

**Reconcilable Differences:**

**The United States Versus Canadian Perspective Towards  
UNESCO's Convention on the Protection of the Diversity of  
Cultural Contents and Artistic Expressions**

By

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## DEDICATION

This is dedicated to all those who share an interest and passion for the still emerging field of cultural policy in the United States and for Ellen McCulloch-Lovell and Jeanne Butler; the women who opened the door and paved the way for me.

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## **List of Abbreviations/Symbols**

CA	Canada
CMT	Country Music Television (U.S)
EU	European Union
FCC	Federal Communications Commission (U.S.)
FTA	Free Trade Agreement
GATS	General Agreement on Trade and Services
GATT	General Agreement on Tariffs and Trade
IICD	International Instrument for Cultural Diversity
IIPA	International Intellectual Property Alliance
IMLS	Institute for Museum and Library Services (U.S.)
INCD	International Network for Cultural Diversity
INCP	International Network for Cultural Policy
MAI	Multilateral Agreement on Investment
MPAA	Motion Picture Association of America
NAFTA	North American Free Trade Agreement
NEA	National Endowment for the Arts (U.S.)
NEH	National Endowment for the Humanities (U.S.)
NGO	Non-governmental Organization
RIAA	Recording Industry Association of America
TRIPS	Trade-Related Aspects of International Property Rights
SAGIT	Sectoral Advisory Group on International Trade (CA)
UNESCO	United Nations Education Scientific and Cultural Organization
U.S.	United States
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## ABSTRACT

### RECONCILABLE DIFFERENCES: THE UNITED STATES VERSUS CANADIAN PERSPECTIVE TOWARD UNESCO'S CONVENTION ON THE PROTECTION OF THE DIVERSITY OF CULTURAL CONTENTS AND ARTISTIC EXPRESSIONS.

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International cultural diversity efforts, although couched in language promoting the protection and cultivation of national resources and identity, have been accused as primarily establishing a pretext for justifying cultural exemption policies in trade agreements and thus the economic benefits of nation states rather than the assurance of cultural diversity. This project investigated whether or not the proposed UNESCO *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expression* (Convention on Cultural Diversity) which was scheduled and then voted on in October 2005, could reconcile the contradictory perspectives of the United States and Canada on the validity of cultural exemptions in free trade agreements, and if not, how the Convention's outcome will affect U.S. Canadian relations and cultural exemptions within pre-existing trade agreements.

By analyzing the composition of the Canadian and American delegations to the UNESCO "Convention on Cultural Diversity", this thesis determines through interviews with members of the delegations and experts in the creative industries which policy interests are reflected and how this affected the international negotiations on cultural diversity leading to the creation of the Convention.



## I. INTRODUCTION: Only the Beginning

*“The Convention, it’s just good theater,”* Delegation participant

On October 20, 2005 the 33<sup>rd</sup> General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) voted 148 to 2 with four abstentions to approve an international instrument for cultural diversity, the *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions*. The Convention, as an agreement between nations that by definition imposes binding legal commitments,<sup>1</sup> will go into effect after ratification by thirty of UNESCO’s members. This document is the culmination of a decade-long international dialogue driven by the Canadian national interest to create domestic market space for its cultural goods and services. The “ultimate goal... is to give all countries the means to protect and promote the diversity of cultural expressions within and outside their borders”<sup>2</sup> in a way “complementary to, rather than in competition with, pre-existing international legal instruments.”<sup>3</sup> The Convention on Cultural Diversity, as it is often referred to, was intended to be unique to other international treaties by placing equal value and importance on the “cultural and economic aspects of development and the specific nature of cultural contents and artistic expressions; in other words, the dual cultural and economic nature of the goods and services to be covered by the Convention.”<sup>4</sup>

The Convention on Cultural Diversity was designed to ensure states’ “capacity to develop and implement measures to support diversity of artistic, linguistic and cultural expression, within and among nations; and taking into account the potential impediments to these goals that may arise from international trade, investment and service disciplines.”<sup>5</sup> These measures include financial support through subsidies and grants, and preferential treatment to national forms of cultural expression through quotas to ensure local content. The pre-draft discussions and suggested texts advocated that an effective instrument on cultural diversity would require legally binding commitments to insure that “cultural goods and services must not be treated as mere economic commodities as has been the case when trade liberalization policies

and those necessary to achieve non-commercial cultural objectives”<sup>6</sup> have defined them.

