

The UNESCO Convention on Cultural Diversity: Cultural Policy and International Trade in Cultural Products

Peter S. Grant

Introduction

This chapter deals with the global conflict over the right of countries to maintain space and choice for their own films and other cultural products, in the face of a massive trade imbalance in favor of the Hollywood-based multinational companies. It is a story involving dramatic confrontations, emotional arguments, and pitched battles in a number of glamorous international cities. Of course, Hollywood blockbuster films are known around the world for action-filled confrontations, special effects wizardry, and a plot involving global combatants. But it is unlikely that the story recounted in this chapter will ever be told in a blockbuster film, at least not one financed by Hollywood. Part of the reason is that the story is more complex than the kind of story that Hollywood films like to tell. But part of the reason is also that the story reveals an appalling and embarrassing disconnect between the position espoused by Hollywood and the position of virtually every country outside the United States (US).

This is not an objective account, since it is told from the point of view of one of the combatants. The story culminates in the overwhelming approval in 2005 of a new international convention on cultural diversity by countries around the world,

despite frantic efforts by the US to oppose it. I can say that I had a small hand in the creation of this convention since I first suggested the idea at a meeting of a Canadian trade advisory group in 1998. That group adopted the idea, published it in a report in 1999, and then stepped back as governments and cultural organizations – first in Canada, then around the world – took up the struggle to implement it.

But I am ahead of my story. It is a complex narrative, dating back to the early part of the twentieth century. And the story has not yet ended.

Trade in Cultural Products

We now live in a globalized world where cultural products – books, sound recordings, magazines, TV shows, films – can be accessed from just about anywhere. It is a world of seemingly unparalleled choice.

Sixty years ago, international trade was a fraction of what it has since become. And international trade in cultural products was also tiny in comparison with present-day trade flows. Since then, cultural trade has exploded in size. It has also changed dramatically. Formerly, most trade took the form of physical goods shipped across borders, such as

books, magazines, or film. Now, trade in cultural products typically involves the transfer of intellectual property, and what crosses borders is frequently a digital bit stream, sent through satellite links or fiber optic cable.

This has also made such trade very difficult to measure or to value. Disputes abound as to whether cultural products are best described as “goods” or “services,” and how to price or value such products when most of the value is intangible and the marginal cost of producing a copy or obtaining an additional viewer is close to zero. In this regard, a study released by the United Nations Educational, Scientific and Cultural Organization (UNESCO) Institute for Statistics in 2005 included the following commentary:¹

Generally trade statistics cannot accurately measure the economic value of copyrighted cultural works sold in foreign markets. Cultural products have both a tangible element, such as the platform of product format, and an intangible element which determines their content and makes them reproducible as many times as desired. This intangible nature of cultural products leads to underestimations of the actual global value of exchanges. For example, trade statistics assign a small value of US\$100 to an original work protected by copyright, i.e. a film print or a master version, when exported from one country to another. Yet, this original work may generate millions of dollars in sales and royalties through copies, exhibition rights and reproduction license fees. However, if unsuccessful, this product may generate almost no revenue at all. Thus, trade statistics as they are currently collected cannot reflect the intangible assets or the market value of many of the cultural products being exchanged among countries. This constitutes the main limitation to attempts to measure cultural trade, which ideally requires the formulation of alternative methodologies and statistical classifications.

Another problem arises because customs data do not track the origin of the content but only the origin of the manufactured copy that crosses the border. The two are not necessarily the same. As noted in the UNESCO Institute for Statistics study:²

Only limited information is available on the origin of the cultural content of traded products. The rules applied to origin and destination of imported and exported products relate to the location of where the product is processed, but

do not specify the origin of its cultural content. It is possible for the original work and its copies to be produced in different locations. For example, many films created and projected in country A may have been imported in the form of release prints from country B, which benefits from competitive laboratories that process at lower prices. In trade records, the products are declared as originating from country B. However, from a cultural point of view, country B is not considered as the country of origin of this product.

A third problem is a definitional one. In trade terms, cultural products can be seen as only one part of a broader classification of creative-industry products, which can include computer software and the products of related industries like advertising, architecture, design, or fashion. Many studies of “creative clusters” focus on this broader classification, making comparisons more difficult.

Recent studies have attempted to develop a better picture of trade flows in regard to cultural products, although none of them has fully addressed the issues noted above. Using the broader definition of what is encompassed, a 2008 study by the United Nations Conference on Trade and Development (UNCTAD) concluded that the value of world exports of creative industry goods and services reached US\$424.4 billion in 2005 (3.4 percent of world trade) compared with \$227.4 billion in 1996. Over the period 1996–2005, the creative industries increased their shares of global markets, growing at an overall annual rate of 8.7 percent for the period 2000–05.³

A more recent US study focussed on a narrower definition and estimated that the revenue generated in 2007 by foreign sales or exports of cultural products created in the US was US\$7.62 billion for pre-recorded records and tapes; \$20.38 billion for motion pictures, TV, and video; and \$5.78 billion for newspapers, books, and periodicals.⁴

A number of other countries also have export success for their cultural products. Television programs from Mexico are widely distributed throughout Latin America and in Spanish-speaking parts of the US. Countries with large internal markets, like Brazil’s television and India’s film industries, also have some export success.

However, much of the trade in cultural products is seen as largely one-way. In 2007, movies produced in Hollywood accounted for 63 percent of the box office receipts in European theaters.⁵ The box office

share of Hollywood films is even higher in other countries, often reaching 90 percent or more. By contrast, the percentage of box office achieved by foreign films in the US is typically below 10 percent. The US is also the dominant television exporter. A British study estimated that 85 percent of all children's programming, 81 percent of television movies, and close to 75 percent of dramatic television programs sold in the global television market were of US origin.⁶

The size and perceived importance of the trade in cultural products has grown exponentially. The "cultural industries" are also increasingly seen by many developed countries as a vital part of their economy. A major study published in November 2006 entitled "The Economy of Culture in Europe" underlined the culture sector's potential for creating more and better jobs in the future.⁷ The study showed how the cultural industries in Europe drive economic and social development, as well as innovation and cohesion. According to the study, the cultural sector in Europe employed at least 5.8 million people in 2004, which is more than the total working population in Greece and Ireland put together. Furthermore, that sector accounted for 2.6 percent of the gross domestic product (GDP) of the European Union (EU) in 2003.

In August 2008, a similar study was published by the Conference Board of Canada. The analysis, entitled "Valuing Culture: Measuring and Understanding Canada's Creative Economy," concluded that Canada's cultural sector directly contributed about C\$46 billion – or 3.8 percent – to overall Canadian GDP in 2007. It also estimated that the culture sector's impact on the economy was much broader – C\$84.6 billion in 2007, or 7.4 percent of total real GDP. As the study noted, "Countries around the world, as well as many cities and regions, recognize that a dynamic culture sector plays a key role as a magnet for talent, enhances economic output, and acts as a catalyst for prosperity."⁸

Why Cultural Products are Different

There is undeniably an active marketplace for cultural products, be they books, sound recordings, magazines, TV shows, or films. These products can be bought and sold. So why should they be treated any differently from other commodities in

terms of trade law? In particular, why are special policies or measures required for products of *popular* culture? After all, if they are popular, won't the market automatically supply them?

