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SEVENTY YEARS OF THE SMITH-MUNDT ACT AND U.S. INTERNATIONAL BROADCASTING: BACK TO THE FUTURE?

By Emily T. Metzgar

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**April 2018
Figueroa Press
Los Angeles**

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Published by
FIGUEROA PRESS
840 Childs Way, 3rd Floor
Los Angeles, CA 90089
Phone: (213) 743-4800
Fax: (213) 743-4804
www.figueroapress.com

Figueroa Press is a division of the USC Bookstores

Produced by Crestec, Los Angeles, Inc.
Printed in the United States of America

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ISBN-13: 978-0-18-222931-4
ISBN-10: 0-18-222931-9

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Seventy Years of the Smith-Mundt Act and U.S. International Broadcasting: Back to the Future?

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May I say that I sometimes wonder if the rest of the world is as eager to hear the American story as we think it is?

John S. Knight

Abstract

The United States has engaged in peacetime international broadcasting and related activities since passage of the Smith-Mundt Act in 1948.² Formally known as the U.S. Information and Educational Exchange Act, Smith-Mundt is the statutory foundation for the U.S. government's transparent production and dissemination of news and information intended for foreign audiences. The political rationale for American engagement in these activities, the legislative structure authorizing them and the environment—both international and domestic—within which these activities unfold have evolved in the seven decades since Congress first deemed “telling America’s story to the world” a worthwhile endeavor. This paper for the *CPD Perspectives* series discusses the legislative actions, the rhetoric and the context for U.S.

* The author thanks Sergio De La Calle and Elli Schank for their research assistance, as well as Indiana University’s Institute for Advanced Study and the University of Southern California’s Center on Public Diplomacy for their financial support of this work. She also acknowledges the archives of the Associated Press in New York; the University of Chicago Library; and Indiana University Libraries for access to their collections and for the kind assistance of their librarians and archivists.

international broadcasting (USIB) at key junctures since the end of World War II. The pattern that emerges is one of both continuity and disconnect, from a consistently stated desire to promote democracy and freedom of information to variable views about how to manage the broadcasters and navigate a changing international system. The analysis presented here has particular relevance for the contemporary political environment where concerns about the efficacy of U.S. government-sponsored broadcasting and other messaging activities abroad have driven legislative change while raising new worries about the potential for government messaging tools to be turned on American audiences at home.

Discussion begins with the deliberations that led to passage of Smith-Mundt then moves to an evaluation of amendments intended to curtail domestic access to USIB content, continues with a discussion of post-Cold War legislation that dramatically altered the bureaucratic structure responsible for overseeing international broadcasting, and finally arrives at recent actions undertaken to impose increased accountability on the broadcasters and to relax constraints on domestic access to their content. In addressing these issues, this report connects past to present, offering a framework for current discussions about U.S. international broadcasting and related information diplomacy efforts in the contemporary global communication ecosystem.

This report does not purport to be a thorough retelling of the history of the Smith-Mundt Act's passage in early 1948, nor of amendments or other legislation that came later. Rather, the work presented here seeks to offer a modest overview of the legislation that has governed U.S. international broadcasting, as well as public discussion about it, since the end of World War II.

Past as Prologue?

It was a time of growing geopolitical instability with the Russian menace on the rise. Politicians in Washington worried that nefarious actors across the globe were spreading disinformation about the United States. Even worse, they were concerned that foreign agents had corrupted key democratic institutions in the American homeland. While this scenario is reminiscent of the contemporary American context, it also describes the view from the United States seventy years ago as the world drifted into a cold war following World War II.

In 1943, well before the end of the war, President Franklin Roosevelt was thinking about how the American government's wartime international broadcast efforts—which had come to be known as the Voice of America—could transition from a propaganda operation to peacetime production of news about the United States and the world.³ Roosevelt sought to ensure that the country would continue spreading a message of democracy and information freedom well after the war's end. He presented the rationale for continued engagement in broadcasting as promoting "better understanding between the peoples of the world" and insisted that even while still at war, the United States should tend to laying the "proper foundations" for such efforts to continue after hostilities came to an end.⁴

Two years later, on the day of Japan's surrender, President Harry Truman commissioned Secretary of State James Byrnes to establish a permanent international information program as part of the United States' new peacetime foreign policy.⁵ Similar to Roosevelt's earlier hopes, Truman sought to make certain that the world would continue to hear about the country on its own terms. In an executive order, Truman specified that the government's postwar broadcasts would present "a full and fair picture of American life and of the

aims and policies of the United States Government.”⁶ The broadcasts were not intended to function as propaganda but rather as a source of accurate information about the United States in a complicated world. In responding to the president’s request, Byrnes echoed Truman’s objectives, noting “We would defeat our objectives in this program if we were to engage in special propagandist pleading. Our purpose is, and will be, solely to supply the facts on which foreign people can arrive at a rational and accurate judgment.”⁷ Byrnes then set out to rally support for legislation that would authorize government engagement in a range of activities that today are described as public diplomacy.

Despite unwavering executive branch support for the proposed peacetime efforts to engage foreign publics, it was not until early 1948 that President Truman was presented with legislation sanctioning the government’s public diplomacy activities, including international broadcasting and other messaging efforts. The years between Truman’s request for action and promulgation of legislation to implement it brought heated debates about American engagement in these activities among politicians and journalists who held a range of views concerning the propriety of government involvement in the creation and international distribution of news. While these debates played out in public fora, the media did more than just report on them. Leading figures in American journalism took sides in the discussion, advocating either for or against what some saw as government’s ill-advised and possibly anti-competitive entry into the broadcast news business. The legislation that resulted was shaped by these debates.

