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PUBLIC DIPLOMACY, SMITH-MUNDT AND THE AMERICAN PUBLIC

EMILY T. METZGAR*

The U.S. Information and Educational Exchange Act of 1948, also known as the Smith-Mundt Act, is a mostly unknown and widely misunderstood piece of legislation. Revised multiple times, the law bans domestic dissemination of Voice of America and other U.S. international broadcast content in the United States. Presenting government-supported international broadcasting as an example of public diplomacy, this article discusses the long-term misrepresentation of Smith-Mundt's original intent and highlights the consequences of the continuing ban. The article considers prospects for ending the ban and emphasizes potential opportunities presented by its elimination, concluding that ending the ban might eliminate incongruity between American foreign policy goals of democracy promotion and the reality of banned domestic content. Repeal of the ban may also result in unexpected remedies for challenges facing the American media industry and the American public's desire for international news.

The United States government may be the largest broadcaster that few Americans know about. Although its networks reach 100 countries in 59 languages, they are banned from distribution in the United States by a 1948 law devised to prevent the government from turning its propaganda machine on its own citizens.¹

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¹Mark Landler, *A New Voice of America for the Age of Twitter*, N.Y. TIMES, June 7, 2011 at 9. The broadcasters comprising the U.S. international broadcasting operation are the Voice of America (VOA), Alhurra, Radio Sawa, Radio Free Europe/Radio Liberty, Radio Free Asia, and Radio and TV Marti. The Broadcasting Board of Governors (BBG) is "a bipartisan agency . . . that acts as a 'firewall' between the U.S. government and international broadcasting entities it funds." Kim Andrew Elliott, *America Calling: A 21st-Century Model*, FOREIGN SERVICE J., Oct. 2010, at 31. When Smith-Mundt was passed in 1948, USIB authority fell under the Department of State. Later, Congress created the United States Information Agency (USIA) to facilitate American public diplomacy operations. After the end of the cold war, Congress dismantled USIA and returned responsibility for American public diplomacy efforts to the Department of State. For an excellent history of the rise and fall of the USIA, see NICHOLAS J. CULL,

Appearing in *The New York Times* in June 2011, this quote contains both facts and inaccuracies. There is, indeed, legislation preventing domestic dissemination of U.S. government-produced international broadcasting (USIB) products. However, the legislation authorizing production of USIB did not originally impose a ban. The legislation, the Information and Educational Exchange Act of 1948, commonly known as the Smith-Mundt Act,² authorized production and distribution of broadcast materials designed to “promote freedom and democracy and to enhance understanding through . . . communication of accurate, objective, and balanced news, information, and other programming about America and the world to audiences overseas.”³ But the formal ban on domestic dissemination did not come until decades later.

Though misperceptions about the intent of the Smith-Mundt Act abound, current discussions surrounding the legislation concern its future. The Smith-Mundt Act has been called, “[O]ne of the most influential, and least understood, laws affecting American national security.”⁴ Amended multiple times since 1948, Smith-Mundt includes a ban on domestic dissemination of USIB products and in 2010 Congress proposed legislation that would relax this ban.⁵ Although that proposal stalled and has not been reintroduced, discussion continues in policy and academic circles about prospects for revising the Smith-Mundt Act and making USIB products more easily accessible within the United

THE COLD WAR AND THE UNITED STATES INFORMATION AGENCY: AMERICAN PROPAGANDA AND PUBLIC DIPLOMACY 1945–1989 (2008).

²Pub. L. No. 95–352 § 204 (1948).

³Broadcast Board of Governors, About Our Broadcasters, <http://www.bbg.gov/broadcasters/index.html> (last visited Oct. 1, 2011). In October 1999, the Broadcasting Board of Governors “became the independent federal agency responsible for all U.S. government and government sponsored, non military, international reporting.” *Id.* The term BBG is used to describe the federal organization overseeing all U.S. international broadcasting, while each of the individual broadcasting services is responsible for its own regular activities. *Id.* The mission of the BBG and its broadcasters “is to broadcast accurate, balanced, and comprehensive news and information to an international audience. The mission to promote freedom and democracy is achieved through journalistic integrity and through the dissemination of factual news information.” Broadcasting Board of Governors, About the Agency, <http://www.bbg.gov/about/index.html> (last visited Oct. 1, 2011).

⁴KATHY R. FITZPATRICK, UNIVERSITY OF SOUTHERN CALIFORNIA CENTER ON PUBLIC DIPLOMACY, U.S. PUBLIC DIPLOMACY’S NEGLECTED DOMESTIC MANDATE (2010), *available* at, http://uscpublicdiplomacy.org/index.php/about/announcements_detail/cpd_perspectives_domestic_mandate/ (citing THE REPORT ON THE SMITH-MUNDT SYMPOSIUM ON JANUARY 13, 2009, ARMSTRONG STRATEGIC INSIGHTS GROUP, LL C, MARCH 12, 2009, <http://mountainrunner.us/symposium/>).

⁵H.R. 5729, 111th Cong. (2nd Sess. 2010).

States.⁶ As one observer notes, “In 1948, the distinction between domestic and international audiences was more pronounced, but in a global information age, audiences aren’t limited to geographical boundaries.”⁷

Presenting international broadcasting as a form of public diplomacy, this article discusses the long-term misrepresentation of Smith-Mundt’s original intent and highlights the consequences of the current domestic dissemination ban. Attention then turns to evaluating prospects for ending the ban and emphasizing potential opportunities presented by its elimination. The article concludes that ending the ban might eliminate incongruity between stated American foreign policy goals of democracy promotion and the reality of banned domestic content. Repeal of the ban may also result in unexpected remedies for challenges facing the American media industry and the American public’s desire for international news.

INTERNATIONAL BROADCASTING AS PUBLIC DIPLOMACY

A 2010 senate report refers to public diplomacy as an exercise seeking

[T]o create a better understanding of our nation with a foreign populace as a whole by providing them access to American culture, history, law, society, art and music that might not otherwise be available through standard local media outlets that often provide biased reporting about the United States and our involvement in the world.⁸

⁶U.S. Advisory Committee on Public Diplomacy: Notice of Meeting – Public Notice: 7474, <http://www.state.gov/pdcommission/events/166460.htm> (June 17, 2011); Press Release, Broadcasting Board of Governors, BBG Executive Director Briefs Group on Proposed Smith-Mundt Changes (July 12, 2011), *available at* http://www.bbg.gov/pressroom/highlights/BBG_Executive_Director_Briefs_Group_on_Smith-Mundt.html. *See also* Posting of Helle Daleto THE FOUNDRY <http://blog.heritage.org/2010/07/19/updating-smith-mundt-for-the-21st-century/> (July 19, 2010, 1 p.m.); Shawn Powers, *U.S. International Broadcasting: An Untapped Resource for Domestic and Ethnic News Organizations*, in ROBERT W. MCCHESENEY & VICTOR PICKARD, EDS. *WILL THE LAST REPORTER PLEASE TURN OUT THE LIGHTS: THE COLLAPSE OF JOURNALISM AND WHAT CAN BE DONE TO FIX IT* 138–50 (2011).

⁷Jackie Kochell, *Smith-Mundt: The Debate That Keeps Going ... and Going*, EXCHANGE: THE JOURNAL OF PUBLIC DIPLOMACY, <http://www.exchangediplomacy.com/smith-mundt-the-debate-that-keeps-going-and-going> (Aug. 4, 2011).

⁸COMM. ON FOREIGN RELATIONS, U.S. SENATE, U.S. INTERNATIONAL BROADCASTING:—IS ANYBODY LISTENING? — KEEPING THE U.S. CONNECTED 3–4 (Comm. Print 2010), *available at* <http://www.lugar.senate.gov/issues/foreign/diplomacy/report.pdf> (commonly referred to as the Lugar Report).

In other words, public diplomacy is public relations for countries with particular emphasis on influencing foreign publics.⁹ In the United States, the Smith-Mundt Act is the legislation authorizing international broadcasting as well as educational and cultural exchange programs, all of which fall within the rubric of public diplomacy and under the authority of the Department of State. Smith-Mundt is also the legislative hurdle preventing domestic dissemination of the U.S. government's international broadcasting efforts. As one scholar notes, because of this legislation, "[A] domestic constituency for public diplomacy does not exist."¹⁰

International relations scholar Joseph Nye describes public diplomacy as "interactions aimed not only at foreign governments but primarily with nongovernmental individuals and organizations. . . . [It] involves building long-term relationships that create an enabling atmosphere for government policies."¹¹ Most definitions of public diplomacy emphasize the interactive nature of communications and the development of relationships beyond the formal state-to-state dynamics of traditional diplomacy.¹²

Nye writes that there are three dimensions to public diplomacy: daily communication, strategic communication and development of long-term relationships.¹³ All three are important as a nation seeks to reach its foreign policy goals. Most of the world's nations exercise public diplomacy in an effort to create and sustain connections with foreign publics in hopes of making the world an easier place to implement their preferred foreign policies.¹⁴ Various aspects of the Smith-Mundt Act address each of the three components of Nye's definition of public diplomacy, but international broadcasting is at the forefront of public diplomacy efforts most often mentioned in the context of Smith-Mundt. One of the United States' most visible and long-standing public diplomacy programs is its roster of international broadcasting stations, the most recognizable

⁹The Center on Public Diplomacy at the University of Southern California's Annenberg School for Communication and Journalism defines public diplomacy as "the government-sponsored cultural, educational and informational programs, citizen exchanges and broadcasts used to promote the national interest of a country through understanding, informing, and influencing foreign audiences." USC Center on Public Diplomacy, *What is Public Diplomacy?*, http://usepublicdiplomacy.org/index.php/about/what_is_pd (last visited Aug. 6, 2011).

¹⁰Fitzpatrick *supra* note 4.

¹¹JOSEPH S. NYE JR., *SOFT POWER: THE MEANS TO SUCCESS IN WORLD POLITICS* 107 (2004).

¹²See *What is Public Diplomacy*, *supra* note 9.

¹³NYE, *supra* note 11, at 107–09.

¹⁴See, e.g., Simon Anholt, <http://www.simonanholt.com/> (last visited Oct. 1, 2011). See also UNIVERSITY OF SOUTHERN CALIFORNIA CENTER ON PUBLIC DIPLOMACY, HISTORY AND MISSION, <http://usepublicdiplomacy.org/index.php/about/> (last visited Nov. 7, 2010).

of which is perhaps Voice of America.¹⁵ Acknowledged as the flagship U.S. international broadcaster,¹⁶ operating with a budget of \$208.8 million¹⁷ and broadcasting in forty-four languages,¹⁸ Voice of America is well known abroad but has little constituency within the United States.