These are logical questions. But to the consternation of economists and policy-makers, the answers are not easy. In fact, it is widely acknowledged that the economic principles applicable to ordinary commodities are difficult if not impossible to apply to cultural products. Cultural goods and services are affected by what *The Economist* has called "curious economics"⁹ and these have to be carefully borne in mind. Table 21.1 lists a number of attributes that make it clear that the marketplace is quite different for cultural products when compared with the market for ordinary commodities.¹⁰

To illustrate this, it may be useful to look at the economics of a popular new TV drama series made in the English language.¹¹ Drama is the most costly to produce of the forms of audiovisual entertainment. An hour-long television drama in the US now costs upwards of US\$2–3 million to make. However, cultural products like TV drama also operate in a market that is very high risk. Most new TV shows fail. That being said, where the market size is large enough, the few titles that do succeed can produce a very high reward, much higher than for other products. This is because the marginal cost of each additional viewer is very low so any revenue from additional sales drops to the bottom line once the initial cost is covered.

These economic realities mean that market size is a key determinant in recovering the high costs of TV drama. And in this respect, the US has a crucial advantage over other markets. Because of its size, the US is the only English-language market where high-cost TV drama can be produced profitably without government or regulatory support. Looking just at the population of the English-language markets, the US market is five times the size of the United Kingdom (UK) market, 13 to 15 times the size of the English Canadian or Australian markets, and over 60 times the size of the Irish or New Zealand markets.

The enormous size of the US television market allows networks in that country to support expensive local TV drama without subsidy or government intervention. Because the cost of a successful program is typically recouped in the domestic US market, prices in foreign markets can be a fraction of the price paid in the US, and are typically far below the cost of local productions in those markets. In 2007, for example, *Variety International* reported that

Table 21.1 Why cultural products are not like ordinary commodities

<i>Attribute</i>	<i>Ordinary commodity (e.g. car, detergent)</i>	<i>Cultural good or service (e.g. TV show, book, CD)</i>
Nature of product	Serves utilitarian purpose	Communicates ideas – information or entertainment
Nature of production process	Assembly line; each unit requires significant resources	Expensive one-time process; creates intellectual property which then can be cheaply stored, duplicated and delivered
Marginal cost of unit of product	Significant	Insignificant
Predictability of demand	Demand largely predictable month after month	Difficult to estimate demand in advance of incurring cost
Substitutability	Large degree of substitutability with competing brands	Limited substitutability; product is perceived as “unique”; copyright law protects monopoly on each title
Time line of demand	Demand for product continues indefinitely until next product cycle (measured in years)	Demand falls off sharply after introduction of the product and next product replaces it (measured in weeks or months)
Who determines demand	Ultimate consumer	Ultimate consumer in the case of books and movies; advertiser in the case of magazines and commercial broadcasting; cable or satellite gatekeeper for niche broadcast channels
Setting the price	Non-discriminatory; arbitrage precludes market differentiation	Within markets is often set at a conventional “going rate”; between markets is discriminatory (by market, nature of use, and time line of use); copyright law permits unlimited subdivision of markets
Pricing latitude	Dependent on competitive forces of demand and supply; constrained by significant marginal cost and non-discriminatory pricing	Marginal cost is insignificant, and pricing of cultural products can be highly discriminatory between markets
Nature of consumption	Each unit of product is consumed and is not available to others	Original intellectual property is not consumed but can be made endlessly available; “public good” attributes
Time line of advertising	Continual advertising over many years to reinforce brand	Intense advertising at time of introduction of product before it is displaced by next product

Source: Table 3.1 in Peter S. Grant and Chris Wood (2004) *Blockbusters and Trade Wars: Popular Culture in a Globalized World*. Toronto: Douglas & McIntyre Ltd (now D&M Publishers Inc.), pp. 44–45. Reproduced with permission from the publishers and authors.

the average price paid by a free-to-air TV broadcaster for the broadcast rights to a one-hour US drama (which, again, typically costs upwards of US\$2–3 million to make) was only US\$300,000 in the UK, \$100,000 in Canada, \$75,000 in France, and \$60,000 in Australia. The average price for the local broadcast rights to a half-hour TV situation comedy (typically costing upwards of \$2 million to make) was reported to be only \$200,000 in the UK, \$60,000 in Canada, and \$35,000 in Australia.

With ordinary commodities, according to economic theory, the socially optimal price for the good would be its marginal cost. However, in the case of broadcast programs, recovery of program production costs cannot occur if such programs are priced at the socially optimal price of zero. Accordingly, broadcast programs are priced (particularly across borders, but in other ways as well) on a highly discriminatory basis which bears little or no relationship to cost.

The problem of competing with US productions was examined in 2005 by David Graham & Associates Limited, a UK economic consulting firm (since renamed “Attentional”). Their report included the following analysis:¹²

Substantial economies of scale and scope, combined with the culturally specific nature of much TV and audiovisual content, leaves the USA – which has the world’s most valuable and culturally homogeneous audiovisual market – with an unbeatable competitive advantage when it comes to international trade in TV and related material. This in turn leads to persistent trade deficits in audiovisual activities for even the largest European countries ...

Even though audiences and consumers in these foreign domestic markets may have a preference for home-grown material, the US material is still able to secure a high share of its domestic markets as it often contains ten to twenty times the production value and creative endeavor of domestic content, while effectively being sold into the domestic market at the same – or an even lower – price than the domestic material.

In an earlier study for the UK Department of Culture, Media and Sport (DCMS), the Graham group calculated that UK broadcasters were acquiring imported programs for only one-sixth of the cost per hour of acquiring programs from independent UK producers.¹³ Given this price and cost disparity, experience has shown, particularly in English-language markets outside the US, that unless governments or regulators act, there will be little or no local high-cost drama on television screens. And because of the cost disparity, that applies even if the local TV drama is more popular in its country of origin than the imported drama is.

Historically, many commentators have founded the need for broadcast regulation on arguments concerning the scarcity of spectrum and the public character of radio frequencies. But these are not the only arguments for the regulation of broadcasting. In the area of entertainment programming, another key argument is that, unless there is regulation, viewers in smaller countries would be presented with a menu of program choices largely dominated by high-cost productions acquired from dominant global or regional players, particularly the US, at a fraction of their cost.

Similar arguments can be made in regard to other cultural products. Despite the apparent

increase in choice, we live in a world where the market for books, films, and sound recordings is dominated by blockbusters and bestsellers, where concentration of media appears to be growing, where independent producers find it harder to survive, and where the priorities of the relatively few companies that dominate the sector have little reason to include the new, the experimental, the alternative, or the exotic or local forms of cultural expression. As a result, the market alone would not deliver true cultural diversity.