In the seventy years since, Congress has modified the bureaucratic structure responsible for managing the country’s now-five broadcasters and has tinkered with restrictions on the domestic dissemination of their content. Meanwhile, American journalists, government officials

and pundits of all stripes have continued to weigh in on the subject of U.S. international broadcasting. Although contemporary debates have been neither as vitriolic nor as public as those prior to passage of Smith-Mundt, opinions today are no less strongly held and often no less alarmist. Discussion here considers key legislative actions that have influenced U.S. engagement in international broadcasting and the rhetoric that has surrounded these actions over the last seven decades. The picture that emerges recalls the French epigram, "*Plus ça change, plus c'est la même chose*" ("The more things change, the more they stay the same").

The story begins with efforts to craft the U.S. Information and Educational Exchange Act of 1948, popularly referred to as the Smith-Mundt Act.⁸ The statute's description declares the law's intent to "enable the Government of the United States to promote a better understanding of the United States in other countries, and to increase mutual understanding between the people of the United States and the people of other countries." Although the mandate sounds straightforward, getting the bill through Congress was anything but.

In announcing the Department of State's intention to continue international broadcasting after the end of World War II, Assistant Secretary of State for Public Affairs William Benton declared in *The New York Times* that "Foreign public opinion about the United States may determine our future peace and security and the peace and security of the world."⁹ A long-time advertising executive and former owner of both Muzak and Encyclopedia Britannica, Benton faced an uphill battle in his efforts to formalize the American government's program to counter the misinformation already being spread about the United States by the Soviet Union and others in the postwar era.

Believing truth to be the best antidote to other countries' targeted misinformation efforts, Benton was the administration's point person in efforts to nurture Congressional support for legislative authorization of the broadcasts that had come to be known as the Voice of America during the war. But the changing international environment presented challenges and opportunities to the practice of journalism, and American journalists had mixed reactions to the U.S. government's plans to engage in their industry. Benton soon found himself embroiled in a public exchange of views with leaders of the media establishment.

Writing in September 1945, *The New York Times* declared that the State Department was "for the first time entering officially the field of dissemination of information abroad."¹⁰ Quoted in the article, Benton insisted the effort would not constitute propaganda. He emphasized that "Open public debate—through the newspapers, the magazines, the radio and other forms of communication between peoples—is perhaps the most important development in the history of our diplomatic efforts abroad."¹¹ As envisioned by Truman, the peacetime international information program would broadcast news and government-related information and would be utterly transparent in the process.

But controversy surrounded the prospect of government engagement in the creation and distribution of news. Aside from the issue of whether the government should be involved in such activities at all, the question was how the government would acquire the news it intended to disseminate. During the war, American and British wire services—the Associated Press, Reuters and United Press International—had provided content gratis to the government which had then prepared global broadcasts based on that reporting. In looking toward the establishment of postwar broadcast operations, the U.S. government had assumed—wrongly, as it turned out—that

these news organizations would continue to make their content available to government broadcasters.

Attempting to circumvent concerns from a nascent commercial broadcast industry, Benton declared, "We in the State Department know that private interests are eager to do more than they have ever done...The government's job will be merely to fill in the gaps."¹² But fallout from the mistaken assumption about access to sources of content for the broadcasts drove much of the early media coverage of the administration's quest for legislation authorizing the department to engage in these activities. As Congress considered the issue, American media leaders weighed in against government engagement in the production and distribution of news. Early on, Kent Cooper, executive director of the Associated Press, declared his opposition to the government's entry into the industry by declaring, "Abhorrence of the government going into the news business has been so ingrained into our national character that to legalize it is like amending the Constitution."¹³ Meanwhile, the publisher of Knight Newspapers, John S. Knight, criticized the government's idealistic rationale for engaging in such activities, describing the government's assumption that its broadcasts could serve as a tool for democratic promotion worldwide as "ludicrously naïve."¹⁴

But other voices from the industry expressed general support for the effort. *Newsweek's* Washington bureau chief, Ernest Lindley, wrote, "[I]t would take a couple of columns to enumerate the ways in which an official American information service abroad would be useful. Very few, if any, of these activities would, or could be undertaken by private American entities. Their [the broadcasts'] value has been established beyond question during the war. By dropping them, we would be penalizing no one but ourselves."¹⁵ Similar sentiment was evident in a State Department document authored by Harold Lasswell who framed the need for broadcasts in the context

of pursuing American foreign policy goals. Lasswell argued that in places where commercial media presence was not viable, it was appropriate for State to step in.¹⁶ Meanwhile, a report in *The New York Times* emphasized the fact that the effort was intended neither to compete with American media abroad nor to function as propaganda directed at foreign audiences.¹⁷

Still, tensions with the wire services nearly derailed the government effort altogether, as did frictions related to worry about the potential for government competition with the growing commercial broadcast industry. Indeed, Representative William Lemke (R-ND) accused those who supported the administration's proposal of having ulterior motives to undermine the industry. He declared, "Behind the scenes of this legislation are [those] who want to put the United States Government into the broadcasting business..."¹⁸ He continued, "Here would be another instance of unnecessary government competition with private enterprise, and in a field where American private enterprise has been notably successful."¹⁹

With these debates publicly brewing, the board of the Associated Press (AP) in 1946 voted to distance itself entirely from the government's peacetime broadcasting effort, canceling what had been its free wartime service.²⁰ Although a resolution passed by the board at that same meeting praised the administration's efforts to promote global press freedom, the group nevertheless determined that "this government cannot engage in newscasting without creating the fear of propaganda which necessarily would reflect on the objectivity of the news services from which such newscasts are prepared."²¹ As a result, not only would AP refrain from offering its content for free, it would not make the service available to the government at any price.²²

The stated rationale for AP's decision did not sit well with Assistant Secretary Benton. In response to the organization's much-publicized move, he mused that the board may not have been "fully informed about the program."²³ This only worsened the situation. Soon, United Press International joined AP in cancelling all service to the government,²⁴ and Reuters was not far behind.²⁵ The journalism community reacted publicly. *The Christian Science Monitor's* Erwin Canhem, for example, supported the wire services' actions,²⁶ while Nelson Poynter of the *St. Petersburg Times* approved the government effort to "fill the gaps of information which private agencies leave in the foreign field."²⁷

