"I Want My MTV Ukraine"

Risk Management in Changing Markets

GREEN PAPER V. 1.2

Please send comments by e-mail to casestudies@griffincap.ch

A final version of this study will be available at:
http://www0.gsb.columbia.edu/ideasatwork/riskmanagement/archive
or at:
http://www.griffincap.com/rfp/MTV Ukraine Case Study.pdf

This Green Paper provides an initial analysis of risk management in changing markets.

The exploratory case study presented in this document is ***research in progress****. The case study analyzes a broad range of management issues, by way of narrative and documents related to MTV Ukraine, in order to achieve a deeper understanding of risk management and media franchises.*

With the exception of the narrative provided by the authors, all information contained in this case study is publicly available or was provided unconditionally and directly by MTV Networks Europe or MTV Networks International, both affiliates of MTV Networks, a unit of Viacom Inc.

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Risk Management in Changing Markets

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[1] In the interests of fair disclosure, one of the authors of this case study was involved in some of the events set forth herein as an advisor and minority equity holder.

[2] Actual names are used in this case study except where indicated. Pseudonyms are used only when the underlying name is not already a matter of generally-available public information.

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Money for Nothin'

(aka "I want my MTV")

Now look at them yo-yo's
that's the way you do it
You play the guitar on the MTV
That ain't workin'
that's the way you do it
Money for nothin'
and your chicks for free
Now that ain't workin' that's the way you do it
Lemme tell ya them guys ain't dumb
Maybe get a blister on your little finger
Maybe get a blister on your thumb.

Dire Straits, from "Brothers in Arms", 1985

Introduction

I should've learned to play the guitar. Instead, I was warming my boots with a fellow shareholder at Charly's Tea Room and Confiserie in Gstaad. Not exactly heavy rotation.

But as a corporate gig, it was as good a place as any for our first and last AGM.

Peering through the window at the skating rink outside, we could see the pistes were iced as the arid sky offered precious little snow the final week of 2006. Finding a table wouldn't be easy among the crush of would-be skiers, *les riches* and almost-famous.

Pondering the events of the past year constituted the agenda of the AGM. We weren't even a quorum. The majority shareholder and General Director remained holed up in his new flat in Kiev, the controlling owner of a once and former MTV licensee now worth something considerably less than zero.

It had all been so promising twelve months ago.

Experienced management, an iconic American media brand and a large European media market emerging from decades of Stalinist rule represented the risk-reward combination we thrived on – just like in Russia ten years earlier.

The last place we expected to find systemic risk was within Viacom's MTV unit. Among the questions we pondered were:

1) What risks do brands face when extending their global footprint?
2) How – and why – did MTV's franchise model go so completely wrong in Ukraine?
3) How does this case illustrate the 'principal-agent problem' when a principal offers compensation unduly favorable to an agent?
4) Why did MTV host a press conference announcing the launch of MTV Ukraine when MTV's management knew its licensee's investors hadn't agreed terms?
5) What happened to the one million dollars advanced to pay MTV's licensing fee?
6) What was achieved at a midsummer night's EGM at an unidentified hotel in Kiev?
7) Was MTV Ukraine a *de facto* affiliate of MTV, or simply an arms-length licensee?
8) Should MTV be concerned with its licensee governance and financial management issues? If so, how might MTV revise its license agreement to ensure licensees timely pay their employees and relevant authorities and don't misallocate funds?
9) What risks does MTV face when intermediating a three-way deal between itself, as licensor, a follow-on Ukrainian licensee and a new investor?
10) What's the likelihood Ukraine's tax authorities might pursue the "new" MTV Ukraine for unpaid salaries, pensions and social insurance payments left by the first?
11) If you were the former General Director and controlling shareholder of MTV Ukraine, would you have sold out to your minority shareholders? At what price?
12) How can a content mill capture and monetize the growth of digital media? How can content providers best avoid, or minimize, disintermediation by advertisers?

13) Can shares of a listed company such as Viacom or News Corporation ever be fully valued if senior management indirectly control the majority of shares?

Internet Killed the Video Star: MTV Twenty-Five Years On

MTV flickered into life in 1981 to the sound of "Video Killed the Radio Star" by The Buggles. Riding the phenomenal popularity of cable TV, a new way of distributing music was launched without reliance on radio, DJs or "payola".

The VJ, or "Video Jockey", was born into the exciting world of cable broadcasting.

The crown jewel of the Viacom media empire[5], MTV accounted for about 70% of Viacom's over $9.6 billion (2005) revenue and more than 90% of its earnings.

But as MTV celebrated its 25th anniversary, a new generation of digital media had emerged including the internet, video on-demand and mobile *i*-phone downloads.

Analysts and investors began to question the prospects of established media as it struggled to learn how to market its content in an increasingly networked world. After all, hot

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[5] Viacom Inc. is a leading multiplatform, pure play content company, with prominent and respected brands in focused demographics. It engages audiences through television, motion pictures and digital platforms. Viacom seeks to reach its audiences wherever they consume content.

MTV Networks ("MTVN") is a unit of Viacom. MTVN owns and operates advertiser-supported basic cable television program services around the world.

Outside the US, MTV Networks owns and operates, participates in as a joint venturer, and licenses third parties to operate, over 95 MTV Networks program services, including MTV, VH1, Nickelodeon, TV Land and Paramount Comedy among others.

MTV Networks Europe ("MTVNE"), a division of MTVN, is among Europe's most widely distributed cable and satellite networks, comprising more than 65 individual music, kids and comedy channels. As of July 2005, the leading MTV Networks program services reached approximately 132 million households and 157 million households in Europe (excluding Russia) and Asia (including Australia), respectively, and approximately 154 million households in the rest of the world (including the United States) through a combination of DTH satellite operators, cable and terrestrial distribution.

For the third quarter 2006, MTVN affiliate fees increased $53.9 million, or 12%, including increases across all domestic channels and various MTV Network international channels. Affiliate revenue growth was driven domestically by subscriber and rate increases.

International affiliate revenues, principally earned in Europe, increased $19.3 million, or 30%, reflecting new channel launches and the consolidation of Nick UK as well as Latin America.

For the nine months ended September 30, 2006, affiliate fees increased $142.4 million, or 10%, including a 17% growth in international markets driven principally by the consolidation of Nick UK and new channel launches in France. Domestic affiliate growth increased 10% principally a result of subscriber and rate increases.

content in 2006 included the hanging of Sadaam Hussein, broadcast free over the internet from a camera phone hidden beneath his gallows somewhere in Iraq.

By then, consumers had successfully forced the hand of media companies that not too long ago had retained power themselves. Consumers were now able to take direct control of what they watched, and when and where they watched it. This had an extremely adverse impact on the ratings-based spot advertising revenue model of content shops.

By early 2007, the media industry's established business models had been completely overturned by new forms of digital distribution and content production. Long-term agreements with content producers or technology partners, such as Apple, were increasingly contentious. Television networks and studios began stockpiling scripts to prepare for another strike by – of all people – the Writers Guild!

But after the downloading of ringtones became a multi-billion dollar industry, no one was able to predict whether other nascent businesses that provided only a trickle of revenue today might become dominant streams a few quarters hence.

The "ringtone business" was simply a low-bandwidth mobile ad channel. It enabled record companies to intermediate and monetize a desirable demographic database held by mobile phone companies, an addressable database coveted by advertisers.

Record libraries missed the beat the first time when they signed away polyphonic rights to ringtone companies for ten percent of revenues. But as teenaged mobile users converted to master tones, the record companies demanded half the revenue or, more often, a direct relationship with mobile phone operators.

It was all happening again with video clips and streaming video as bandwidth expanded and the cost of device memory declined.

Record companies weren't about to let the lessons of ringtones be repeated. Their resolve wasn't asymmetric either, as ringtone companies sought to become content providers – offering games and voice tones. This too was presaged in ancient times when middleman cable companies like HBO had resolved to become leading content providers.

Same as it ever was, the dawn brought unheard of new entrants like MySpace and YouTube.

"When Britney Spears shot to stardom with her chart-topping 1999 debut album, *...Baby One More Time*, few could have realized that her success would mark the end of an era. Spears and boy bands such as Backstreet Boys and N'Sync would prove to be the last major pop acts to generate multiplatinum sales based on the traditional formula of record-company promotion, heavy rotation on Top 40 radio and repeated exposure on MTV. Napster and other peer-to-peer file-sharing programs made it easy for music fans to download music for free, and the record business has yet to recover; MTV, meanwhile, is less interested in showing videos than it ever has been."
Forbes Magazine

The cable network sales that propelled MTV's content business had begun to slow in the US and elsewhere after decades of double-digit growth. At the same time, a brand synonymous with youth culture was struggling to remain relevant in an internet era that has spawned an entire constellation of new stars.

Among the brightest star in the new media firmament was MySpace, the social networking site acquired under Viacom's nose by Rupert Murdoch, aka the "Dirty Digger", and head of archrival News Corp. It would grow to become one of the world's biggest digital music stores – and coveted databases of highly addressable demographics.

MySpace reported more than 100 million registered users by year-end 2006. The ability of Murdoch's MySpace to siphon off MTV's core youth market was an immediate and direct threat to Viacom.

And in November 2006, Murdoch's vision was validated when Universal Music sued MySpace for unauthorized distribution of its artists' songs and video among its users.

Murdoch's response was simple – and devastating.

In January 2007, News Corp. announced at the MIDEM music market in Cannes a new initiative with the Global Independent Sector – Indie music companies representing a third of the world's music market – to create Merlin, a digital licensing agency that served as a one-shop for artists such as The White Stripes, Arctic Monkeys and Tom Waits.

Meanwhile, YouTube, launched in February 2005, along with numerous other social networks, had become wildly popular by allowing users to post self-produced video on the web.

According to Comscore World Metrix, YouTube's audience soared from 2.8 million unique users in 2005 to 72 million users in August 2006.

So it was only the price, in a converging world, which surprised analysts when Google acquired YouTube for $1.65 billion in shares in 2006.

Later that same year, in an attempt to capture more young consumers who were spending time on niche sites and blogs affiliated with Google, and to extend the ratable audience viewing its content, MTV Networks announced a content sharing deal with Google to cash in on the irresistible pull of internet adspend.

> "*Our brands are great navigation tools for our audiences, and this deal with Google will enable us to follow and lead them to new places.*" - Judy McGrath, Chief Executive Officer, MTV Networks

Some of the content MTV made available included video clips from MTV's *Laguna Beach* reality program and its popular video music awards show as well as the Nickelodeon cartoon *SpongeBob SquarePants.*

The internet was the irresistible undertow drawing adspend to the web. Google and MTV agreed to share revenue from advertising sold alongside its iconic videos. The deal reflected the popularity of internet video as fast broadband connections made it easier for fixed – and mobile – audiences to download television programs, "webisodes" and other content.

The Google deal represented a strategic shift for MTV Networks. MTV's internet efforts had been focused on its own branded video sites, such as MTV *Overdrive* which was widely regarded as an unqualified flop.

The arrangement with Google marked the first time MTV Networks ceded some control over its content by making it available to other websites and blogs.

As part of the deal, MTV Networks agreed to sell episodes of its programs through Google's video store. Google had already made similar revenue sharing agreements with AOL and Apple's iTunes.

Yet on 2 February 2007, only a few months after announcing the deal with Google, MTV demanded that all its branded clips be removed from YouTube's servers. Media reports suggested lengthy negotiations broke down over the splitting of advertising revenues and over which company – Google or Viacom – would make those sales.

Youth-oriented MTV had been criticized for its tentative embrace of social networking, user-generated content and other new media phenomenon. Dramatic management changes within Viacom and MTV were the result.

In early August 2006, a year after losing the auction of MySpace to Murdoch, Viacom's Chairman and indirect majority shareholder Sumner Redstone fired Viacom CEO Tom Freston after barely eight months at Viacom's helm.

Freston was MTV's co-founder and head of Viacom's MTV Networks.

After dismissing Paramount's couch-jumping, marquee star Tom Cruise a month before firing Tom Freston, Redstone made it clear why he lost out to arch-rival Rupert Murdoch in the battle to acquire MySpace.

> "*Tom let MySpace get away! We lost that deal because Tom was too slow. That was the problem with Tom. This distinguished him from the way Les [Moonves, head of CBS] would've done that deal, or the way I would have.*"
> Sumner Redstone, Vanity Fair, December 2006

The MySpace debacle was an epiphany for MTV executives. "Connecting with our consumers on every platform they love is at the heart of our digital strategy," declared Judy McGrath, paraphrasing the recently departed Freston with whom she co-founded MTV.

> "*But I'm not counting on our television business going stale. I really believe that as advertisers look to put their money into things that are more engaging and more relevant, our multiplatform play is our unique selling proposition and competitive advantage.*"
> Tom Freston, Hollywood Reporter, 15 December 2005

MTV's executives were particularly keen to master the emerging mobile business because their young audience was already spending considerable time on their TV phones, a distribution channel MTV could not directly offer its advertisers.

MTVN's television networks, including MTV, Nickelodeon and Comedy Central, specialized in producing precisely the short-form content that had been most popular on the small screen, particularly in Europe where web-TV was becoming widely available on mobile "3G" devices thanks to its uniform mobile data standard.

So MTV Networks decided to establish a new division to deliver content to mobile platforms. The so-called Mobile Media Group would be responsible for developing ringtones, games, videos and other content from its various brands for supply to mobile phone carriers.

MTV management's push reflected the dawning realization among traditional media companies that mobile platform services would form an important component of evolving digital businesses.

At the same time, mobile phone carriers were looking to new revenue streams from data services, such as games and video content, as a way to offset the pressure on their traditional voice revenue.

As a result, by the end of 2006, MTV claimed to have content sharing deals in place with all the big mobile carriers. MTV also claimed to be the leading supplier of video content to mobile phone carriers – publishing more than 600 clips and 30 hours per month in the US. Its management was particularly excited about the multimedia possibilities of a new service, Mobile Junk 2.0, launched with Sprint, in which user-generated content from the internet would be beamed to customers' phones.

Those customers would in turn use their phones to vote for their favorite clips, to be broadcast on MTV Networks nationally and internationally.

Regardless of these new initiatives, MTV's ability to monetize its content in the melee of potentially fickle youth-oriented social networks and complex mobile distribution arena ultimately depended on its ability to execute a coherent plan. And they weren't alone among the other media giants going into the New Year.

Just up the road in Davos, the 2007 annual meeting of the World Economic Forum was themed "*The Shifting Power Equation*", focusing on the growing power of consumers and individuals over business and institutions.

The broad subject was choice, how it was exercised and who captured the benefits. And in the world of digital media, when anyone could mix, mash and, hours later, broadcast her video to the world over YouTube, why bother watching NBC's television comedy *30 Rock*?

A rehash itself, the "original" comedy was set behind the scenes of a fictional television show reminiscent of NBC's *Saturday Night Live*, whose first season was MC'd by George Carlin – in October 1975. Anyone who could recall "SNL" was hardly a desirable demographic in 2007.

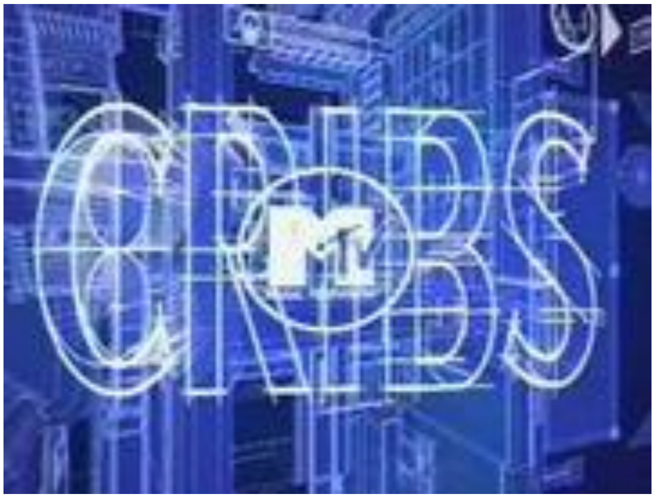
The fact was that NBC, owned by American industrial giant GE, had not one *but two* "behind-the-scenes-at-Saturday Night Live" shows on its schedule – Tina Fey's *30 Rock* and Aaron Sorkin's *Studio 60 on the Sunset Strip* – said something about media navel gazing.

MTV was hardly alone among traditional media giants, but its approach to new distribution channels and markets was widely regarded as reactive rather than anticipatory.

Like its uptown rivals at Rock Center and Columbus Circle, MTV management was seen to be experimenting with ways to find a "walk around" to YouTube and other digital outlets, flailing about in an attempt to remain king of the media hill.

Fortunately for Viacom, 90% of MTV's core earnings still came from its traditional business of video content distribution throughout an expanding global footprint.

Over the decades, MTV had nurtured a creative culture which consistently produced a broad range of new content and shows targeting desirable demographics. Leading shows included *Beavis and Butt-head*, *Southpark, I'm from Rolling Stone* and *MTV Cribs*. "Cribs" was a reality TV show that featured tours of the new homes and mansions of the latest celebrities from media and sport, kickin' it widda' Kings o' Bling.



Never thin-skinned when it came to taking risks, MTV's Comedy Central, a 24 hour, all-comedy channel, even sanctioned a DVD of an uncensored mock *MTV Cribs* video featuring Comedy Central star Dave Chappelle.

But Chappelle's show was suspended when he walked away from his $50 million two-season contact in April 2005 – to "chill".

The uncensored DVD set "Chappelle's Show Season One" was the best-selling DVD television show ever, selling over 3 million copies for MTV's Comedy Central.

In early 2007, going from strength to strength, Bill Roedy's MTV Networks International launched Comedy Central in Germany, a 24 hour German-Speaking comedy channel, it's first in Germany.

> *"2007 will probably end up being the year of digital media. The technology's ready and media companies are rushing to experiment with new ways to reach an audience through the web. But the power is in the hands of the content owners, and they're cagey. When it comes to digital video, most have licensed out their rights only temporarily, keeping the power to reassume control and, potentially, charge a higher price for the same content in the future."*
>
> Vince Tobkin, Head of Bains & Co's Technology and Telecoms Practice
>
> *The Financial Times, 24 January 2007*

With its iconic content, strong and continuously evolving brands and seasoned management, MTV was well positioned to extend its core licensing business into large emerging markets such as Russia, India and China, each of which promised huge growth opportunities.

Among these large markets, Ukraine remained the only large European country not licensed by MTV Networks.

In early 2005, with growth of Viacom's core earnings in mind, Ukraine's 46 million westward looking consumers began to look very appealing to executives at MTV headquarters and the advertisers they served.