The Cultural Tool Kit

Given this situation, what policy measures can governments take to sustain or develop a broader range of popular cultural products, without undermining freedom of expression? I have provided an inventory of such measures in a previous book and have referred to these measures as comprising a “cultural tool kit.”¹⁴ Among others, the tool kit includes six types of measures, which are widely used in developed countries around the world:

- The institution of *public broadcasting* is considered a key support measure for cultural diversity, because public broadcasters can be given a mandate to support local cultural expression in a variety of formats and languages. However, their ability to do so is vitally dependent on the funding they receive from TV license fees or government appropriation, and this varies significantly between countries.¹⁵ Public broadcasters can also be seen as a means to provide local and alternative expression in digital and online media.
- The imposition of reasonable *scheduling or quota requirements* on private broadcasters and other cultural gatekeepers. Many countries require private broadcasters to include program genres that would otherwise be under-represented in their program schedules, in particular, local drama, children’s programs, or documentaries. And a few countries require a certain proportion of screen time in cinemas to be devoted to local films.
- The imposition of *expenditure requirements* on privately owned cultural gatekeepers to support the creation of local cultural products. A variant of this model is to impose a levy on box office

or distributor subscription revenue which goes to a funding agency to support investment in local expression. Examples include the box office levy by the French government to support local film production and the requirement imposed by Australia, Canada, and France on subscription programming services to expend a certain proportion of their revenue or programming budget on local drama. In Canada, all cable and satellite distributors must contribute 5 percent of their subscription revenue to a fund that supports Canadian programming (and in 2009, the broadcast regulator increased this to 6.5 percent). In Italy, commercial broadcasters must spend at least 4 percent of their revenue on the support of European films. In France, the amount is 3.2 percent. In Spain, the amount is 5 percent.

- The application of *national ownership rules* in certain cultural industry sectors. Broadcasters in the US, Canada, Australia, and many other countries are required to be locally owned. In countries outside the US, the effect of these rules is to create broadcast companies that provide a local “green light” for the benefit of indigenous producers, so they have more doors to go to besides Hollywood. The problem with national ownership rules, of course, is that the larger the local company becomes, the more its program choices become indistinguishable from those of a multinational.
- The use of *competition policy measures*, to support independent production and to lessen the dominance of gatekeepers. An example is the rule in a number of countries requiring their broadcasters to acquire a certain proportion of their programs from independent producers. Another example is the imposition of access rules on cable or satellite companies, requiring them to carry indigenous broadcast services. Again, the object of the exercise is to promote diversity of source.
- The support of the creation or distribution of cultural products through *subsidies or tax incentives*. This is probably the most common type of measure used in developed countries around the world to support a diversity of cultural expression. For example, the movie trilogy *The Lord of the Rings* would never have been made but for tax incentives from Germany and New Zealand.

There is no question that when properly applied, measures of this kind can be quite effective in maintaining a level of pluralism in cultural expression. However, most of the measures in the cultural tool kit have weaknesses as well as strengths, and they need to be carefully drafted and implemented in order to be fair and effective. In addition, the cultural policy appropriate for one society may be quite different than that for another, just as every cultural product is unique.

It is also important to note that with the digitization of media, the fragmentation of audience, and the increased availability of cultural products on the Internet, the cultural tool kit needs to be constantly reinvented. In an on-demand world, for example, scheduling requirements become less relevant, and greater emphasis needs to be placed on measures such as public broadcasting, expenditure requirements, and subsidies.

Evolution of Trade Law on Cultural Products

The first major multilateral treaty dealing with trade was signed in 1947.¹⁶ Called the General Agreement on Tariffs and Trade (GATT),¹⁷ it focussed only on trade in goods, not services, and contained a number of key principles:

- *tariff reduction* (reducing customs duties on the importation of goods)
- *most favoured nation* (treating imported goods from one country no differently than like products from another) and
- *national treatment* (treating imported goods no differently than like products of national origin in respect to laws affecting their internal sale, distribution, or use).

The beliefs underlying the GATT were based on the theory of “comparative advantage,” which asserts that each country should specialize in producing and exporting goods in which its comparative advantage is greater, or its comparative disadvantage is smallest, and should import goods in which its comparative disadvantage is greatest. For most goods, this specialization arguably leads to higher real incomes for all, lending force to arguments for free trade.

However, the theory rests on classic economic assumptions, including the assumption that the goods being compared are readily substitutable and that the relative efficiency of countries can be measured by looking at the marginal cost of the commodities they produce. Neither assumption applies in regard to cultural products, since the value of each product is based on its unique intellectual content and the marginal cost per unit is close to zero.

Trade in cultural products in 1947 was a tiny fraction of what it has become. However, a number of European countries were concerned with the dominance of Hollywood films and had imposed quotas for local films in their cinemas. Such quotas would be inconsistent with the principle of “national treatment” and so Article IV was added to the GATT permitting countries to reserve screen time for “films of national origin.” Only one other provision in the GATT addressed cultural products. Article XX stipulated that nothing in the agreement prevented the enforcement of measures “necessary to protect public morals” or “imposed for the protection of national treasures of artistic, historic or archaeological value.” But there was no “cultural exception.” The GATT therefore applied – and continues to apply – to trade in cultural *goods* such as books, newspapers, magazines, sound recordings, and film (subject only to the provision allowing domestic screen quotas in theaters).

However, the GATT does not apply directly to cultural *services* such as film production, the performing arts, broadcasting, or the dissemination of cultural works by satellite or cable. In the 1960s, the US tried unsuccessfully to argue that the national treatment principle in the GATT should apply to strike down European scheduling quotas for local content in television. Although it did not succeed, the issue did not go away. In the 1970s, Canada introduced a number of tax and regulatory measures to reduce the adverse impact on its domestic broadcasting system of the US television stations along the Canada–US border. The US border stations then commenced what has been called the “border broadcasting war,” attacking the Canadian measures in the Canadian courts, and seeking retaliation by US regulators and legislators. While their efforts largely failed, the dispute underlined the vulnerable state of the Canadian cultural sector in the face of threatened trade retaliation.¹⁸

In 1987, Canada and the US negotiated a bilateral free trade agreement. The Canada-US Free Trade Agreement (FTA) did contain a cultural exemption, although a number of concessions were given to the US in the cultural field. When the Agreement was expanded to include Mexico in 1994 with the North American Free Trade Agreement (NAFTA 1994), Canada maintained its cultural exemption.¹⁹

By 1995, however, the move toward free trade took a major step forward with the completion of the Uruguay Round of multilateral trade negotiations. The agreements entered into created the World Trade Organization (WTO), set up a binding dispute resolution process, reconfirmed the terms of the GATT, and added a new General Agreement on Trade in Services (GATS).²⁰ In the latter agreement, a number of European countries led by France had pressed for a “cultural exception.” The US, intent on rolling back the television broadcast quotas in Europe, refused to countenance this approach. In the end, the GATS was silent on the matter of cultural services. However, the national treatment provisions in the GATS only applied to those service sectors for which each country made affirmative commitments. To the dismay of the Motion Picture Association of America, the US agreed to go forward with the agreement even though almost all countries refrained from making national treatment commitments in regard to audiovisual services.²¹ However, the GATS also called for future negotiating rounds in which further trade liberalization would be expected.