But Benton soon zeroed in on an inconsistency in the agencies' claims that they feared being associated with propaganda as the rationale for refusal to provide content for the government's broadcasts. He observed that they seemed unconcerned about the continued sale of their content to other countries' state broadcasters, naming the British Broadcasting Corporation (BBC), the Soviet news agency TASS and the Canadian Broadcasting Corporation (CBC) as the groups' current clients.²⁸ Benton concluded that the argument about propaganda was a red herring and suggested that their real concern was the possibility of the American government actually competing with their news services in foreign markets.²⁹

In late January 1946, *Editor & Publisher* published a "Symposium on State Department News", presenting the opinions of leading journalists on the subject of government-sponsored broadcasting. The editor of the *St. Paul (MN) Dispatch-Pioneer Press* wrote, "The action of the Associated Press was over-hasty and unnecessarily reflects on the government's broadcasting policy. A reconsideration is in order."³⁰ In contrast, Colonel Robert R. McCormick of the *Chicago Tribune* opined, "The Associated Press would do itself and the principle of a free press infinite harm and

seriously delay a free world if it became any part of the power politics of the State Department..."³¹ American journalism was thus divided over whether the government should be engaged in international news distribution at all and if so, whether commercial news organizations should be involved in the undertaking. It was a disagreement that would not soon end.

Two months later, Benton addressed a meeting of the New York Newspaper Woman's Club with a speech focused on what he considered the responsibilities of the Associated Press in the postwar world. He categorized the news agency's objections as "fear of a propaganda label, fear of government, fear of competition, and fear of the sales ability of other services."³² He concluded by asking, "Where the alternatives are, on the one hand, the greatest threat to mass obliteration the world has ever known, and on the other the necessity for the greatest and quickest spread of understanding among the peoples of the world that has ever been attempted, can this action be called living up to the responsibility of a free press in the postwar world?"³³

The assistant secretary's presentation summarized many themes that had appeared in preceding debates about peacetime government broadcasting, including concern about the government's engagement in propaganda and worry that the government would be competing with the nation's broadcast industry at home and abroad. In chastising the news agencies, Benton was pointing to what he saw as an ironic contradiction between the positions of individuals and institutions in the press who were staunch supporters of global information freedom in the postwar environment—the highest profile of whom was perhaps Kent Cooper of the Associated Press³⁴—but who also stood in strident opposition to establishment of a government-driven mechanism intended to help promote those very goals.

When the American Society of Newspaper Editors (ASNE) convened its annual meeting that year, the group's president, John S. Knight, spoke at length about his opposition to government-sponsored international broadcasting, saying, "I applaud Mr. Benton's ardent desire to give the world more information about our country, but as yet I remain unconvinced that it can be accomplished through government publicity agencies."³⁵ Benton addressed the same crowd in hopes of winning converts to the government's position but made little progress. When *Editor & Publisher* reported on his visit, it editorialized with a statement expressing hope that Congress, which was watching these exchanges carefully, would not interpret ASNE's support for the wire services' position as opposition to the very prospect of a peacetime government-sponsored international information program. *Editor & Publisher* suggested this interpretation of the situation was a legitimate concern since "[a]fter all, the congressmen were debating proposals to set up a government information program at the same time newspaper editors were labeling it propaganda."³⁶

Finding the nation's journalists difficult interlocutors, Benton turned his attention to courting support from Congress for the international broadcasting plan. He began by convening a committee of sympathetic leaders from the media industry to strategize with the Department about how to move forward. Among the group's members were Roy E. Larsen, president of Time Inc.; Edward R. Murrow, vice president of CBS; and Harold Lasswell from the Yale School of Law. *The New York Times* described the committee's task as one of appraising Voice of America's content.³⁷ In a House hearing dedicated to consideration of the broadcaster, Ralph McGill of *The Atlanta Constitution* editorialized about the position of the news agencies, saying that although he was personally fond of the leaders of the AP and other organizations, he doubted that "God had appointed them to protect the freedom of the press."³⁸ Mark Ethridge, editor

of *The Louisville Courier-Journal and Times* and one-time president of the National Association of Broadcasters, said he too found the wire services to be “exceedingly smug in the idea that they are the possessors of all the purity.”³⁹ These comments demonstrated that earlier disagreements about the administration’s proposal for peacetime international broadcasting were likely to follow Benton as he pivoted toward rallying support on the Hill.

Despite a period of steady media attention to the public sparring between the administration and the press, by the end of 1946 *Editor & Publisher* declared the disagreement over,⁴⁰ with industry opinion coalescing around recognition of the need for the government to engage in peacetime international broadcasting after all. The issue of noncooperation from the wire services receded into the background. But the legislation still faced a few hurdles before its passage a year later. Between late 1946 and the bill’s approval in early 1948, Benton quit, and Congress moved to cut the funding that had been keeping the Voice of America afloat since the end of the war.⁴¹ *The New York Times* summarized the situation that had driven Congress to take this action, writing that “the program has been assailed in this country on various grounds; that it is an expensive luxury, that it competes with private enterprise, that it is ineffective, that there are ‘Reds’ in its... staff.”⁴²

Justifying its decision to cut funding, the House Appropriations Committee declared its belief that the government should not be involved in the news business.⁴³ Funding to continue broadcasts was cobbled together, but other skirmishes continued during this period: some focused on funding; others concerned lingering questions about the propriety of government engagement in news production and dissemination; and still others tied to fears that the State Department was infested with communists whose views might contaminate the broadcasts themselves.