It was only a matter of applying its tested licensing model before MTV Ukraine would become the latest member of the MTV family.

Ukraine: "Another Brick in the Wall"

MTV's programming consists of youth-oriented programs including music videos, music-based programming, music and general lifestyle information, reality-based programming, comedy and dramatic series, animated programs, news specials, interviews and documentaries. Internationally, MTVN owns and operates, participates in as a joint venturer, and licenses third parties to operate, approximately 90 MTV's program services. These include online, broadband, wireless and interactive television services.

Most of MTV's international program services are regionally customized for the particular viewers through the inclusion of local music, programming and on-air personalities, and use of the local language. Local language dubbing is a necessary, but not sufficient, condition to deliver eyeballs media buyers demand.

MTVNE is among Europe's most widely distributed cable and satellite networks, comprising 57 individual music, kids and comedy channels. As of April 2005, leading MTV program services reached approximately 134 million households in Europe through a combination of DTH satellite operators, cable and terrestrial distribution.

Each such network operates under license from MTVNE.

With a population of approximately 46 million, Ukraine would soon become the final European market to be licensed by MTVNE.

Breaking the mould

By Chrystia Freeland
Published: January 7 2005 17:43 | Last updated: January 7 2005 17:43

Ukraine is one of Europe's great submerged nations. A thread of Ukrainian statehood can be traced back to mighty 10th century Kievan Rus, sovereign over all of the eastern Slavic lands, through to the 17th-century Cossacks, who briefly asserted their independence from Poland only to lose it to Russia, and on to flickers of national independence at the time of the Bolshevik Revolution and the second world war. But to outside eyes, this iconic national narrative was overshadowed by the more obvious reality of Ukraine's imperial overlords - Poland, Austria-Hungary, Imperial Russia, the Soviet Union.

Yet beneath this cloak of invisibility, the idea of Ukraine as a separate state continued to germinate, emerging with particular strength in the 19th century among its proselytising, educated intelligentsia. Then, as now, Ukrainian identity was as much about making a personal and political choice as it was an ethnic or historical fact: this multi-ethnic and historically divided land did not lend itself to a single interpretation. With the Soviet takeover of central and eastern Ukraine, and then, with the second world war, of the formerly Polish territories that are now western Ukraine, choosing to be Ukrainian became ever more marginal and dangerous. The notion of Ukraine went underground, while abroad those Ukrainians who managed to escape Soviet rule nurtured their nation's emblems - language, history, culture - with a zeal that often seemed absurd to outsiders.

In 1991 as the Soviet Union began to crumble, this secret history of opposition suddenly burst above ground. Ukraine's national intelligentsia, inspired by the dissidents released from Soviet prison camps and armed with the histories and encyclopedias written by Ukrainian emigres, spearheaded a national protest movement that was one of the catalysts of the final collapse of the USSR. Those who had doubted Ukraine's existence weren't altogether wrong, though. Ukraine's national identity, never certain and further blurred by decades of Soviet repression, was extremely fragile. To secure its emergence as a separate state, the leaders of Ukraine's national democratic movement - people who shared the background and politics of the leaders of eastern Europe's 1989 revolution - made a pact with the country's Soviet-era communist elite. If the nomenklatura backed independence, it could stay in power. As one Ukrainian dissident, freshly released from prison, explained to me in the early 1990s when I asked him how he could make an alliance with his former jailers: "Let them be Communists, let them be dictators, let them build their own Ukrainian prison camps. At least they will be our Communists, our dictators, our prisons."

Over the past few years, as outgoing president Leonid Kuchma's administration became ever more mired in corruption and inclined to authoritarianism, that seemed to be precisely what was happening. Had Ukraine's neo-authoritarian post-Soviet regime succeeded in entrenching its rule with the coronation of prime minister Viktor Yanukovich, its candidate in the November presidential elections, this is the Ukraine they would have created: nominally independent, explicitly unfree. That effort failed when opposition leader Viktor Yushchenko was elected on Boxing Day - Kuchma's state was too weak to sustain itself and civil society was too strong to be denied.

Why was the Kuchma regime, for all its crudity and casual ugliness, hollow? First, the Ukrainian authorities inherited only the branch plants of the repressive machinery of the USSR, not the headquarters that are making their fury at the collapse of Soviet communism so powerfully felt in Moscow today.

Second, for all its corruption, Ukraine's privatisation process dispersed economic power much more broadly than Russia's. The difference is summed up by a single economic indicator: over the past two years, the engineering sector in Ukraine has been growing by about 30 per cent a year. In Russia, the rate is about 12 per cent. As Anders Aslund, an economist who follows both Ukraine and Russia closely, explained to me over breakfast in Kiev: "In Ukraine, the engineering business is owned by independent people who develop those businesses. In Russia, it is owned by the oligarchs."

Third, the Ukrainian political elite was privately lukewarm in its support for Yanukovich - its official candidate - and not particularly hostile to Yushchenko, a popular former prime minister and central bank chief. Indeed, at a personal level, much of Kiev officialdom felt more comfortable with the cultivated and technically skilled opposition leader than with the rough, proletarian Yanukovich. This sympathy became apparent in the early days of the protests as swathes of the establishment, from the Kiev city government to the diplomatic service, defected to the opposition.

Fourth, unlike Russia, Ukraine has no lost empire to mourn. In the end, despite the urgings of his prime minister, some of his security chiefs and some of his regional henchmen, Kuchma did not turn his tanks on his people. With no glorious imperial restoration to tempt him, he chose to go down in history as the midwife of Ukrainian democracy, however reluctant, rather than the butcher of Kiev's Independence Square.

He bowed to the will of the Ukrainian people whose collective strength - so obvious now, barely suspected before the vote on November 21 - was the main reason the "Orange Revolution" succeeded. Neither a national struggle, nor an economic one, Ukraine's revolt this autumn was the uprising of a people at last secure enough in their identity and confident enough about their material welfare to demand to be treated like citizens, not serfs. For the first time in Ukrainian history, the big and traditionally divisive question of statehood was resolved. Ukrainian civil society was also bolstered by what has been dubbed the "distance to Dusseldorf" factor - shorthand for geographic proximity to the west. With EU enlargement last May, the west arrived at Ukraine's border, and it has acted as a powerful model and lure. Hundreds of thousands, if not millions, of young Ukrainians are now travelling west to work and study. With each of the letters home accompanying their cash remittances, and with their eventual return, they bring back knowledge of a different way of life.

This way of life - described by Ukrainians as "European" but really the relationship between state and individual that underpins all western democracies - inspired the Orange Revolution. Aslund calls it "Ukraine's 1848 - a true bourgeois revolution." A member of that petit bourgeoisie is Oleksandr Tkachenko, who over the past decade and a half of our friendship has risen from being a lowly fixer for Reuters to a prosperous television executive. He saw the protesters as the modern incarnation of a Ukrainian national archetype, the kulak peasant small-holders who historically formed the backbone of Ukrainian provincial society and whom Stalin had tried to wipe out. "This is the revolution of good burghers, of the well-dressed, well-spoken Kievites. They already have money. What they need is freedom for themselves, their businesses and their children," says Tkachenko.

Ukrainians are now busily creating a new set of myths to define and sustain the transformed nation they believe their protests have forged. In his speeches to the crowds during their 17-day vigil in Independence Square, Yushchenko often spoke of democratic episodes from Ukrainian history, including Pylyp Orlyk's constitution of 1710 limiting his powers as Cossack ruler. An odd choice of topic, it might seem, for a 21st century political campaign whose unofficial anthem was a hip-hop song and which was co-ordinated by internet and mobile phone. But Yushchenko's discourses were part of the larger democratic reimagining of Ukraine as a free, liberal and "European" nation. The 44 per cent of voters who backed Yanukovich in the December 26 run-off shows that not all Ukrainians buy into this vision. Some, especially in the east, still cleave to a more Soviet, Russophilic identity. But Russia's aggressive role in backing the outgoing regime has produced an explicitly pro-Ukrainian backlash that is strikingly audible on the Russified streets of Kiev. Since November 21, the capital has suddenly started to speak Ukrainian - a language everyone in Ukraine understands, but may not be accustomed to using. Like the ubiquitous orange scarves and arm-bands, the language, at least for the moment, has become a symbol of democracy.

For countries to Ukraine's west, the Orange Revolution represents both an opportunity and a challenge. The Poles, in particular, have been swift to grasp the significance of developments in Ukraine and to offer moral and practical support. Solidarity veteran Lech Walesa joined protesters in Independence Square; Polish president Aleksandr Kwasniewski was one of the leaders of the international mediation effort that helped avert a violent crackdown; Gazeta Wyborcza, one of Poland's first independent newspapers, produced a special edition, in Ukrainian, devoted to the Orange Revolution. Their enthusiasm was recognition of the fact that Europe's dividing line between democracy and authoritarianism is moving from Ukraine's western border to its eastern one.

The best way to secure that border, from Poland's perspective, is to put Ukraine on the path to EU membership and eventually to bring it fully into the union. That is a project sure to send a chill down the spines of some Eurocrats and politicians further west, for whom the prospect of a democratic Ukraine eager to join the European club is less delightful. It is not so long since Romano Prodi, speaking as president of the European Commission, declared that Ukraine had as much reason to be in the EU as New Zealand. Europe is still struggling to absorb the 10 eastern European accession states, is riven by the emotional debate over Turkey and is scrambling to establish a secure post-war order in the Balkans. For many European leaders, the sudden emergence of Ukraine as a credible, democratic European state seems more like a problem than a solution. This view is particularly strong among countries such as France, Italy, Spain and possibly Germany, for which the project of deepening ties between core members of the community is more important than broadening European values ever further east and south - and which fear antagonising Russia.

The difficulty for the deepeners is that Ukraine, undeniably geographically, culturally, religiously and historically a part of Europe, is now claiming political and moral membership as well. Kuchma's Ukraine had been easy enough to dismiss. As Yushchenko admitted to me in a conversation before the final ballot: "Europe had some real and understandable reservations about Ukraine. Can Europe co-operate with a criminal regime and call it a partner? Can Europe work with a country dominated by a black-market economy? Can Europe work with a country without the rule of law?" But now, Yushchenko continued, "we are walking the not-very-easy path to democracy... we have shown we are a different country, we are a different people. It is a unique demonstration that here we have a civil society. The nation has paid a high price to be able to say that this is a European country." Soon, he said, it would be up to Europe to take "real, concrete steps in response to our democracy".

Europe's broadeners can see Yushchenko's point. For them, by exerting the seductive force of its own example, Europe has inspired the shift of a country larger than France and with 48 million inhabitants from authoritarianism to democracy. This is the vision of those who see the EU as a democratic, voluntary empire, expanding through the lure of membership. Ukraine, never offered that lure but determined to become worthy of it, is the latest example of its power.

"It is very exciting, it is very uplifting, to see Europe's unquenchable desire for freedom," says Denis MacShane, Britain's Minister for Europe. "I don't see how anyone under any circumstances can deny that Ukraine is a European country. If Ukraine announces that it has European ambitions, we ought to welcome it."

The Orange Revolution has also subtly influenced relations between Europe and the US. In their surprisingly robust and concerted defence of Ukrainians' right to a fair election, the Bush administration and the EU, in political scientist Robert Kagan's lovely phrase, "committed a flagrant act of transatlantic co-operation". As MacShane put it: "The crisis in Ukraine has helped to reconnect Europe with the US. It has made us understand that our values are a lot more similar and more profound than the Iraq crisis may have made us think."

If the west is (generally) welcoming, the east is sour. Russia's leadership bet heavily on the loser in Ukraine's political contest. For the Kremlin, a Yanukovich victory was important for philosophical, political and geopolitical reasons. Philosophically, a triumph for "managed democracy" and state capitalism in Ukraine would have been a validation of Russia's own renunciation of open democracy and free markets in favour of president Vladimir Putin's increasingly overt neo-authoritarianism. Politically, installing the Kremlin's man in Kiev would have been a victory for the neo-imperialist vision that Putin and his supporters increasingly have been propagating to shore up domestic support. Geopolitically, the Kremlin made its traditional calculation that vassals make better neighbours than independent states.

Guided by this logic, Russia backed Yanukovich with tremendous zeal. Putin visited Kiev twice in what essentially were campaign trail appearances for Yanukovich. Kremlin political consultants, relying on the same arsenal of techniques that had twice secured Putin's election, were so central to Yanukovich's election drive that even officials within the Kuchma establishment were enraged. Vasyl Baziv, the president's deputy chief of staff, told me: "It hugely angered me when I walked through the presidential administration and saw how citizens of another state were lying on the divans and brutally forcing themselves into the state life of Ukraine." Anders Aslund, the economist, estimates that Moscow spent $300m on the Ukrainian elections, a figure confirmed by a leading Russian oligarch. At a summertime meeting, Putin explicitly forbade Russia's oligarchs, some of whom have democratic sympathies and strong connections with Ukraine, from contributing to Yushchenko's campaign. Ultimately, Russia's candidate failed because Russia's example has lost its appeal for most Ukrainians. On a visit to London a year ago, my friend Oleksandr Tkachenko, the Kiev television executive, described to me the worldview of his teenage daughter. Like him, she spoke mostly Russian with her friends, though she listened to Ukrainian rock groups and studied at Ukrainian schools. But Russia, the country, held absolutely no interest for her. She had spent summer holidays travelling through Europe with her parents. Next on her wish-list was New York. Moscow, the dream destination of Oleksandr's Soviet childhood, did not figure in her aspirations.

Ukraine's public rejection of the Kremlin model is playing in Russia in two very different ways. For Putin and his neo-imperialist confreres, it is an enraging humiliation. They are insulted and angry: Gleb Pavlovsky, one of the architects of Putin's rise to power in 2000 and a leader of the Russian political consultants sent to Ukraine, described the opposition's orange as "the colour of children's diarrhoea". This fury has real cause. The triumph of western values in Ukraine is a significant check on Russia's neo-imperialist ambitions: historically, the Russian empire has never existed without Ukraine. If Ukraine secures its position in the European political space, Russia's post-Soviet sphere of influence shrinks to Belarus, the Caucasus and Central Asia - not much of an empire, even for a Russia that has accepted it will never regain its cold war super-power status.

Nor is it only the Russian elite that mourns the loss of imperial might. As Yegor Gaidar, the father of Russian market reforms and one of the country's staunchest liberal democrats, admitted to me over breakfast in London: "It is a complex of the lost empire. This is a huge difference between us and all the other post-communist countries, apart from Serbia. Everyone else lost socialism and gained independence. We lost socialism and lost an empire."

But Gaidar and other Russian democrats are also hopeful Ukraine will inspire another reaction. As he put it: "This is the first stone thrown at the edifice of Russia's managed democracy." He argues that the example of Ukraine will give Russians, particularly the younger ones, faith that their society, too, might prove capable of mustering the collective will to stand up for democracy.

The danger is that Putin - piqued by his personal humiliation in Ukraine, stung by the loss of empire and legitimately worried by Kiev's democratic example - will pursue personal vengeance rather than national interest. Gaidar warned that the Kremlin's reaction could be, "everyone has betrayed us, now we are a besieged fortress." He hoped that the west could play a valuable role in averting this sort of "hysterical" reaction.

Insulating eastern Europe from Russian expansionism, securing democracy and free markets along Europe's eastern arc, encouraging the erosion of the neo-authoritarian regimes that had seemed the inevitable successors of the Soviet Union, and all without unduly provoking a wounded Russia still bristling with nuclear weapons - that is the vast geopolitical agenda that the Orange Revolution has opened up for the world. Gaidar worries that the west may "sleep through it". In contrast with made-in-America political projects such as Afghanistan or Iraq, he fears the western response might be to say, "we didn't make your revolution, you did it yourselves, so now you figure it out."

There is an alternative view. A recent essay in The New Yorker positively compared the success of America's own soft power in Ukraine - the lustre of its example, a dribble of support for local NGOs - with the shambles its exercise of hard power has made of Iraq. You don't have to buy into the contrast between the two to accept that homemade velvet revolutions can make as legitimate a claim on the world's attention as violent regime change imposed from abroad.

The accidental hip-hop anthem of the Orange Revolution is an apt embodiment of what has been a spontaneous and united assertion in Ukraine:

We are not swine,

We are not goats,

We are Ukraine's daughters and sons.

No, to falsification!

No, to manipulation!

No, no, no to lies!

Together we are many,

We cannot be overcome.

Its putative composers are Roman Kalyn and Roman Kostyuk, two thirtysomething would-be musicians - Kalyn has a day-job as a TV anchorman, Kostyuk as a sound engineer - from the western Ukrainian city of Ivano-Frankivsk. After the falsified November 21 vote, they recorded the slogans they had heard at their town square to a hip-hop beat and were soon singing it with their friends and fellow protesters. Someone - they don't know who - sent it out on the internet and it was soon picked up by those singing and chanting in Kiev's Independence Square.

"The Yushchenko people said they had been thinking that they needed such a song and then it just appeared," Kalyn recalled. The pair haven't earned a kopek from writing their country's wildly popular new hymn, but they don't seem to mind. "We wrote this song for the people," Kostyuk explained. "Let them use it."

Chrystia Freeland is deputy editor of the FT.

INVESTING IN UKRAINE

Ukraine's businessmen are decoupling from politics to concentrate on building up their companies and engaging in international capital markets.

"Ukraine is the last large untouched market in Europe." So says Natalie Jaresko, managing partner at Horizon Capital, a private equity firm dedicated to investing into Ukraine. The excitement among investors for Ukraine's potential is palpable and investment—both portfolio and direct—has flooded the country over the last year, despite a mini-banking crisis and an economic downturn inspired by political uncertainty. The unintentional side effect of last year's Orange Revolution was that it was the best bit of marketing Ukraine ever had.

"Suddenly, West European bankers woke up to the fact that Ukraine actually existed. All major West European bankers arrived to look for opportunities," says Gerd Wriedt, General Manager of HVB Bank in Ukraine.

Ukraine was on the cusp of choosing an Orange Coalition in late April. In the election month of March more money was invested into the PFTS (First Federal Trading System), Ukraine's leading stock exchange, than in all of 2002 and 2003 combined. After a decade of endemic corruption that made the country an international pariah, investors are almost impervious to Ukraine's political risk, as they believe the hard part is already finished.

"The results of the elections are important for Ukraine's future, but more important is that no one party won, none of the parties are on the extreme of the political spectrum and all of them agree on the need to join the WTO for a free market and continuing the reform effort," says Horizon's Jaresko. His firm specializes in consumer-related companies and manages two funds: Emerging Europe Growth Fund, which had a first close at $45 million in February, and the $150 million Western NIS Enterprise Fund.