The Uruguay Round gave teeth to the GATT and, within a year, Canada found itself on the defensive in a US complaint to the WTO concerning its measures to protect its domestic magazine industry. For decades, Canada had protected Canadian magazines from competition from foreign “split-run” magazines by prohibiting their importation. (A “split-run” magazine would be a Canadian edition of a foreign magazine, using editorial matter that had already been amortized in the foreign market, and stripping in Canadian ads. Canada freely allowed foreign periodicals into the country provided they did not try to “cream-skim” the Canadian ad market with split-run editions.) In 1993, Time Warner had proposed to avoid the customs tariff on a new split-run magazine by sending the page proofs by satellite to a printing firm in Canada. After Canada introduced legislation to tax away any profits from such activities, the US

brought its complaint. In the end, the WTO sided with the US, ruling that Canada's measures breached the provisions of the GATT. Canadian arguments that US magazines were not "like products" to Canadian magazines fell on deaf ears.²² Following its defeat in what has come to be known as the *Periodicals* case, Canada introduced a new services-oriented measure that it felt would pass scrutiny at the WTO, since it would fall under GATS, not GATT. However, the US threatened immediate trade retaliation and the two countries eventually settled their differences in mid-1999, with Canada agreeing to allow split-run editions of foreign magazines with up to 18 percent Canadian ads.²³

The *Periodicals* case brought home to the Canadian side two realities about the WTO process.²⁴ The first was the apparent inability of a dispute resolution panel to see any difference between local and foreign cultural products. The second was the fact that the process focussed entirely on whether a complained-of measure fit within the words of the treaty and had no regard for whether, in the absence of the measure, one would have a failed market in economic terms, given the public-good nature of the content in the product. The WTO was clearly oblivious to the "curious economics" of cultural products. Arguments of this kind were essentially irrelevant to its process.

The Idea of a Cultural Diversity Convention

By 1998, the *Periodicals* case was coming to a head at the WTO. And it was the central topic at the meetings of the Cultural Industries Sectoral Advisory Group on International Trade (SAGIT), a trade advisory group set up by the Government of Canada to advise its Minister of International Trade. The group was also concerned with the trade liberalization agenda in the GATS, which might impact Canadian protection measures in the broadcasting field.

A word about the SAGIT process is in order. The idea of having trade advisory groups from various industry sectors to advise the government is not a Canadian idea. In fact, such groups had long been part of the trade process in the US, and the influence of such industry groups on the US Trade Representative was well known. Accordingly,

in the mid-1980s, Canada had followed suit. It had set up some 15 industry panels to help it develop its trade position in trade negotiations. All panel members contributed their time without compensation.

One of these panels was the Cultural Industries SAGIT. In its earliest incarnation, it was seen as ineffective, largely because a number of its members were drawn from the artistic community which viscerally opposed free trade in general. But then the government changed its membership to include more of the cultural industries – particularly those parts of the sector considered more business-oriented – broadcasters, and book and magazine publishers.

I had advised a group of high-level Canadian communications executives about the implications of a Canada-US Free Trade Agreement in the 1985–88 period. That group had been formed at the instance of Pierre Juneau, then President of the Canadian Broadcasting Corporation (CBC), Canada's national public broadcaster, and Donald Hunter, then President of Maclean Hunter, one of Canada's largest multimedia companies. This group consisted of a dozen "heavy hitters" from the cultural industries who carried little of the emotional fervor of the creator community. The group fully recognized that Canada was a trading nation and needed the benefits of a free trade agreement. But it also recognized the curious economics of local cultural products and their unique vulnerability in smaller countries like Canada. I was commissioned by the group to prepare an inventory of cultural assistance and protection measures and to help it lobby the government to keep culture policies "off the table" of the FTA negotiations. In this, the group was largely successful. I was added to the Cultural Industries SAGIT in the early 1990s. The President of Maclean Hunter, Ron Osborne, was asked to chair it. And the membership became more disciplined, responsive, and business-oriented. By 1998, when the *Periodicals* case was before the WTO, the group had participated in numerous meetings over the years to discuss trade issues involving cultural products. But the meetings now had a more urgent tenor. In the Canada-US FTA, and in the Uruguay Round, Canada had dodged some bullets. But now it had been blindsided by the US complaint to the WTO about Canada's policies to protect and assist its magazine sector.

I was particularly affected because I was also counsel to the Canadian Magazine Publishers Association, which was embroiled in the *Periodicals* case. And represented on the SAGIT were some of Canada's biggest magazine players – Maclean Hunter, Telemedia, and Southam. By the mid-1990s, the SAGIT was chaired by Scott McIntyre, the head of a Canadian book publishing company. He was later succeeded by Ken Stein, a former civil servant who had headed the cable industry trade association and then become a senior executive with one of Canada's cable companies.

As we discussed the case with our government trade negotiators, the mood became increasingly dispirited. The *Periodicals* case brought us face to face with a troubling reality. The WTO structure seemed to be biased against the kind of analysis that distinguished cultural products from other trade products. For example, in a dispute resolution process, who would be the impartial judges? Judges were picked from a roster of former WTO trade officials or trade law academics. All of them had an institutional bias towards liberalizing trade. All of them wanted the WTO treaties to “work” and to minimize any perceived loopholes. None of them seemed to have any acquaintance with the curious economics of cultural products. While they might attend symphony concerts and profess to be sensitive to “culture,” they would have little inkling of the forces that affect trade in popular cultural products or in distinguishing one form of expression from another.

It was also clear that the WTO itself would not be sympathetic to a “protocol” that exempted cultural policies from trade retaliation. The delegates to WTO meetings were trade ministers, rather than culture ministers. They generally came from hard-nosed economic ministries and had considerable clout. Culture ministers were all too often seen as lightweight dispensers of subsidies to the arts community. They would have no impact on the WTO.

The staff of both the culture and trade ministries attended these SAGIT meetings, and from time to time, the Canadian Heritage Minister at the time, Sheila Copps, would also attend. Copps was very supportive. But she wanted ammunition. Her cabinet colleagues were not all convinced. Give me some arguments besides just “cultural protection,” she would say.

It was clear to all of us that it would be pointless to tackle the WTO head-on. First, we needed to

educate the world. But what to do? As we kicked ideas around the table, André Bureau, the chair of Astral Communications Inc., suggested having the government create a Cultural Ambassador who could travel the globe, proselytizing the concept of cultural sovereignty.

Then I suddenly had an idea. How about pushing for an international treaty specifically dealing with culture and trade, I said. The room quieted as I talked further. Instead of focussing on the concept of a “cultural exemption,” why don't we talk about the need to protect “cultural diversity”? And if we can't win inside the WTO, maybe we can influence public opinion outside of it. After all, the landmines treaty was done without any involvement of a UN organization at all. The real issue was how to mobilize world opinion behind our goals.

There was a lot of discussion as to how such a treaty might be negotiated. There was broad agreement that it would be best to do it outside the aegis of the WTO. The obvious agency to tackle it would be UNESCO, although there were reservations about that agency's clout or effectiveness. By the end of the meeting, the group had coalesced around my idea. And it was decided that the group would prepare a report – ostensibly to the Minister, but also for public dissemination – outlining the idea in more detail. A writer was hired to help put the report together. I helped draft the key portions. The report was published in February 1999 and was the first document to propose a legally binding cultural diversity convention that would address the interface between cultural policies and trade obligations.²⁵ In the end, it was left open as to where such a treaty might be negotiated. With regard to content, the report recommended the following:

Canada could initiate a new international instrument, which would lay out the ground rules for cultural policies and trade, and allow Canada and other countries to maintain policies that promote their cultural industries.

A new cultural instrument would seek to develop an international consensus on the responsibility to encourage indigenous cultural expression and on the need for regulatory and other measures to promote cultural and linguistic diversity. The instrument would not compel any country to take measures to promote culture, but it would give countries the right to determine the

measures they will use (within the limits of the agreement) to safeguard their cultural diversity.