Representative John Tabor (R-NY) summarized the sentiment of many on the Hill when he said he would contemplate funding for U.S. international broadcasting if the “drones, loafers and incompetents” were removed from the Department.⁴⁴ For the Truman Administration, Congress was proving as treacherous a minefield as the press had been. As one early study of Smith-Mundt described the discussions, opposition to the bill “was often concerned with the basic problems of government-industry relationships which underlay so many discussions in the post-war period.”⁴⁵ Representative Karl Mundt (R-SD), House sponsor of the bill that eventually succeeded, once mused, “Never since I have been in Congress have I heard such a disorganized collection of misinformation circulated about any one piece of legislation.”⁴⁶

Ultimately, it was widespread worry about the growing global communist threat that cut through the concerns and provided the momentum necessary to push the long-languishing legislation over the finish line. There was particular alarm about how the Soviet Union was portraying the United States to audiences across Europe. Intensity of concern peaked following the overseas activities of a number of Congressional delegations that were engaged in fact-finding missions on the war-battered continent toward the end of 1947. As the delegations visited major European capitals, *The Washington Post* referred to the expeditions as “the greatest legislative exploration in history.”⁴⁷ The paper noted that upon his return from a fact-finding mission to Europe, the formerly isolationist Mundt had expressed a newfound commitment to internationalism. Returning to the United States, he had expressed alarm that “...in every country we visited... we are losing this war of words.”⁴⁸ As the traveling politicians made their way back to Washington in late 1947, the *Post* observed that “[a]lmost without exception, members of Congress who toured Europe... have

come back convinced of the necessity for expanding our international information program."⁴⁹

Calling on Congress to take immediate action on the international information front, *The Washington Post* also cautioned against using the same propagandistic approach employed by the Soviet Union as it spread misinformation in support of a single ideology. By resisting this temptation, the newspaper counseled, the United States would succeed in avoiding the perils of propaganda. "The objective truth," the *Post* noted, "can be just as devastating as Moscow's name-calling, and far more effective."⁵⁰ At the end of 1947, *The New York Times* declared that prospects for passage of the legislation were good, aided as they were by a rapid decline in relations with the Soviet Union, Russia's concurrent increase in anti-American propaganda and new Congressional awareness of the need to counter Soviet activity.⁵¹

Adding a sense of urgency was a December report from the National Security Council (NSC) declaring, "The USSR is conducting an intensive propaganda campaign directed primarily against the US and is employing coordinated psychological, political and economic measures designed to undermine non-Communist elements in all countries. The ultimate objective of this campaign is not merely to undermine the prestige of the US and the effectiveness of its national policy but to weaken and divide world opinion to a point where effective opposition to Soviet designs is no longer attainable by political, economic or military means."⁵² The NSC memo concluded, "The present world situation requires the immediate strengthening and coordination of all foreign information measures of the US Government designed to influence attitudes in foreign countries in a direction favorable to the attainment of its objectives and to counteract effects of anti-US propaganda."⁵³ The document indicated it was appropriate for the Secretary of State to be

tasked with coordination and implementation of government efforts to address foreign disinformation campaigns.⁵⁴

With all this as backdrop, the Smith-Mundt Act was finally passed in January 1948.⁵⁵ Upon President Truman's signing of the bill, *The Washington Post* called the country's newly-approved international outreach efforts "virtually the only means of explaining American policies to peoples behind the so-called 'Iron Curtain'",⁵⁶ and it described the bill's success as "recognition of the significance of the battle of ideologies in which we are engaged."⁵⁷ Later that year, *CQ Almanac* described the Act's purposes as two-fold. The first "is an information service stemming from the Office of War Information's foreign activities and including the radio 'Voice of America'... The other is an exchange of students, teachers, and technical consultants between the United States and foreign countries... Both aim to promote better understanding of the United States and strengthen international relations."⁵⁸

The new law stated that in order for the country to promote improved understanding of the United States abroad, the government was authorized to, in addition to establishing international exchanges, "provide for the preparation, and dissemination abroad, of information about the United States..."⁵⁹ Concerning the dissemination of any such content within the country's borders, the statute mandated that the content "be available, in the English language at the Department of State, at all reasonable times following its dissemination abroad, for examination by representatives of the United States press associations, newspapers, magazines, radio systems, and, on request, shall be made available to Members of Congress."⁶⁰ As stand-ins for the American public, media organizations would have access to the broadcast content in ways the rest of the public could not. Moreover, in clear acknowledgement of the commercial interests of the U.S. news industry, the bill instructed the

Secretary of State to “reduce such government information activities wherever corresponding private information dissemination is found to be adequate” and that nothing in the law should be construed to “give the Department a monopoly in the production or sponsorship on the air... or a monopoly in any other medium of information.”⁶¹

As passed, the Smith-Mundt Act suggested little concern on the part of Congress about the American public gaining access to the broadcaster’s content. More explicit emphasis was placed on preventing government competition with commercial news producers as they sought to expand abroad. Still, by declaring that media organizations were to act as conduits to the materials, the legislation placed hurdles in the path of any citizen who sought access to the government-produced content.

Considering the Ban

Twenty years after the bill’s passage, the congressionally mandated U.S. Advisory Commission on Information, led by Frank Stanton, president of CBS, observed that “what began as a caution has hardened into a policy” of preventing domestic access to content produced by the U.S. government.⁶² Noting that under the watchful eye of Congress and the media the government was constrained from propagandizing the public, the commission argued that it was time for “the walls” that barred domestic audiences from the content to “come down.”⁶³ The group recommended that “the American public should no longer be prohibited from seeing and studying the product a government agency produces with public funds for overseas audiences. [Those]... who are interested in foreign affairs and international relations should not be denied access to what the U.S. government is saying about itself and the rest of the world.”⁶⁴