Although VOA is sometimes described by critics as a propaganda tool, Frank Stanton, the former president of CBS, once summarized the goals of VOA as effective broadcasting, comprehensive coverage of the news, and accurate portrayal of American society.¹⁹ He declared, “The Voice is a tactical tool for policy articulation and, at the same time, a strategic tool for cultural communications. In addition, and most importantly, it is a broadcaster of news.”²⁰ Putting VOA’s work into Nye’s language, its broadcasts are part of the daily communication efforts of the United States abroad.²¹

A 2010 report from the University of Southern California’s Center on Public Diplomacy calls Smith-Mundt “one of the most influential, and least understood, laws affecting American national security.”²² The Smith-Mundt Act prevents domestic dissemination of USIB, and awareness of this legislative hurdle is growing. Allusions to Smith-Mundt

¹⁵See Voice of America, <http://www.voanews.com/english/news/> (last visited Aug. 1, 2011).

¹⁶See William Gertz, *VOA Overseer Creates Static with Switch to Internet, Social Media*, WASH. TIMES, Aug. 1, 2011, at 1.

¹⁷See Voice of America, A Trusted Source of News and Information Since 1942, <http://www.insidevoa.com/about/faqs/> (Last visited Aug. 7, 2011).

¹⁸See Alan Heil, *VOA and the BBC at a Crossroads*, PUBLIC DIPLOMACY MAG., Summer 2011, available at <http://publicdiplomacymagazine.com/voa-and-the-bbc-at-a-crossroads-as-a-user-says%E2%80%9Cgrab-a-board-and-catch-a-wave-%E2%80%93-it%E2%80%99s-your-freedom-in-the-end/>.

¹⁹Frank Stanton, *Separating American Messages*, N.Y. TIMES, July 19, 1975, at 18.

²⁰*Id.* Even today, VOA’s charter declares the broadcaster “will serve as a consistently reliable and authoritative source of news. VOA news will be accurate, objective, and comprehensive.” VOA Charter and Journalistic Code, <http://www.insidevoa.com/about/voa-charter-code/> (last visited Aug. 3, 2011).

²¹NYE, *supra* note 11, at 107–09. There is a distinction between what scholars refer to as “international broadcasting” and other kinds of international programming. See, e.g., Monroe Price, Susan Haas & Drew Margolin, *Broadcasting: Reflections on Adaptations and Transformations*, ANNALS OF THE AM. ACAD. OF POLITICAL AND SOC. SCI., Mar. 2008, at 150. Scholars note the difference between government-funded “full service” broadcasting like VOA or the British Broadcasting Corporation and other broadcasters that are merely associated with a country or region. *Id.* at 152–53. CNN, for example, is seen as providing an American view on the news, but it is not government funded. *Id.* at 153. It is the same with Al Jazeera, the news network originating in the Middle East and presenting a world view consistent with that region — it is influential and associated with the Arab world and although funded by the government of Qatar it is not a single nation’s broadcasting tool. *Id.* In this context, therefore, these two broadcasters are not considered “international broadcasters.” *Id.*

²²Fitzpatrick, *supra* note 4, at 38 n.109.

appear in discussions concerning previous Bush administration practices of hiring commentators to promote preferred policy positions, to reports in *Rolling Stone* that a congressional delegation visiting Afghanistan was subjected to Pentagon “psy-ops” to promote good feelings about American involvement in that country.²³ The Broadcasting Board of Governors, the government entity responsible for overseeing USIB, has requested revision of Smith-Mundt arguing the current communication environment makes it difficult to enforce. In the aftermath of Haiti’s massive earthquake, for example, Voice of America sought to make its Creole broadcasts “available on radios to be donated by Sirius [satellite radio] to Haitian citizens,” but since these broadcasts would then also be available to American citizens, special congressional action was required.²⁴

Contemporary concerns about the continued domestic dissemination ban in today’s international environment and communication ecosystem are summarized by one analyst writing about the “iron fence” that the legislation has erected between the information broadcast abroad and the information received by the American public: “It insinuates American information activities . . . are full of lies and unfit for our own people to hear.”²⁵ It also “creates barriers in oversight and imposes costs on the State Department for redundant operations,” and “[I]t partitions off some of the conversation with the American public about foreign affairs.”²⁶

Despite the domestic dissemination ban, some USIB content inevitably makes its way into the American media environment. While scholars and journalists have often characterized the content of U.S. international broadcasting as propaganda,²⁷ an analysis of congressional debate from the late 1940s offers little indication that those promoting expansion of U.S. international broadcasting efforts after World War II had a desire to spread propaganda. Rather, as one analyst notes, “Congress was concerned more with protecting the government from

²³Both these incidents were reported within the context of Smith-Mundt even though the legislation does not govern materials produced by organizations not officially charged with conducting American diplomatic efforts. See Michael Hastings, *Another Runaway General: Army Deploys Psy-Ops on U.S. Senators*, ROLLING STONE, Feb. 23, 2011, available at <http://www.rollingstone.com/politics/news/another-runaway-general-army-deploys-psy-ops-on-u-s-senators-20110223>).

²⁴Press Release, *supra* note 6.

²⁵Matt Armstrong, *Rethinking Smith-Mundt*, SMALL WARS J., July 21, 2008, <http://smallwarsjournal.com/blog/mag/docs-temp/77-armstrong.pdf>, at 1–2.

²⁶*Id.*

²⁷See, e.g., Allen W. Palmer & Edward L. Carter, *The Smith-Mundt Act’s Ban on Domestic Propaganda: An Analysis of the Cold War Statute Limiting Access to Public Diplomacy*, 11 COMM. L. & POLICY 1, 13 (2006).

the State Department than with protecting the American people from the government.”²⁸

While concerns about communist infiltration of the State Department played a role in the original decision to limit general American public access to government-financed international broadcast content, no formal ban was then imposed. In fact, proceedings of congressional debate suggest greater concern about protecting domestic broadcasters from government competition.²⁹

Storied American journalist Edward R. Murrow ran American international broadcasting operations during the Kennedy administration. His statement about the importance of the broadcasts summarizes the view with which the American government has approached international broadcasting since the end of World War II: “To be persuasive we must be believable; to be believable we must be credible; to be credible we must be truthful. It is as simple as that.”³⁰ The content of Voice of America was designed to explain the United States to the world.

The continued existence of the Smith-Mundt ban on domestic dissemination of VOA and other USIB content in 2011 poses hurdles to U.S.-based researchers seeking access to timely, large-scale samples of program content to test for bias. A search of major academic databases suggests there is no publicly available, large-scale study systematically comparing Voice of America news content with that of other news organizations, either domestic or foreign. As a result, suppositions about the nature of that content remain hypothetical, despite decades of assumptions by many that such bias is prevalent in all American government-produced international broadcasts.

The Smith-Mundt Act, one analyst observes, “[N]ever defines or uses the word ‘propaganda.’ Despite popular belief, it was not an ‘anti-propaganda’ law nor was it ever intended for or ever applied to the whole of the U.S. Government.”³¹ The issue is clouded by contemporary media coverage describing Smith-Mundt as legislation prohibiting “the

²⁸Matt Armstrong, *Reforming Smith-Mundt: Making American Public Diplomacy Safe for Americans*, WORLD POLITICS REV., Aug. 2, 2010, <http://www.worldpoliticsreview.com/articles/6175/reforming-smith-mundt-making-american-public-diplomacy-safe-for-americans>.

²⁹See 93 CONG. REC. (1947), 94 CONG. REC. (1948) (debate concerning H.R. 3342, 80th Cong. (1947, 1948)).

³⁰CULL, *supra* note 1, at 189 (quoting Edward R. Murrow’s May 1963 testimony before the Congressional Appropriations Committee). See also Alexander Kendrick, PRIME TIME: THE LIFE OF EDWARD R. MURROW 466 (1969); Public Diplomacy: What it is and What it’s Not, <http://www.publicdiplomacy.org/1.htm> (last visited Nov. 19, 2010).

³¹Matt Armstrong, *The Smith-Mundt Modernization Act of 2010 (Updated)*, MOUNTAIN RUNNER, <http://mountainrunner.us/2010/07/5792.thornberrysmith.html> (July 16, 2010, 15:30).

U.S. government from spreading propaganda inside U.S. borders”³² and as being applicable to any government-produced persuasive communication. Smith-Mundt is more precisely described as legislation that has come to prevent U.S. international broadcasting materials from being freely circulated within the United States.

THE SMITH-MUNDT ACT

The legislative architecture governing U.S. international broadcasting and other aspects of public diplomacy has its origins in the early days of the cold war, stemming from concerns that the Soviet Union was spreading disinformation about the United States around the world, particularly in post-World War II Europe.³³

The continued existence of Smith-Mundt as it has been fashioned over the last sixty years is both ironic and anachronistic. The irony, first hinted at by a congressional commission forty years ago,³⁴ stems from government efforts to prevent citizens from having easy access to materials promoting the benefits of democracy and a free press to the rest of the world. The anachronism results from the nature of the modern information ecosystem where the dissemination of digital media materials cannot be controlled at national borders. In an international environment posing multiple threats to the United States and myriad challenges to its policy objectives, the continued application of resources to a ban on materials created to promote the United States abroad is outdated.³⁵

In 1967, a congressionally mandated commission examining the question of the American public’s access to USIB wrote:

The American taxpayer 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.³⁶

³²Posting of Josh Rogin to THE CABLE, http://thecable.foreignpolicy.com/posts/2010/08/17/park_51_imam_could_discuss_controversy_on_state_department_mideast_tour, (Aug. 17, 2010, 5:26 p.m.).

³³See *The American Twang*, TIME, May 26, 1947, at 21.

³⁴U.S. ADVISORY COMM’N ON INFO., THE TWENTY-SECOND REPORT OF THE UNITED STATES ADVISORY COMMISSION ON INFORMATION 22 (1967) [hereinafter Stanton Report].

³⁵Voice of America content is identified in searches through Lexis/Nexis. Voice of America IP addresses are not blocked in the United States making it possible to stream live broadcasting and to conduct limited searches for past Web site content.

³⁶Stanton Report *supra* note 34, at 22.