A kind of blueprint for cultural diversity and the role of culture in a global world, the instrument would clearly define what was covered, and stress the importance of cultural sovereignty.

The new instrument would identify the measures that would be covered and those that would not, and indicate clearly where trade disciplines would or would not apply. It would also state explicitly when domestic cultural measures would be permitted and not subject to trade retaliation.

Later that year, the Canadian government endorsed this idea. And so started a seven-year effort by many players which culminated in the adoption in October 2005 of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (see UNESCO 2005). How this came about is a complex story.²⁶ Among the key milestones were the following:

- In May 2000, the European Commission and UNESCO sponsored a Forum on Globalization and Cultural Diversity in Valencia, Spain. Delegates from the audiovisual sector in countries from six continents attended. I attended the forum and was chosen to be the rapporteur. No one there was aware of the Canadian idea before I described it to them. However, there was immediate agreement with the concept, and the final communiqué included a statement that “there is an urgent need for the negotiation of a new international instrument on cultural diversity to address issues related to cultural products.” This was the first *international* recognition of the concept of a new cultural trade instrument.
- In the fall of 2000, the International Network of Cultural Policy (INCP) met on the Greek island of Santorini. Following a UNESCO conference on cultural diversity held in Stockholm in 1998, the INCP had been created in 1998 at the instance of Sheila Copps, the Minister of Canadian Heritage, to bring culture ministers from around the world together in annual meetings. (Having no culture minister, the US was not included in the INCP.) In Santorini, a working group led by Canadian officials presented a discussion paper and an illustrative list of principles to be used as a starting point for the development of an international instrument

on cultural diversity. In the ensuing annual meetings of the INCP, the membership of which grew to include 72 countries, the culture ministers exchanged ideas, advanced the discussion, and built support.

- At the Santorini meeting, a group of private nongovernmental organizations (NGOs) representing artists’ and cultural groups in 21 countries decided to create an International Network on Cultural Diversity (INCD). This organization timed its meetings to coincide with the ministerial meetings of the INCP. Over time, the INCD grew to include 500 individuals from 70 countries. By lending the voice of civil society to the pressures for a new international instrument, the INCD played a significant role in garnering further support.
- Also in 2000, the Coalition for Cultural Diversity (CCD) – a group of Canadian cultural professional associations that had been established in Quebec in 1998 – decided to embrace the concept of a new instrument for cultural diversity. It then focussed its attention on helping to create sister organizations in other countries, so that professionals in the cultural field in those countries would have a focal point to lobby their governments to support the proposed convention. Robert Pilon, the CCD’s Executive Director, spent most of the next few years on a plane travelling to conferences and meetings in countries on six continents. Eventually, through his efforts and those of many others, coalitions for cultural diversity were set up in 42 different countries.
- In June 2001, culture ministers of La Francophonie, an international organization of fifty French-speaking countries, meeting in Benin, added their backing to “the principle of a universal international regulatory instrument that supported the promotion of cultural diversity.”²⁷ La Francophonie proved to be a key player in supporting the new instrument.

For those that appreciate the importance of leadership in international policy-making, a word is in order about the role of Sheila Copps. A strong supporter of Canada’s cultural policies, she was seen as irrational and intransigent by the US entertainment industries. The mere mention of her name to a senior executive in the US sound recording sector would bring forth a spitting-mad tirade. But overseas, Copps was magical and charismatic.

Fluent in English, French, and Italian, she could mesmerize international audiences in both developed and developing countries. I can remember standing with a few other Canadians at the back of a packed conference room in Rabat, Morocco, as she spoke extemporaneously to public broadcasting officials from across Africa. As that audience listened spellbound, we looked at each other with widened eyes. Coppins' communication skills seemed to be little recognized or applauded in her native country, but she was magnetic and compelling when speaking in other countries about the importance of cultural diversity.

The UNESCO Convention on Cultural Diversity

Although the initial discussion of the new instrument did not specify where it would be negotiated, opinion quickly coalesced around UNESCO as the logical body for this purpose. In 2001, UNESCO had adopted a non-binding Universal Declaration on Cultural Diversity, and by 2002, the culture ministers in the INCP, meeting in Cape Town, agreed that UNESCO was "the appropriate international institution to house and implement an International Instrument on Cultural Diversity."²⁸ Pressed by a number of Member States to take up the matter, in October 2003 UNESCO unanimously approved a resolution calling for "the elaboration by 2005 of an international standard-setting convention regarding the protection of the diversity of cultural contents and artistic expressions."²⁹ Even the US, which had rejoined UNESCO earlier that year after a 19-year absence, did not, in the end, oppose the resolution. The US had asked for and received a formal recognition in the resolution of the Universal Declaration of Human Rights (1948), an acknowledgement in it of the right of free speech, and a statement calling on the Director-General of UNESCO to undertake consultation with the WTO and other agencies.

So began an intense two-year campaign within UNESCO to develop and approve a binding convention.³⁰ The first step was the creation of a group of 15 independent "experts" to come up with a draft of such a convention. By this time, a number of drafts were in circulation, including versions prepared by the Canadian Cultural Industries SAGIT,

the INCP, and the INCD. The group of independent experts met three times in late 2003 and the first half of 2004 and issued a useful first draft and an accompanying report. Then, matters were handed to an intergovernmental group of experts – actually comprising almost 550 people from 132 Member States – which met three times in 2004 and 2005 to consider and approve a final draft for consideration at the upcoming UNESCO General Conference. This process was bogged down by the end of the second meeting, given the endless drafting suggestions from a number of states, most of which were put in square brackets, indicating lack of agreement. The suggestions included a number of clauses proposed by the US which undermined or diluted the draft convention.

It was necessary to cut through the confusion to get to a final text, and the task fell to the Chairman, Kadar Asmal, a former minister in Nelson Mandela's cabinet. After the second meeting had concluded, he convened a week-long get-together in Cape Town with four officials to come up with a "Chairman's Draft" that eliminated all the square brackets. This became the starting point for the third meeting of intergovernmental experts held in May 2005, which made relatively few further changes, approved it, and sent the document on to the UNESCO General Conference.

By this point in time, the earlier efforts of the INCP, the INCD, La Francophonie, and the Coalitions for Cultural Diversity had paid off. Within Europe, Finland, France, and Belgium were the most supportive. (France had initially been wedded to the "cultural exception" approach to trade negotiation but eventually realized that "cultural diversity" was a stronger way to argue the case for cultural sovereignty.) Germany was initially cooler to the concept of a binding convention until Jacques Chirac buttonholed Gerhard Schroeder in early 2004 and convinced him to support it in the interest of European unity. With Germany's support came much of the Eastern bloc. Spain came aboard after a change in government. The UK and the Netherlands were not particularly supportive at first but eventually agreed to support the pan-European position.

In Africa, the efforts of La Francophonie came to fruition as Senegal and Benin led other countries on the continent to support the initiative. In Latin America, Brazil brought many other countries into the fold, although Argentina was less interested. In

the Asia Pacific region, China came aboard early, but Australia hung back, intent on pursuing a free trade agreement with the US. Japan was “cranky” until the end.