This guidance to legislators was offered in 1967, but rather than freeing access to the materials, Congress instead took successive actions to further limit public access. First among the additional restrictions was an amendment included in the Foreign Relations Authorization Act of 1972.⁶⁵ Referred to as the Fulbright Amendment, named after the powerful chairman of the Senate Foreign Relations Committee, the change mandated that “[a]ny such information [content produced by government-sponsored broadcasters]... shall not be disseminated within the United States, its territories, or possessions, but, on request, shall be available in the English language at the Department of State, at all reasonable times...”⁶⁶ The rationale for this change seems to have stemmed less from worry about the delivery of government propaganda to the American people and more from a personal disagreement between Senator J. William Fulbright (D-AR) and Bruce Herschensohn, an assistant administrator at the United States Information Agency (USIA), the government organization that had been created in 1953 to manage American public diplomacy efforts.⁶⁷

Fulbright had written to Acting Attorney General Richard Kleindienst in early 1972 expressing concern about New York television stations’ broadcast of a USIA-produced film titled *Czechoslovakia 1968*. The senator was concerned that presentation of the film in the United States had been a violation of the terms of the Smith-Mundt Act. When informed of the complaint, Herschensohn described Fulbright’s views as “naïve and stupid.”⁶⁸ Herschensohn soon apologized and resigned, but Kleindienst nevertheless ruled that while Smith-Mundt prohibited direct dissemination of broadcast content by the government itself to the American public, media organizations did indeed have the right to circulate the materials.⁶⁹ The Senate Foreign Relations Committee, in turn, deemed Kleindienst’s interpretation of the law “a distortion of the legislative intent concerning the domestic distribution” of the government-produced materials.⁷⁰ But

this was not before an exchange between Senator Fulbright and USIA's director, Frank Shakespeare, that *The New York Times* described as "a verbal spitting match that has thrown into question the future of the United States information program overseas."⁷¹

There was a history of bad blood between the director and the senator. Well before the hearing and the disagreement about domestic use of USIA-produced materials, Shakespeare was reported to have called Fulbright "bad news for America." Fulbright, in turn, allegedly responded that the director was a "very inadequate man" for the job.⁷² As it considered the matter of domestic dissemination of USIA-produced materials, the Senate committee moved to impose what it described as a "blanket prohibition" on the content, ensuring that the materials in question could only be distributed in the United States with authorization by Congress.⁷³ With the amendment entering into force soon thereafter, explicit restrictions on domestic access to the government-produced content were born.

More than a decade later, Senator Edward Zorinsky (D-NE) offered an amendment to the Foreign Relations Authorization Act for 1986 and 1987 mandating that "[n]o material prepared by the United States Information Agency shall be distributed within the United States."⁷⁴ In discussing his proposal on the floor of the Senate, Zorinsky observed that restrictions on the government's ability to propagandize the American public were what distinguished the United States from the Soviet Union. He noted further that while USIA's first mandate was to tell the world about the United States, its second mandate was to tell the United States about the world,⁷⁵ and he warned that "[t]here is considerable discussion within USIA about using the Agency's so-called second mandate to engage in domestic propaganda." Not only had that second mandate never been implemented, Zorinsky argued, it never should be. He concluded his remarks by declaring, "The American

taxpayer certainly does not need or want his tax dollars used to support U.S. Government propaganda directed at him or her. My amendment ensures that this will not occur.”⁷⁶ The amendment passed.⁷⁷ One contemporary author has described its passage and the restrictions it imposed as the “zenith of the domestic dissemination ban.”⁷⁸

Testing the Ban

No further restrictions were ever imposed, although almost thirty years elapsed before the ban was eliminated.⁷⁹ The legislation that ended the ban, the Smith-Mundt Modernization Act of 2012,⁸⁰ is discussed in further detail in coming pages, but before its passage came other developments with implications for public access to government-produced materials intended for foreign publics. There were also significant changes to the organizational structure responsible for directing the creation and distribution of the government-sponsored content. They are considered here because contemporary concerns about the management of U.S. international broadcasting are increasingly intertwined with broader debates about the efficacy of American government messaging abroad, the possibility of government propaganda in the homeland and overall return on investment for U.S. taxpayer dollars. As the discussion below helps demonstrate, current debates are rooted in decades of congressional, judicial and journalistic actions.

A year after passage of the Zorinsky Amendment, Michael Gartner, the president of NBC News,⁸¹ co-owner of *The Ames (Iowa) Tribune* and eventual winner of a Pulitzer Prize for editorial writing,⁸² published a commentary in *The Wall Street Journal* reflecting on what he saw as the absurdity of the domestic dissemination ban. He observed that it had “been the law since at least 1972, maybe since 1967 and perhaps since 1948, depending on who is interpreting the

U.S. Information and Educational Exchange Act of 1948 and its subsequent alterations. It's the view of the United States Information Agency, the parent of the Voice, that the prohibition on the American press has existed since 1948."⁸³ Highlighting the fact that it was only because he was a journalist that he was able to gain access to archives at the Voice of America headquarters in Washington, he wrote, "The people at the Voice, who are awfully nice, wouldn't give me a transcript and wouldn't let me make a copy. And even if I had a copy, I couldn't share it with you. It's against the law for me to tell you."⁸⁴ Sufficiently annoyed by the situation, Gartner, along with a state legislator, and the *Tribune* itself, went on to file a lawsuit against USIA claiming that their first amendment rights were violated by the ban. But the U.S. District Court for the Southern District of Iowa dismissed the case, finding that "[p]laintiffs have not demonstrated a concrete injury or controversy as to their ability to speak, and they have no constitutional right to make verbatim copies of the agency's documents at the agency's offices."⁸⁵

