive measure. Though cultural protection is a legitimate concern, regulation of rights which are purely personal is not appropriate.

\textsuperscript{160} Rigaux, \textit{supra} note 153.
\textsuperscript{161} \textit{Id.} at 64.
\textsuperscript{162} Riding, \textit{supra} note 125.
It does not appear that the law will ameliorate the rights of the French consumer or worker, as it purports to. Rather, it appears to be a defensive measure. This defensive tone is expressed clearly in the words of Jacques Toubon: "[a] foreign language often becomes a tool of domination, uniformity, a factor of social exclusion and, when used snobbishly, a language of contempt." Instead of reacting after they feel threatened by U.S. domination, the French should concentrate on technological innovation and audiovisual programming at home and let language follow its own natural course.

On the other hand, though France has earned a reputation of obstinance, its role in the EU contributes to the balancing of interests and the promotion of cultural diversity, as it tends to endorse the most protectionist and defensive measures. If France changed this trait and became more open-minded, would it not mean the decline of its existing "cultural personality?"

Michele Belluzzi

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163. Bremner, supra note 75.