The US had largely ignored the mounting pressure for an international instrument until UNESCO agreed to pursue it in 2003. As matters progressed at UNESCO, however, the US became increasingly involved in trying to stop it. It focussed its rhetoric on two arguments. The first was the claim that the Convention could justify government-imposed restrictions on freedom of expression and other human rights abuses, although language in the Convention expressly contradicted this. The US’s second concern was that the Convention could adversely affect trade rules at the WTO. To bolster this argument, the US tried to have the WTO communicate this concern to UNESCO. The WTO did carry out an informal consultation among its Members, but no consensus was reached on the issue and the WTO report to UNESCO made no recommendations in this regard. As the final UNESCO negotiations were about to start in October 2005, the US played a last frantic card, a personal letter from Secretary of State Condoleezza Rice to all the UNESCO Member country ambassadors. The letter criticized the draft convention, complained of the process, and darkly hinted that the US might reconsider its support for UNESCO if Member States agreed with the draft.

The matter finally came to a head in the week of October 16–22, 2005. The debate took place at UNESCO headquarters at 7, Place du Fontenoy, Paris, in a large accordion-shaped building with fluted concrete walls and a copper-plated fluted roof, only a few blocks away from the Eiffel Tower. This building was the site of the largest conference room in the UNESCO complex. It was a room that needed to be big enough to accommodate delegations from over 150 countries around the world. Each country could bring a dozen delegates – and many did. The interest in the subject was intense – so much so that on the first day the meeting had to be moved out of a smaller conference room when there had been standing room only and late-arriving delegates had been stopped at the door.

Over the days of debate, the dialogue was emotional and heart-felt. Delegates from more than a hundred countries from every corner of the globe rose to be heard. During the days of deliberation, procedural resolutions and amendments put

forward by the US were defeated by votes of 54–1, 53–1, and 158–1. The final vote came on October 20, 2005. In the end, the Convention was approved by a vote of 148 in favor, two opposed (the US and Israel), and four abstaining (Australia, Nicaragua, Honduras, and Liberia). The US Delegation did not help matters by ending the session with an angry and bitter closing speech.

The Convention came into force on March 18, 2007, three months after at least 30 countries ratified it. But it was widely understood that the Convention would not be seen to have broad applicability unless a significant number of countries – say, 50 or 60 – ratified it. That has also occurred. In fact, by the beginning of 2010, the Convention had been ratified by over 100 countries around the world, including large and small players from every part of the globe. The international support for the Convention and the speed with which it had been ratified is almost unprecedented. Even Australia, which had abstained from voting for the treaty in 2005, had a change of government and ended up ratifying the treaty in 2009.

The result was a stunning victory for those who felt that the rules of international trade needed to defer to the desire for cultural diversity. At the same time, the debate revealed what appears to be an unbridgeable chasm between the position of the US and the rest of the world.

Ambit of the Convention

The title of the Convention is the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. But what does the Convention say?

To begin with, it declares that “cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value” (UNESCO 2005). A key objective of the Convention is “to reaffirm the sovereign right of States to maintain, adopt and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expression in their territory” (UNESCO 2005). At the same time, the Convention notes that cultural diversity can be protected and promoted only if freedom of

expression, information, and communication are guaranteed.

Article 6 elaborates on the kinds of measures that each party may adopt to protect and promote the diversity of cultural expressions. These include measures that “provide opportunities for domestic cultural activities, goods and services among those available within the national territory,” measures to aid “artists and other cultural professionals,” measures to provide access to the means of production and distribution for “domestic independent cultural industries,” and “measures aimed at enhancing diversity of the media, including through public service broadcasting.” Given the broad wording of Article 6, all the measures noted earlier in this chapter as part of the “cultural tool kit” can be said to be supported and endorsed by the Convention. At the same time, by virtue of Article 3, paragraph 2, any such provisions must be consistent with the provisions of the Convention which include freedom of expression, information and communication (UNESCO 2005). So the Convention does not support measures that prohibit the importation of foreign cultural products; rather, it supports measures that afford space and choice for a variety of cultural expression.

The Convention also creates an International Fund for Cultural Diversity, to support cultural diversity in developing countries.

While the word “trade” is not to be found in the Convention, it is obvious that many measures endorsed by the Convention would be inconsistent with the national treatment and most favored nation principles set out in trade agreements. So a crucial question is how does the Convention interrelate to other trade agreements and, in particular, to the WTO agreements? The answer is found in Article 20 of the Convention, which was the subject of much heated debate.

Article 20, paragraph 2, states that “Nothing in this Convention shall be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties.” So as it stands, the Convention does not roll back existing obligations that countries may have under WTO or other trade agreements. However, Article 20, paragraph 1, states that “without subordinating this Convention to any other treaty, parties shall foster mutual supportiveness” between this Convention and other treaties, and when interpreting and applying the other treaties or when entering into other

international obligations, parties “shall take into account the relevant provisions of this Convention” (UNESCO 2005). Accordingly, the Convention would appear to stop dead any *future* WTO agreements that would be inconsistent with cultural policies. It would also provide an avenue to interpret existing trade obligations – at least where they are ambiguous – in a way that recognizes the specificity of cultural goods and services.

Where We Stand Today

So how can one assess the impact of the Convention?

Since 1995, progress in further trade liberalization has stalled at the WTO for a number of reasons having little to do with cultural policies. But by virtue of the UNESCO Convention, any further encroachment on cultural policies in regard to audio-visual services at the WTO is unlikely to occur.

For the US, the global support for the UNESCO Convention was a dismal defeat, all the more galling because it had come on the heels of what the US thought was an important victory in the *Periodicals* case at the WTO. Acting at the behest of Time Warner to fight that battle at the WTO, in the end the US lost the war. In fact, had the WTO not been engaged by the US in 1996, it is unlikely that the UNESCO Convention would ever have materialized in 2005.

There has been a growing literature about the impact of the UNESCO Convention on the WTO and vice versa. Some commentators have noted that the Convention does not override the WTO and therefore question its effectiveness.³¹ But others have taken a more positive view, noting that the Convention could influence the interpretation and operation of the GATT and GATS, and pointing to other benefits.³²

It is certainly true that the Convention does not affect past WTO commitments by countries. Nor does it stop the US from continuing to press for trade liberalization in cultural products, particularly at the bilateral level. In the absence of multilateral progress, the US has entered into bilateral free trade agreements with a number of countries. In those agreements, it has sought concessions in regard to trade in cultural products, and it has succeeded in a number of cases, although existing cultural protection measures in these countries typically have been

grandfathered. The US particularly has pressed to have any protection measures removed for products delivered digitally, taking the view that this is where future delivery of cultural products will focus.³³ Again it has had mixed success in this regard at the bilateral level. However, progress in multilateral negotiations on this issue would now be highly doubtful given the global support for the principles of the UNESCO Convention.

So what does the Convention do? I see it as achieving six objectives:

- the Convention blesses the tool kit of government measures to support cultural diversity, such as public broadcasting, scheduling and quota rules, spending rules, foreign ownership rules, competition policies, and subsidies;
- the Convention educates the world that cultural products are different from ordinary commodities and that countries should have the sovereign right to implement measures to protect cultural diversity without fear of trade retaliation;
- the Convention creates a fund to help developing countries in producing local, distinctive cultural products;
- the Convention supports freedom of expression and does not empower countries to stop or prohibit foreign content;
- while not overriding preexisting trade obligations of the parties, the Convention can aid in the interpretation and application of those obligations; and
- most significant, the Convention dissuades countries from further trade liberalization in the cultural sector, and strengthens their hand in resisting pressure to do so.