Despite this recommendation from a group it had commissioned, Congress further strengthened limitations on domestic access to broadcasts such as Voice of America.³⁷ The issue of limited accountability was again identified as a problem by the Government Accountability Office in a report about the Department of State and public diplomacy programs in general.³⁸ Accountability was also an issue highlighted by a joint investigative report by ProPublica and *60 Minutes* into the operations of Alhurra, the American Arabic language television station in the Middle East.³⁹

The Congressional Research Service calls the Smith-Mundt Act the United States' "post-World War II charter for peacetime overseas information and education exchange activities."⁴⁰ The legislation also

[P]laced limitations on the international information activities of the government so that it would not compete with corresponding private information dissemination if it is found to be adequate, and ensure that the government would not have a monopoly in the production and sponsorship of short wave or any other media of information.⁴¹

Private sector market considerations seem to have been at the core of this legislative debate. The no-compete clause was formalized into a domestic dissemination ban with later amendments to the legislation.⁴²

Observations about the anachronisms of the Smith-Mundt Act abound. One analyst notes, "No other Western industrialized democracy has a law like Smith-Mundt."⁴³ Public diplomacy historian Nicholas Cull describes the law as "the information equivalent of *posse comitatus*, the law forbidding domestic deployment of the U.S. military."⁴⁴ Another writer laments that Smith-Mundt was "designed in and for another

³⁷The Information and Educational Exchange Act of 1948, Pub. L. No. 95-352 § 204 (1948).

³⁸U.S. GOV'T ACCOUNTABILITY OFFICE, U.S. PUBLIC DIPLOMACY: KEY ISSUES FOR CONGRESSIONAL OVERSIGHT (2009), *available at* www.gao.gov/new.items/d09679sp.pdf.

³⁹Posting of Dafna Linzer to PRO PUBLICA, <http://www.propublica.org/article/alhurra-middle-east-hearts-and-minds-622> (June 22, 2008, 6:42 EST).

⁴⁰KENNON H. NAKAMURA & MATTHEW C. WEED, CONG. RESEARCH SERV., U.S. PUBLIC DIPLOMACY: BACKGROUND & CURRENT ISSUES 4 (2009).

⁴¹*Id.* at 4-5.

⁴²The Information and Educational Exchange Act of 1948, Pub. L. No. 95-352 § 204 (1948).

⁴³Matt Armstrong, *Talking about the Principles of Smith-Mundt*, MOUNTAIN RUNNER, http://mountainrunner.us/2008/03/talking_about_the_principles_s.html (Mar. 15, 2008, 11:22 EST).

⁴⁴CULL, *supra* note 1, at 40.

era⁴⁵ when domestic concerns raged about the dangers of government propaganda and communication technology had yet to render the world a single communications ecosystem.⁴⁶

ORIGINS OF THE SMITH-MUNDT ACT

In December 1947, given the Soviet Union's robust international propaganda campaign against the United States, the U.S. National Security Council called on the government to "strengthen and coordinate all foreign information measures."⁴⁷ Once passed in 1948, the Smith-Mundt Act formalized government-sponsored educational and cultural exchanges between private American citizens and foreign nationals, created the American international broadcasting service, and established rules for dissemination of government-funded broadcasts abroad. The intent was clear: The United States would not rely on private communication services or the services of other governments to accurately convey American intentions and accomplishments to the world.⁴⁸

While contemporary discussions of Smith-Mundt often allude to concerns about the spread of government-produced materials being circulated domestically as the primary concern of the original legislation,⁴⁹ a review of congressional debate surrounding Smith-Mundt indicates a more intense interest in ensuring the viability of privately-owned broadcasting operations whose owners feared unfair competition from the U.S. government.⁵⁰ There was also a desire to verify the loyalty of those government employees who would be entrusted with production of

⁴⁵ALVIN SNYDER, UNIVERSITY OF SOUTHERN CALIFORNIA CENTER ON PUB. DIPLOMACY, IS IT TIME TO PERMIT AMERICANS TO WATCH U.S. INTERNATIONAL BROADCASTING? (2005), http://uscpublicdiplomacy.org/index.php/newsroom/worldcast_detail/784.

⁴⁶The *National Journal* reports, "Under Smith-Mundt, the State Department divided operations that now fall under the euphemism of 'public diplomacy' into separate shops – an Office of International Information and an Office of International Exchange. The information office was split off from State in 1953 to create the independent USIA." *From the Start, Information Was a Weapon*, NAT'L J., Apr. 22, 1995, at 1003.

⁴⁷Memorandum from the Executive Sec'y to the Members of the Nat'l Sec. Council, Coordination of Foreign Information Measures (Dec. 1, 1947), available at <http://www.fas.org/irp/offdocs/nsc-hst/nsc-4.htm>.

⁴⁸See CHARLES A. H. THOMSON, OVERSEAS INFORMATION SERVICE OF THE UNITED STATES GOVERNMENT 200–01 (1948).

⁴⁹See generally Palmer & Carter, *supra* note 27.

⁵⁰See Sanford J. Ungar, *Pitch Imperfect: The Trouble at the Voice of America*, FOREIGN AFFAIRS, May/June 2005, at 9. Speaking of VOA, he wrote:

But like government-produced pamphlets and films about the United States, its radio programs were barred from being broadcast at home, for fear that they might be used by whatever administration was in power to influence the domestic public. (Commercial broadcasters, then gaining strength, also feared the government-funded competition.)

Id. at 8.

program materials for eventual international distribution.⁵¹ One early study of Smith-Mundt summarized the 1947 debates, indicating that opposition to the legislation “was often concerned with the basic problems of government-industry relationships which underlay so many discussions in the post-war period.”⁵² This tension is understandable given that until late 1948, much of the content distributed *via* American international broadcasting was actually being produced by CBS and NBC radio networks.⁵³

As the legislation was being debated, leaders of the American media industry weighed in against the legislation to formalize American international broadcasting. Kent Cooper, executive director of the Associated Press declared, “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.”⁵⁴ John S. Knight, publisher of Knight Newspapers said, “The concept of the Voice as a potent agency for promoting democracy throughout the world seems ludicrously naïve.”⁵⁵

Representative Michael Lemke of North Dakota accused the bill’s sponsoring legislators of having ulterior motives to undermine the American communication industry. “Behind the scenes of this legislation are some members of the State Department who want to put the United States Government into the broadcasting business,”⁵⁶ he said. “Here would be another instance of unnecessary Government competition with private enterprise, and in a field where American private enterprise has been notably successful.”⁵⁷ These are powerful assertions, but they belie no concern for protecting America’s domestic audience from government propaganda.

⁵¹These concerns are consistent with other early rumblings of concern during this period about the insidious nature of Communism. Such concerns ultimately manifested in McCarthyism and broader attacks on the loyalty of officials representing the United States abroad. See R.M. FREELAND, *THE TRUMAN DOCTRINE AND THE ORIGINS OF MCCARTHYISM: FOREIGN POLICY, DOMESTIC POLITICS AND INTERNAL SECURITY, 1946–1948* (1972).

⁵²Burton Paulu, *The Smith-Mundt Act: A Legislative History*, 30 *JOURNALISM Q.* 303, 303 (1953). Paulu writes: “Specifically, there was doubt as to the propriety of a government information service, and concern lest the government supplant rather than supplement the work of private agencies.” *Id.*

⁵³See Ralph A. Uttaro, *Voices of America in International Radio Propaganda*, 45 *L. & CONTEMP. PROBS.* 103 (1982).

⁵⁴93 CONG. REC. 6543 (1947) (debate concerning H.R. 3342, 80th Cong. (1947)). Voice of America now has a contract with AP for the use of photos and graphics in VOA stories and broadcasts. See Voice of America, Terms of Use and Privacy Notice, <http://www.voanews.com/english/news/69075687.html> (last visited Nov. 7, 2010).

⁵⁵93 CONG. REC. 6747 (1947) (debate concerning H.R. 3342, 80th Cong. (1947)).

⁵⁶*Id.* at 6969.

⁵⁷*Id.*

Indeed, the argument was made on the House floor that although the government had purchased and used multiple short-wave radio broadcast towers around the world during the war, those operations should “be sold to private operators in the same manner, and for the same reason, that other Government-financed properties are passing into private hands.”⁵⁸ Representative Lemke continued:

Instead of setting up a system to compete with those who pioneered our international short-wave radio stations, any Government money used for this purpose should be spent to support those who blazed the trail with their own private funds. Any other procedure would be the rankest kind of injustice, as well as being a stupid refusal to use the world’s finest creative talent in the realm of radio.⁵⁹

The discussion regarding international broadcasting was thus weighted against introducing new competitors to private broadcasters and, in fact, tended strongly toward encouraging privatization of already-existing government-owned broadcast equipment and programs.

Debate suggested a strong congressional preference for abandoning altogether the State Department’s programming operations borne of the war and leaving the international broadcasting environment to the burgeoning private American media industry.

In June 1947, despite heated floor debate mostly focused on the educational and cultural exchange components of the bill, legislation passed the House. Upon House passage one member spoke about the job of telling the world about American values. In language reminiscent of public diplomacy discussions today, he acknowledged that “to some slight extent this essential task is being done by private agencies and individuals,” but that there was a “vast area which private enterprise cannot and does not reach in this battle for men’s minds.”⁶⁰ It was, therefore, the government’s responsibility to fill those gaps. Procedural delays enacted by members opposed to other aspects of the legislation prevented the bill from being fully considered by the Senate before the end of the year, although in the fall of 1947 a congressional delegation traveled to Europe to study Voice of America operations in the region and returned convinced of the need to counter the Soviet’s anti-American disinformation campaign.⁶¹

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰*Id.* at 6718.

⁶¹94 CONG. REC. 244–246 (1948) (statement of Sen. Alexander Smith).

Other debate surrounding the legislation focused on concerns unrelated to the international broadcasting aspects of the proposed bill. Writing in 1951, one scholar pointed to growing cold war tensions as the impetus for concern about the educational exchange components in particular.⁶² The idea of having a Soviet school teacher spend an academic year in the American heartland, for example, as part of a formal exchange program, was anathema to those who saw the Communist threat around every corner.

Nevertheless, when discussion of the legislation resumed in January 1948, concerns about the educational and cultural exchange aspects of the bill had been resolved and congressional action was swift. New Jersey Senator Alexander Smith, the primary sponsor of the legislation for that chamber, delivered a detailed list of reasons for passage while simultaneously addressing the concerns of those worried about government international broadcasting competing with the private sector.⁶³

Smith offered assurances that those supporting the legislation “were particularly agreed with the importance of using private American agencies to the maximum extent possible in everything having to do with the understanding of America abroad.” He also noted, “[I]t is the sense of the Congress that the Secretary of State shall reduce Government information activities whenever corresponding private information dissemination is found to be adequate.”⁶⁴ Smith and others seemed less concerned with the possible contamination of the State Department by communist infiltrators and never mentioned worries about exposing the American people to government-produced propaganda.