Although not allowing the case to proceed, the judge did note "It would be easy to conclude that USIA's position is inappropriate or even stupid."⁸⁶ Writing another *Wall Street Journal* commentary a year after the first—and after USIA had appeared to adjust its rules for public access to materials—Gartner declared that the agency's previous interpretation of the law had been "...censorship. It was outrageous. And it was stupid." The problem had been, he argued, that "an agency in the information business was not being allowed to inform." Gartner argued that his lawsuit had not been a true failure because in materials USIA had prepared for the court, the agency seemed to have decided to relax its rules about access and dissemination, determining that the ban applied only to the agency itself and not to other people who gained access to the materials. USIA had also indicated that it would not vet the credentials of anyone seeking to review the broadcast content; that is, one no longer needed to be

a journalist or member of Congress to access materials at the agency's headquarters. Finally, USIA had determined that those who viewed agency-produced materials could take copious notes, and, although those notes were not to be verbatim, there would be no check to ensure compliance.⁸⁷ Referring to the changes and to what he viewed as the improved prospects for American democracy as a result, he closed his commentary with a simple sentiment: "I feel pretty good about it."⁸⁸

Two years after Gartner's second piece in *The Wall Street Journal*, the Foreign Relations Authorization Act for 1991 and 1992 included language to allow the American public access to materials produced by the U.S. Information Agency after twelve years. The amendment to Smith-Mundt instructed the director of USIA to "make available to the Archivist of the United States, for domestic distribution" any materials prepared by the agency after more than a decade had passed.⁸⁹ The change offered an opportunity for citizens to eventually review the content, but it also sidestepped concerns about the possibility that USIA would seek to influence the American public in real time.⁹⁰ The amendment passed without comment in major American papers. Based on Gartner's and his attorney's interpretation of USIA's changed practices in 1989 as spelled out in the former's commentary, the change in the statute seems to have merely codified policies that were already in place.

The U.S. International Broadcasting Act of 1994, part of the Foreign Relations and Authorization Act for 1994 and 1995, was the next legislative action with implications for U.S. international broadcasting and related activities, but this time, the changes were focused on the organizational structure responsible for overseeing these efforts. The opening section of the bill contained language reminiscent of the early days after World War II, declaring, "It is the policy of the United States to promote the right of freedom

of opinion and expression, including the freedom 'to seek, receive, and impart information and ideas through any media and regardless of frontiers,' in accordance with... the Universal Declaration of Human Rights."⁹¹ Such language would have been familiar to Kent Cooper and others who had been passionate advocates for information freedom at the end of the war.

The bill included an amendment to earlier legislation stating that no monies appropriated to USIA could be used to influence public opinion in the United States and that no materials produced by the agency could be circulated domestically. It clarified, however, that "[t]he provisions of this [law] shall not prohibit the United States Information Agency from responding to inquiries from members of the public about its operations, policies, or programs."⁹² This meant that although content produced by broadcasters could not be circulated to the American public for twelve years, the government organization was nevertheless expected to be transparent about its work. The language addressing this issue appeared under the header "Ban on Domestic Activities by the USIA".⁹³

More importantly, for contemporary discussions about U.S. information diplomacy activities, the International Broadcasting Act of 1994 created the Broadcasting Board of Governors (BBG) within USIA to work toward "achiev[ing] important economies and strengthen[ing] the capability of the United States to use broadcasting to support freedom and democracy in a rapidly changing international environment."⁹⁴ Among the standards and principles that the BBG was directed to embrace was the expectation that all broadcast content produced under its purview be consistent with U.S. foreign policy objectives, that it not duplicate the work of private U.S. broadcasters and that it maintain the highest journalistic standards.⁹⁵ This language, too, had echoes of decades past.

While USIA's tweaked interpretation of obligations under the Smith-Mundt Act in response to the Gartner case in the late 1980s may have offered some hope to those who sought easier access to content produced by government-sponsored broadcasters, a decision handed down by the United States Court of Appeals for the District of Columbia a decade later ruled that content produced by USIA, specifically programming materials and internet addresses related to its broadcasts, was exempt from the Freedom of Information Act (FOIA).⁹⁶ The appellants in the case, Essential Information, Inc., described themselves as "researchers, scholars, organizers and journalists", and the court denied their request for access to data from USIA, citing the blanket prohibition on domestic dissemination contained in the Smith-Mundt Act. Pointing to a history of legislative attention to issues related to distribution of government-produced content in the United States, the court ruled that "Congress has expressed its concern plainly in the Smith-Mundt Act and we must therefore" comply with those terms.⁹⁷ Remarkably, the fact that government-sponsored materials produced for and distributed to foreign audiences around the globe had been deemed beyond the reach of FOIA seems to have escaped the notice of major media American media outlets, although the Associated Press had reported on the case when it was first filed in 1996.⁹⁸

The same year as the court's FOIA decision, the Foreign Affairs Reform and Restructuring Act dissolved the U.S. Information Agency and moved all of its activities, except for international broadcasting, into the Department of State. The Broadcasting Board of Governors, created just four years earlier, was spun off as an independent agency to be overseen by a part-time bipartisan board.⁹⁹ Despite this momentous change in the organizational structures tasked with implementing American public diplomacy, the statutes governing production and dissemination of broadcast materials for foreign audiences remained unchanged. A

spokesman for Senator Jesse Helms, chair of the Senate Foreign Relations Committee and chief proponent of the move to eliminate USIA, framed the legislation as “slimming down the bureaucracy” and “bringing more coherence to foreign affairs institutions.”¹⁰⁰ But coherence was not among the outcomes generated by establishment of an independent Broadcasting Board of Governors. The structure of the BBG was not meaningfully addressed until 2017, a development that will be discussed in more detail later. First, however, attention returns to the ban on domestic dissemination of government-sponsored broadcast and related information materials.