Countries representing over two-thirds of the world's population have now ratified the Convention and more are likely to follow suit. But as noted at the beginning of this chapter, the Convention has also made clear an appalling and embarrassing disconnect between the position espoused by Hollywood and the position of virtually every country outside the US.

It is too early to tell how effective the Convention will be in achieving the objectives noted above. The Convention was referred to in the course of argument in the recent US-China dispute before the WTO over publications and audiovisual products. However, the decisions of the

Dispute Resolution Panel³⁴ and the Appellate Body³⁵ in that case largely turned on the specific commitments made by China in its WTO Accession Protocol to grant non-discriminatory trading rights to foreign-owned distributors. The US did not seek to overturn China's restriction on the number of US films permitted to be exhibited in the country.

In a more interesting case, the European Court of Justice was asked to review a requirement by Spain that private broadcasters in that country expend at least five percent of their revenue on European films, at least 60 percent of which must be earmarked for films made in one of the five official languages of Spain. The broadcasters contended that this amounted to state aid in favor of the Spanish film industry, which was not compatible with the European Convention. Spain argued that the measure at issue had a cultural basis, namely, the defence of Spanish multilingualism. The decision of the Court made specific reference to the UNESCO Convention in upholding the Spanish requirement.³⁶

Since language and culture are intrinsically linked, as pointed out by, *inter alia*, the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted at the General Conference of UNESCO in Paris on 20 October 2005 and approved on behalf of the Community by Council Decision 2006/515/EC of 18 May 2006 (OJ 2006 L 201, p. 15), which states in paragraph 14 of its preamble that "linguistic diversity is a fundamental element of cultural diversity", the view cannot be taken that the objective pursued by a Member State of defending and promoting one or several of its official languages must of necessity be accompanied by other cultural criteria in order for it to justify a restriction on one of the fundamental freedoms guaranteed by the Treaty ...

The fact that such a criterion may constitute an advantage for cinema production undertakings which work in the language covered by that criterion and which, accordingly, may in practice mostly comprise undertakings established in the Member State of which the language constitutes an official language appears inherent to the objective pursued. Such a situation cannot, of itself, constitute proof of the disproportionate nature of the measure at issue in the main proceedings without rendering nugatory the recognition, as an overriding reason in the public interest, of the objective pursued by a Member

State of defending and promoting one or several of its official languages.

In the end, the protection and support of cultural diversity will be the responsibility of individual states. However, the UNESCO Convention hopefully will assist them in being able to maintain space and choice for a broad range of cultural products – including their own cultural expression – in a globalized world.

Notes

- 1 UNESCO Institute for Statistics (2005: 18).
- 2 UNESCO Institute for Statistics (2005: 19). For a discussion of the definitions used in various countries to determine what is a “national” film or other cultural product, see Grant and Wood (2004: 139–167).
- 3 UNCTAD (2008: 106).
- 4 See Siwek (2009: Table A.5). Note that in addition to the three “cultural” sectors mentioned, foreign sales or exports of US-created computer software were estimated to be US\$91.86 billion in 2007.
- 5 European Audiovisual Observatory (2009).
- 6 DCMS (1999), cited in Bielby and Harrington (2008: 39).
- 7 KEA European Affairs (2006).
- 8 Conference Board of Canada (2008).
- 9 *The Economist* (2001: 88).
- 10 For a detailed examination of the economics of cultural products, see Grant and Wood (2004: 42–109); Baker (2000).
- 11 For a recent study of this issue, see Grant (2008), from which much of the following information is taken.
- 12 Graham and Associates Limited (2005: 68–69).
- 13 Graham and Associates Limited (2000).
- 14 See Grant and Wood (2004: 139–314).
- 15 Public broadcasters in high-support countries, like the UK, Germany, Denmark, Finland, Norway, Sweden, and Switzerland, receive per capita funding from US\$100 to \$150 per year. Public broadcasters in medium-support countries, like France, Ireland, Austria, and Belgium, receive per capita funding from US\$60 to \$80 a year. By contrast, public broadcasters in low-support countries like Canada, Australia, and New Zealand receive less than US\$40 per capita funding from government or license fees to support their operations. See Grant (2008), where calculations of the per capita support for public broadcasters in 18 countries, prepared for the Canadian Broadcasting Corporation by Nordicity Group Ltd., and expressed in Canadian dollars, are set forth in Appendix 2.
- 16 For further details on the evolution of trade agreements affecting cultural products, see Véron (1999); Grant and Wood (2004: 352–377); Geradin and Luff (2004); Voon (2007).
- 17 GATT (1947).
- 18 Grant and Wood (2004: 360–361).
- 19 Canada–US Free Trade Agreement (1987).
- 20 GATS (1999).
- 21 In the end, to its later regret, only New Zealand made national treatment commitments in regard to audiovisual services.
- 22 World Trade Organization (1997).
- 23 In the end, however, the Canadian magazine sector managed to thrive within the terms of the negotiated settlement and the few US split-run periodicals that launched eventually ceased operation. Even *Time Canada*, a long-standing Canadian split-run edition that had been grandfathered in the 1970s, gave up the ghost in 2009.
- 24 For a discussion of the *Periodicals* case, see Magder (1998).
- 25 Cultural Industries SAGIT (1999).
- 26 For other descriptions of the evolution of the UNESCO Convention, see Grant and Wood (2004: 378–405); Bernier (2005, 2008). For a US perspective, see Fullman (2005); Balassa (2008).
- 27 Grant and Wood (2004: 387).
- 28 Grant and Wood (2004: 397).
- 29 Grant and Wood (2004: 397).
- 30 The reports of the expert committees, the reports of the intergovernmental group of experts, and other UNESCO documents relating to the Convention can all be accessed at: http://portal.unesco.org/culture/en/ev.php-URL_ID=11281&URL_DO=DO_TOPIC&URL_SECTION=201.html.
- 31 See, for example, Voon (2007); Hahn (2006).
- 32 See, for example, Graber (2006); Khachaturian (2006); Carmody (2007); Smith (2007); Raboy and Mawani (forthcoming); Bernier (2008; 2009).
- 33 Bernier (2004).
- 34 World Trade Organization (2009).
- 35 World Trade Organization (2009a).
- 36 European Court of Justice (2009: Paragraphs 33–35).