A PARLIAMENTARY DEMOCRACY

Following Viktor Yushchenko's election as president last year, Ukraine has arguably become the only full democracy in Eastern Europe. The parliamentary elections brought the Orange Revolution to a close after constitutional changes, agreed at the height of last year's political crisis, effectively transformed the country from a presidential republic to into a parliamentary democracy and curbed the all-encompassing powers of the president.

"You don't come to Ukraine because you believe that stability will prevail. What is more important is that the country is a democracy," says Jacques Mounier, General Manager of Crédit Agricole's subsidiary in Ukraine.

The political wind has veered and most of Ukraine's businessmen have smartly changed tack, decoupling from politics to concentrate on building up their companies and turning outward to engage in international capital markets. One of the first things that Yushchenko did upon taking office was promise to take back some of the companies "stolen" by the venal old guard connected to former President Leonid Kuchma.

This Sponsored Report was prepared by the Special Projects Department of *Institutional Investor* and written by Ben Aris, a journalist based in Berlin.

"Before the revolution, businessmen were afraid that if they fell out with the regime, someone would try to go after them–the tax authority for instance–and take away their assets. Now it is the complete opposite. The companies are trying to maximize their value by cleaning up their act."

TOMAS FIALA, DRAGON CAPITAL

"On the one hand, this cleaning up of corporate structure is an insurance against re-privatization and on the other hand, it is because big business wants to attract money from the west–issue eurobonds, possible IPOs," says Tomas Fiala, managing director of Dragon Capital. "Before the revolution, businessmen were not secure so they hid the cash flows and they hid the ownership because they were afraid that if they fell out with the regime, someone would try to go after them–the tax authority for instance–and take away their assets. Now it is the complete opposite. The companies are trying to maximize their value by cleaning up their act."

Western governments are keen on encouraging Ukraine on its course toward a functioning democracy, partly as a counterweight to the increasingly authoritarian regime in Russia. The EU upgraded Ukraine to "market economy" status at the end of last year, a bureaucratic distinction that ends "anti-dumping" protections, followed by the U.S. in February.

And Yushchenko's government has its sights firmly set on joining the EU as soon as possible (although possible membership of NATO is far more controversial); the European parliament is in the process of outlining concrete steps to allocate Ukraine "associate membership" of the EU by 2008 as a first step toward eventual accession.

FLOOD OF INVESTMENT

All the investment numbers went off the scale after the Orange Revolution, as it is this political resolve to create a recognizable system that makes Ukraine so appealing to western investors.

Ukraine attracted a record $7.5 billion in foreign direct investment (FDI) last year, according to the National Bank of Ukraine. This is just a little less than the $9 billion Ukraine attracted collectively over the preceding 14 years. That's a 340 percent year-on-year gain, equivalent to 9.2 percent of GDP, and a per capita FDI of $161, up by 344 percent year-on-year.

Natalie Jaresko
Horizon Capital

The same is true for portfolio investment. PFTS index passed its all time high of 450 in the middle of April, up from 345 on the last day of trading in 2005. However, the index only represents 10 stocks and if the top 100 companies are included, the index was up 74 percent last year.

Last year's good performance follows on from a 53 percent gain over 2005 and average daily volumes were smashed by the arrival of some $2.8 billion of almost exclusively foreign portfolio investment. The market did even better in 2004, rising an astonishing 204 percent in 2004, albeit on extremely thin volumes. Still,

Victor Yushchenko, President of Ukraine

AP Photo/Mykola Lazarenko, Pool

the Ukrainian market pales when set against that of Russia, the regional benchmark. Daily volumes on the PFTS are between $2 million and $17 million a day whereas Russia now averages $5 billion a day.

Ironically, all this enthusiasm comes just as Ukraine's economy is going through a bad patch.

The Orange Revolution dealt the economy a hefty blow by wrecking domestic business confidence. Year-on-year GDP growth slumped from a blistering 12 percent in 2004 to fall to just 2.4 percent by February 2005 (on an annualized basis). There are two economic drivers in Ukraine: government spending and the oligarchs. The latter universally froze investment plans as they waited to see what the government of Yushchenko would do.

Value Added Growth by Sector:
Outlook for industries affected by the gas price increase (%; y-o-y)

Sector	2M06	1Q06	1Q05
Processing Industries	(1.8%)	(0.8%)	7.8%
Extracting Industries	2.5%	3.4%	3.6%
Agriculture	4.4%	4.5%	5.1%
Utilities	9.0%	7.4%	3.2%
Construction	(0.2%)	5.0%	(5.9%)
Trade	1.6%	2.2%	3.1%
Transportation	5.9%	6.7%	6.9%
Net Taxes	1.0%	1.9%	5.8%
Real GDP growth	1.5%	2.4%	5.4%

Source: State Statistics Committee

"In 2003 and 2004, the economy was flying. GDP growth was 12 percent, industrial production growth was over 20 percent–and no one invested. Now GDP growth is 2 percent and industrial growth is negative and everyone is investing."
JOHN SUGGITT, CONCORDE CAPITAL

"In 2003 and 2004, the economy was flying. GDP growth was 12 percent, industrial production growth was over 20 percent–and no one invested. Now GDP growth is 2 percent and industrial growth is negative and everyone is investing," says John Suggitt, president of investment bank Concorde Capital. "Its like a high school dance with the girls on one side and the boys on the other. Both sides want to dance but they only get up the courage to ask three quarters of the way through the evening."

As the political mists clear, business has put up the shutters again and got back to work. GDP rose by 4 percent year-on-year this March with utilities, trade, transport and construction leading the way. However, the recovery will not be straightforward after Kyiv (Kiev) clashed with Moscow over gas prices in January and the Kremlin doubled the cost of Ukraine's major energy source. Economists have been revising their end of year expectations down. The IMF dropped its prediction precipitously in April from 5 percent to 2.3 percent by the end of this year because of the increased energy costs.

PRIVATIZATION AND BANKS

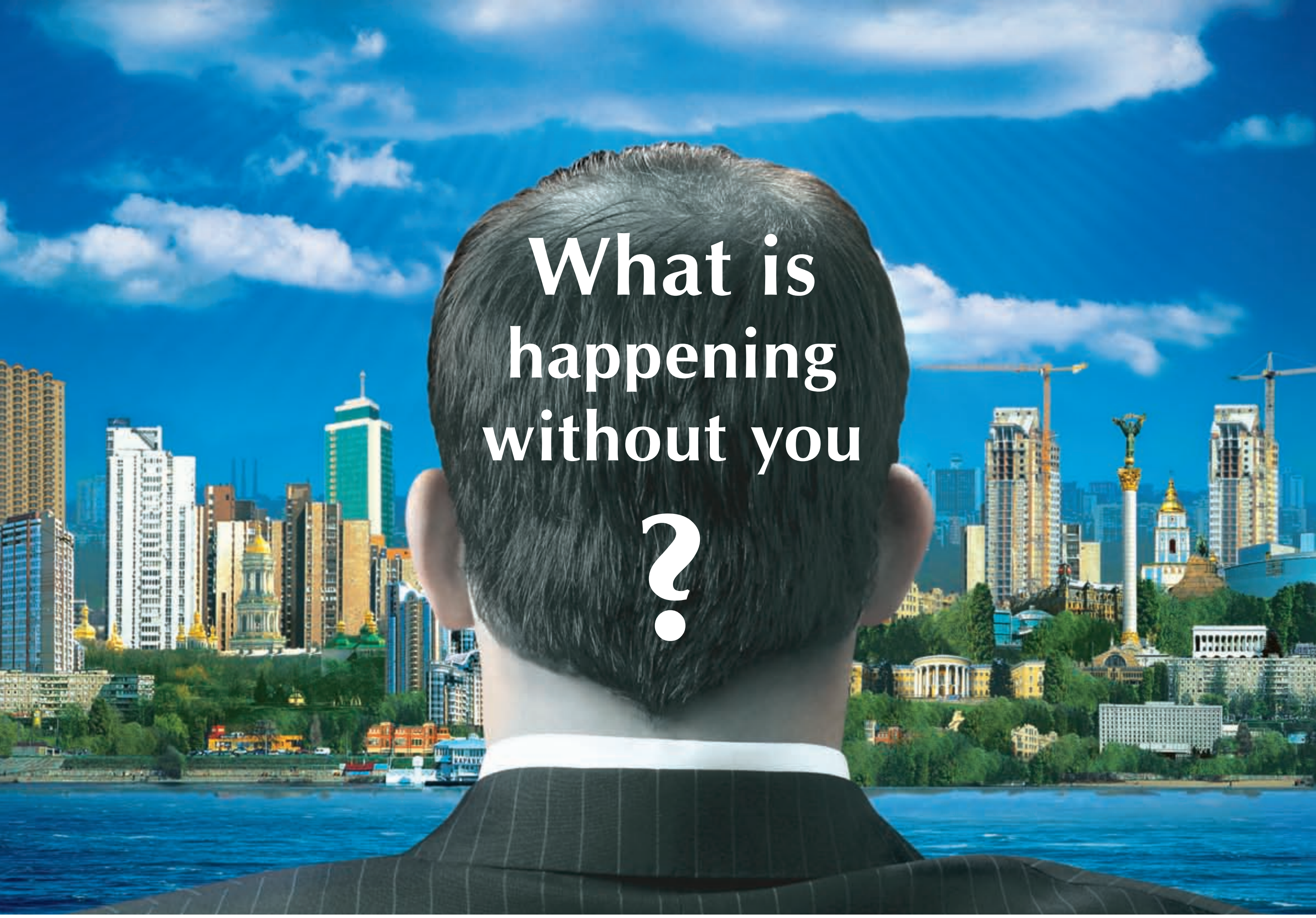
While the macroeconomic situation looks less than appetizing, investors are unflustered as the basic promise of long-term sustained growth remains in place.

A third engine has been added to the Ukraine economic motor in the last three years: soaring personal incomes. In February the State Statistics Committee reported real disposable income was up 23 percent year-on-year to $95 per month per person and personal consumption rose 29 percent to $10.4 billion in an $81 billion economy, easily outstripping GDP growth.

Banks are the first stop for investors hoping to tap this huge and growing pool of cash and Ukraine has seen a string of acquisitions over the last six months.

Austrian bank Raiffeisen Zentralbank Group got the ball rolling after it paid the unheard of sum of $1 billion for Ukraine's second largest bank Aval Bank at the end of last year. The French BNP Paribas and Italian Bank Intesa which picked up another two of top-five league banks–Ukrsibbank and Ukrsotsbank–soon followed Raiffeisen. In total, the value of foreign acquisition in the Ukrainian banking sector last year was close to $3 billion and several more deals are on the cards. Three of Ukraine's top five banks are now foreign-owned and foreign-owned bank assets have increased to about 25 percent of the total sector assets.

With a population of 48 million, Ukraine is the second largest country in Europe but is still badly under-banked. The foreigners are buying into what they hope will be massive growth. Mortgages have been around for two years, but volumes are small. Consumer lending took off last year and the car loan business has barely started. Yet these business lines are worth billions of dollars in the countries surrounding Ukraine.


What is
happening
without you
?

"It is an encouraging sign for foreign investors if the locals are reinvesting their profits into the domestic market. The sales will lead to a stronger banking sector that will underpin growth. Ukraine's great strength is that it isn't a resource-based economy and was already more diversified than Russia."

NATALIE JARESKO, HORIZON CAPITAL

Horizon's Jaresko says the bank sales will be a big boon for the country. The immediate advantage is a much stronger financial sector that can offer much more sophisticated products as well as tap western parents for cheaper long-term money. The indirect benefit is that the sellers are already ploughing the money back into the Ukrainian economy. Jaresko says her fund can already exit from an investment through a leveraged buyout, which wasn't the case a year ago.

"It is an encouraging sign for foreign investors if the locals are reinvesting their profits into the domestic market," says Jaresko. "And the sales will lead to a stronger banking sector that will underpin growth. Ukraine's great strength is that it isn't a resource-based economy and was already more diversified than Russia."

In many ways 2005 was ground zero for the Ukrainian economy as far as foreign investors are concerned. Under Kuchma, the game was all about being close to the government. Deals were done in backrooms and lubricated by the passage of brown envelopes. But since the Orange Revolution, the interests of Ukraine's oligarchs, foreign investors, the government and the people have all aligned.

OTHER INVESTMENT OPPORTUNITIES

"The mentality has changed," says HVB's Wreidt. "Big business in Ukraine has got the assets. They have got sizable profits, but most of it is offshore. What's new is that they realize they can make more money here in Ukraine if they bring this money home."

And there is plenty to invest into. Ukraine has yet to pass its privatization peak and scores of companies are expected to float on the domestic and international markets in the next 18 months.

The re-privatization of Ukraine's biggest steel mill Kryvorizhstal last year opened a new era for the state. The $4.8 billion that Indian industrialist Lakshmi Mittal paid for the mill was twice the government's asking price, but more importantly, the deal set auction transparency standards and created a valuation yardstick for future privatizations.

The government is also planning to re-privatize the Nikopol metallurgical plant as well as sell off a third of the national fixed line carrier Ukrtelecom this year. But both these sales have been bogged down in political wrangling and stalled until a new government is formed, which should happen by July. However, the privatization program is going ahead with 35 companies on the docket that should raise $400 million, according to the 2006 budget. As in other countries, selling off valuable state-owned assets is an intensely political process.

Foreign investors hoping to get some exposure to the Ukrainian story will have an easier time buying securities. Ukraine first came to international capital markets' attention in 2002 when the government issued its debut $500 million eurobond with a 27 percent yield.

"The bond was offering a tremendous return and was the top yielding bond in 2003 in the world. The issue was large enough to attract very large emerging market funds and it became the flavor of the month putting Ukraine on the map," says Dorian Foyil, president of Foyil Securities.

Gert Wriedt, HVB, Kiev

Last year the government started to actively issue government bonds, which proved to be popular with hedge funds and international institutional investors, although yields have fallen to 6 to 15 percent. There was also a flurry of corporate bonds and the appearance of the first municipal bonds last year, which make up the larger part of PFTS trading. Only 10 percent of equity trading takes place on the formal market. The rest is over the counter (OTC) deals in the form of GDRs and are typically settled offshore–a testimony to the rudimentary state of Ukraine's equity capital market infrastructure.

IPO BOOM

Investors and Ukrainian companies have overcome their first-dance butterflies and are queuing up for the party. The number of companies listed on the PFTS has almost doubled in the last decade to reach 260 by the end of 2005, with the market capitalization rising from $2 billion to $30 billion over the same period.

IPOs moved overseas for the first time in 2005 after XXI Century, a Ukrainian real estate company, completed a pioneering flotation on London's alternative investment market (AIM) in January raising $139 million for a 35.7 percent stake. Ukraine's second largest automobile producer LuAZ followed suit a week later, raising $26 million for a debut of 8 percent of the company.

"This is just the onset of the IPO boom Ukraine is about to experience," said Dragon Capital's Fiala, which managed the flotation. "There will be at least a dozen more IPOs by Ukrainian companies in 2006."

The ice has been broken and more companies are adding their names to the IPO list every month. Among the companies to recently announce IPOs plans are electronics retailer Foxtrot; Eurocar which assembles Skoda; Volkswagen and Audi cars; and the leading business group Industrial Union of Donbass.

"Step by step, businessmen are becoming more professional and they understand the market value of their companies.," says Foyil. ■

IPO OUTLOOK BY UKRAINIAN COMPANIES: 2006-2008

Company	Sector	Expected	Size Estimate
Mironovsky Khleboproduct	Food	2006	$200M
KP Media	Media, publishing	2H2006	
Furshet	Retail chain	2H2006…2007	
Kraz Industries	Machine building	4Q2006…2007	
Poltavsky GOK	Iron ore	2007	$150M
Stirol	Chemicals	2007/on hold	$100M
Galnaftogaz	Oil retail	2007	$100M
Image Holding	Alcoholic beverages	2007	
Soyuz-Victan	Alcoholic beverages	2H2007	
Velyka Kishenya	Retail Chain	2H2007	
SCM-Energy	Energy	2007	
Istil	Steel	2008	$120M
IUD	Steel	2008	$500M

Source: Companies, Concorde estimates

The Pitch

With its successful and established business model, introducing MTV to Ukraine promised to be relatively straightforward in an otherwise chaotic emerging market.

President Viktor Yuschenko, a former central banker committed to economic reform, had led his country in a democratic and peaceful triumph over an authoritarian regime in the widely lauded Orange Revolution. He then struggled to hold his own in a post-revolutionary fight with his former ally, the charismatic populist Yulia Tymoshenko whom he had sacked from his government during the summer of 2006.

When the Yuschenko and Tymoshenko factions failed to rebuild their former Orange alliance, Yuschenko established a coalition government with former rival Viktor Yanukovich and his Regions Party. Tymoshenko had overplayed her hand and remained in the opposition camp at Christmas 2006.

Under these circumstances, a bright young star at MTV headquarters was well suited to capture Ukraine's promising high-growth TV adspend. Gennadiy M. Borisov was Vice President of the Advanced Products Group at MTV International in New York.[6]

Borisov was born in Kiev, received his Bachelor of Science degree from Ukraine Technical State University and a Bachelor of Science from Thomas A. Edison College in the US. He was also fluent in Russian and his native Ukrainian and spoke thoroughly American English.

Borisov was well qualified as agent to develop MTV's Ukrainian licensee. It would be only the third instance in 25 years Viacom had licensed the MTV brand to a Viacom insider who was a national of the target country.

On 5 October 2005, Borisov appointed an advisor to assist in financing his undertaking.

The agreement was signed by Borisov's at his office at MTV's headquarters. Though he was in fact an employee, he signed the agreement as a director of a holding company he had previously established for the purpose of launching MTV Ukraine.

The agreement was later amended on 28 October 2005.

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[6] Borisov previously held positions as Senior Director of New Technologies at MTV International and Director of Media Products and Services at the MTVi Group working with divisions of MTV Networks worldwide. As a key member of the Business Development and Information Systems and Technology groups he was involved in day-to-day activities at MTVN (domestically and internationally), Viacom Digital Media, many of company-wide business and technology projects as well as strategic product and partner development. Over the years, he helped MTV Networks to negotiate and implement some of the largest content and technology driven deals, launch new ventures, achieve multimillion-dollar savings and bring new products to market. Prior to his establishing MTV Ukraine, he reported directly to the Senior Vice President of Interactive Services and Programming MTV Networks, the Chief Technology Officer of MTV International and the Senior Vice President of Strategy and Operations MTV Networks.