The *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions*, hereafter referred to as the *Convention or the Convention on Cultural Diversity*, is an effort to build a parallel quasi-legal justification for the rationale of treating cultural products separately from other industries which in some cases has been interpreted as violating the standards of free trade. The core issue concerns how individual nation-states can ensure “shelf space” for domestic cultural production particularly vis-a-vis American cultural goods and services. A critical subsequent question asks whether or not the tangible and intangible products of the creative industries can be legitimately exempted, as vehicles of national and cultural symbolism, from trade agreements in an international order committed to free trade and open markets. In the future, it will be important to look back at members’ intentions, goals, and the negotiating process itself in order to evaluate the success of the treaty and to document the evolution of the conversation on cultural diversity.

For the purpose of this inquiry the main actors are: the United States, which is perceived world wide to be culturally aggressive and guilty of “dumping” inferior cultural products resulting in saturated markets; Canada, the self-perceived primary victim of aforementioned cultural imperialism due to its shared border and language with the United States; and UNESCO, the stage in which the debate surrounding an IICD was set. Secondary actors include the main coalition partners organized through the International Network for Cultural Policy (INCP) and the International Network for Cultural Diversity (INCD) that participated in preliminary efforts to raise the debate and frame the issues. The role of the specific creative industry service organizations, which are believed to have varying degrees of influence on specific delegations, are also examined in this study.

The U.S. and Canada represent two opposing ideological perspectives towards cultural exemptions and provide a useful framework to understand the origins and motivations that caused the conversation on cultural diversity to become discussed in trade terms. These two nations were chosen as the comparative focal points for this analysis because in addition to a shared border they share similar qualities in their diverse multi-ethnic populations, first-world economic development status, territorial size, and representative governments. In addition, these countries are relative newcomers on the nation-state scene, in comparison with other more culturally and politically established representative Western states like France, Spain and Great

Britain, that have a more recognizably defined national identity and culture. However, despite their similarities, Canada has consciously and aggressively developed cultural policies while the U.S. has not actively developed a national cultural identity, or policies affecting culture.

Entering the negotiations of the Convention there were set assumptions concerning the specific motivations of the United States and Canada. One could presume, based on the U.S. lack of a national cultural priority and passivity towards cultural policies, that in regard to pursuing national interests concerning hybrid industries representing both trade and culture, that "culture" has less of a voice in the U.S. than commercial trade interests. In contrast, Canada has seemed to promote both a social and commercial agenda for culture. The cultural trade relationship between Canada and the U.S. is particularly unique because of their joint efforts in promoting bi-lateral and multi-lateral free trade, their common language of English, and a geographic proximity that facilitates creative industry market penetration and cross-national cultural influences. Profiling these two countries, that hold contradictory perspectives, provides a useful framework to investigate the validity of cultural exemptions in free trade. Furthermore, it allows a determination of whether or not the Convention can adequately and effectively address the competing cultural and economic objectives of its member states.

This thesis examines the development of the Canadian and American positions on the cultural policy issues relevant to the intersection of trade and culture that are expressed in the Convention. It captures these nations' delegation responses to the goals and text of the Convention and their perspectives on potential outcomes. Furthermore, this project objectively attempts to evaluate the motives, tactics, and negotiating positions of each country to determine if the U.S. and Canada each made a genuine attempt to bridge the divide on the proper recognition and treatment of cultural products, to solve the problem of ensuring and encouraging cultural diversity in all its planes of manifestation, and whether its professed goals and delegation compositions reflected their true interests and represented an effort of good faith. A second goal was to determine the utility of the document itself in its ability to effectively reconcile opposing views of its member states towards the validity of cultural exemptions in trade, and provide a significant discussion and framework to support cultural diversity.

It was foreseen that the representation of interests on the U.S. and Canadian delegations would respectively correspond to each national viewpoint concerning the validity of cultural exemptions. Under this rationale, the United States delegation members and advisors would be

more representative of economic and free trade experts with position development heavily influenced by private creative industry interests. In contrast, it was assumed that the Canadian delegation's position would be more inclusive of both economic and cultural interests. Based on the United States' history of reluctance towards signing international treaties, the low priority of the U.S. in making conscious cultural policy, and the American underestimation of other countries' concerns to ensure the vibrancy of their own native culture in relation to American cultural dominance, it was hypothesized that the U.S. would not be able to support a final Convention on Cultural Diversity that provided justification or support for cultural exemptions in trade.