Ending the Ban

The domestic dissemination ban remained in place until passage of the National Defense Authorization Act (NDAA) for fiscal year 2013. Embedded within that legislation was the Smith-Mundt Modernization Act of 2012. The language implementing the change was straightforward: “Information intended for foreign audiences may, upon request and reimbursement of the reasonable costs incurred in fulfilling such a request, be made available, in the United States.”¹⁰¹

Rationale for the change was clear in comments offered by one of the bill’s sponsors. When it was first introduced in 2010, Representative William H. “Mac” Thornberry (R-TX) commented, “The central problem is that the law [Smith-Mundt] has not kept up with changes in technology. Whether it is the Internet, the most obvious example, or even satellite television broadcasts, it becomes extremely difficult to say this broadcast is not only intended for foreign audiences but will only go to foreign audiences.”¹⁰² Gartner’s commentary and unsuccessful lawsuit had comprised the first salvo, and the issue had emerged once more in 1996 when journalists again commented on the domestic availability of USIA

content, but the Smith-Mundt Modernization Act finally addressed this cold war-era anachronism.¹⁰³

With a single action, Congress removed the ban on domestic dissemination of materials that had taken almost seventy years to develop. Cautioning that the content in question was still not to be used for propagandizing the American public, the bill mandated that both the Broadcasting Board of Governors and the Department of State were prohibited “from engaging in any medium of communication, either directly or indirectly because a United States domestic audience is or may be thereby exposed to program material, or based on a presumption of such exposure.”¹⁰⁴ The policy on accessing materials issued by the BBG in response to the bill’s passage was straightforward: “As directed by the National Defense Authorization Act for 2013 and amendments to the U.S. Information and Educational Exchange Act, the Broadcasting Board of Governors issues a rule which establishes procedures for responding to domestic requests for the Agency’s program materials. The Agency may, upon request, provide members of the public, organizations, and media with program materials which the Agency disseminated abroad.”¹⁰⁵

In the history of postwar U.S. international broadcasting, the volume of media coverage accompanying the end of the domestic dissemination ban has been matched only by the attention that journalists in the late 1940s dedicated to debates before passage of the original legislation. Most of the reporting and commentary about the end of the ban seemed to stem from a fundamental misunderstanding about the scope of the act itself. Many writers wrongly suggested that the law applied to content produced by all government agencies, not simply the broadcasters and Department of State. The danger, these writers argued, was that with the end of the ban, all U.S. government entities were free to propagandize the American public at will.

BuzzFeed was first to raise the alarm in advance of the bill's passage. A website that epitomizes the contemporary media ecosystem, it published an article about the proposed legislation that declared, "An amendment that would legalize the use of propaganda on American audiences is being inserted into the latest defense authorization bill..."¹⁰⁶ *Politico* soon followed suit, writing, "The new law would give sweeping powers to the State Department and Pentagon to push television, radio, newspaper, and social media onto the U.S. public."¹⁰⁷ Also weighing in on the subject, a reporter for *The Christian Science Monitor* tweeted, "What I want is to make it harder, not easier, to propagandize our citizens."¹⁰⁸ And an academic with a widely read blog focused on foreign policy asserted that the legislation would "allow the Department of Defense to subject the U.S. domestic public to propaganda."¹⁰⁹

In response to the inaccurate coverage, Representative Thornberry observed that in an era of interactive media, the spread of misinformation about the legislation was "a fascinating case study in how one blogger was pretty sloppy, not understanding the issue and then it got picked up by [other outlets], and you had one level of sloppiness on top of another. And once something sensational gets out there, it just spreads like wildfire."¹¹⁰ His statement echoed Representative Mundt's lament issued decades earlier about the nature of public discourse surrounding the Smith-Mundt Act when he said "...never have I heard such a disorganized collection of misinformation circulated about any one piece of legislation."¹¹¹ Soon after introduction of the bill proposing an end to the ban, an article in *Columbia Journalism Review* addressed the panic, chastising journalists and commentators for the inaccuracies in their work. It concluded, "The proposed change to the Smith-Mundt Act will bring the law into the 21st century and give Americans access to the same content as audiences around the world. What took so long?"¹¹²

Addressing the Broadcasting Board of Governors

Almost ten years after the BBG emerged as a free-standing entity responsible for management and oversight of the nation's international broadcast efforts, an independent report described the organization's structure as "an illogical patchwork, an archipelago of broadcasting organizations lacking clear individual missions and lacking a normal separation between management and oversight."¹¹³ That report was just the first of many critical analyses focused on the BBG and the content produced by broadcast entities under its purview.¹¹⁴ Perhaps the most damning criticism, and certainly the most visible, came a decade later when Secretary of State Hillary Clinton, during a televised House Foreign Affairs Committee hearing, described the BBG as "practically defunct."¹¹⁵ She was referring as much to the organization's untenable organizational structure as she was to its apparent inability to keep pace with what scholars have referred to as a "global communications arms race".¹¹⁶

Upon introduction of an amendment to the 2017 National Defense Authorization Act addressing the BBG's organizational structure, the amendment's sponsor and chair of the House Foreign Affairs Committee, Representative Ed Royce (R-CA), noted that the American response to propaganda from Russia, China, ISIS and others "has been crippled, in part, by bureaucracy. Our agencies that helped take down the Iron Curtain with accurate and timely broadcasting have lost their edge. They must be revitalized to effectively carry out their mission in this age of viral terrorism and digital propaganda. My provision takes an important first step in this process by replacing the BBG's part-time board with a permanent CEO to help better deliver real news to people in countries where free press does not exist."¹¹⁷

In the context of U.S. international messaging efforts, the National Defense Authorization Act of 2017 tackled what

had come to be widely regarded as “strategic dysfunction”¹¹⁸ at the Broadcasting Board of Governors. When he signed the legislation, President Barack Obama issued a statement saying, “My Administration strongly supports the bill’s structural reform of the Broadcasting Board of Governors (BBG), which streamlines BBG operations and reduces inefficiencies...”¹¹⁹ The legislation disbanded the nine-member part-time board that had been responsible for management of the BBG since its creation in 1994, and it put in place a single CEO commissioned to streamline the agency’s activities and seek efficiencies across the five broadcasters under its purview.