When discussion turned to the requirement that members of Congress be notified of the content of international programs within fifteen days of broadcast, some expressed a desire to receive the information more quickly. Smith reassured them “upon request, this information should be furnished as soon as practicable.”⁶⁵ Others argued that all members of Congress and all American citizens should have access to the content “at the same time it is released abroad.”⁶⁶ Records of this discussion betray no sense of concern about the public being propagandized. Senate discussion of the legislation ended soon thereafter.⁶⁷

In an analysis of the legislative debate, Shawn Parry-Giles provided four reasons to explain eventual passage of the legislation. First, she

⁶²Paulu, *supra* note 52, at 303.

⁶³94 CONG. REC. 244–248 (1948) (statement of Sen. Alexander Smith).

⁶⁴94 CONG. REC. 247 (1948) (Statement of Sen. Alexander Smith).

⁶⁵*Id.*

⁶⁶*Id.* at 249.

⁶⁷*Id.* at 269.

suggests, Congressional debate managed to successfully paint the Soviet Union as an enemy, even though the United States and the Soviet Union had fought together recently in World War II. Second, proponents of the legislation successfully presented the practice of international broadcasting as consistent with the values of a democratic society like the United States. Third, supporters argued there was an interested audience abroad ready to hear about the world through American eyes. Finally, those seeking passage of the legislation presented international broadcasting efforts as an effective antidote to any lingering domestic preferences for isolationism.⁶⁸

Summarizing the conditions leading to passage of Smith-Mundt, another scholar argues it was the cold war context and the rising threat of the Soviet Union that drove the sense of urgency behind congressional passage of this legislation focused on American information and educational exchange programs across the globe.⁶⁹ Congratulating Congress on imminent passage of the legislation, *The New York Times* declared, "We try to throw our beams of light across the earth and we raise our own curtains to let light in."⁷⁰ That summarized the spirit in which the legislation was eventually passed.

The 1948 legislation did not ban domestic dissemination of materials created for distribution to foreign audiences but, "[B]y 1965 . . . a de facto ban existed."⁷¹ As one analyst writes, it was not actually a ban "but rather an allocation of responsibilities that let private sector media do what it did best and governmental media do what it did best."⁷² So as not to interfere with domestic broadcasters, the American government did not disseminate materials created for foreign audiences within American borders. It is this agreement that has most likely been responsible for the perception that the legislation's original intent was to keep broadcasts from the public for fear of spreading propaganda in the homeland.

In 1967, an advisory commission offering guidance to the United States Information Agency, the agency then hosting USIB programs, and its overseers in Congress observed there was "nothing in the [1948] statutes specifically forbidding" making USIA materials available to

⁶⁸Shawn J. Parry-Giles, *Exporting America's Cold War Message: The Debate Over America's First Peacetime Propaganda Program, 1947–1953* 40–41 (July 1992) (unpublished doctoral dissertation, Indiana University, Bloomington, Indiana).

⁶⁹See Paulu, *supra* note 52, at 314.

⁷⁰Editorial, *Victory for the "Voice"*, N.Y. TIMES, Jan. 18, 1948, at E10.

⁷¹Charles F. Gormly, Comment, *The United States Information Agency Domestic Dissemination Ban: Arguments for Repeal*, 9 ADMIN. L.J. AM. U. 191, 196 (1995).

⁷²Posting of Matt Armsrong to Mountain Runner, <http://mountainrunner.us/2008/07/rethinking.smithmundt.a.look.b.html> (July 28, 2008, 15:22 E.S.T.).

American audiences.⁷³ “Rather, what began as a caution has hardened into policy.”⁷⁴ The group’s recommendations included relaxing control over these materials, noting, “[A]fter almost two decades, the walls can come down. The time has come when the vigilance of Congress and the press may be relied upon to provide sufficient safeguard against partisanship and the promulgation of a particular Administration’s point of view.”⁷⁵ Even by 1967 the perception was that any ban (in practice) was to protect a naïve American public and not the growing private broadcast industry.

It was not until 1972 that the ban in effect today was formalized in an amendment sponsored by Senator J. William Fulbright.⁷⁶ The *CQ Almanac* writes the amendment “made explicit a previously disputed prohibition on public dissemination of USIA information materials within the United States.”⁷⁷ The intent and effect of the law were thus changed more than twenty years after its original passage.

Instead of following the recommendations of the 1967 commission, Congress formalized the domestic dissemination ban with the 1972 Foreign Relations Authorization Act, thus preventing domestic dissemination of “information about the United States, its policies, and its people” that had been prepared for foreign audiences.⁷⁸ The 1972 change was driven not by concern about propagandizing the American people, but rather as a result of one powerful senator’s perceived slight by an administrator of the United States Information Agency. Senator Fulbright’s amendment was precipitated by a disagreement with the agency’s assistant director. Fulbright had expressed concern to Attorney General Richard Kleindienst about the USIA film *Czechoslovakia 1968* being shown in the United States. USIA’s assistant director in turn called

⁷³In 1948, U.S. international broadcasting and educational and cultural exchange programs were run by the Department of State. Five years later, Congress created an executive agency with sole responsibility for managing American public diplomacy efforts. Named the United States Information Agency, the organization existed until Congress disbanded it, merging it into the Department of State in 1999. For an excellent history of USIA and its role in American cold war policies see CULL, *supra* note 1.

⁷⁴Stanton Report, *supra* note 34, at 22.

⁷⁵*Id.*

⁷⁶See The Information and Educational Exchange Act of 1948, Pub. L. No. 95-352 § 204 (1948).

⁷⁷*State-USIA Authorization: Senate Debate on Vietnam*, CQ PRESS ELECTRONIC LIBRARY, CQ ALMANAC ONLINE EDITION, cqal72-1250606, originally published in 28 CQ ALMANAC 1972 (1973), available at <http://library.cqpress.com/cqalmanac/cqal72-1250606>.

⁷⁸Smith-Mundt Act – Public Diplomacy, http://publicdiplomacy.wikia.com/wiki/Smith-Mundt_Act (last visited Nov. 7, 2010).

Fulbright's view "naïve and stupid."⁷⁹ The attorney general responded to Fulbright's concerns noting the "law prohibited USIA from actively disseminating its materials in the United States but required the agency to make materials available upon request by the press or by members of Congress."⁸⁰ It is an irony of history that a senator whose name is associated so closely with international exchange programs and development of global awareness was in fact responsible for writing the law that keeps USIB materials beyond the reach of the American public, even today.

USIA's assistant director was ultimately forced to resign and remaining agency leadership apologized to Fulbright. Still, Fulbright's committee passed the "blanket prohibition" after calling the attorney general's opinion "a distortion of the legislative intent" of Smith-Mundt.⁸¹ Fulbright's amendment decreed that USIA materials could only be distributed domestically with specific congressional authorization.⁸² The only exception was *Problems of Communism*, a USIA journal that Congress allowed to continue circulating in the United States.⁸³ As attorney Charles Gormly notes, the amendment led to "extremely limited access for review to the press, scholars and Members of Congress."⁸⁴

In 1979, another amendment led to the removal of loyalty checks for employees creating the international broadcast content – a remnant of the anti-communist fears of the immediate post-World War II era.⁸⁵ In 1985, Senator Edward Zorinsky offered an amendment to Smith-Mundt, reasserting the ban on domestic dissemination of USIA materials. The amendment says, "[N]o funds authorized to . . . the United States Information Agency shall be used to influence public opinion in the United States, and no program material prepared by the United States Information Agency shall be distributed within the United States."⁸⁶ In offering the amendment, Zorinsky proclaimed, "The American taxpayer

⁷⁹*State-USIA Authorization*, *supra* note 77. This outburst added further fuel to an already existing fire caused by the Nixon administration's refusal to provide USIA planning documents to Congress on request.

⁸⁰*State-USIA Authorization*, *supra* note 77.

⁸¹*Id.*

⁸²*Id.*

⁸³*Id.*

⁸⁴Gormly, *supra* note 71, at 197. It is widely reported that the only exception to this ban was circulation of USIA's *Problems of Communism* which could be purchased through the Government Printing Office. See Deidre Carmody, *And Now, No More "Problems of Communism"*, N.Y. TIMES, May 31, 1992, at 16.

⁸⁵H. COMM. ON FOREIGN AFFAIRS & S. COMM. ON FOREIGN RELATIONS, LEGISLATIONS AND FOREIGN RELATIONS THROUGH 2005, Vol. II-A & II-B, 1453 (2008), available at www.internationalrelations.house.gov/111/33619.pdf.

⁸⁶22 U.S.C. §1461-1(a).

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.”⁸⁷

Following that addition to the legislation, USIA circulated an internal memorandum stating clearly that no international broadcasting information was to be circulated within the United States by any USIA employee. Later, Congress loosened this restriction, relatively speaking, to allow program materials to be released to the United States Archivist, but only twelve years after their original distribution overseas, with the National Archives then taking responsibility for that materials’ circulation.⁸⁸

TESTING THE BAN

In 1989, Michael Gartner, the editor of the Ames, Iowa, newspaper and former president of NBC News in New York,⁸⁹ wanted to include reprints of Voice of America editorials in his paper for readers, “[S]o they could keep abreast of government policies on some important world issues and learn how the VOA was presenting these policies to listeners abroad.”⁹⁰ He was particularly interested in the foreign policy editorials VOA had begun broadcasting under the Reagan administration.⁹¹ Gartner had requested these materials from USIA but had been refused. The agency invited him to visit their offices where he could read the material, but he would be unable to copy anything or use any of the content verbatim.⁹²

⁸⁷131 CONG. REC. 14,945 (2985). *See also* Foreign Relations Authorization Act, Fiscal Years 1986 and 1987, Pub. L. No. 99-93, 99 Stat. 405, 421 (codified as amended at 22 U.S.C. §1461-1(a)); The Zorinsky Amendment, Public Diplomacy, http://publicdiplomacy.wikia.com/wiki/The_Zorinsky_Amendment (last visited Nov. 7, 2010).

⁸⁸*See* Gormly, *supra* note 71, at 197 n 36.

⁸⁹Gartner resigned from his post at NBC News in 1993 after it became clear that *Dateline NBC* had misrepresented the explosive tendencies of General Motors trucks. *See* Elizabeth Kolbert, *NBC News Chief Stepping Down Amid Troubles*, N.Y. TIMES, Mar. 3, 1993, at 1.