An international treaty on cultural diversity guided by UNESCO provided a chance to examine the nature of cultural diversity in a forum dedicated to cultural interests. The document was a significant new opportunity to discuss and codify the nature and importance of culture separate from a commodity or trade status that has thus far marred nation-state efforts to secure space and ensure local access and resonance for their national symbols, stories, and perspectives. The long awaited presentation of an international instrument on cultural diversity could have been a unique moment in cultural policy history to set guidelines for how national policies pertaining to issues of access, national investment, and preservation could create cultural ecosystems that are supportive of cultural diversity in a world where globalization has been perceived as equal to the threat of cultural homogenization. Despite the Convention's adoption, supporters and detractors alike have critiqued the Convention for "lacking teeth." The process has manifested in yet another ambiguous text and has been criticized by the American delegation members as prejudicial and flawed. This thesis profiles how two nations committed to free trade, freedom of expression, human rights, and cultural diversity came to opposite conclusions when choosing to support an international instrument intended to promote and protect the diversity of cultural contents and artistic expression.

## II. BACKGROUND: The Path Towards An International Instrument

The march towards an international instrument in UNESCO on cultural diversity originated from the existing ambiguities within free trade agreements that are relevant to the cultural industries and their ability to be exempted. International cultural diversity efforts, although couched in language promoting the protection and cultivation of national cultural resources and identity, have been accused as primarily establishing a pretext for justifying cultural exemption policies in trade agreements and thus the economic benefits of member states rather than the assurance of diverse cultural expression. The Convention is significant to a larger discussion of whether or not a country participating in the World Trade Organization (WTO), regional economic cooperation, and free trade agreements can exempt cultural goods and the creative industries, which were estimated to be worth \$1300 billion in trade by 2005<sup>7</sup>, from pre-established and future trade agreements. Pre-Convention efforts by NGOs, including the INCD and the INCP, to draft an international instrument for cultural diversity (IICD) established justification for cultural exemptions, and advocated that each signatory be allowed to establish its own procedures for maintaining local voices and cultural diversity through the use of quotas, levies and other similar tools on the cultural industries of media, film, music, and publishing.

Although there is no universal definition of the cultural industries, commonly they are defined also as the “copyright” or “creative” industries, those industries that produce goods or services which combine the creation, production, and commercialization of contents which are cultural in nature. These industries are usually protected by copyright and include printing, publishing, multimedia, audio-visual, phonographic arts, cinematography, crafts, and design.<sup>8</sup> Article 4 of the Convention (Definitions) considers them in relevance to the “industries producing and distributing cultural goods or services” and then refers the reader to the previous definition of *cultural activities, goods, and services* which are broadly described as “those activities, goods, and services, which at the time they are considered, as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value that they have. Cultural activities may be an end in themselves, or they may contribute to the

production of cultural goods and services.”<sup>9</sup> The hybrid nature of the cultural industries makes it difficult for nations to agree on the proper treatment of cultural products in their dual role as a commodity and as a tool for social cohesion representing national cultural significance that is conveyed via commercial media.

### **American Market Share and Trade Disputes**

The argument for diversity cannot be separated from the implications on trade relations that are caused by the practice of cultural exemptions. Canada and the U.S. each hold different interpretations on the validity and enforcement of cultural exemptions. The North American Free Trade Agreement (NAFTA) signed in 1995 helped to establish Canada as the United States’ largest trading partner, as well as a precedent for cultural exemptions. The United States accepted the exclusion of the cultural industries from NAFTA in Article 2005 (1) but reserved the right to retaliate if enforced unfairly in Article 2005 (2) which states that “a party may take measures of equivalent commercial effect in response to actions that have been inconsistent with this Agreement but for paragraph 1.”<sup>10</sup> This language was copied from the 1989 free trade agreement between the U.S. and Canada. Internationally, it was not just Canada that was in favor of preserving states’ rights to counter the impact of American entertainment and cultural goods, specifically in the audiovisual industries. The Europeans used the same 1989 free trade language as a bargaining chip in the Uruguay GATT round, whose successful completion in 1994 after eight years ultimately hinged on the exclusion of the audiovisual industries.<sup>11</sup>

NAFTA’s ambiguous terms proved inadequate for both American and Canadian interests in specific trade disputes by demonstrating that interpretation of the language can be utilized to each country’s economic advantage. In 1997, the U.S. disputed a Canadian 80% excise (prohibitive) tax on the advertising revenue for the Canadian edition of *Sports Illustrated*, a split-run magazine created first in the U.S. and then distributed in Canada financed through local advertising revenue. Canada had instituted the tax to counter the ability of the publisher to sidestep through new technology, which sent the publication electronically over the border, its 1965 law banning the import of foreign magazines including Canadian advertising which had been legislated in order to protect the Canadian magazine industry.<sup>12</sup> The World Trade Organization ruled against the custom tariff and excise tax implemented by Canada, on the grounds that it contradicted the spirit of the NAFTA agreement. The case explicitly illustrated

that, contrary to Canada's hopes, not all products with cultural attributes could be included within NAFTA's cultural exemption clause.