In order to preserve working capital for the new licensee, the amended agreement provided for a grant of shares to Borisov's advisor in lieu of a cash fee. The shares granted would be on terms *Pari passu*[7] with the first round participant.

While still an employee of MTV, Borisov was now actively seeking to raise $13 million for the launch of MTV Ukraine, a company in which he was a director and the controlling shareholder.

Nevertheless, during all his presentations to investors, whether at MTV headquarters, London, Kiev or elsewhere, he also presented himself as an MTV employee. His business cards and contact details in his presentations always referred recipients to his office at MTV's headquarters at 1515 Broadway in New York.

During several meetings with investor groups hosted at MTV headquarters, Borisov stated he intended to allocate the $13 million as follows:

Proposed Application of Proceeds	***Account***
MTV Europe Brand Fee	$361,500
MTV Europe License Reserve	$843,500
Other Licenses and Rights (Uplink, etc)	$502,000
Playout, Archive, Equipment and Service	$1,800,000
Programming (Dubbing, Local Prod and Online)	$2,464,000
Contract Research, People Meters, Media Planning	$291,000
Sales, General and Administrative Expense	$3,038,000
Working Capital Reserve	$3,000,000
Transaction Expenses	$700,000
Total	**$13,000,000**

The multi-hat situation embodied fundamentally conflicting roles for Borisov as employee, as director/principal for himself and as agent for his employer, MTV.

MTVNE condoned this situation and in fact encouraged its employees to participate directly in the ownership of licensee entities.

As long as the MTV employee holds, solely for "investment purposes", *not more than 3%* of any such entity, such a holding was acceptable to MTVNE.

Though a classic example of the principal-agent problem, MTVNE management actively supported Borisov while he wore three hats. His first hat was that of an employee and Vice President of MTV. His second hat was as the agent of MTVNE to develop the Ukrainian licensee. Borisov's third hat was that of a director and shareholder of the MTVNE licensee in Ukraine.

Unfortunately, Borisov controlled over 90% of the licensee *dba* MTV Ukraine through a company he established – with MTV's consent - in the US state of New Jersey.

[7] "Pari passu" means "of equal step" in Latin. In the present context, it means that the shares granted to MTV Ukraine's advisor have the same rights and privileges as the shares granted to the first round participant – the investor.

The pathfinder document "MTV Ukraine: Description of Participation" presented by Borisov to investors during meetings at MTV's headquarters and elsewhere states:

> "The Company's management team is lead by the Vice President of Advanced Products at MTV Networks in New York."

The first page of the MTV Ukraine pathfinder approved by Borisov is shown below.

MTV Ukraine: Description of Participation

Issuer: Accella Group Inc., a corporation registered in the state of New Jersey, USA ("Accella", "Issuer") and controlled by Gennadiy M. Borisov, Vice President, Advanced Products Group at MTV Networks in New York.

The Issuer and its subsidiaries were established to explore the opportunity and extend under license MTV Networks' iconic portfolio of TV, mobile and broadband content into the Ukraine (pop: c. 48 million), the last European market to be served by MTV Networks.

Accella owns 92.5% of OOO Action Media Group, a company registered in Ukraine ("AMG"). AMG in turn owns 100% of OOO MRIYA TV, a media and broadcasting company registered in Ukraine ("MRIYA").

Accella, AMG and MRIYA are together referred to as the "Company".

The Business: The Company, to be *dba* "MTV Ukraine", will own, operate and manage advertiser supported multi-platform content delivery services and systems under license by MTV Networks.

Licensee: MRIYA. This is only the third time in 25 years Viacom has licensed the MTV brand to a Viacom insider who is a national of the target country.

Licensor: MTV Europe, a division of MTVN International, itself a unit of MTV Networks ("MTVN"). MTVN owns and operates advertiser-supported basic cable television program services in the United States and internationally.

MTVN is a unit of US$50 billion (market cap) Viacom International Inc. (NYSE: VIA: VIA.B), one of the world's leading creators of programming and content across all media platforms.

MTVN, with more than 100 channels worldwide, owns and operates the following television programming services: MTV: Music Television, MTV2, VH1, mtvU, Nickelodeon, Nick at Nite, Comedy Central, TV Land, Spike TV, CMT, Noggin, LOGO, MTVN International and The Digital Suite from MTV Networks, a package of 13 digital services, all of these networks are trademarks of MTV Networks.

The pathfinder identified the issuer as being controlled by an MTV employee:

> "Accella Group Inc., a corporation registered in the state of New Jersey, USA ("Accella", "Issuer") and controlled by Gennadiy M. Borisov, Vice President, Advanced Products Group at MTV Networks in New York. Borisov is President, founder and 92.5% shareholder of Issuer".

The pathfinder further stated that:

> "Accella owns 92.5% of OOO Action Media Group, a company registered in Ukraine ("AMG"). AMG in turn owns 100% of OOO MRIYA TV, a media and broadcasting company registered in Ukraine ("MRIYA")."

It was thus with MTV's consent, and while still their employee, that Borisov established several Ukrainian companies, *dba* MTV Ukraine, to own, operate and manage advertiser supported multi-platform content delivery services and systems under a ten year license he obtained from his employer, MTV Networks Europe.

That license, known as the "Trademark and Television Programming Agreement for MTV Ukraine", was formally executed on 13 January 2006 by Borisov on behalf of MRIYA TV and AMG, its Borisov-controlled guarantor.

Borisov also persuaded the National Committee for Radio and Television Broadcasting of Ukraine to issue a ten (10) years broadcasting license to MRIYA TV *dba* MTV Ukraine on 18 January 2006. The license had to be activated within twelve months or it was void.

Like Starbuck's, MacDonald's and any other established franchise business, MTV Ukraine owner/managers would simply apply the proven MTV brand to a traditional advertising model for cable television and an evolving model for mobile content services.

The success of the MTV franchise would ultimately depend on the development of (i) Ukraine's advertising market; (ii) the share of TV and cable advertising within the total advertising market; and (iii) the Company's share of total local TV and cable adspend.

These Ukrainian market risks had been successfully addressed by another pioneering media company, Central European Media Enterprises, founded by Ron Lauder. In fact, CME's Ukrainian operation was among its most profitable – it had captured almost one-third of Ukraine's television adspend.

MTV Ukraine's original business model was prepared by MTV staff and by Borisov during the fall of 2005. The resulting proforma business model would ultimately find itself attached as an exhibit to the licensing agreement between MTVNE and Borisov's licensee entity MRIYA TV.

The Excel spreadsheets on the following pages were presented to several investors, including a Mr. Everett Slim[8], in October 2005.

Like other investors, Mr. Slim was reassured by the simple fact that the presentation and the financial and operating plans were produced by MTV executives, badged with the MTV logo and presented by MTV's impressive Vice President Borisov.

Nevertheless, Slim and his advisors began their customary due diligence.

The first proforma financial plan for MTV Ukraine, shown on the following pages, was presented to several investors by Borisov while he was employed by MTV through 2005.

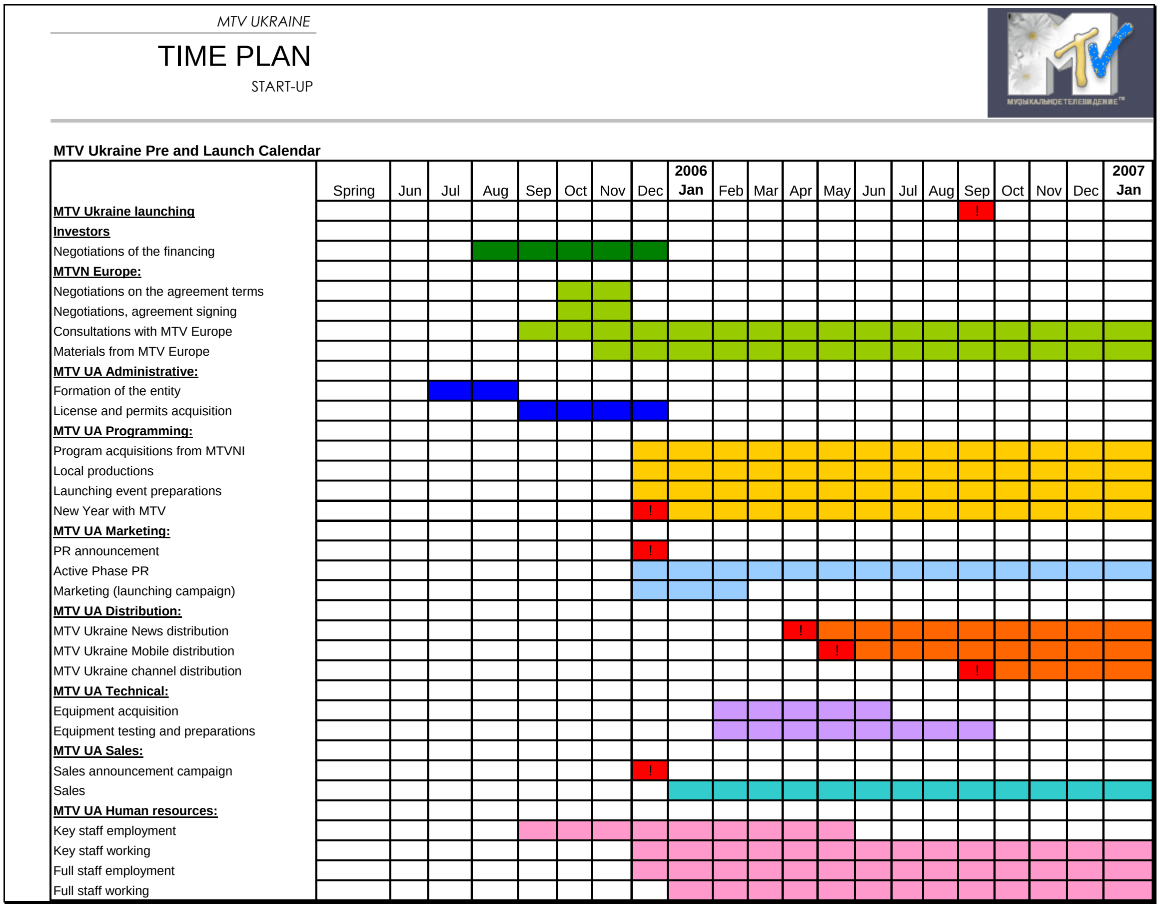
During his presentations to Slim, Borisov emphasized that the license agreement with MTV would be completed soon.

But Borisov continued to be unwilling, or unable, to present the latest draft of MTV's license agreement to Slim or Slim's advisors.

Borisov did note however, that the most recent draft license would require an "Initial Marks and Programming Fee" of US$1,000,000 be paid by his entity MRIYA TV (the licensee) to MTVNE as licensor upon execution of the license agreement.

The original project schedule Borisov presented Slim and investors contemplated "Formation of the Entity" MRIYA TV and completing his licensing arrangements by 31 December 2005.

[8] "Everett Slim" is a pseudonym. He's also simply referred to as "the investor".



With time was running short, Borisov urged Slim to consider an advance on the licensing fee due MTV as he anticipated completing that agreement in early December.

Borisov stated that he could lose this deal if he couldn't assure MTV that the "money's in the bank." Reassured by MTV's clear endorsement of the project, Slim assured Borisov that he would make such an advance as a down-payment on the licensing fee.

Having obtained the requested advance from Slim, Borisov and Dean Possenniskie, MTV's Vice President and General Manager for Emerging Markets, announced the launch of the new network at a media event in Kiev on 10 February 2006.

But at some point in the six weeks between 31 December 2005 and MTV's launch announcement, Borisov took it upon himself to revise downward the financial and operating proforma for MTV Ukraine.

By January 2006, it became apparent to Slim and his financial advisors that Borisov's changes to the previously agreed proforma business plan for MTV Ukraine had dramatically diminished the enterprise value previously demonstrated by Borisov in reliance on MTV's "house" franchise model.

The Business: A License to Bill

MTV regards itself as a "content power play". This makes essential a license agreement which reflects the competing claims of content rights holders, digital media distributors and the demands of advertisers and content consumers.

A savvy private equity investor, Mr. Slim had appointed a leading investment bank to conduct due diligence on MTV Ukraine. As an established "franchise" business the due diligence focused on management, the business plan and the content licensing agreement.

The operative MTV license agreement was negotiated between Borisov, while he was an employee of MTV, and an affiliate of his employer as represented by Dean Possenniskie.

The content license was executed by the parties on 13 January 2006.

Yet for some unexplained reason, immediately after signing the license agreement, Borisov revised the "Agreed Business Plan" which was attached as Schedule 5 to the license agreement.

The result was a substantial reduction in value.

As a practical matter, the diminished business could no longer support the large "up front" disbursement of cash required by the license agreement.

Yet in spite of the reduced enterprise value, the licensing fee Borisov agreed to pay MTVNE while he was an employee remained unchanged.

Dean Possenniskie was clearly pleased and treated the MTV Ukraine license fee as a receivable in his budget for 2006. The license agreement provided, in part:

2.9 As part consideration of the rights and licences granted to the Licensee hereunder, Licensee shall pay to MTVNE the Initial Marks and Programming Fee in two equal instalments. Upon either the Commencement Date or the 30th March 2006, whichever is the later date, the Licensee shall immediately pay to MTVNE the first instalment of the Initial Marks and Programming Fee in the sum of five hundred thousand United States dollars (US$500,000.00.) and thereafter shall pay the second instalment of five hundred thousand United States dollars (US$500,000.00) on or before the 30th June 2006. This sum shall be non-refundable notwithstanding any failure to comply with any of the remaining conditions precedent set out above and/or notwithstanding the expiration or early termination of this Agreement, howsoever terminated.

Whether or not the business plan could support the originally budgeted $1 million license fee remained to be determined as the enterprise value had diminished dramatically.

In any event, Slim would remain supportive of the funding required to expand MTV's global footprint to Ukraine. However, he would naturally expect a larger share allocation against a diminished pre-money valuation. Whether or not this was acceptable to Borisov remained to be seen.

DATED THE 13th DAY OF JANUARY 2006

MTV NETWORKS EUROPE

AND

TRC MRIYA TV LLC

AND

ACTION MEDIA GROUP OOO

TRADE MARK AND TELEVISION PROGRAMMING AGREEMENT FOR MTV UKRAINE

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TRADE MARK LICENCE AND PROGRAMMING AGREEMENT

Agreement with Commencement date the 13th day of January 2006

BETWEEN

(1) **MTV Networks Europe**, a US partnership between MTV Networks Europe Inc. and Viacom Networks Europe Inc. constituted under the laws of the State of Delaware, USA, whose principal place of business is UK House, 180 Oxford Street, London W1D 1DS (**'MTVNE'**); and

(2) **TELERADIOKOMPANIYA MRIYA-TV, LLC.,** a company registered under the laws of the Ukraine with registered number 33790240 and registered office at 29 E Vorovskogo Str, Office #14, Kiev 01054, Ukraine (**"Licensee"**) and

(3) **ACTION MEDIA GROUP OOO,** a company registered under the law of the Ukraine with registered number 33749873 and registered office at 11-B Marshala Rybalka Str, Kiev 04116, Ukraine (**"Guarantor"**).

WHEREAS

(A) MTVNE and its Affiliate(s) (as defined below) own and operate music television channels around the world known as 'MTV: MUSIC TELEVISION', including MTVNE's MTV European service.

(B) Licensee wishes to produce, operate and transmit and/or procure transmission, via digital and/or analogue cable or satellite television, a 24 hours per day, 7 days per week, new music television channel in the Territory, to be called MTV Ukraine, predominantly in the relevant Authorised Language targeted specifically at young people in the Territory. Licensee is a subsidiary of the Guarantor, the Guarantor owning one hundred per cent (100 %) of the share capital in the Licensee as at the date of this Agreement.

(C) MTVNE and/or its Affiliate(s) controls the rights in the Territory to certain music-related and other programming suitable for use as part of Licensee's proposed new channel, and to certain trade marks, service marks and copyrights.

(D) Subject to the Conditions Precedent set out at Clause 2 below and in accordance with the terms and conditions of this Agreement, the parties wish to set out their agreement hereunder for MTVNE to provide the Licensee with trade marks, know how and certain related services in accordance with the terms and conditions of this Agreement solely to enable the Licensee to create, produce, operate, transmit and distribute the Channel via the Licensed Media in the Territory using the trade marks hereinafter described, and to make use of such trade marks, know how and any related services and the MTV Website Content by means of Online or Internet Based Delivery as defined and more fully described in this Agreement. MTVNE is willing to enter into this Agreement only if all of the Licensee's obligations herein are guaranteed by the Guarantor. Accordingly this Agreement hereby reflects the parties' agreement with regard to:

(i) the conditions precedent set out in Clause 3, which include, inter alia, certain agreements concerning technical and operational services and distribution agreement(s) required to be executed by the Licensee;

(ii) the licensing by MTVNE to Licensee of certain television programming rights and certain trade marks, service marks and copyrights for use by the Licensee in its proposed new channel and as expressly permitted herein;

(iii) the licensing by MTVNE to Licensee of certain website content for use by the Licensee in operating the Website registered in the name of MTVNE or one of its Affiliates;

(iii) the parties arrangements in relation to certain advertising and distribution revenues derived from the proposed new channel and Website; and

(iv) the Guaranty from the Guarantor to MTVNE and its successors and assigns made from the Commencement Date in accordance with Clause 41 below.