⁹⁰ALVIN A. SNYDER, *WARRIORS OF DISINFORMATION: AMERICAN PROPAGANDA, SOVIET LIES AND THE WINNING OF THE COLD WAR* (1995).

⁹¹*See* David F. Stein, *The Voice of America Case: A Challenge to a Federal Information Statute*, 12 COMM. & L. 49, 55 (1990).

⁹²*See* Michael Gartner, *Don't Repeat What Your Uncle Sam Tells You*, WALL ST. J., June 9, 1988, at 1. He writes:

It is against the law for anyone to print or broadcast or otherwise “disseminate” in the U.S. anything the Voice of America says. In other words, the 1,204 hours of programming the Voice beamed out last week – including 15 editorials – is just a little secret between this government and those 130 million foreigners tuned in.

Id.

Believing these restrictions to be a violation of his First Amendment rights, Gartner filed suit against USIA. He argued that Smith-Mundt was “the only American statute that legislates a prior restraint on the press,” noting that “except in the most grave circumstances, prior restraints are unconstitutional.”⁹³ In 1989, the U.S. District Court for the Southern District of Iowa described the case in two parts, “[T]he first alleging a violation of the right to receive information, and the second alleging a violation of the right to disseminate information.”⁹⁴ Finding the plaintiffs had no grounds for either claim, the court then dismissed the case.⁹⁵

The judge in the case, while noting that the First Amendment “does not prescribe a duty upon the government to assure easy access to information for members of the press,” also commented that “it would be easy to conclude that USIA’s position is inappropriate or even stupid.”⁹⁶ One long-time USIA executive points to the fact that the “Smith-Mundt Act carries no penalties and is really a law without teeth.”⁹⁷ International broadcasting analyst Kim Andrew Elliott agrees, writing, “Gartner v. USIA ruled that VOA cannot distribute its materials within the United States, but any U.S. media operation can, of its own accord, use VOA material VOA might therefore deal with U.S. domestic media outlets on a don’t ask, don’t tell basis.”⁹⁸

Mark McCormick, the attorney who represented Gartner in the case, observes that although the court did not rule in their favor, the outcome was still a victory for the public. As evidence, he points to the fact that concurrent with court proceedings and seemingly in response to the case, USIA had issued a memo “officially and publicly declar[ing] the absolute right of everyone except the USIA to disseminate agency program materials in the United States.”⁹⁹ As Gartner opined in a *Wall*

⁹³*Id.*

⁹⁴Gartner v. U.S. Info. Agency, 726 F. Supp. 1183, 1185 (S.D. Iowa 1989).

⁹⁵There is no record of appeal by either party according to Shephard’s Citations Service. See LEXIS/NEXIS (last accessed Oct. 1, 2011).

⁹⁶Gartner, 726 F. Supp. at 1185.

⁹⁷SNYDER, *supra* note 90, at 266.

⁹⁸Kim Andrew Elliott, *An Arrangement to Do Wheelies on the Graves of Smith and Mundt*, REPORTING ON INTERNATIONAL BROADCASTING, <http://kimelli.nfshost.com/index.php?id=6418> (Apr. 29, 2009). Elliott also writes:

Gartner v. USIA ruled that VOA cannot distribute its materials within the United States, but any U.S. media operation can, of its own accord, use VOA material. U.S. newspapers, cutting down on foreign correspondents and bureaus, might be tempted to tap the VOA website, generally unencumbered by copyright issues, for their foreign coverage.

Kim Andrew Elliott, *VOA Domestically Disseminated Again (Updated Again)*, REPORTING ON INTERNATIONAL BROADCASTING, <http://kimelli.nfshost.com/index.php?idequals;4147> (June 18, 2008).

⁹⁹Michael Gartner, *Making America’s Voice a Little More Audible*, WALL ST. J., Nov. 2, 1989, at 1.

Street Journal editorial, “[T]he court noted the new USIA position but, just in case, officially found ‘that Congress did not intend to preclude plaintiffs from disseminating USIA information domestically.’”¹⁰⁰

Today the VOA Web site articulates the terms of use for its materials. The bottom line is straightforward: “All text, audio and video material produced exclusively by the Voice of America is in the public domain.”¹⁰¹

A 1998 case¹⁰² eleven years later led to the declaration that government-produced, international broadcasting materials created for foreign audiences were exempt from the Freedom of Information Act.¹⁰³ Interestingly, the Gartner decision did not make it illegal for American citizens to acquire the information, only for government employees to make the materials available. The court held, “[T]he press and the public may obtain verbatim transcripts of USIA through less convenient channels, such as receiving the broadcasts in other countries.”¹⁰⁴ Gormly concludes that the court’s decision “laid bare the immense obstacles Congress has placed in front of any member of the public who tries to gain access to official U.S. foreign broadcasts.”¹⁰⁵ As one writer has since commented, that decision serves as evidence that discussion of the domestic ban had “shifted over time from a law against dissemination to a law against disclosure.”¹⁰⁶ Indeed, the decision was rendered in language typically reserved for protection of highly classified national security materials.¹⁰⁷ This is noteworthy because the content the court was seeking to protect was already being broadcast to millions of people elsewhere around the globe.

¹⁰⁰*Id.*

¹⁰¹Voice of America, Terms of Use & Privacy Notice, *supra* note 54.

¹⁰²Essential Info., Inc. v. U.S. Info. Agency, 134 F.3d 1165 (D.C. Cir. 1998). For a detailed discussion of the distinction between dissemination and disclosure, particularly as it pertains to interpretation of Smith-Mundt, see Jeremy Berkowitz, *Raising the Iron Curtain on Twitter: Why the United States Must Revise the Smith-Mundt Act to Improve Public Diplomacy*, 18 COMMLAW CONSPECTUS 269, 280 (2009). For the purposes of discussion here, it is enough to note the circuit court did not appear to uphold the intent of the original legislation or subsequent amendments when it determined that the Smith-Mundt Act prohibited any disclosure of USIA materials within the United States. *Id.* at 280–82. The result is that a ban on dissemination initially intended to prevent undue government competition with the private sector has been interpreted instead as a ban on disclosure typically reserved for matters of national security. *Id.* at 281. Berkowitz notes, “Eleven years later, [this decision] is even more outdated, since much of the information that the Smith-Mundt Act protects is now publically [sic] available on the Internet and through other sources.” *Id.* at 283.

¹⁰³Not only is U.S. international broadcasting not subject to the Freedom of Information Act, it is also not governed by the Federal Communications Commission. See Uttaro, *supra* note 53, at 104.

¹⁰⁴Gartner v. U.S. Info. Agency, 726 F. Supp. 1183, 1185 (S.D. Iowa 1989).

¹⁰⁵Gormly, *supra* note 71, at 200.

¹⁰⁶Berkowitz, *supra* note 102, at 280.

¹⁰⁷See *id.* at 281.

All this demonstrates that the Smith-Mundt Act and the international broadcasting efforts it regulates have been controversial for their potential threat to private media organizations, for questions about the political loyalty of employees producing the broadcast content, and, most recently, for barriers preventing the American public from seeing, hearing or reading international news produced by the United States government and paid for by American taxpayers. Because of the safeguards put in place to address those concerns, American citizens living in the United States have been unlikely to see or hear this content. “As a consequence,” one observer writes, “even informed Americans are kept in the dark about how our tax dollars are used to promote U.S. interests through international broadcasting.”¹⁰⁸

Michael Gartner, the Iowa editor, summarizes the situation thusly: “This has 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.”¹⁰⁹ Regardless, international broadcasting materials are not disseminated to the American public. This fact is at the core of present discussions about reform of Smith-Mundt.

TALKING ABOUT REFORM

More than forty years ago, before any formal domestic dissemination ban had been imposed, a congressional commission had identified the dangers of having American audiences isolated from American international broadcast content.¹¹⁰ The panel called for easier domestic availability of international broadcast content and even recommended that Congress “effect the same ‘open door’ policy on overseas-intended information materials as decreed by the ‘Freedom of Information’ Act . . . for domestically-based governmental operations.”¹¹¹ These same concerns about the lack of public awareness about public diplomacy and foreign policy are articulated today in a report focusing on what one scholar calls the “neglected domestic mandate.”¹¹²

¹⁰⁸SNYDER, *supra* note 45.

¹⁰⁹Gartner, *supra* note 92.

¹¹⁰In fact, when he spoke to the Congress in 1967, Frank Stanton asked, “[I]f it is truth, what does it matter who hears it?” Steve Knoll, *Banned in the Land of the Free*, WASH. JOURNALISM REV., May 1988, at 43.

¹¹¹Stanton Report, *supra* note 34, at 22.

¹¹²Fitzpatrick, *supra* note 1, at 5. She writes:

When public diplomacy scholars and practitioners talk about the domestic dimensions of U.S. public diplomacy – which isn’t very often – they generally refer to former President Jimmy Carter’s idea that public diplomacy should have dual mandates: one focused on helping people abroad understand U.S. politics, ideas and values (the foreign mandate) and

The 1967 commission had recommended reestablishment of “contacts with the academic community”¹¹³ as a priority for those running American international broadcasting. The report read, “The Commission notes with regret the gradual decline of interest by academicians and scholars in the USIA mission and in the general subject of international and inter-cultural communications. Relatively few continue to pursue research in this field.”¹¹⁴ A contemporary search for scholarship about the content of American international broadcasting indicates little has changed in the forty intervening years.

In 1988, an article in the *Washington Journalism Review* called for reform of the Smith-Mundt Act. Although that article, like many others, attributed the initial domestic dissemination ban to fears of the American government propagandizing the public, the author also noted, “[U]nder Smith-Mundt, the wide-ranging information and propaganda apparatus of the U.S. Government functions without a mechanism for direct accountability to the taxpayer.”¹¹⁵ That same article observes that Smith-Mundt, its restrictions, and the content it actually governs are remarkably little known to American journalists. Indeed, in the process of seeking references to the legislation for the purposes of writing this article one finds few references to the legislation in traditional media, particularly since 1967.

The few examples that do allude to the legislation focus on the oddities of the ban. For example, in a 1985 column discussing the advent of Radio Marti, the Spanish language U.S. government station directed at Cuba, reporter Suzanne Garment reported on her interaction with the broadcaster’s public relations person:

The VOA publicity lady in charge was by turns accommodating, exasperated, apologetic and steely-firm. . . . All requests for interviews at Radio Marti had to go through the VOA public-affairs office. No, she could not predict when requests would be answered. Yes, a journalist could listen to a tape of the station’s first broadcast. No, the law absolutely forbade someone copying the tape to have a translation made on the outside.¹¹⁶

the other focused on enhancing Americans’ understanding of other nations’ policies, ideas and values (the domestic mandate). In fact, the “second” or “reverse” mandate as it came to be called was part of the mission laid out by Congress for U.S. public diplomacy more than half a century ago.