References

- Baker, C. E. (2000) “An economic critique of free trade in media products,” *North Carolina Law Review*, 78: 1357.
- Balassa, C. (2008) *America’s Image Abroad: The UNESCO Cultural Diversity Convention and U.S. Motion Picture Exports*. Nashville, TN: The Curb Center for Art, Enterprise, and Public Policy, Vanderbilt University.
- Bernier, I. (2004) “The recent free trade agreements of the United States as illustration of their new strategy

- regarding the audiovisual sector," http://www.diversite-culturelle.qc.ca/fileadmin/documents/pdf/conf_seoul_ang_2004.pdf (accessed 12/04/2010).
- Bernier, I. (2005) "La négociation de la convention de l'UNESCO sur la protection et la promotion de la diversité des expressions culturelles," *Canadian Yearbook of International Law*, 43: 3–43.
- Bernier, I. (2008) *The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: A Cultural Instrument at the Junction of Law and Politics*, http://www.diversite-culturelle.qc.ca/fileadmin/documents/pdf/carrefour-du-droit_eng.pdf (accessed 12/04/2010).
- Bernier, I. (2009) "The relationship between the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions and other international instruments: The emergence of a new balance in the interface between commerce and culture," (August), http://www.diversite-culturelle.qc.ca/fileadmin/documents/pdf/ANG_Relations_entre_Convention_Unesco_instruments_internationaux.pdf (accessed 12/04/2010).
- Bielby, D. D., and Harrington, C. L. (2008) *Global TV: Exporting Television and Culture in the World Market*. New York: New York University Press.
- Canada–US Free Trade Agreement (1987) Ottawa: Foreign Affairs and International Trade Canada, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/assets/pdfs/cusfta-e.pdf> (accessed 12/04/2010).
- Carmody, C. (2007) "Creating 'Shelf Space': NAFTA's Experience with Cultural Protection and its Relevance for the WTO," *Asian Journal of WTO and International Health Law and Policy*, 2(2): 287–312.
- Conference Board of Canada (2008) *Valuing Culture: Measuring and Understanding Canada's Creative Economy*. Ottawa: Conference Board of Canada.
- Cultural Industries SAGIT (1999) *New Strategies for Culture and Trade: Canadian Culture in a Global World* (February). Ottawa: Foreign Affairs and International Trade, <http://www.international.gc.ca/trade-agreements-accords-commerciaux/fo/canculture.aspx?lang=en> (accessed 12/04/2010).
- DCMS (1999) *UK Television Exports Inquiry: The Report of the Creative Industries Task Force Inquiry into Television Exports*. London: Department of Culture, Media and Sport.
- European Audiovisual Observatory (2009) *Film and Home Video: Yearbook 2009, Film, Television and Video in Europe*, vol. 3. Strasbourg: European Audiovisual Observatory.
- European Court of Justice (2009) *Unión de Televisión Comerciales Asociadas (UTECA) vs. Administración General del Estado* (March 5). Luxembourg: European Court of Justice, <http://eur-lex.europa.eu/LexUriServ.do?uri=CELEX:62007JO222:EN:HTML> (accessed 12/04/2010).
- Fullman, A. R. (2005) "Reconcilable differences: The United States versus Canadian perspective towards UNESCO's Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions." Unpublished Master's Thesis, George Mason University.
- GATS (1995) *General Agreement on Trade in Services*. Geneva: WTO, http://www.wto.org/English/docs_e/legal_e/26-gats_01_e.htm (accessed 12/04/2010).
- GATT (1947) *General Agreement on Tariffs and Trade*. Geneva: WTO, http://www.wto.org/English/docs_e/legal_e/gatt47_01_e.htm (accessed 12/04/2010).
- Geradin, D., and Luff, D. (2004) *The WTO and Global Convergence in Telecommunications and Audio-Visual Services*. Cambridge: Cambridge University Press.
- Graber, C. B. (2006) "The new UNESCO Convention on cultural diversity: A counterbalance to the WTO?" *Journal of International Economic Law*, 9(3): 553–574.
- Graham, D., and Associates Limited (2000) *Out of the Box: The Programme Supply Market in the Digital Age*, Report for the UK Department of Culture, Media and Sport. London: DCMS.
- Graham, D., and Associates Limited (2005) *Impact Study of Measures (Community and National) Concerning the Promotion of Distribution and Production of TV Programmes Provided for Under Article 25(a) of the TV Without Frontiers Directive*. Brussels: Audiovisual, Media and Internet Unit, Directorate-General Information Society and Media, European Commission.
- Grant, P. S. (2008) *Stories Under Stress: The Challenge for Indigenous Television Drama in English-Language Broadcast Markets*. International Affiliation of Writers Guilds, <http://www.iawg.org/Stories%20Under%20Stress.pdf> (accessed 12/04/2010).
- Grant, P. S., and Wood, C. (2004) *Blockbusters and Trade Wars: Popular Culture in a Globalized World*. Vancouver and Toronto: Douglas & McIntyre.
- Hahn, M. (2006) "A clash of cultures: The UNESCO Diversity Convention and international trade law," *Journal of International Economic Law*, 9(3): 515–552.
- KEA European Affairs (2006) *The Economy of Culture in Europe*. Brussels: European Commission.
- Khatchaturian, A. (2006) "The new cultural diversity Convention and its implications on the WTO international trade regime: A critical comparative analysis," *Texas International Law Journal*, 42: 191–209.
- Magder, T. (1998) "Franchising the candy store: Split-run magazines and a new international regime for trade in culture," *Canadian-American Public Policy*, 34(April 1): 1–66.
- North American Free Trade Agreement (NAFTA) (1994) *NAFTA*. Ottawa: Foreign Affairs and International Trade Canada, <http://www.international.gc.ca/>

- trade-agreements-accords-commerciaux/agr-acc/nafta-alena/index.aspx?lang=en (accessed 12/04/2010).
- Raboy, M., and Mawani, A. (forthcoming) "Are states still important? Reflections on the nexus between national and global media and communication policy," in A. Calabrese and C. Padovani (eds) *Communication Rights and Global Justice: Reflections on the Short History of a Social Movement*. Cresskill, NJ: Hampton Press.
- Siwek, S. E. (2009) *Copyright Industries in the U.S. Economy: The 2003–2007 Report*. Prepared by Economists Inc. for the International Intellectual Property Alliance (IIPA), June 2009, available at www.iipa.com.
- Smith, R. C. (2007) "The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions: Building a New World Information and Communication Order?" *International Journal of Communication*, 1: 24–55.
- The Economist* (2001) *Globalisation*. London: Profile Books.
- UNCTAD (2008) *Creative Economy Report 2008*. Geneva: UNCTAD, <http://www.unctad.org/Templates/Webflyer.asp?intItemID+5109> (accessed 12/04/2010).
- UNESCO Institute for Statistics (2005) *International Flows of Selected Cultural Goods and Services, 1994–2003*. Montreal: UNESCO Institute for Statistics, http://www.uis.unesco.org/template/pdf/csc1/IntlFlows_EN.pdf (accessed 12/04/2010).
- UNESCO (2005) *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. Paris: UNESCO.
- Véron, L. (1999) "Hollywood and Europe: A case of trade in cultural industries, the 1993 GATT dispute." Unpublished paper, Columbia International Affairs Online.
- Voon, T. (2007) *Cultural Products and the World Trade Organization*. Cambridge: Cambridge University Press.
- World Trade Organization (1997) *Canada: Certain Measures Concerning Periodicals* (WT/DS31/AB/R); Appellate Body Report, adopted 30 July 30. Geneva: WTO, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds31_e.htm (accessed 12/04/2010).
- World Trade Organization (2009) *China: Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products*, WT/DS363/R and Corr.1, Dispute Resolution Panel Report, circulated to WTO Members (12 August). Geneva: WTO, http://docsonline.wto.org/imrd/gen_searchResult.asp?RN=0&searchtype=browse&q1=%28%40meta%5FSymbol+WT%FCDS363%FCR%2A+and+not+RW%2A%29&language=1 (accessed 12/04/2010).
- World Trade Organization (2009a) *China: Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products* (DS363), Appellate Body Report (December 21). Geneva: WTO, http://www.wto.org/english/news_e/news09_e/363abr_e.htm (accessed 12/04/2010).