NOW, THEREFORE, in consideration of the premises and other covenants and conditions contained herein, the parties hereto agree as follows **THE PARTIES AGREE** as follows:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires, the following terms shall have the following meanings:

"Advertising" means Pan Euro Advertising and Local Advertising;

Affiliate(s)' means in relation to a person, another person who controls that first-named person, or an entity which is either controlled by that first-named person or by a person who controls that first-named person, except that 'Affiliate(s)' of MTVNE shall only include entities controlled by New Viacom Corp. (a Delaware Company to be renamed Viacom Inc.). For the purposes of this definition control means (a) ownership of such part of the issued share capital or such other interest in the relevant entity as gives that person or organisation majority voting rights in respect of such entity, or (b) the ability to secure that the affairs of the relevant entity are conducted in accordance with that person's wishes (due to the holding of shares or the possession of voting power or any other power);

"Agreement" means this agreement, as executed in the form of a deed by the Licensee and the Guarantor, as amended, supplemented or otherwise modified from time to time and shall include the Transmission and Technical Services Schedule;

"Ancillary Activities" means all commercial activities undertaken by the Licensee directly or through a third party acting on behalf of the Licensee relating to the Channel and/or Website that are beyond the scope of rights expressly granted under this Agreement, including but not limited to, any sales of and revenue from CD sales, merchandising and Channel/Website branded events in the Territory, but shall not include, for the avoidance of any doubt SMS or other interactive applications, which will be subject to separate agreement;

"Ancillary Revenue" means all revenue invoiced by the Licensee (excluding Channel Distribution Revenue, Licensee Channel Advertising Revenue or Licensee Website Advertising Revenue) after deduction of all taxes and other fiscal duties that the Licensee is obliged to charge, which is derived directly or indirectly from the transmission, distribution and operation of the Channel via the Licensed Media in the Territory or from any Ancillary Activities that may be consented to and agreed in writing by MTVNE pursuant to this Agreement. This shall include, without limitation, any revenue from CD sales, merchandising and Channel-branded events;

2 CONDITIONS PRECEDENT AND INITIAL MARKS AND PROGRAMMING FEE

2.1 Licensee's compliance with its obligation under Clause 2.2.1, 2.4 and 2.9 shall be conditions precedent to:

2.1.1 the rights and licences granted to Licensee by MTVNE in this Agreement taking effect; and

2.1.2 the fulfilment of any obligations of MTVNE as set out in this Agreement

and any failure by the Licensee to comply with any of the Conditions Precedent or failure to maintain the other obligations, as set out hereunder, shall give rise to the right of termination of this Agreement by MTVNE in accordance with Clause 37 below.

2.2 In consideration for the rights granted to Licensee in this Agreement Licensee shall

2.2.1 obtain prior to the Launch Date, at its cost all necessary broadcast licenses and other consents necessary for the production, delivery and distribution of the Channel in the Territory; and

2.2.2 shall maintain the same throughout the Term.

2.3. In consideration of the rights and licences granted to Licensee hereunder, Licensee shall be responsible at its cost for the playout, transmission, encryption and, where relevant, uplink of the Channel and full service maintenance of all such elements for the Channel and for customer care and shall comply with the Transmission and Technical Services Schedule. Licensee shall co-operate with MTVNE in registering the Website in MTVNE or MTVNE's affiliates name in accordance with Clause 13.11 (if not already so registered) and thereafter Licensee shall maintain and operate the Website in accordance with this Agreement.

2.4. At least two months in advance of the Launch Date the parties shall finalise the specifications of the Transmission and Technical Services Schedule, which Licensee hereby agrees shall be in accordance with Clause 2.5 and 2.6 below (for the avoidance of any doubt, no further consideration will be due from MTVNE to Licensee under the The Transmission and Technical Services Schedule). The Transmission and Technical Services Schedule is incorporated into and subject to the terms and conditions of this Agreement and shall be annexed as Schedule 6. It shall fully particularise the technical specifications and functionality of the technical services and the management and operational and maintenance services to be provided by Licensee. MTVNE shall co-operate with Licensee in all good faith to agree such documentation as may be required to that end.

2.5 The Transmission and Technical Services Schedule shall fully demonstrate the Licensee's ability to broadcast and/or transmit, operate, manage and maintain the Channel and the Website during the Term and the Licensee's ability to fulfill all of its obligations under this Agreement (including any reporting obligations) to a level of the highest quality as required by MTVNE.

2.6 Accordingly, the Transmission and Technical Services Schedule shall provide for all technical services to be provided and/or procured by Licensee for the Term, setting out full roles and responsibilities and annual project plans particularised for both the Channel and the Website, which shall include without limitation the following elements (in alphabetical order):

2.6.1 Accounting and reporting systems, including for all advertising and distribution activities;

2.7 Licensee shall be entitled to subcontract the whole or part of the obligations contained in

Clause 2.6 and in the Transmission and Technical Services Schedule with the prior written consent of MTVNE, which consent shall not be unreasonably withheld or delayed, and provided that Licensee shall remain liable always for all obligations under this Agreement and the acts and omissions of any sub-contractor Licensee may engage.

2.8 Prior to the Launch Date, Licensee shall use best endeavours to ensure that all operators of Licensed Media to which MTV European may already be supplied enter into a distribution agreement with Licensee to distribute the Channel in place of MTV European with effect from the Launch Date. The parties shall work in all good faith to achieve a smooth transition from MTV European to MTV Ukraine as further detailed at Clause 19.4 below.

2.9 As part consideration of the rights and licences granted to the Licensee hereunder, Licensee shall pay to MTVNE the Initial Marks and Programming Fee in two equal instalments. Upon either the Commencement Date or the 30th March 2006, whichever is the later date, the Licensee shall immediately pay to MTVNE the first instalment of the Initial Marks and Programming Fee in the sum of five hundred thousand United States dollars (US$500,000.00.) and thereafter shall pay the second instalment of five hundred thousand United States dollars (US$500,000.00) on or before the 30th June 2006. This sum shall be non-refundable notwithstanding any failure to comply with any of the remaining conditions precedent set out above and/or notwithstanding the expiration or early termination of this Agreement, howsoever terminated.

SECTION ONE: PRODUCTION, PROGRAMMING AND TRADE MARK LICENCE

3 PRODUCTION AND OPERATION OF THE CHANNEL AND WEBSITE

3.1 In consideration of the rights and license granted to Licensee, Licensee shall, at it own cost and to a first class standard, operate and produce the Channel using Original Programming and MTV Programming, and shall design, construct, host, maintain and operate the Website using Original Website Content and MTV Website Content, subject to the provisions of this Agreement. The Licensee's responsibilities shall include, without limitation, all relevant programming, dubbing, subtitling, promotion, transmission, marketing and P.R., provision of sufficient personnel, resources, facilities and administrative support in connection therewith.

3.2 For the avoidance of doubt, all normal business overheads incurred in the production of the Channel and the design, construction, hosting and maintenance Website including, without limitation, premises, utilities, and staff salaries and benefits, shall be the sole responsibility of Licensee.

4 TELEVISION PROGRAMMING LICENCE AND WEBSITE CONTENT LICENCE

4.1 Subject to the terms and conditions of this Agreement and compliance by Licensee of all its obligations in this Agreement, MTVNE grants to Licensee from the Launch Date for the Term and within the Territory:

4.1.1 the sole right to use the MTV Programming (including the Copyrights) in the production of the Channel, and the transmission of the Channel for distribution in the Territory in accordance with the terms of this Agreement; and

4.1.2 the sole right to use the MTV Website Content in the design, construction, hosting, maintenance and operation of the Website.

6 MARKS AND PROGRAMMING LICENCE FEE

6.1 In consideration of the rights and licences granted to the Licensee at Clause 4.1 and Clause

5.1 above, Licensee shall pay to MTVNE the Marks and Programming Licence Fee as a guaranteed sum during the Term as follows:

6.1.1 From the Commencement Date to the 31st December 2006 in the sum of one million United States Dollars (US$1,000,000.00) in four equal instalments of two hundred and fifty thousand dollars (US$250,000.00) payable on or before the following dates:

6.1.1.1 30th March 2006;

6.1.1.2 30th June 2006;

6.1.1.3 30th September 2006; and

6.1.1.4 1st December 2006;

6.1.2 In the second Year of this Agreement (each Year for the purposes of this Clause 6.1.2-6.1.10 being calculated as from the 1st January) in the sum of eight hundred and forty thousand United States dollars (US$840,000.00) in four instalments of two hundred and ten thousand dollars (US$210,000.00) payable quarterly in advance;

6.1.3 In the third Year of this agreement in the sum of one million and eight thousand United States dollars (US$1,008,000.00) in four instalments of two hundred and fifty two thousand dollars (US$252,000.00) payable quarterly in advance;

6.1.4 In the fourth Year of this Agreement in the sum of one million, two hundred and nine thousand and six hundred United States dollars (US$1,209,600.00) in four instalments of three hundred and two thousand and four hundred dollars (US$302,400.00) payable quarterly in advance;

6.1.5 In the fifth Year of this Agreement in the sum of one million, four hundred and fifty one thousand and five hundred and twenty United States dollars (US$1,451,520.00) in four instalments of three hundred and sixty two thousand and eight hundred and eighty dollars (US$362,880.00) payable quarterly in advance;

and, in the event that the Term is extended under Clause 42.7:

6.1.6 In the sixth Year of this Agreement in the sum of one million, seven hundred and forty one thousand and eight hundred and twenty four United States dollars (US$1,741,824.00) in four instalments of four hundred and thirty five thousand and four hundred and fifty six dollars (US$435,456.00) payable quarterly in advance;

6.1.7 In the seventh Year of this Agreement in the sum of two million and ninety thousand, one hundred and eighty nine United States dollars (US$2,090,189.00) in four instalments of five hundred and twenty two thousand, five hundred and forty seven dollars (US$522,547.00) payable quarterly in advance;

6.1.8 In the eighth Year of this Agreement in the sum of two million, five hundred and eight thousand and two hundred and twenty seven United States dollars (US$2,508,227.00) in four instalments of six hundred and twenty seven thousand and fifty seven dollars (US$627,057.00) payable quarterly in advance;

32 LAUNCH PARTY

32.1 Licensee shall, at its own cost and in consultation with MTVNE, organise a party, to be held in the Territory on the Launch Date, to celebrate the launch of the Channel and the Website ("**Launch Party**"), such cost not to include the travel and associated costs of MTVNE staff attending the Launch Party.

32.2 Licensee shall, at its own cost, arrange for an international recording artist(s) to attend and perform at the Launch Party and comply with its obligations under Clause 17 (Rights Clearances). MTVNE shall provide Licensee with all reasonable assistance and its expertise in arranging the attendance and performance of such international recording artist(s).

37 TERMINATION

37.1 Either party (the "**Initiating Party**") may terminate this Agreement with immediate effect by notice to the other party (the "**Breaching Party**") on or at any time after the occurrence of any of the following events in relation to the Breaching Party**:**

37.1.1 the Breaching Party being in material breach of any provision under this Agreement and, if the breach is capable of remedy, failing to remedy the breach within thirty (30) days starting on the day after receipt of notice from the Initiating Party giving particulars of the breach and requiring the Breaching Party to remedy the breach;

37.1.2 the Breaching Party passing a resolution for its winding-up or a court of competent jurisdiction making an order for the Breaching Party's winding up or dissolution;

37.1.3 the making of an administration order in relation to the Breaching Party or the appointment of a receiver over, or the taking possession or sale by an encumbrancer taking possession of or selling an asset of the Breaching Party;

37.1.4 the Breaching Party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.

37.2 If in any instance Licensee has failed to obtain approval under Clause 16.2 for any use of any of the Marks, but such unauthorised use has ceased and is therefore incapable cure, MTVNE may send Licensee a written warning notice in respect of such use, but such use shall not be considered as a material breach for the purposes of Clause 37.1 above. However, if, during any period of ninety (90) days during the Term, MTVNE has sent Licensee three such notices, and within that period or within the subsequent period of ninety (90) days (commencing ninety (90) days after the first instance of unauthorised use of any of the Marks by Licensee in respect of which MTVNE has sent Licensee a written warning notice), there occurs a further instance of failure to obtain approval, MTVNE shall be entitled either to send a further warning notice or to give Licensee written notice terminating this Agreement forthwith.

37.3 In addition, MTVNE shall have the right to terminate this Agreement forthwith by giving Licensee written notice thereof if any of the following events occur:

37.3.1 the Licensee fails to comply with any of the Conditions Precedent in accordance with Clause 3;

37.3.2 the Launch Date has not occurred by 1st December 2006 (or such later date as the parties may agree in writing);

37.3.3 Licensee changes its organisation or methods of business in such a way as in the opinion of MTVNE to be able less effectively to carry out its duties under this agreement; or

37.3.4 Licensee does anything which significantly diminishes, denigrates or otherwise adversely affects the value of and/or goodwill associated with the Marks and breaches this agreement in connection with trade mark quality assurance requirements.

there is a change of effective control of Licensee or Licensee's direct or ultimate parent company.

37.4 Any act done or omitted to be done by any Affiliate(s) of Licensee, which would be a breach of this Agreement if done by Licensee, is deemed to be a breach of this Agreement by Licensee.

37.5 Termination or expiry of this Agreement shall be without prejudice to the rights and remedies of either party accrued prior to the effective date of such termination or expiry.

39 NOTICES

39.1 Except as otherwise expressly provided herein, notices and other communications served under this Agreement shall be in writing and shall be delivered by hand or overnight courier service, posted by registered service or sent by facsimile transmission, as follows -

If to MTVNE:

MTV Networks Europe
180 Oxford Street
London W1D 1DS

Attention: Dean Possenniskie, Vice President, General Manager – Emerging Markets
Facsimile: +44 20 7478 5909

If to Licensee or to Guarantor:

29 E Vorovskogo Str, Office #14,
Kiev 01054, Ukraine

Attention: Gennadiy M. Borisov, Managing Director
Facsimile: +1 212-404-5666

or to such other address, facsimile number, or attention of such other person as the relevant party hereto shall advise the other party in writing from time to time.

42 OPTION TO PURCHASE EQUITY OR OPTION TO RENEW CONTRACT

42.1 Subject to any early termination of this Agreement and Clause 42.7 below, at the date twelve (12) months prior to the expiration of Term ("Review Date"), MTVNE shall have the right to require Licensee to sell to MTV up to fifty per cent (50%) of the issued share capital of Licensee ("Equity") with effect from the expiry of the Term, at a value to be determined according to Clause 42.3 below ("Option").

42.2 If MTV wishes to exercise the Option, it shall notify Licensee in writing on or prior to the Review Date, of the amount of Equity it wishes to acquire. Thereafter, the parties shall proceed diligently to effect the transfer of Equity to MTV as described in this Agreement.

42.3 The price for transfer of the Equity shall be determined as follows:

42.3.1 As may be agreed between the parties within 14 days of the date of the notice under Clause 42.2.

42.3.2 If the parties do not agree a price under Clause 42.3.1, MTV and Licensee shall each, at its own cost, appoint a firm of independent, certified accountants, to conduct a valuation of the Equity fourteen (14) days form the date of the Review Date, in accordance with accepted accounting principle in the Territory, consistently applied ("Initial Valuations").

42.3.2 If the higher of the Initial Valuations is within ten percent (10%) of the lower of the Initial Valuations, then the value of the Equity for the purposes of this Clause 42.3 shall be the average of the Initial Valuations.

42.3.3 If the higher of the Initial Valuations exceeds the lower of the Initial Valuations by more than ten percent (10%), then the parties shall, at their joint cost, jointly appoint a firm of independent accountants, certified in the Territory, to conduct a further valuation of the Equity at the Review Date, in accordance with accepted accounting principles in the Territory, consistently applied, which accountants shall have no connection with either MTV or either of the Licensee (and in default of agreement, such firm of accountants shall be appointed by the President for the time being of the Institute of Chartered Accountants or equivalent body in the Territory) ("Further Valuation"). In such circumstances, the value of the Equity for the purposes of this Clause 42.3.3 shall be the average between the Further Valuation and the Initial Valuation that is closest in value to the Further Valuation.

42.4 The valuations described in Clause 42.3 above, shall be conducted on the basis that the Equity is part only of the entire issued share capital of Licensee, and shall not be calculated as a pro rata proportion of any valuation of the entire issued share capital of Licensee.

42.4 The parties shall execute a shareholders' agreement, the terms of which agreement shall be discussed between the parties in all good faith and the agreement from both parties shall not be unreasonably withheld, conditioned or delayed.

42.5 The parties agree to execute all such documents (including, without limitation, stock transfer forms or other instruments to transfer the Equity from Licensee to MTV and complete such documentation as may be required before a notary) and do all such things as may be necessary to give effect to this Agreement.

42.6 Unless otherwise stated, each party shall bear its own costs in connection with the transfer of the Equity hereunder.

42.7 Alternatively, (subject to any earlier termination of this Agreement) upon the Review Date, MTVNE shall review the financial performance of the Channel between the Launch Date and the Review Date compared to the Business Plan contained in Schedule 5 hereto. Provided that the Gross Licensee Revenue forecast as presented in the Business Plan has been achieved by no less than eighty percent (80 %), and there are no outstanding payments due to MTVNE under this Agreement, the Agreement shall be automatically extended for another five (5) Year period, subject to the same terms and conditions of this Agreement. Upon expiry of the Term, as extended under this Clause 42.7, any further extensions shall be subject to agreement between the parties negotiating in all good faith and there shall be no obligation upon MTVNE to enter into any extension to the Term or to enter into any new agreement with the Licensee to replace this Agreement.

42.8 In the event that the Business Plan Gross Licensee Revenue Forecast has not been achieved by at least eighty per cent (80)%, the parties shall enter into negotiations in all good faith for any extension to this Agreement and any new terms and conditions that may be applicable. In this instance, there shall be no obligation upon MTVNE to enter into any extension to the Term or to enter into any new agreement with the Licensee to replace this Agreement.

SCHEDULE 5

Agreed Business Plan As Attached

"MTV Ukraine BP -
20060113 mtv FINAL

SCHEDULE 6

The Transmission and Technical Services Schedule

SCHEDULE 7

MTV Ukraine ORGANISATION CHARTS

CHART A **Operations And Productions**
CHART B **Finance, Marketing, Sales, Air Time Planning And Business And Legal**

"20060110 Org Chart - Ops Prod (Scl

"20060111 Org Chart - Commercial (:

SCHEDULE 8

AGREEMENT FOR PROVISION OF ADVERTISING AND MARKETING SERVICES BY LICENSEE

(EMMP)

"20060113 EMMP
Provision of Advertisi

The Switch

Shortly after negotiating the licensing agreement as an MTV employee, and as agent for his holding company, Borisov resigned from MTV.

He simultaneously executed the licensing agreement on behalf of the licensee he owned, MRIYA TV. He also executed the licensing agreement on behalf of MRIYA's guarantor. With the consent of his former employer MTVNE, Borisov next revised the proforma financial and operating projections.

Though no longer an MTV employee, Borisov was still struggling to serve two masters – himself as manager and his holding company as owner of MTV's Ukrainian licensee.

The revised proforma was prepared by Borisov as the General Director of MRIYA TV, MTV's Ukrainian licensee. His deliberations over the revised plan were naturally eased by the fact that he was formerly an employee of MTV and that the negotiation was with his former colleague, Dean Possenniskie, Vice President of MTVNE Emerging Markets.

Borisov also revised the project timeline, but neglected to inform his investor, much less his advisor. The launch itself was now to occur one month earlier, in August rather than September 2006. But MTV's big PR announcement would now occur two months later, in February 2006 rather than December 2005.

The revisions Borisov made resulted in a substantial reduction in the enterprise value which had been previously agreed by Borisov and his investor. Yet there was no known change to the commercial or regulatory environment and no explanation offered for the revised plan.