¹¹³Stanton Report, *supra* note 34, at 2.

¹¹⁴*Id* at 20.

¹¹⁵Knoll, *supra* note 110, at 43.

¹¹⁶Suzanne Garment, *Years of Trouble, Moment of Joy for Radio Marti*, WALL ST. J., May 24, 1985, at 1.

Writing ten years later, one scholar noted Congress was concerned that “relaxing Smith-Mundt opens the door for anyone occupying the White House or VOA and other . . . media products to advance his own political agenda.”¹¹⁷ The writer observed it was congressional Republicans who were unwilling to provide access to such tools to the Democratic White House of Bill Clinton. It was during the administration of Republican president George W. Bush, however, that the executive branch was discovered to be using domestic media personalities and outlets to promote preferred policy options.¹¹⁸ According to the language of the statute, such activities were not a violation of the Smith-Mundt Act although they were often portrayed as such in the press.

In an earlier article, two communication scholars argued, “The domestic dissemination ban may have outlived its usefulness and relevance. . . . Futile enforcement of the statute contradicts general U.S. policy promoting transparency and encouraging the free and open flow of information.”¹¹⁹ More than sixty years after its passage, the Smith-Mundt Act impedes U.S.-based efforts to assess the effectiveness of America’s international broadcasting public diplomacy practices.

In 2010, sixty years after passage of the original legislation, Congress was once again considering a bill to revise the Smith-Mundt Act. According to *Congressional Quarterly*, the revised legislation would “permit the Department [of State] to disseminate materials as long as they were intended ‘primarily’ for audiences abroad.”¹²⁰

As one of the sponsors of the proposed legislation noted, “The central problem [with the Smith-Mundt Act] is that the law has not kept up with changes in technology.”¹²¹ Others echo this sentiment, with one observer noting, “[I]nternational, technological, and political events would prove to make enforcement of the ban increasingly difficult.”¹²²

¹¹⁷SNYDER, *supra* note 90, at 262.

¹¹⁸See Kevin R. Kosar, *The Executive Branch and Propaganda: The Limits of Legal Restrictions*, 35 PRESIDENTIAL STUD. Q. 784 (2005). See also Anne E. Kornblut, *Bush Prohibits Paying of Commentators*, N.Y. TIMES, Jan. 27, 2005, at A1; Howard Kurtz, *Administration Paid Commentator*, WASH POST, Jan. 8, 2005, at A1; Howard Kurtz, *Writer Backing Bush Plan Had Gotten Federal Contract*, WASH POST, Jan. 26, 2005, at C1.

¹¹⁹Palmer & Carter, *supra* note 27, at 29.

¹²⁰Tim Starks, *Should the Government be Allowed to Press Its Case at Home?*, CQ WEEKLY ONLINE, July 19, 2010, at 1718, <http://library.cqpress.com/cqweekly/weeklyreport111-000003703920>.

¹²¹*Id.*

¹²²Berkowitz, *supra* note 102, at 277.

The advent of the information revolution has allowed U.S.-based consumers to catch VOA programs live-streamed from the broadcaster's Website.¹²³

Although there is no searchable archive of audio files for VOA, news texts are available for searching both at the Web site and through Lexis/Nexis. Since the U.S. government does not block U.S.-based IP addresses from accessing the VOA Web sites, the ban is incomplete. However, the legal mandate forbidding use of government resources to assist in the identification and supply of USIB content presents a frustrating hurdle for researchers and for other members of the public.

In 1995, while acknowledging congressional concerns about domestic propagandizing with USIB content, one scholar also foresaw the reality of government-produced material circulating within the United States anyway noting, "[W]hile the domestic dissemination ban initially sought to shield the American public from government-sponsored information and editorials and to protect commercial media outlets from government-sponsored competition, such programming has in fact been developed and transmitted through alternate channels."¹²⁴

Even in 1967, proponents of increased circulation of USIB content argued that increasing the free flow of information by relaxing the de facto domestic dissemination ban would "encourage the development of a high quality product. It would serve to ensure accurate and balanced treatments of the news. It would improve credibility overseas in demonstrating there is no curtain between what is released abroad and what is made available at home."¹²⁵ Many advocating changes to Smith-Mundt still make this argument, although it is striking that criticisms of the disconnect between the broadcast of American pro-democracy, pro-free press messages and the reality of domestic audiences' access (or lack thereof) to that very content was anticipated forty years ago.

DOMESTIC USAGE

Fifteen years ago, in support of relaxing the ban, one scholar argued, "[T]echnology has rendered pointless any of Congress's efforts to muffle government broadcasts."¹²⁶ He also wrote that American television and

¹²³For thoughtful discussion about the impact of information technology on the international political environment, see ELIZABETH HANSON, *THE INFORMATION REVOLUTION AND WORLD POLITICS* (2008).

¹²⁴Gormly, *supra* note 71, at 210.

¹²⁵Stanton Report, *supra* note 34, at 23.

¹²⁶SNYDER, *supra* note 90, at 262.

radio stations “traditionally have not shown much interest in getting access.”¹²⁷

Although that was once true, one international broadcasting expert has been documenting examples of American media usage of VOA content for several years,¹²⁸ and as far back as 1988, the *Washington Journalism Review* printed the full text of an editorial it had obtained by monitoring short wave radio.¹²⁹ Earlier, the *Christian Science Monitor* published a story about ethnic media outlets using VOA content.¹³⁰ In 1984, National Public Radio ran a twenty-six-part VOA-produced program titled *Americans All* narrated by Charlton Heston.¹³¹ Various American media outlets, therefore, have used VOA content without incident. However, there is at least one incident in which a congressman sent multiple VOA editorials to a constituent upon request and was later compelled by USIA to return them to the agency.¹³² That incident aside, there is little evidence of VOA action seeking to retrieve or censor agency materials once they have been distributed within the United States.

The remarkable result, notes former VOA Director Sanford Ungar, is that “For all the admiration [VOA] enjoys overseas, the network has virtually no constituency inside the United States.”¹³³ By preventing formation of a domestic constituency for American international broadcasting efforts, Smith-Mundt actively discourages at home exactly the kind of internationalism that the broadcasts and education and cultural exchanges hope to promote abroad.

Newer news organizations do appear interested in learning more about this source of information.¹³⁴ Several U.S. organizations are already using Voice of America content in the United States.¹³⁵ The recently launched site, *The Daily Caller*, for example, published the first

¹²⁷*Id.*

¹²⁸See Kim Andrew Elliott, *Smith-Mundt Be Damned, U.S. Media Help Themselves to VOA Content*, REPORTING ON INTERNATIONAL BROADCASTING, <http://kimelli.nfshost.com/index.php?id=3298> (Feb. 7, 2008).

¹²⁹See Stein, *supra* note 91, at 55.

¹³⁰David Purcell, *Boston Area’s Ethnic Press Helps Varied Groups Preserve Traditions*, CHRISTIAN SCI. MONITOR (New England Supp.), Mar. 21, 1985, at B3.

¹³¹See David Hugh Smith, *Patriotism Comes to Radio: NPR Dramatizes Historic Americans*, CHRISTIAN SCI. MONITOR, Nov. 6, 1984, at 30.

¹³²See Knoll, *supra* note 110, at 43–45. The offending congressman was Rep. Cooper Evans (R-Iowa).

¹³³Ungar, *supra* note 50, at 12.

¹³⁴See Powers, *supra* note 6.

¹³⁵See *id.* See also Kim Andrew Elliott, REPORTING ON INTERNATIONAL BROADCASTING, <http://www.kimandrewelliott.com/> (various dates).

two paragraphs and a follow-up link to a VOA report of leadership changes in Al Qaeda following the death of Osama bin Laden.¹³⁶

Writing in 1995, Charles Gormly exposed this distribution loophole writing, “Although under current law, [the government] can and must limit the prior dissemination of program materials, it has no authority to police such rebroadcasts retroactively.”¹³⁷ This would seem further confirmation of Gormly’s observation that, even if original concerns about anti-competitiveness, loyalty of government employees, and the danger of propagandizing the American public all had some validity at one time, today, “[T]he ban overreaches and no longer serves those purposes in light of subsequent developments in both communication technology and U.S. government-sponsored communications programs.”¹³⁸

Given the declining budgets of America’s media industry, particularly decreasing resources dedicated to the collection of expensive and hard-to-get on-the-ground foreign news and analysis, the internationally oriented news content already produced by USIB offers an option for keeping American audiences abreast of international affairs and about the American role in them. Indeed, a recent book chapter in a volume focused on the future of the American media industry recommends use of VOA content for ethnic media organizations in the United States.¹³⁹

The Congressional Research Service observes “Smith-Mundt provisions have come under increasing criticism in recent years, and are seen as anachronisms in the current global communications environment.”¹⁴⁰ The authors of the CRS report describe the failure of the current ban, noting that anything on the Internet can be accessed in the United States and that satellite technologies employed by the Department of State in transmission of international broadcasting are also accessible to people in the United States who have the right equipment.¹⁴¹ Despite the leakage allowed by current information technologies, the State Department, which now houses USIB activities since the elimination of USIA in the late 1990s,¹⁴² must still act to comply with the restrictions, many of which may ultimately affect the ability of the department to conduct public diplomacy abroad as intended.¹⁴³

¹³⁶See Kim Andrew Elliott, highlighted this development on his Web site, <http://www.kimandrewelliott.com/>. He also reported that Tucker Carlson, co-founder of *The Daily Caller*, is the son of Richard Carlson, who served as director of VOA from 1986 to 1991.

¹³⁷Gormly, *supra* note 71, at 201 n. 61.

¹³⁸*Id.* at 191–92.

¹³⁹See Powers, *supra* note 6, at 149–150.

¹⁴⁰See NAKAMURA & WEED, *supra* note 40, at 55.

¹⁴¹*Id.*

¹⁴²See Cull, *supra* note 1, at 484.

¹⁴³See NAKAMURA & WEED, *supra* note 40, at 55.