As with passage of the Smith-Mundt Modernization Act a few years earlier, criticisms of the change came in the form of alarmist declarations from major American media outlets and online commentators: “Trump to Inherit State-Run TV Network with Expanded Reach”,¹²⁰ “Don’t Gut America’s Voice and Turn It into Propaganda”,¹²¹ “Trump TV Could Really Be a Thing... and on the Government’s Dime”¹²² and “A Big Change to U.S. International Broadcasting—and It’s One Putin Might Admire.”¹²³ The over-the-top coverage often neglected to mention longstanding concerns about the management structure at the BBG, ongoing worries about the efficacy of the products produced by the agency, the need for anyone appointed to the new CEO position to receive Senate approval or the fact that efforts to reform the organization had widespread bipartisan support in the House and Senate and were embraced by the Obama White House.

Sidestepping the Broadcasters?

As discussed above, one section of the NDAA sought to begin imposing order on an organizational structure widely recognized to be deeply flawed. But a separate section of that same legislation also tackled the challenge

of communicating with foreign publics. The Countering Disinformation and Propaganda Act authorized the Global Engagement Center (GEC), an effort that had been established by President Obama earlier the same year.¹²⁴ The bill instructed the Center to “lead, synchronize, and coordinate efforts of the Federal Government to recognize, understand, expose, and counter foreign state and non-state propaganda and disinformation efforts aimed at undermining United States national security interests.”¹²⁵ A Congressional Research Service memorandum about the legislation interpreted the bill’s language to mean Congress had authorized a mandate for the Center beyond that initially specified by the executive order to include a “much broader purpose for the new GEC than the original one, possibly encompassing counterterrorism communications but also expanding the GEC’s coverage to include countering certain foreign communications from any source.”¹²⁶

The expanded mandate appears to allow the possibility of overlap with the mission of U.S. international broadcasting as understood for the last seventy years. It also suggests that Congress may have been hedging its bets when it tackled government-sponsored messaging efforts in the NDAA. Congress attempted to begin untangling the “illogical patchwork” at the Broadcasting Board of Governors, but in hopes of helping to ensure effective government performance in the delivery of messages to foreign audiences, it seems to have given expanded authority to an entirely separate entity to undertake some of the same work.

Similar to the early days of U.S. international broadcasting before passage of Smith-Mundt, the Global Engagement Center has struggled for operational funds. But this time, the impediment to funding has been the State Department itself, where the statute mandates the Center be located. Senators Chris Murphy (D-CT) and Rob Portman (R-OH), cosponsors of the act, described as “indefensible”¹²⁷ that as

reported by *Politico*,¹²⁸ the Department of State under the Trump Administration had yet to request funds Congress had already appropriated to operate the Center. The senators' joint statement declared, "Congress has provided substantial resources to combat foreign propaganda...There is broad agreement that the U.S. Government is behind the curve on this threat."¹²⁹ Although not mentioning the BBG and its broadcasters directly, the statement alluded to the previously discussed weaknesses in U.S. government-sponsored messaging efforts amidst what scholars have referred to as a "global communications arms race".¹³⁰ Then, in early 2018, an editorial in *The Washington Post* attacked the Trump Administration for failing to act in the face of Russia's disinformation threat at home and abroad,¹³¹ while minority members of the Senate Foreign Relations Committee issued a report that condemned a "lack of urgency and self-imposed restraints by the current State Department leadership" for having left the Center in "limbo".¹³²

Back to the Future?

Seventy years after passage of the Smith-Mundt Act and nearly thirty years after the end of the Cold War, the United States once again finds itself in the midst of an international messaging crisis. Longstanding implements in the country's public diplomacy tool box are enfeebled by lingering bureaucratic challenges,¹³³ while newer organizations intended to be nimbler in today's fast-moving international information ecosystem are falling victim to an administration that has yet to find its footing in the foreign policy realm. And Russia's disinformation efforts once again form the core of the narrative about the need for the United States to get the message and delivery tools right.

Confirmation hearings for the Trump Administration's nominee for Under Secretary of State for Public Diplomacy and Public Affairs, Steven Goldstein, took place near the end

of 2017. Senators asked Goldstein to commit to effective government messaging efforts. A statement released by Senator Portman's office following the hearing reported that Goldstein had vowed to "work to ensure that the State Department's Global Engagement Center (GEC) is both funded properly and works, as intended, to effectively counter foreign disinformation and propaganda." He was approved by the Senate and sworn in the next month.¹³⁴

Meanwhile, although Congress has taken the steps noted earlier to address well-recognized problems with the BBG, *The Wall Street Journal* complained in early 2018 that "[t]he U.S. government seems remarkably slow and backward [in its messaging efforts], starting with the taxpayer-backed Broadcasting Board of Governors."¹³⁵ The editorial, written in the face of seeming inaction on the part of the U.S. government in response to recent protests in Iran, condemned the BBG for dedicating less than 2 percent of its 2017 budget to efforts to promoting internet freedom. Criticizing the current CEO, a holdover from the Obama Administration, the editorial called the BBG's board "a political sinecure, rather than a home for foreign-policy experts who want to fight oppression"¹³⁶ and asked if President Trump was "aware that he could dismiss the BBG's current board and nominate a CEO who's more attuned to foreign policy and the fight for freedom?"¹³⁷

Not unlike the immediate postwar era, contemporary discussions about U.S. international broadcasting and other messaging efforts directed at foreign publics are increasingly framed as more than attempts to build goodwill abroad. Indeed, one recent report called public diplomacy "as important to winning 21st-century conflicts as military might."¹³⁸ Appealing for a reimagined mission for U.S. international broadcasting and other messaging tools, that report's authors asserted, "The need is growing to transmit truthful information into societies whose governments

are increasingly adept at filtering and obfuscating such information on the internet.”¹³⁹ The question for today’s leaders, legislators, scholars and journalists is whether and how the United States is equipped to fight the information battles raging currently. At this moment in time, the question is not necessarily one of whether foreign audiences want to hear the American message as John S. Knight once asked, but as a growing number of critics worry, whether those foreign audiences are actually receiving the American message at all.¹⁴⁰

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