Perhaps Borisov oversold the commercial prospects to Slim and to his former bosses at MTV. Perhaps Borisov was dicing the entire enterprise to renegotiate the licensing fee with MTVNE's Dean Possenniskie. Perhaps he was caught up in post-revolution euphoria.

Whatever he was doing, the reduction in enterprise value would be severely dilutive to Borisov and had little if anything to do with market fundamentals or events in Ukraine.

Meanwhile, as his advisors continued their due diligence, Slim became increasingly uncomfortable with the $30 million implied pre-money value of the license he had agreed to underwrite.

His anxiety increased when he learned that MTV would announce the launch of MTV Ukraine at a press conference in Kiev on 10 February 2006. Without his investment, the network couldn't launch. The negotiations for value and funding were unfinished.

Slim had previously urged Borisov and MTV's Dean Possenniskie to postpone the press announcement until everything had been finalized, but the MTV publicity machine was in full gear.

According to the bank advising MTV Ukraine's investor, the revised business model was unbankable given reasonable metrics and assumptions about the growth and pricing of Ukraine's media market.

The licensing fee would have to be reduced along with the diminished enterprise value.

The proforma enterprise value was about 30-40% lower than agreed by Slim in December.

The licensing terms negotiated by Borisov, as MTV employee and licensee, and his then-fellow MTV employee Dean Possenniskie, representing the licensor, made the entire business untenable.

Yet the licensing fee provided to MTVNE had not been reduced in the new business plan.

No explanation was offered by Borisov, Possenniskie or anyone else at MTVNE.

The business plan was no mere piece of paper.

The financial and operating proforma attached as Schedule 5 to the Trade Mark and Television Programming Agreement for MTV Ukraine (see Case study Section IV: "The Pitch") was a material contractual obligation of the licensee.

Unfortunately, neither Borisov nor Possenniskie chose to respond to the drumbeats from Slim and his advisors.

Now that Borisov and MTVNE had Slim's million, he was being ignored, or worse.

Under the circumstances, on the day of the press conference, Slim notified Possenniskie's boss, Simon Guild, the CEO of MTV Networks Europe, of his objections to the launch announcement.

-----Original Message-----
From: Slim, E
Sent: 10 February 2006 9:16
To: 'guild.simon@mtvne.com'
Subject:

Dear Mr. Guild

As you know myself and my personal investment company have been in negotiations with Mr. Borisov for a potential investment and financing for a new MTV channel in the Ukraine.

Mr. Borisov advised us and sent us a copy of the Licence agreement between MTV Europe and the new Ukrainian company signed on the 13^{th} January. As you know this licence agreement has been thoroughly analysed by our lawyers and Mr. Borisov informed you that it will need a few changes to make the project bankable and financeable. Of particular concern is MTV Europe's call option after 5 years without a prefix pricing formula. Mr. Borisov told us that MTV Europe would consider a change and asked us for suggestions and we thank you for your flexibility. We will revert with suggestions as soon as possible.

In December we pre-funded Mr. Borisov with 1 million dollars against a share participation in the holding company and Ukrainian companies. Certain aspects of the licence agreement have somewhat changed the financing case and we particularly encounter a problem with a downward adjustment of the financial forecasts.

I therefore have mandated a leading investment bank to represent me and my Investment Company in this very interesting project. A bank representative will meet Mr. Borisov in Kiev on Tuesday and it would be extremely helpful if they could meet with you on Monday in order to gain a good understanding of how MTV Europe looks at the project as a whole and at the co-operation with outside investors.

The Gentlemen in MTV Europe handling this project are Mr. Thomas Ehr and Mr. Ian Possenniskie. I would highly value the opportunity to have a dialogue with you as we assume that Mr. Borisov will now leave the employment of MTV and we therefore need another contact. The gentleman at my investment advisor is Mr. ~ under the direction of Mr. ~. I am sorry to ask for an appointment at such short notice but as MTV announced their intentions today - I think it is important to move matters forward and come to conclusions as soon as possible.

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With Best Regards,

Everett Slim
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The responsibility for responding to Slim's query regarding the license and the business plan was delegated by Simon Guild – to none other than Dean Possenniskie, Vice President Emerging Markets.

Over nine months passed before Slim was summoned to a meeting with Simon Guild at MTV's London headquarters on 23 November 2006.

By then, the original MTV Ukraine was long gone, along with Slim's million dollar advance. Slim's 48 shares would ultimately become worthless.

It all came down to control.

If Slim funded the full $13 million Borisov originally requested against an agreed pre-money of $30 million ($0.65/POP), Slim's revised shareholding in MTV Ukraine, based on Borisov's revised enterprise value, would likely exceed 50%.

The original share capital of £2,020 was divided in 2,020 shares of £1 at 15 December 2005.

Following receipt of $1 million from Slim, Borisov's entity was allocated 1,360 shares and Slim 48 shares. MTV Ukraine's financial advisor received 40 shares.

Unfortunately for Borisov, by revising the financial plan for MTV Ukraine, he'd completely undermined the basis for his control of the business.

Borisov's original share allocation would be severely diluted due to the lower pre-money value he would now have to concede to Slim in a renegotiated investment agreement.

Furthermore, the imminent dilution of his shares would restrict Borisov's ability to control MTV Ukraine. Specifically, he would not be able to dictate the terms of his employment contract which had not, to Slim's knowledge, been approved by MTV Ukraine's two directors – Borisov himself and his childhood friend and house counsel.

Furthermore, in a world where barter trade and exchange of assets and shares is customary, the increase in Slim's share due to the revised business plan would dramatically erode Borisov's ability to distribute a portion of his shareholding as "consideration" to third parties whose involvement was essential to the success of MTV Ukraine.

This outcome would encourage Borisov to renege on promises to third parties in order to limit further erosion of his control of MTV Ukraine.

The completion of due diligence by Slim's advisors revealed conditions which may have threatened Borisov's position in the opaque commercial and regulatory environment prevalent at the time in Ukraine. After all, if Borisov failed to deliver on promises to Ukrainian broadcast licensing authorities, the entire enterprise could fail.

One can only speculate why Borisov initiated the revisions to the proforma business plan without first conferring with Slim.

“Failure to Launch”

On 10 February 2006, the launch of MTV Ukraine was announced at a formal press conference in Kyiv. The event itself was hosted by MTV Networks’ Dean Possenniskie and MTV Ukraine’s Gennadiy Borisov.

By that date, one might reasonably assume Borisov was no longer wearing the hat of an MTV employee.

Borisov was by then probably wearing only two hats, one in his capacity as General Director of MTV Ukraine and another as 92.5% owner of MRIYA TV, licensee of MTVNE.

Upon reading the announcement in the *Kiev Post* of 16 February 2006, it became clear why Borisov and Possenniskie were so secretive about the owners and investors behind MTV Ukraine.

Their actions had by then completely alienated Mr. Slim who was not accustomed to being ignored.

One might also ask: “How was the media event paid for if the investor had already funded the $1 million due MTVNE under the Trade Mark and Television Programming Agreement for MTV Ukraine?”

After further reading the *Kiev Post* article, it was also difficult to explain why Borisov refused to address the reporter’s question as to why his registered office housed an office for a construction company, not the licensee. This sort of behavior was hardly unprecedented, though it was more common in Yeltsin’s Russia.

Lesya Ganzha of Telekritika, a web-based Ukrainian media watchdog, observed that such secretive behavior is more typical of local television companies – most of whom are reluctant to disclose information about their Ukrainian owners or investors.

She added: “There has been a hope that once Western players [like MTV Networks] enter the market this would change.”

But at the press conference that day, MTVNE Vice President Dean Possenniskie appeared unconcerned that the behavior of MTV’s licensee might evoke the opaque and murky conduct of the regime of former Ukrainian president Leonid Kuchma, ousted in the Orange Revolution.

What was ironic in the extreme was that a more media savvy team might have anticipated Lesya Ganzha’s widely held perception.

Borisov and Possenniskie might have been more forthcoming in their response to reporters’ questions. But they had other plans.

“Running on Empty”

Three days before the press conference to announce the debut of MTV Ukraine, Borisov requested his financial advisor return to the market in order to recapitalize MTV Ukraine.

He was now seeking $12 million.

By then, Borisov concluded that the revised terms likely to be acceptable to his first-round financier, Everett Slim, might be improved upon by second round participants.

Borisov felt the fact that he’d obtained a license from both MTVNE and Ukraine’s broadcast authorities would reduce the perception of risk facing the enterprise and would result in an accelerated closing of a second round of funding.

But Borisov’s conclusion was flawed. He was desperate to attract financial backing before the press announcement scheduled by MTV’s Dean Possenniskie for 10 February in Kiev.

What Borisov failed to mention to his advisor was that none of the money advanced by Slim had been paid to MTVNE as provided in the agreement he struck with Slim.

Borisov also failed to recognize that it was a small world. Any investor would insist on knowing from a direct interview why Slim was reluctant to “complete” the first round or participate in a second round only sixty days into the game. Unless Borisov sold down his shareholding substantially, the secondary offering would never withstand due diligence.

Nevertheless, Borisov insisted his advisor resume discussions with a handful of institutional participants. Yet Borisov was unable, or unwilling, to produce the capitalization table requested by his advisor. He’d withheld any documents which might enable the advisor to do so independently including, most importantly, a share register showing Slim’s interest.

It had begun to dawn on the advisor that a pre-money enterprise value had never been agreed with Mr. Slim. It became clear that the MTV license payment was delinquent when, on 10 February, Borisov approved for his advisor’s review the following application of proceeds for a secondary offering:

Proposed Application of Proceeds	***Account***
MTVNE Brand License	$ 1,000,000
Minimum Override Payment to MTVNE	$ 1,840,000
Local Satellite and Broadcasting License and Fees	$ 18,000
Video and Publishing Content License	$ 10,000
Uplink	$ 276,000
Playout, Archive, Equipment and Service	$ 1,000,000
Programming (Dubbing, Local Prodcution and Online)	$ 1,993,000
Contract Research, People Meters, Media Planning	$ 200,000
Sales, General and Administrative Expense	$ 5,053,000
Transaction Expenses	$ 610,000
Total	**$ 12,000,000**

Included are all expenses for 2006 unless noted otherwise.

Expenses are rounded up to the nearest $1,000.

In order to minimize the risk of jeopardizing the MTVNE license, we’ve also included as a reserve the 2007 minimum license payment of $840,000.

Includes 2007 budgeted expenditures.

The first line item “MTVNE Brand License” was budgeted at $1 million.

What had happened to the million dollars previously advanced by Slim?

Borisov told his advisor he’d “reallocated” Slim’s funds, but didn’t explain further.

On 13 February, MTV Ukraine’s financial advisor met with London solicitors for MRIYA TV and its affiliates *dba* MTV Ukraine.

No capitalization table was forthcoming that evening and the solicitor effectively discouraged Borisov’s advisor from going forward if doing so required referring to Mr. Slim’s interest. The entire initiative had become untenable.

Within a week, Borisov proposed voiding the amended fee agreement with his advisor. Borisov also disputed the 40 shares his advisor held in MTV Ukraine’s holding company though they’d been registered by MRIYA’s solicitors on 18 December 2005.

From:	"G.M. Borisov" <gmb@~.com>
Subject:	RE: Moving Ahead
Date:	Sun, February 19, 2006 11:39 pm
To:	rob@capital.co.uk
Cc:	"'GG'" <gg@earthlink.net>

Rob,

I appreciate your understanding and time to discuss recent event and turns taken by this project. As you correctly noted, we need to move forward and be proactive, precise and maintain the initiative. Prior to next steps, I would like to confirm details of our conversation regarding our mutual agreement to void the Amendment to the Original Agreement discussed in the previous emails.

Please note that our London based counsel will have limited availability over the next few weeks and TS could be prepared mostly by GG and I with your participation, if of course you would be so kind as to continue working with us.

Best, Genna

-----Original Message-----
From: Rob [mailto:rob@capital.co.uk]
Sent: Saturday, February 18, 2006 14:00
To: gmb@~.com
Subject: Moving Ahead

Genna: Thanks for the call yesterday. I'm glad we had a chance to speak at length about the events of the past few weeks.

As we move ahead, it's important that we be responsive to QP's who've requested a term sheet. They can move quickly, so under the circumstances, producing the term sheet should probably be a greater priority than updating the pathfinder.

Having issuer's counsel produce the term sheet enables you to maintain the initiative in negotiations with one - or several - QPs. The term sheet will enable you not only to address the legal and economic terms on offer.

It also defines terms relating to corporate governance, the selection of board members, voting rights, rights of founders or management shareholders, pre-emptive rights, restrictions on transfers, change of control, information rights, registration rights and other non-financial matters such as conformance with the MTV license which are of material significance to you.

We're available to participate with your solicitors and directors to complete these documents at any time.

Best regards,

Rob

Though he sought to negate the existing engagement agreement and the grant of shares, Borisov produced no new amendment nor proposed consideration for a new arrangement.

Two days later, Borisov revealed he'd lined up participants for the second round financing. Though he did not identify them, he asserted they were exempt from the engagement agreement with his advisor. Borisov appeared to be in the process of retaining another advisor or making other funding arrangements directly.

From: "G.M. Borisov" <gmb@~.com>
Subject: RE: Public Disclosure
Date: Tue, February 21, 2006 6:16 pm

Rob,

Thank you for the note. As of today there are two investors /shareholders and they are "Western, apolitical, and very powerful" - both Mr. Slim and my holding company fit this definition. The license is absolutely of no worries and KievPost is not an official trade publication and its opinion is not a "qualified" opinion, the author is just a journalist (generalist) with not all things correctly quoted and some misinterpreted.

Rob, we have opened discussions with new and some old parties who were interested in the venture before we went exclusive with Mr. Slim, and before we can move forward with parties referred by you we need to clarify positions that we have discussed in our phone conversation last week. I have not received the email from you confirming our agreements and look forward to the confirmation.

Best,
Genna

-----Original Message-----
From: Rob [mailto:rob@capital.co.uk]
To: gmb@~.com
Subject: Public Disclosure

Dear Genna:

The Kiev Post of 16 February quoted you as saying Mriya's backed by investors who are "... Western, apolitical, and very powerful".

> Whether or not you're referring to the three shareholders listed in the pathfinder letters approved by your director, any second round QP will want to know with whom they're bunking up.
>
> Unfortunately, the Post article may also be cited by QPs concerned about the defensibility Mriya-TV's license granted by the NTRC. Addressing this matter may consume more time in due diligence by QPs.
>
> As to timing, several other groups have now requested the pathfinder and the term sheet. We can get this round done quickly, but we must be ready to respond at least as quickly as we expect QPs to respond to us.
>
> We're ready to meet with your transaction counsel to discuss draft documents at any time.

Borisov then went silent.

It would take Borisov an entire month to surface. During that time, the marketing effort he had asked his advisor to undertake was effectively dead in the water. By the time Borisov reappeared, it was difficult to see how his advisor or anyone else could be of assistance without clarification of some fundamental issues.

Then on 23 March, Borisov informed his advisor that he was concluding matters with Mr. Slim for a recapitalization of his holding company and its affiliates and that a secondary offering would soon be concluded with an unidentified investor.

Borisov was in fact foundering.

By early April, he and his childhood friend from Kiev, MRIYA TV's second director and corporate counsel, were trying to figure out how to void the agreement with MRIYA's original financial advisor and nullify the grant of 40 shares.

This initiative to declare void MRIYA's agreements was limited to a few verbal denials, but was ultimately abandoned.

In early May, MRIYA's director and corporate counsel resigned. Borisov's top employees were not being paid. It was clear that Borisov was struggling to keep MRIYA going as he sought further funding. He needed MTV's help or at the very least, their forbearance. Yet Borisov had failed to pay the MTV the licensing fee due five months earlier.

On 7 June, solicitors for MRIYA's financial advisor delivered a notice of arbitration to MTVNE's Dean Possenniskie for unpaid fees and expenses due under the agreements signed by Borisov on behalf of MTV Ukraine and MRIYA TV.

Dean wrote MRIYA's advisor to say it was "… good to have visibility of where things are at."

Less than a month passed when it became clear Borisov was still struggling to pay MRIYA's bills. By now, some of his employees had resigned. Dean suggested a meeting with MRIYA's advisor at MTV's London headquarters on Wednesday 5 July.

"Night Moves"

It wouldn't be the first time in 2006 that an important company announced a delay in delivering financial statements to its shareholders. Nor would it be the last.

Seven days after Dean Possenniskie first met MTV Ukraine's financial advisor, and minority shareholder, it was clear that serious financial irregularities could quickly emerge at MRIYA TV and its affiliates.

From:	"Gennadiy M. Borisov" <gmb@mtv.ua>
Subject:	RE: Query
Date:	Wed, July 12, 2006 9:54 am
To:	Rob <rob@capital.co.uk>

Rob,

Sorry for delay. We have not produced any financial statements except for the Ukrainian operational companies. We plan to close the Q2 in about 2 weeks and I will send you copies of Q2 statements of Ukrainian operations.

Best,
Gennadiy

---------- Original Message ----------------------------------
From: "Rob" <rob@capital.co.uk>
Reply-To: <rob@capital.co.uk>
Date: Fri, 7 Jul 2006 15:58:48 +0200

Dear Genna:

We just had a partners meeting during which I was asked about MTV Ukraine. I need to assign a book value to our 2.5%.

Can you provide a statement of stockholder's equity or a capitalization table for the holding company? Alternatively, a set of financial statements would be fine, in whatever standard is provided for in the articles of inc. I assume something's been prepared, at least for the first quarter since inception.

Thanks in advance and best wishes,

Rob

MOB: +44 78 1234 5678

One week later, more issues arose. This time it concerned shareholders' pre-emptive rights as provided by the Articles of Association of MRIYA's holding company. Resolving this matter may well have been a condition of closing for Borisov's second round investor.

The re-emergence of the pre-emptive rights issue may have explained why Borisov had earlier sought to invalidate, then claw back, the 40 shares granted to his financial advisor.

On 18 July, Possenniskie noted in an e-mail to MRIYA's advisor that another MTV licensee and consultant had observed Slim in Kiev. Though Slim had other business there, something might be up. If so, MRIYA's advisor and minority shareholder had not been invited to what was shaping up as a possible meeting of MTV Ukraine's shareholders.

From:	possenniskie.dean@mtvne.com
Subject:	RE: Interesting ...
Date:	Tue, July 19, 2006 2:18 pm
To:	Rob <rob@capital.co.uk>

Good to know, lets see how the next day pans out and talk then.
Thanks
Dean

-----Original Message-----
From: Rob [mailto: rob@capital.co.uk]
Sent: 19 July 2006 1:06
To: possenniskie.dean@mtvne.com
Subject: RE: Interesting ...