Addressing many of these issues directly, the convener of a March 2010 Senate Foreign Relations Committee hearing asked, “[W]hat is the future of the Smith-Mundt Act, part of which prohibits domestic dissemination of information produced for foreign audiences, when a quick search on the Internet will turn up the information anyway?”¹⁴⁴

That same month, a new, bipartisan Capitol Hill caucus was formed to focus on public diplomacy and strategic communication issues, with Smith-Mundt among the likely topics of conversation. Echoing congressional discussions of sixty years ago, the House members leading the effort noted, “[M]isinformation about U.S. actions can be quickly disseminated to millions, damaging our country’s reputation when not vigorously countered in a timely fashion.”¹⁴⁵

Senator Richard Lugar also pleads for reform of Smith-Mundt. He issued a report in mid-2010 calling for improvements to all aspects of U.S. international broadcasting operations.¹⁴⁶ His argument for updating the legislation is rational: Russia and China are growing their English language broadcasting in the United States. Al Qaida has an online English language presence¹⁴⁷ and Arabic-speaking immigrants in the United States have unfettered access to Al Jazeera, “[Y]et are prevented by Smith-Mundt from viewing Alhurra.” He calls Smith-Mundt “both anachronistic and potentially harmful.”¹⁴⁸

In July 2010, addressing decades of concerns about the Smith-Mundt Act and its need for reform, ten members of the House of Representatives introduced House Resolution 5729, identified as, “A bill to modernize authorities to fight and win the war of ideas against violent extremist ideologies over the internet and other means of information, and for other purposes.”¹⁴⁹ A *CQ Weekly* article about the proposed legislation takes a broad approach to reform, including an interview with one of the bill’s sponsors who observes, “The central problem is that the law has not kept up with changes in technology. . . . [I]t becomes extremely difficult to say this broadcast is not only intended for foreign audiences but will only go to foreign audiences.”¹⁵⁰

¹⁴⁴Press Release, Sen. Ted Kaufman, Kaufman Chairs Hearing on Future of U.S. Public Diplomacy (Mar. 10, 2010), available at http://kaufman.senate.gov/press/press_releases/release/?id=2314533f-1f98-47c5-a005-809714517925.

¹⁴⁵Fawzia Sheikh, *New Caucus to Probe Strategic Communication, Public Diplomacy, INSIDE THE PENTAGON*, Mar. 11, 2010, available at LEXIS/NEXIS.

¹⁴⁶COMM. ON FOREIGN RELATIONS, *supra* note 8, at 4.

¹⁴⁷Marc Ambinder, *Al Qaeda’s First English Language Magazine is Here*, ATLANTIC MONTHLY, June 30, 2010, available at <http://www.theatlantic.com/international/archive/2010/06/al-qaedas-first-english-language-magazine-is-here/59006/>.

¹⁴⁸COMM. ON FOREIGN RELATIONS, *supra* note 8, at 4.

¹⁴⁹H.R. 5729, 111th Cong. (2nd Sess. 2010).

¹⁵⁰Starks, *supra* note 120, at 1718.

The language of the proposed bill states clearly that the State Department shall dedicate no funds to the production of content intended to influence public opinion in the United States. It also notes that the revised legislation, if passed, “[S]hall not prohibit or delay the Department from responding to inquiries about its operations, policies, programs, or program material, or making such available to members of the media, public, or Congress.”¹⁵¹

With that language, the bill sought to overturn the domestic dissemination ban first formalized in 1972 then reiterated in 1989, making it possible for people in the United States to have unimpeded access to all international broadcasting materials. The proposed legislation also declared that no aspect of this proposed revision “shall be construed or interpreted to prohibit the Department of State to engage in any medium of information on a presumption that a United States domestic audience may be exposed to program material.”¹⁵² Although brief, the proposed resolution addressed decades of concern about access to American public diplomacy materials in the United States.

SOLUTIONS

The Omnibus Appropriations Act of 2009 mandated that no monies allocated to the Department of State or other foreign operations could be used for “publicity or propaganda” efforts “within the United States.”¹⁵³ Because there is ongoing debate in Washington about which agency or agencies have primary responsibility for public diplomacy or strategic communication efforts, there is also disagreement about the range of agencies to which Smith-Mundt should be expected to apply.¹⁵⁴

With regard to context for the legislation proposed in 2010 and its perceived scope and implementation, CRS notes:

Although the Department of Defense (DOD), the United States Agency for International Development (USAID), and several other U.S. government agencies communicate with populations abroad, the primary legal authorities and governmental organization for such engagement rest within the

¹⁵¹H.R. 5729, 111th Cong. (2nd Sess. 2010).

¹⁵²*Id.*

¹⁵³H.R. 1105, 111th Congress (2009–2010) Section 7080, 7081.

¹⁵⁴Some policy experts and others in the “reform Smith-Mundt” discussion suggest the strategic communication operations conducted abroad by the U.S. military and other government agencies either should be considered – or not – to be governed by the Smith-Mundt Act. For the purposes of discussion here, reform of the Smith-Mundt Act is discussed in the context of removing formal barriers to domestic dissemination of USIB products only. The legalities and technicalities of broader reforms or full elimination of Smith-Mundt are beyond the purview of this article.

State Department, and the State Department remains the central focus and starting point of most calls for reform of the United States' approach to communicating with foreign publics.¹⁵⁵

This declaration of scope for public diplomacy can also be used to define the parameters of any revision of Smith-Mundt.

The need for better sources of international news in the United States and the potential role of the government in providing it keeps appearing in contemporary discussions. In mid-2011, the cover story of *Columbia Journalism Review* advocated establishment of an American equivalent of the BBC World Service, with its accompanying international and domestic audiences.¹⁵⁶ Earlier, a book about the future of American journalism argued the government was the logical source of funding for journalism in a democracy.¹⁵⁷ But even while others may be eyeing USIB content for potential domestic usage, USIB entities face budget cuts and the organization governing USIB operations – the BBG – is facing a strategic overview. The decades-long ban on domestic dissemination of VOA and other content, however, has resulted in no domestic constituency supporting the broadcasts.¹⁵⁸

Only congressional action can make American international broadcasting materials more easily available in the United States. One analyst notes, for example, that NATO, Harvard University, Johns Hopkins University and other organizations requested permission to screen a Voice of America film about Afghanistan's poppy production.¹⁵⁹ Congress began its approval for release in 2009, but more than a year later still had not signed off on domestic use of the material. However, emphasizing the extent to which American policy has failed to keep up with the realities of the modern communication ecosystem, “[T]he video has been available on YouTube since 2008.”¹⁶⁰

Writing in 2006, scholars Allen Palmer and Edward Carter noted, “With the arrival of the Internet and the goal of universal access, the

¹⁵⁵NAKAMURA & WEED, *supra* note 40, at 3 n.5.

¹⁵⁶Lee C. Bollinger, *News for the World*, COLUMBIA JOURNALISM REV., July/Aug. 2011, at 29–33.

¹⁵⁷ROBERT W. MCCHESENEY & JOHN NICHOLS, *THE DEATH & LIFE OF AMERICAN JOURNALISM: THE MEDIA REVOLUTION THAT WILL BEGIN THE WORLD AGAIN* (2010).

¹⁵⁸*See* Fitzpatrick, *supra* note 4.

¹⁵⁹*See* Armstrong, *supra* note 28.

¹⁶⁰*Id.* The film is titled *A Fateful Harvest*, available at <http://www.youtube.com/watch?v=k5hAgVFRF1w>. It is a 2008 “documentary produced with the help of State Department funding, [that] describes the devastation on Afghanistan’s people, economy and society wrought by the opium business.” *Another Budget Battle*, NAT’L J.’S CONGRESS DAILY UPDATE, June 12, 2009, available at FACTIVA, File No. CNGD000020090612e56c0000i.

Smith-Mundt prohibition of domestic dissemination of the U.S. government's international propaganda materials appears to be particularly arcane and problematic."¹⁶¹ They are not alone in that view.

IMPLICATIONS OF REFORM

As the preceding discussion suggests, the domestic dissemination ban is outdated and the implications of its continued existence are profound. As one analyst writes, "[T]his imaginary separation between foreign and domestic audiences reduces awareness of the State Department's effectiveness . . . increases the cost of engagement while decreasing overall effectiveness, and limits accountability."¹⁶²

A recent book chapter connects the need for reform with the future of public broadcasting in the United States. Public diplomacy expert Shawn Powers writes, "U.S. public service broadcasting, which is severely underfunded in comparison to the rest of the world, is also legally separate from U.S. international broadcasting" effectively preventing collaboration between them. The twisted outcome of this is that "U.S. funded international broadcasting is prohibited from disseminating its journalistic features within the U.S., a legal ban that hinders use of its significant journalistic resources by both public and private networks."¹⁶³ This sentiment is echoed in a summary of discussion following a July 2011 hearing hosted on Capitol Hill by the United States Advisory Commission on Public Diplomacy.¹⁶⁴

Powers further writes that U.S.-based ethnic media could make use of the materials created in dozens of languages for dissemination abroad.¹⁶⁵ In response to an update on a mid-summer U.S. Commission on Public Diplomacy hearing about Smith-Mundt, the Center on Public Diplomacy's blog observed:

One of the important audiences for VOA, in my opinion, should be diaspora communities living within the U.S. They can serve as a credible conduit to their friends, family and former neighbors living in other parts of the

¹⁶¹Palmer & Carter, *supra* note 27, at 2.

¹⁶²Armstrong, *supra* note 28.

¹⁶³Powers, *supra* note 6, at 138.

¹⁶⁴U.S. Advisory Committee on Public Diplomacy: Notice of Meeting – Public Notice: 7474, available at <http://www.state.gov/pdcommission/events/166460.htm> (June 17, 2011). See also Press Release, *supra* note 4.

¹⁶⁵Powers, *supra* note 6, at 138.

world. [The] content should be made available to them as easily as it is to those who are still living in their country of origin.¹⁶⁶

Others have also emphasized the benefits accruing to American audiences should the ban be lifted. In a recent blog post, the conservative Heritage Foundation's public diplomacy analyst acknowledges Smith-Mundt's constraints on distribution of Voice of America and other international broadcasting content noting that this ban prevents such information from reaching "immigrant communities in the United States who may be subject to radicalization. . . . Content on the international broadcasting service is often tailored to communities in Muslim countries and may be highly relevant here at home as well."¹⁶⁷ That organization's argument for reforming Smith-Mundt is thus focused less on making international broadcast materials more transparent and available for the public good and more on the need to address al-Qaeda recruiting strategies everywhere they are in operation. This is a different interpretation of the potential benefits of eliminating the domestic dissemination ban, but it is still advocating an end to the ban.

While other government agencies have expressed interest in and opinions about reform of the Smith-Mundt Act, as the CRS report noted, the reach of Smith-Mundt is limited to public diplomacy-practicing agencies and the Department of State has the lead role on this front. Regardless, representatives of other agencies mentioned by CRS as occasional practitioners of public diplomacy question the scope of any non-specific revisions to Smith-Mundt. The Department of Defense, for example, has grown its strategic communication operations considerably, even to the point of raising internecine concerns in the American policy community about which organization has the legal authority to take the lead on public diplomacy matters.¹⁶⁸

Careful crafting of any legislation reforming Smith-Mundt, however, could specify the limited intent that the reform apply only to recognized producers of USIB, all of which are governed by the BBG, under the purview of the State Department. As discussed above, broadcasts are recognized as part of a larger public diplomacy scheme; broadcasts are under the purview of BBG, and, there are benefits to be won by allowing easier domestic access to USIB products. Many concerns about potentially loosing Pentagon "psy-ops" on the domestic American public

¹⁶⁶Posting of Rick Barnes to Anna Dawson, The Center on Public Diplomacy Blog, <http://uscpublicdiplomacy.org/index.php/newswire/cpdblog.detail/reforming-smith-mundt/> (July 16, 2011, 10:57 a.m.).

¹⁶⁷Posting of Helle Dale to The Foundry, <http://blog.heritage.org/2010/07/19/updating-smith-mundt-for-the-21st-century/> (July 19, 2010, 1 p.m.).

¹⁶⁸See NAKAMURA & WEED, *supra* note 40, at 28.

with reform of Smith-Mundt can be avoided by carefully defining the conditions under which the ban would no longer apply. If applied only to USIB content, reform neatly sidesteps the slippery slope argument that every government agency will then feel free to propagandize the American public.

There is already evidence that the messages of multiple government agencies are seeping into the domestic media market. The need for controlling those messages would not change by reforming Smith-Mundt to allow domestic distribution of USIB. Such a change would simply allow the USIB content already being produced, already explaining the United States and its policies to the world, to be easily circulated in the homeland.

Calling for reform of Smith-Mundt need not be equated with eliminating a ban on domestic distribution of every government agency's marketing and policy advocating content. That is a debate for another time. For now, let the American public, scholars and media environment, begin to reap the benefits of U.S. taxpayer resources already being dedicated to production of USIB content – content that is already leaking its way into the domestic environment.

Other concerns about reform have included worry that should the domestic firewall be removed, there would be a blending of the State Department's public affairs and public diplomacy operations.¹⁶⁹ The concern is that State Department resources, already limited and threatened by the current Congress, could divert attention from USIB's international public diplomacy mission to the domestic audience, ultimately diminishing emphasis on the messages intended for the rest of the world. Language such as that included in the 2010 proposed legislation, however, could help safeguard against such a redistribution of resources after the ban disappears.

Sixty years after passage of the Smith-Mundt Act, Congress was once again considering a bill to update the legislation. In recent years, incidences of government monies being used in attempts to sway American public opinion on policy issues have often resulted in reference to Smith-Mundt and its supposed application to entities outside the public diplomacy context. High profile incidents such as the revelation that a visiting U.S. code in Afghanistan was targeted for potentially deceptive strategic communication efforts inflames discussions about the role of propaganda in the domestic environment and clouds the issue at the center of debate about Smith-Mundt reform which is whether USIB content should be more easily accessible to the American public. While advocates of transparency in American government activity have in

¹⁶⁹See Kochell, *supra* note 7.

the past voiced concern about the employ of columnists and academics advocating particular policy positions, this treads on entirely different territory than that intended by Smith-Mundt in either its original or revised forms.

As Sanford Ungar observed in *Foreign Affairs*, “As a government agency with a journalistic mission, VOA has always been a somewhat peculiar institution.”¹⁷⁰ *CQ Weekly* notes that Smith-Mundt “is having foolish or even dangerous unintended consequences.”¹⁷¹ The passage of reforms like those in the legislation proposed in 2010 would do a great deal to ease some of these peculiarities and unintended consequences. Should repeal of the ban on domestic dissemination of USIB content be implemented, it could have a number of significant implications.

First, the legislation could help change thinking about American public diplomacy and international broadcasting efforts since the legal framework within which it operates will be updated to reflect realities of modern communication ecosystem. After all, as one scholar has noted, “Public diplomacy has never been the favorite child of U.S. foreign policy. More often considered a poor relation, faintly disreputable, with no particular merits in the past and of doubtful relevance in the present, not to be discarded altogether, but kept at a safe distance.”¹⁷² Easier access to USIB content could translate into better reporting about public diplomacy in general and international broadcasting in particular, a subject notably overlooked in American reporting about foreign policy.¹⁷³ The further result could be growth of a domestic constituency for American public diplomacy efforts and the political protections that can accrue to an issue when voters contact their legislators in support of certain policy priorities or in opposition to budget cuts.

Second, elimination of the domestic dissemination ban would make American domestic policies consistent with U.S. foreign policy talking points emphasizing democracy and a free press. The significance of this cannot be overstated, particularly as the United States continues efforts to improve its reputation abroad and counter the influence of extremists who are apt to exploit, if only with rhetoric, just such inconsistencies in American policy. Eliminating the irony of having pro-democracy and pro-free press content banned in the United States would yield benefits abroad.

¹⁷⁰Ungar, *supra* note 50, at 8.

¹⁷¹Starks, *supra* note 120, at 1718.

¹⁷²Walter Laqueur, *Broadcasting America's Message Matters*, 73 FOREIGN AFFAIRS 19 (1994).

¹⁷³See Posting of Emily Metzgar to The Center on Public Diplomacy Blog, http://usepublicdiplomacy.org/index.php/newswire/cpdblog_detail/on_missed_opportunities/ (July 13, 2010).

Third, the accountability for content and performance of U.S. international broadcasting programs would be enhanced. Reform would make government evaluation of American public diplomacy efforts easier to measure and the increased visibility and transparency would lead to improved accountability to the taxpayers who fund the work.

Fourth, scholarly attention to the content would likely increase with improved access. Research related to the content, framing, orientation and effect of U.S. international broadcast materials would likely begin to appear. Elimination of the domestic dissemination ban will make academic efforts to assess content and framing in USIB products much easier to conduct. Unfettered access to the content will allow the kind of close study that can evaluate the credibility of the media content and either justify or defend such products against their lingering reputation of being simply state-sponsored propaganda.

Fifth, American international broadcast content, particularly from VOA, could be repurposed for domestic consumption and distributed by private media organizations.¹⁷⁴ Not only would ethnic media outlets benefit from materials available in sixty different languages, more mainstream media outlets could also use the content to help fill gaps in internationally-oriented coverage resulting from budget cuts and the declining stability of traditional industry models.¹⁷⁵ Already existing USIB resources could be used to help facilitate domestic distribution as well as overseas. U.S.-funded international broadcast materials are an untapped, public domain resource for news organizations around the country. Based on recent polls assessing the American public's fluency (or lack thereof) with international issues¹⁷⁶ more media content with an international orientation would serve a public good.

CONCLUSION

While most current discussion about Smith-Mundt and its domestic dissemination ban emphasizes the benefits that could accrue from elimination of the ban, in its even-handed summary of public diplomacy, the Congressional Research Service report presents an alternative

¹⁷⁴Powers, *supra* note 6, at 484.

¹⁷⁵See THE STATE OF THE NEWS MEDIA 2010: AN ANNUAL REPORT ON AMERICAN JOURNALISM (2010), <http://www.stateofthemediamedia.org/2010/>; CHICAGO COUNCIL ON GLOBAL AFFAIRS, GLOBAL VIEWS 2010 – CONSTRAINED INTERNATIONALISM: ADAPTING TO NEW REALITIES, http://www.thechicagocouncil.org/curr_pos.php. See also ALEX S. JONES, LOSING THE NEWS: THE FUTURE OF THE NEWS THAT FEEDS DEMOCRACY (2009); MCCHESENEY & NICHOLS, *supra* note 157; PEW RESEARCH CENTER, PUBLIC KNOWLEDGE: SENATE LEGISLATIVE PROCESS A MYSTERY TO MANY (2010), available at <http://pewresearch.org/pubs/1478/political-iq-quiz-knowledge-filibuster-debt-collbert-steele>.

¹⁷⁶CHICAGO COUNCIL ON GLOBAL AFFAIRS, *supra* note 175.

point of view. The authors note that, with the ban in place, American public diplomacy products are focused on foreign audiences. However, “[W]ithout such domestic prohibitions, U.S. public diplomacy efforts may become dominated by a preoccupation with communicating to the American people for political effect, to the detriment of creating effective, targeted communications to specific foreign populations.”¹⁷⁷ The concern is that public diplomacy efforts directed toward particular regions or nations, already seen as less effective than they could be, would further falter, but structuring the legislation as proposed above would help decrease the possibility of this diversion of attention to a more domestically-oriented mission. Most noteworthy about the CRS comment is that even discussion of this concern concludes with a reminder that removing the ban could lead to the creation of a domestic constituency for foreign affairs, “the lack of which has long been lamented.”¹⁷⁸

Despite a change in House leadership after the 2010 elections, prospects for eventual reform of Smith-Mundt Act remain good. Interest in Congress, in policy circles and, increasingly, in academic environments suggests an end to the domestic dissemination ban may be inevitable.

With respect to the continued production of international broadcasting content, were reform to pass, the State Department could dedicate its full attention to producing that content without worries about who might consume it stateside. The world is too big and the challenges too great to dedicate American public diplomacy resources to anything other than unfettered dissemination of international broadcast content either abroad or at home.

In a press release following his testimony before a mid-summer hearing of the United States Advisory Commission on Public Diplomacy,¹⁷⁹ Jeff Trimble, executive director of the BBG, presented the board’s desire that the legislation be revised. He argued that “in a global media environment where U.S. international broadcasting stories go viral, are picked up by media competitors and aggregators, and often are played back to the U.S. public, a new examination of Smith-Mundt is very much in order.”¹⁸⁰ Such an examination resulting in carefully crafted

¹⁷⁷NAKAMURA & WEED, *supra* note 40, at 56.

¹⁷⁸*Id.* See also Fitzpatrick, *supra* note 4.

¹⁷⁹U.S. Advisory Commission on Public Diplomacy, <http://www.state.gov/pdcommission/index.htm>

¹⁸⁰See BBG, *supra* note 6.

legislation limiting the possibilities of unintended consequences would serve the public interest. Borrowing language from *The New York Times*' 1948 editorial supporting passage of Smith-Mundt,¹⁸¹ it is time for the United States to raise the curtain on itself.

¹⁸¹See *Victory for the Voice*, *supra* note 70, at E10.