Yes. This will be more attractive if we aggregate the networks within one holding.

We're available to talk any time. I'm in NYC this week.

Rob

---------- Original Message ----------------------------------
From: possenniskie.dean@mtvne.com
Date: Tue, 18 Jul 2006 13:46:10 +0100

Rob,

If we can step away from the saga on MTV Ukraine for a few moments...

I am currently looking for investors for MTV services in:
Romania - MTV Romania (launched in June 01)
Adria (Slovenia, Croatia, Serbia, Bosnia) - MTV Adria (launched in Sept 05)

Adria in particular is a very exciting prospect where MTV Adria is the only pan-regional channel across the from Yug states and in bringing music and culture development to a new level there. Office is already set up in Ljubljana with marketing offices in Zargreb and Belgrade but we are Thinking to move HQ to Belgrade in coming years due to the size and growth of this market. Niall would hold the license for this channel.

Do you think you could find interested parties to look at this opportunity? If so we can talk in more detail once we get Ukraine resolved.

Thanks
Dean

-----Original Message-----
From: From: Rob [mailto: rob@capital.co.uk]
Sent: 18 July 2006 12:16

To: possenniskie.dean@mtvne.com
Subject: RE: Interesting ...

Dean: I've heard not a peep from Genna or anyone else.

Genna may also have failed to remind you about our agreement which remains in effect. In particular, you should know that the reaffirmation and amendment of our agreement with MRIYA provides that the Participation be on terms "pari passu" with Slim. That document was sent to you on 7 June by our counsel.

You might want to ask MRIYA's solicitor what "pari passu" means before you go too far down the road. If Slim's been invited to the table, we should be too. But we've heard nothing.

We're here to help make MTV UA a success.

Rob

---------- Original Message ----------------------------------
From: possenniskie.dean@mtvne.com
Date: Tue, 18 Jul 2006 11:59:15 +0100

Thanks Rob - has Genna responded about Slim's pre-emptive rights – this would be key.

Have just heard from Niall that Slim has just shown up in Kiev ... Will be an interesting 24hours and I will keep you posted on developments

At dawn in Kiev on 20 July 2006, Borisov e-mailed a notice of an Extraordinary General Meeting - at an unidentified location - to MTVNE's Dean Possenniskie, to Dean's colleague and friend, Niall MacCormick (an MTV producer and licensee who controlled MTV Adria), and to the two minority shareholders of MTV Ukraine's holding company.

According to the notice, the sole purpose of the EGM was to amend the Articles of Association of MRIYA's holding company, controlled by Borisov, deleting the articles regarding "Pre-emption Rights".

Borisov's solicitor first sent the Articles of Association to MRIYA's minority shareholders later that same day. It was a lot to digest and made for interesting reading.

Before midnight in Kiev on 20 July, resolutions were passed to delete pre-emption rights, only 18 hours after the EGM was announced by Borisov to minority shareholders – and to MTVNE executives. Though not shareholders, they did represent the licensor to MRIYA.

Unfortunately for Borisov, the revocation of pre-emption rights was accomplished six hours before the statutory minimum of a one day notice. Twenty-four hour advance notice was required for short-notice EGMs to be effective under the short-notice provisions of the Articles of Association of MRIYA's holding company.

On 24 July 2006, based on the MRIYA directors' failure to comply with the provisions of the Articles of Association, an arbitration claim was filed by solicitors acting on behalf of a minority shareholder against MRIYA and its holding company, both controlled by Borisov.

After MRIYA conceded the validity of the claim, the shareholder's claim was withdrawn on 25 July.

On 26 July 2006, the minority shareholders were notified that they would receive a settlement offer in the next few days.

“Well … How did I get here?”

Kiev-based fund manager Horizon Capital was originally the Western NIS Enterprise Fund. It was established by the U.S. Congress and funded by the U.S. government via USAID.

Horizon management was well regarded and had grown to establish a private equity fund devoted to Ukraine. Borisov had been negotiating with them to replace Slim.

Horizon had been informed of the MRIYA EGM, though not invited to participate directly.

As a result, a representative of Horizon was present during the EGM in an adjacent room at a hotel in Kiev.

The “back-to-back” EGM was planned and orchestrated by solicitors to Borisov’s holding company as a way to quickly recapitalize MRIYA and address its liquidity crisis.

However, Horizon was uncomfortable with the claims of MRIYA’s minority shareholders.

As a result, following the EGM, Horizon had extensive correspondence with the minority shareholders of MRIYA’s holding company.

On 28 July, acting through an intermediary, Horizon proposed to buy out both minority shareholders, though on distinctly different terms.

As consideration for his 48 shares of MTV Ukraine’s holding company, Mr. Slim was offered a $1,000,000 7-year note.

Horizon and its co-investor offered to acquire the 40 shares held by MTV Ukraine’s advisor for cash consideration of $26,500.

The differential treatment of the two shareholders of MTV Ukraine violated the *pari passu* treatment of such shares agreed by Borisov and MRIYA TV.

Borisov’s agreement to grant shares to his advisor had been in the hands of his solicitors since November. In fact, his solicitor had registered those 40 shares in the name of MRIYA’s advisor in December 2005.

Yet for some unknown reason during all their negotiations with Horizon, Borisov and his solicitors chose to ignore, or simply conceal, the *pari passu* provisions Borisov had previously agreed with shareholders.

In their hit song “Once in a lifetime”, The Talking Heads’ David Byrne famously pondered:

> “*And you may find yourself living in a shutdown shack*
> *And you may find yourself in another part of the world*
> *And you may find yourself behind the wheel of a large automobile*
> *And you may find yourself in a beautiful house, with a beautiful wife*

And you may ask yourself: Well...How did I get here?"

How indeed? Horizon management, headed by Natalie Jaresko, may well have asked the same question after the abortive EGM of MTV Ukraine.

But in Horizon's case, unlike The Talking Heads, the answer was more prosaic. Horizon arrived at this juncture through a short chain of events involving agents acting as principals.

It all began on 7 October 2005, when MTV's then-employee Borisov and the financial advisor for MRIYA TV met in New York with, among others, a representative of a prospective investor other than Mr. Slim.

The meeting was held at the headquarters of MTV Networks where Borisov walked his tightrope, wearing two hats for MTV – one hat as their employee and one hat as their "independent" agent to launch MTV Ukraine.

Some months later, the so-called investor turned agent and had returned with a co-investor. He had gone to Kiev and enlisted Horizon's participation as lead investor to acquire control of MTV Ukraine and MRIYA TV.

But when Horizon and their agent/co-investor became aware of the *pari passu* provisions Borisov failed to disclose, Borisov pre-emptively terminated negotiations with Horizon.

By doing so, Borisov had single-handedly and effectively reinstated the pre-emptive rights of minority shareholders he and his fellow director had contrived to invalidate.

Borisov's only remaining option was to offer the holding company – and its associated liabilities – to the minority shareholders who would recapitalize and re-launch the business.

But the nature and extent of the liabilities proved impossible to describe, much less quantify. Borisov also demanded a golden parachute and a consulting contract.

At the holding company level, the only identifiable liability was £70,000 payable to Borisov's solicitors. They'd threatened to petition to liquidate the company, though they knew there were no assets to liquidate. However, the onerous burden on the holding company's directors, if found to be trading while insolvent, proved sufficient to compel Borisov to pay his solicitors in full and at once.

Acting through their own solicitors, MTV Ukraine's minority shareholders restated their view that winding up of MTV Ukraine's holding company was unnecessary and excessive given the modest liabilities of MTV's Licensee, MRIYA TV.

At the same time, solicitors acting for MTV Ukraine's minority shareholders notified MRIYA's solicitors that they objected to any action winding up the holding company or its affiliates absent any financial statements which set forth assets and liabilities of the group companies.

Presenting such financial statements was a common prior condition any insolvency court would demand before setting a date to hear a winding-up petition.

As Borisov let the days go by, he finally estimated total liabilities at the affiliate level of US$268,369.16 plus £14,087.94.

The stated liabilities of MRIYA included all unpaid salaries, benefits and rents as well as accounts payable to bona fide vendors like GfK Media Research.

As a potential acquirer of the entities dba MTV Ukraine, Borisov's advisor remained prepared to assume those liabilities at par in exchange for a transfer of all shares held by Borisov's entity – and an indemnity against further claims.

The advisor also offered to fund immediately the $1,500,000 delinquent Marks and Programming fees cited in MTVNE counsel Neil Miller's termination notice to MRIYA TV.

But a few days later, Borisov stated: "The companies have realized all of their assets and have unpaid liabilities totaling approximately US$638,000."

As a potential buyer, the minority shareholders objected to the selective discharge of liabilities absent any financial statements for the holding company and its affiliates. Their solicitor advised that such an act could in some instances open them to unlimited liability.

When Borisov declared that neither MRIYA nor its parent had ever hired an accountant or auditor, because Borisov had "more important things to do", it was clear MTV Ukraine's financial statements would not be produced.

In lieu of that, Borisov offered a collection of bank statements, spreadsheets and unaudited statements of accounts payable.

The business was clearly short on cash and struggling to complete construction and kitting out of its studio in Kiev.

Furthermore, Borisov had been summoned by a civil court in Kiev for unpaid wages of employees he had terminated.

"*I can't seem …*
To face up to the facts;
I'm tense and nervous and I can't relax …
qu'est-ce que c'est ?"
– The Talking Heads, "Psycho Killer"

A few days later, Borisov declared to his advisor that he'd received a summons to appear before Ukraine's national tax authorities. They weren't likely to be pleased by his failure to fund employee pension accounts or to withhold taxes.

Yet in spite of all his troubles, Borisov somehow found the means to acquire a premium flat in Kiev, rumored to cost over $250,000.

It was clear that if MTVNE wanted to make good on the promises of their February press conference and launch the channel in 2006, they would have to indemnify any party acquiring Borisov's holding company and its affiliates against a raft of potential claims.

MTV's Dean Possenniskie was very uncomfortable with this prospect.

He understood better than most what was going on in Kiev. Since the press conference in February, Dean had seconded MTVNE staff to help launch the business.

Now it was all coming to naught.

"I'm an ordinary guy,
Burnin' down the house.

Hold tight, wait 'til the party's over;
Hold tight, we're in for nasty weather.

Here's your ticket.
Pack your bags.
Time for jumpin'
... overboard."

– The Talking Heads, "Burnin' Down the House"

In addition to its national broadcasting license, MTV Ukraine had one unique and valuable intangible asset: a license with MTVNE which needed revisions before Slim, or anyone else, would bank the franchise. And the revised business plan remained unfinished.

If the business was to launch, MTVNE would also have to resist the temptation to terminate the license even though Borisov had never paid the licensing fee due MTVNE in January.

At the beginning of August, MTVNE began to feel it was time to abandon ship.

MRIYA began to appear like a black hole. Peering toward the event horizon, its minority shareholders refused to fund any additional cash without taking over the company and terminating any further role for Borisov.

At the same time, MTVNE management had concluded that terminating the MRIYA TV license and starting over with a new local operator capitalized by Horizon might be a more sensible plan.

Though the revised license terms of offer were acceptable to MTVNE and the minority shareholders who had offered to acquire MTV Ukraine, Borisov rejected the first offer his advisor made for Borisov's 1,360 holding company shares.

On 7 August 2006, the minority shareholder submitted a second offer to acquire all Borisov's shares in the holding company which controlled MTV Ukraine, subject to the new license proposed by MTVNE's Dean Possenniskie and Niall MacCormick.

The bid was for $600,000 in three installments.

Three days later, Borisov rejected the second offer from his minority shareholder, though he had no a backup offer.

Borisov's bluff called, MTV Ukraine's lights went out – literally, as MRIYA's landlord had cut electrical power to their new offices and production studio for non-payment of rent.

MTVNE terminated the licensing agreement with MRIYA TV on 10 August 2006.

10/08 2006 20 55 FAX +44 20 7475 0006 MTV EUROPE 002

MTV NETWORKS EUROPE

To: Teleradiokompaniya Mriya-TV LLC
29E Vorovskogo Str, Office # 14
Kiev 01054
Ukraine

For the attention of: Gennadiy M. Borisov, Managing Director

By courier and by facsimile

Fax: 001 212 404 5666

Copy to: George A. Geltis, Esq
560 West 43rd Street, Suite 22G
New York
New York 10036

By courier and by facsimile

Fax: 001 212 208 4652

10 August 2006

Dear Sirs

Trade Mark and Television Programming Agreement for MTV Ukraine entered into by (1) MTV Networks Europe ("MTVNE"), (2) Teleradiokompaniya Mriya-TV LLC (the "Licensee") and (3) Action Media Group OOO ("Guarantor") dated 13th January 2006 (the "Agreement")

NOTICE OF INTENTION TO TERMINATE THE AGREEMENT FORTHWITH

All capitalised terms used in this letter shall have the meanings set out in the Agreement, except where separately defined herein.

We refer to the following clauses of the Agreement which set out certain of the Licensee's payment obligations thereunder:

(A) the obligation of the Licensor, as set out in Clause 2.9, to pay MTVNE the Initial Marks and Programming Fee, consisting of two instalments of US$ 500,000.00 each, both of which instalments were payable on or before the 30th March 2006 and the 30th June 2006 respectively; and

(B) the obligation of the Licensor, as set out in Clause 6.1.1, to pay MTVNE the Marks and Programming Licence Fee consisting of, in respect of the period from the Commencement Date to 31st December 2006, in aggregate, the sum of US$1,000,000.00, payable in four equal instalments of US$250,000.00 each on or before the following dates: the 30th March 2006, the 30th June 2006, the 30th September 2006 and the 1st December 2006.

This sad story was detailed in an interview with a director of MTV Ukraine in the *Kiev Post* on 7 September 2006.

In that interview, Mykhaylo Rudenko, MTV Ukraine’s former executive director, stated that Ukrainian company MRIYA TV became the licensee in Ukraine of MTVNE in December 2005, but the network revoked that license in August 2006.

Whatever happened next, it was clear that winding up the licensee would be a loss not only to the MTV family, but to all Ukrainians. That is, with the exception of the most unsavory sorts MTV would never wish to get hold of its license.

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Ukrainian business schools teach local market realities
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SEPTEMBER 7TH, 2006

Mohyla head not in for politics

By LENA PLEKHANOVA

The president of Ukraine's prestigious Kyiv-Mohyla Academy, Vyacheslav Bryukhovetskyy, is a staunch supporter of the Ukrainian language for his students and the country at large. In a Sept. 5 interview to the Post, Bryukhovetskyy confirmed his membership of the pro-presidential Our Ukraine party, but denied that his political preferences influence the academy's policies. Bryukhovetskyy, 59, recently turned down a seat in the Kyiv City Council, which he said is characterized by petty squabbling.

KP: How did you succeed to your current position as president of Kyiv-Mohyla Academy?

VB: In a certain sense, I became the president by accident. It was in 1991 that I came to understand that it was time to revive Kyiv-Mohyla Academy. At that time I was a politician. I came and issued Decree No 1 on Kyiv-Mohyla Academy, which did not even exist at the time. On Nov. 16, 1991, I became the rector of an academy that didn't exist. From the legal point of view it was nonsense. But at the time it was acceptable...

The president of Kyiv-Mohyla Academy, Vyacheslav Bryukhovetskyy, above, says his Our Ukraine membership does not determine his academy's policy. (Konstantin Klimenko)

KP: Is it true that you only recently resigned as a member of the Kyiv City Council?

VB: At first I decided to withdraw my candidacy from Our Ukraine's parliamentary election list, in which I was number four. Then I agreed to head Our Ukraine's Kyiv Council election list, and took part in the campaign. In my view, the Kyiv City Council is not exactly politics. I didn't go for the Verkhovna Rada because I would have had to leave Kyiv-Mohyla Academy. Unfortunately, after the first meeting of the Kyiv City Council I understood that it is not possible to work there. There would be quarrels, squabbles and wrangling. I didn't think that it was worth my time. This is not even politics, but pseudo-political squabbles. This is why I resigned my seat.

KP: But are you now a member of the Our Ukraine party?

VB: Officially, yes. But I'm not involved in party activities very much.

KP: Does your political affiliation influence policies at Mohyla?

VB: No, it has nothing to do with the Academy.

KP: Kyiv-Mohyla Academy is well known as an educational institution that fiercely promotes the Ukrainian language.

VB: All the students can speak Ukrainian. But it's another matter as to whether they do speak it. It's up to them whether they want to speak this language in their personal lives. Of course, we encourage them to speak Ukrainian.

see **MOHYLA**, page 7

Parliament divisions return after summer break

By ORYSIA KULICK

Lawmakers reconvened on Sep. 5 following their summer vacation, but the political gridlock that had characterized the legislature's first session, which almost ended in President Viktor Yushchenko's dismissal of the parliament, might again be heating up for Ukraine's early Indian summer.

In a sign that the inter-factional negotiations and intrigues witnessed in the wake of the March 26 general elections are still active, MPs immediately postponed their next working session until Sept. 12, opting instead to spar publicly over well-worn issues. Heading the list of these issues is the composition of the Rada's majority coalition and continued efforts by the party in power, or the Donetsk-based Party of Regions, to curtail the prerogatives of an already weakened presidency.

Parliamentary deputies appear to be far from the stability and cooperation that they promised would come from a shaky alliance patched together in early August between President Yushchenko and his hitherto arch enemy Viktor Yanukovych, leader of the Donetsk-based Party of Regions, and now the country's new prime minister.

The alliance ushered in a Regions-led government that is now not only solidly in control of the country's economic and energy policies, but also holds a majority of the posts in the Cabinet of Ministers, which on Aug. 30 moved to reduce the president's direct levers of influence over its work.

The new Cabinet of Ministers, which is comprised of many powerful and controversial Regions members, like deputy prime minister Andriy Kliuyev and the former head of Naftogaz Ukrainy Yuriy Boyko, passed an act that took away the president's ability to suspend Cabinet decisions, one of the few ways in which he can check the Cabinet under amendments to the constitution that came into force in January 2006.

> "NO LAWMAKER, NOT TO MENTION THE CABINET OF MINISTERS, CAN IN ANY WAY DIMINISH OR INCREASE PRESIDENTIAL POWERS…"
>
> *– Roman Zvarych, Minister of Justice*

This sparked a vociferous reaction from some members of the pro-presidential Our Ukraine and also called into question the extent to which the Donetsk-dominated Cabinet is ready to "cooperate" with the president and his supporters in parliament.

Roman Zvarych, Our Ukraine deputy and current Minister of Justice, stressed on Aug. 30, "No lawmaker, not to mention the Cabinet of Ministers, can in any way diminish or increase presidential powers. The only government body that can change the powers of the president is the Verkhovna Rada ... by introducing changes to the Ukrainian Constitution."

Yuriy Kliuchkovsky, the president's representative in parliament, also underscored on Aug. 30 that "It is not the Cabinet of Ministers that decides how the president of Ukraine should act. That the Cabinet of Ministers is under the control of the president of Ukraine flows directly out of the text of the Constitution..."

Cabinet spokesman Oleksandr Lavrynovych countered that "although we curtailed the president's right to issue instructions to the Cabinet, he is left with the possibility of challenging decisions made by the Cabinet of Ministers in the courts."

That the Cabinet of Ministers has moved to further curtail Yushchenko's powers is a concern, especially now that the president cannot dismiss individual ministers, the prime minister, or the Cabinet in its entirety, as was previously the case under the un-amended Constitution.

Yushchenko had the constitutional amendments that came into force in January foisted on him as he battled with Yanukovych for the presidency during the country's 2004 Orange Revolution.

Now, the divided parliament must decide whether to pass legislation that would more clearly delineate and protect the spheres of influence of the president, as well as the Cabinet and the parliamentary opposition.

Various drafts are currently in the legislative pipeline waiting to be introduced, discussed and voted on.

For example, both Regions and the opposition BYuT faction have submitted draft laws on the opposition in recent months.

And in an encouraging sign, on Sept. 5, Parliament Speaker Oleksandr Moroz, who controls the agenda set before the legislature, called for parliamentary deputies to adopt a law regulating the interaction between the parliament and the Cabinet.

see **RADA**, page 5

MTVproject fails amid accusations

By VLAD LAVROV

A plan to give Ukraine its own MTV channel, which was promoted with great fanfare earlier this year, has collapsed amidst accusations of broken promises, misused funds and poor management.

MTV Ukraine was to have been the 122nd channel of London-based MTV Networks Europe – a unit of global cable networks and entertainment brands giant Viacom, and Europe's largest 24-hour music television network – with a target launch date originally scheduled for sometime this month.

MTV Networks Europe is a division of MTV Networks International, which describes itself as the largest television network of youth channels in the world, broadcasting on all continents and reaching an audience of nearly one-and-a-half billion people.

"When MTV Ukraine launches in September this year, it will be over two years in its planning, and I have great confidence that with our local partner and general manager [of MTV Ukraine], Gennadiy Borisov, we will launch a channel that will set new standards in quality and creativity, both in Ukraine and our European network of channels," Dean Possenniskie, MTV Networks Europe's general manager for emerging markets, was quoted as saying in a Feb. 13 press release issued by the network.

The announcement was followed by a widely promoted public casting of presenters for MTV Ukraine's news programs in late April.

Now, with the hoopla over, and the MTV Ukraine project apparently canned, three of the project's former executives are blaming the failure of MTV Ukraine on the project's former general manager, Borisov, accusing him of poor management and lack of flexibility in dealing with the project's investors.

According to Mykhaylo Rudenko, MTV Ukraine's former executive director, Ukrainian company Mriya TV became the licensee in Ukraine of MTV Networks Europe in December 2005, but the network revoked that license in August 2006.

Rudenko said that Mriya TV was simply unable to pay the network its license fees, as it failed to get the promised investments needed to continue with the project.

Rudenko confirmed that MTV Ukraine was originally to go on air sometime this fall. According to the MTV license, the channel was to be broadcasting no later than Dec. 18 this year.

see **MTV**, page 5

ON THE MOVE

Alexander Kolyakin has been appointed Service Line Leader for Supply Chain Management at Deloitte & Touche Ukraine. Kolyakin will be responsible for introducing this new consulting service line to the Ukrainian market with the support of the Deloitte global network of Supply Chain experts. Deloitte Ukraine provides a full range of services to its clients across four core disciplines: consulting, audit, tax and financial advisory services. In 1999–2006, Kolyakin worked for Procter & Gamble, gaining practical experience working in a number of positions in Procter & Gamble's supply network and operations departments, including as Plant Planning Manager and Operations Department Manager. Kolyakin graduated from Kyiv Polytechnic Institute with a degree in Intellectual Decision-Making Systems.

Yevgeniy Bessarabov has been appointed to the position of Finance Director at the Kyiv-based law firm Magister & Partners. Prior to joining Magister & Partners, Bessarabov was Finance Director for Relacom Ukraine. Bessarabov has extensive experience in management, accounting and finance from his work at various production and trade companies. He also has a lot of experience in financial management systems implementations and transformation of local accounting systems to US/UK GAAP and IFRS. Bessarabov has worked on a number of successful projects on organization of Western- type management accounting and financial systems. He received his economic degree from the International Institute of Business and Law Management and recently received a degree in Management at Kyiv National Trade and Economic University.

Stan Abbeloos has been appointed Acting General Director of the telecommunications company Fariep-Invest. Fariep-Invest is a member of System Capital Management holding company, owned by Ukraine's Donetsk-based magnate and MP Rinat Akhmetov. Prior to joining Fariep-Invest, Abbeloos held the position of chief operations director for Russian telecommunications company Golden Telecom. From 1991 to 1996, he headed Russia's Lenbell, a Russian-based telecommunications company. From 1986 to 1991, Abbeloos worked for Alcatel Bell's Chinese office in various top management positions. Abbeloos has 20 years of experience working in the telecommunications industry and extensive experience developing and implementing unified infrastructure strategies within the business.

Rene Schlegel has been appointed General Manager of the German-based company Robert Bosch in Ukraine. Schlegel previously served in this position in 2002 and is reassuming his responsibilities in Ukraine, in addition to his functions as general manager of Bosch Russia and Bosch Belarus. Bosch Group is a leading producer of motor vehicle and industrial technologies, consumer goods and construction technologies. Founded in 1886 as the Workshop of Precise Mechanics and Electric Engineering, today Bosch Group includes a production, trade and service network of 280 subsidiaries in more than 250 countries around the world. Schlegel, originally from Lucerne, Switzerland, has worked with Bosch in a variety of functions and countries since 1986. He graduated from the University of Chicago and lives with his family in Kyiv and Moscow.

Ernest Arutyunyan has been appointed President for media operations of ADV Ukraine Group, a group of companies providing marketing communications services. Arutyunyan has more that 15 years of experience in the advertising business. Prior to his current appointment, he was ADV Ukraine Group's media director. From 2000 to 2002, Arutyunyan was the president of ADV Belarus. Before joining the company, Arutyunyan was Chief Executive Officer of IP Minsk (the Belarusian subdivision of IP Group, which forms part of the French media group Havas). From 1991 to 1993 Arutyunyan worked as editor for the advertising department of the State TV and Radio Broadcasting Company of Belarus. In 1987, Arutyunyan graduated from Belarus State University with a degree in journalism.

On the Move is prepared by the Kyiv Post *editorial staff. The* Kyiv Post *does not accept payment for news items and photographs included in this section. Send news via e-mail to plekhanova@kppublications.com, or contact Lena Plekhanova at 496-1111.*

MTV Ukraine stopped in its tracks

Mykola Rudenko, former executive director of MTV Ukraine, says that the Mriya TV company, which was supposed to broadcast MTV Ukraine, lost its license and ended up with debts of $200,000 as funds from an investor dried up. (Konstantin Klimenko)

MTV, continued from page 3

According to Rudenko, of the $12 million that Borisov claimed to have secured for the launch of MTV Ukraine from a mystery investor, whose identity neither Rudenko nor Borisov have been willing to disclose, only $1 million had actually been received. The rest, Rudenko said, was never given to Borisov, as he and the investor were apparently unable to agree on the issue of control over both the company's management and its board of directors.

"I believe that MTV should be more scrupulous in selecting their licensees in Ukraine, especially when it comes to the financial side of the project," Rudenko said, adding that Borisov was the owner of MTV Ukraine licensee Mriya TV.

In addition to Rudenko, Serhiy Lysiuk, MTV Ukraine's former financial director, and Andriy Solomakha, the project's former development director, also blame Borisov for the project's collapse. The three say that any attempts to bring in additional investors have all failed for the same reason – Borisov's unwillingness to share control over the company.

"After we received the Ukrainian broadcasting license in January, we began actively recruiting people, but then it became apparent that all we had was $1 million .. which was going quickly," Solomakha said.

He said that as of May 20, none of Mriya TV's spending had actually gone toward buying a single piece of studio equipment, adding that the standard delivery time for television equipment is 60 days after the signing of a purchase agreement.

Rudenko said that around 30 people from the local TV market had been hired starting in February, with the average salary at the company for the MTV Ukraine project coming to $1,000 a month. He said that although staff were paid on time for three months, Mriya TV began laying off employees in May.

Lysiuk said that due to the lack of funding for the project, Mriya TV had incurred approximately $200,000 in debts as of May. That same month, all three executives – Rudenko, Lysiuk and Solomakha – were fired from the company for "violation of corporate culture." The three are currently suing Mriya TV in a Kyiv district court over the decision, and say they would be willing to be part of MTV Ukraine if a new licensee is selected. According to Rudenko, they also keep in touch with the project's mystery investor.

Borisov, a U.S. citizen who has worked for MTV Networks' headquarters in New York for the last six years, refused to comment on the current situation with MTV Ukraine.

However, Borisov did tell the *Post* that he is no longer the channel's general manager.

Asked about former colleagues Rudenko, Lysiuk and Solomakha, Borisov said that "these employees were released due to illegal actions, and are currently the subject of a pending investigation."

MTV Networks Europe did not respond to the *Post's* requests for comment regarding the collapse of the MTV Ukraine project by the time the *Post* went to press.

Government, president to continue power duel

RADA, continued from page 3

"It is the duty of the parliament and it must be done in the next few months or even weeks," Moroz said.

Indeed, the constitutional reforms adopted during the Orange Revolution ceded parliament considerable powers, which lawmakers should now more clearly define for themselves and the executive branch.

Whether they do will reveal much about the intentions and future of the majority coalition, which currently includes the Regions, the Socialists and the Communists.

Although a significant percentage of Yushchenko's parliamentary faction collaborated with the majority in voting in Regions' Yanukovych as premier early last month, Our Ukraine is still not a formal member of the coalition.

Moreover, continuing tension as a result of the inability of Our Ukraine to reach a workable compromise with the existing majority could mean that legislation clarifying the roles of the executive and legislative branches of power will continue to be stalled, making all decisions by parliament contingent on backroom deals.

In the meantime, both sides are sending mixed signals to the public.

Our Ukraine recently cited a memorandum of unity signed with Regions and the Socialists, but not the Communists, on Aug. 3, the day before Yushchenko confirmed Yanukovych's candidacy for prime minister. Joining a coalition without the Communists would be politically less risky for the pro-presidential party.

However, parliamentary speaker Moroz stated on Sept. 4 that the Communists would not be "driven out of the Coalition."

Ukrainian Prime Minister Viktor Yanukovych, right, and deputy prime minister Andriy Klyuyev, left, have a discussion during the opening of the second session of the fifth convocation of the Ukrainian parliament on Sept. 5. Cabinet members and the heads of regional councils and regional administrations, as well as judges were present. (UNIAN)

“Same as it ever was”: MTV’s Principal – Agent Issue

Viacom’s 10-K for 2005 contains the following statement:

> **NOTE 9. RELATED PARTY TRANSACTIONS**
>
> NAI through its wholly-owned subsidiary NAIRI, Inc. is Viacom's controlling stockholder, and Sumner M. Redstone is the controlling stockholder of NAI and Viacom's Executive Chairman of the Board and Founder. NAI and/or NAIRI also own controlling interests in various other companies, some of which do business with Viacom. These companies include CBS Corporation and Midway Games, Inc., as further described below.
>
> NAI licenses films in the ordinary course of business for its motion picture theaters from all major studios including Paramount. During the nine months ended September 30, 2006 and 2005, NAI made payments to Paramount in connection with these licenses in the aggregate amounts of approximately $8.7 million, and $11.2 million, respectively.
>
> NAI and Mr. Redstone owned in the aggregate approximately 88% of the common stock of Midway Games Inc. ("Midway") as of September 30, 2006. Midway places advertisements on several of Viacom's cable networks from time to time. During the nine months ended September 30, 2006 and 2005, Midway made payments to MTV Networks of approximately $3.1 million and $2.8 million, respectively. The Company believes that these transactions were no more or less favorable to the subsidiaries than they would have obtained from unrelated parties. The Company may continue to enter into these and other business transactions with Midway in the future.
>
> For information on NAI and NAIRI's participation in the Company's stock repurchase program, see *Note 3. Stock Repurchase Program*.

Like father, like son, Viacom’s holding company structure was the house model for Borisov’s MTV Ukraine.

And Viacom evidently regarded it’s deal with Borisov was “no more or less favorable to the subsidiaries [such as MTVNE] than they would have obtained from unrelated parties.”

The consequences of such related party transactions have been broadly examined by students, economists, lawyers and psychologists, to say nothing of company directors.

According to Wikipedia:

“In economics, the problem of motivating one party to act on behalf of another is known as ‘the principal-agent problem’.

The principal-agent problem arises when a principal compensates an agency for performing certain acts that are useful to the principal and costly to the agent, and where there are elements of the performance that are costly to observe.

This is the case to some extent for all contracts that are written in a world of information asymmetry, uncertainty and risk. Here, principals do not know enough about whether (or to what extent) a contract has been satisfied.

The solution to this information problem – closely related to the moral hazard problem – is to ensure the provision of appropriate incentives so agents act in the way principals wish.

In terms of game theory, it involves changing the rules of the game so that the self-interested rational choices of the agent coincide with what the principal desires.

Even in the limited arena of employment contracts, the difficulty of doing this in practice is reflected in a multitude of compensation mechanisms ('the carrot') and supervisory schemes ('the stick'), as well as in critique of such mechanisms

The information asymmetry that exists between shareholders and the Chief Executive Officer is generally considered to be a classic example of a principal-agent problem.

The agent (the manager) is working on behalf of the principal (the shareholders), who does not observe the actions of the agent. This information asymmetry causes the agency problem.

In Viacom's 10Q for the quarter ended 31 October 2006, the Notes to Consolidated Financial Statements states:

> "The Company also acquired additional interests in three entities previously accounted for under the equity method of accounting. In September 2006, the Company completed the acquisition of the remaining 63.8% interest in MTV Japan for $84.6 million in cash consideration. In August 2006, the Company acquired the remaining 58% interest of BET Interactive, the owner of the BET.com for $22.7 million in cash consideration. In addition, on June 1, 2006, the Company acquired an additional ten percent interest in Nickelodeon UK Limited ("Nick UK") for $8.9 million in cash consideration. Previously, Nick UK was a fifty-fifty joint venture with BSkyB. With the additional interest, the Company obtained control of Nick UK and began consolidating its operations as of June 1, 2006."

Discuss the following:

1. Using the revised business plan for MTV Ukraine, and after adjusting for market size and estimated household income relative to Japan, how would you value a 94% holding in MTV Ukraine in September 2006?
2. Was Borisov irrational to hold out for a better offer than that presented by a minority shareholder?
3. **Based on the new licensing agreement proposed by MTV to the minority shareholder (absent MTVNE's original purchase option),** what terms would you have offered Borisov in the days before MTV terminated the original license agreement?

“Into the Blue Again; After the Money’s Gone”

By the end of 2005, leading media companies realized the business models which had sustained them for decades were, if not broken, certainly under severe pressure.

Soaring production costs, declining audience share and digital video recorders that enabled consumers to avoid appointment TV and skip commercials were undermining the television business.

DVD sales – the main source of revenue for the film industry – were slowing after years of double-digit growth.

The threat of piracy, the need to find new growth abroad and internet-based competitors like Google’s YouTube and New Corp’s MySpace were raising the temperature in the boardrooms at NBC, Disney and Viacom.

“*There will probably be more changes in the next five years than there have been in the last 50 years.”*
– Jeff Zucker, CEO NBC Universal
6 February 2007

The challenge faced by traditional media companies remained immense: how to keep their core business thriving at a time when audiences and advertising dollars were migrating to new media.

And as MTV recognized, mobile media was the hottest addressable platform for the young.

By the end of 2006, Ukraine reported over 105% mobile penetration. Ukraine’s youthful demographic and large television audience remained immensely attractive to MTV executives and their media buying customers.

With about 46 million pair of eyeballs, the prospect of resurrecting MTV Ukraine proved irresistible. Ukraine was the sole remaining European market MTVNE hadn’t licensed.

But where to begin?

“And you may ask yourself –
How do I work this?
And you may ask yourself –
Where is that large automobile?

Where indeed? By year-end, MRIYA still owned a valuable Ukrainian national broadcasting license which could take years to reproduce.

Letting the days go by was not an option for MTV Ukraine.

Time was of the essence if the brand was to remain untarnished in Ukraine.

And some assembly would most certainly be required if MTV was to resurrect the network.

Unfortunately for MTV's plans, MRIYA's national broadcast licenses were revoked by Ukraine on 13 January 2007.

Replacing these national licenses would be difficult after all the broken promises since 2005 including, not least, the big press conference by MTV in February 2006.

With Borisov, MacCormick, Possenniskie, and now Guild, well and truly gone, the remaining MTV executives would have to pick up the pieces.

And one of the most important pieces would be $9 million of funding available from Horizon Capital.

> *And you may tell yourself –*
> *This is not my beautiful house!*
> *And you may tell yourself –*
> *This is not my beautiful wife!*

Perhaps Horizon and MTVNE, as licensor, could simply direct their presumptive "new licensee" owned by a talented media personality, to hire top talent and rebuild the studio.

Under this scenario, the licensee entity might even include seasoned senior executives of, and advisors to, Ukraine's Studio 1+1, a division of Ron Lauder's highly-regarded Central European Media Enterprises. Perhaps some of the former employees of MTV Ukraine too.

At long last, MTVNE could book their license fee and simply rely on local management of the new licensee to deal with the mess left behind by their former executives – and the original licensee entity MTVNE also thought they once controlled.

Voila! MTV Networks Europe would finally be complete.

> *Letting the days go by; let the water hold me down*
> *Letting the days go by; water flowing underground*
> *Into the blue again; after the money's gone*
> *Once in a lifetime; water flowing underground.*
>
> *Same as it ever was...Same as it ever was...Same as it ever was...*
> *Same as it ever was...Same as it ever was...Same as it ever was...*
> *Same as it ever was...Same as it ever was...*"

– The Talking Heads, "Once in a Lifetime"