In another case, Canada's broadcasting policies allowed a Canadian company to usurp the U.S. based Country Music Television's market share in Canadian markets. According to Canadian authors Grant and Wood of Blockbusters and Trade Wars, in 1994 a license was granted to a Canadian company, The Country Network, to duplicate the same service and CMT was dropped from the authorized cable services list. In response, the U.S. based CMT, with U.S. support, retaliated by preventing distribution of country music by Canadian artists in the United States. The end result was a compromise which gave the original CMT a 20% share in the newly established Canadian Country Music channel.<sup>13</sup> These two conflicts demonstrated that the interpretations of what was permissible to exempt on cultural grounds as negotiated through NAFTA were continuing to clash and motivated Canada to find other forums to strengthen its sovereign right to protect and promote Canadian culture.

The impact of cultural exemptions, the exposure of markets to foreign influence, and retaining market share for national cultural goods between the U.S. and Canada are particularly notable as each is the other's largest trading partner and thus potential market.<sup>14</sup> The copyright industries are the United States' largest global export, contributing almost 90 billion to the strongest economy in the world. Comparatively, Canada's creative sector contributes 35 billion to their economy<sup>15</sup> and their most successful cultural export, the Harlequin Romance series, accounts for 40% of all U.S. paperback sales.<sup>16</sup> The Canadian government, realizing how much is at stake economically and culturally, is profoundly concerned about the presence of the U.S. products in its markets.

In contrast, the U.S. has promoted open trade access for the cultural industries, of which American products are found globally, despite the efforts other nations have made to contain American influence and nurture their own national cultures. To understand fully the implications of U.S. domination within these industries, the scale and breadth of influence must be realized. The United States controls 75% of television markets, up to 90% of motion picture markets in some regions including Canada and Europe, and 60-65% (depending on the source) of the French cinema market which has only reserved a space for French and European content through quotas. Canada's parallel policy of utilizing quotas in its music industry has resulted in a reservation of only 30% for Canadian content, with 70% of Canadian music markets containing

American content.<sup>17</sup> Canada's geographic proximity to the U.S. and its shared language even more clearly highlight the same concerns that other nations are articulating as its markets are the most saturated by American cultural products.

The chart below clearly illustrates the origin of Canadian and other nations' concern for foreign dominance within their markets.

**Table I: Foreign Share of Canadian Cultural Markets**

<i>Percentage Foreign</i>	<i>In these Canadian Markets</i>
95	<i>Feature films screened in theaters</i>
70	<i>Music on Radio Stations</i>
84	<i>Retail sales of sound recordings</i>
69	<i>French language retail sales of sound recordings</i>
60	<i>English-language television programming</i>
33	<i>French-language television programming</i>
85	<i>Prime-Time drama on English-language television</i>
75	<i>Prime-time drama on French-language television</i>
70	<i>Book market</i>
83	<i>Newsstand market for magazines</i>
81	<i>English-language consumer magazines</i>

Source: Keith Acheson and Christopher Maule. Much Ado About Culture: North American Free Trade Disputes. University of Michigan Press: 1999. P. 16

While Canada's proximity to the U.S. brings a greater exposure and gravity to their concern of cultural imperialism, far less wealthy and less developed nations share the same concerns because their distribution channels cannot compete with the United States cultural industries' worldwide reach.<sup>18</sup> Over one hundred and forty-three countries are in support of protecting cultural diversity, in defense against the homogenization of culture augmented by the increased flow of goods, services, people, ideas, and information more readily accessible due to the Internet and other technologies. This threat, often interpreted as Americanization, has driven many countries to use measures considered protectionist in order to preserve their national culture and identity from cultural imperialism. Quotas and levies are often used to defend national market access in Europe, Australia, Asia and the Americas against U.S. entertainment goods.

Despite state intervention and policies to encourage domestic content, the chart and statistics cited indicate that American cultural products resonate with global audiences, and as such the United States is the largest global exporter of the cultural industries. Historically, the



United States has categorized such economic activity as the “entertainment” industries, and as a sector they are the largest American industry employing more workers than the defense industry thus indicating a clear economic interest.<sup>19</sup> According to estimates by the IIPA, in 2002 the U.S. copyright industries accounted for foreign exports of \$89.26 billion and employed 11.47 million workers.<sup>20</sup> It is the U.S.’s conceptual definition that focuses on entertainment rather than cultural value, along with aggressive defenses of free trade to retain its market dominance for cultural goods and services, which has created tension between the U.S. and other countries seeking to carve out a market niche for their national ideas. The United States is committed to open economic markets as a foreign policy and economic goal, and interprets Canada’s endorsement of cultural exemptions as contrary to the spirit of free trade to which the two nations are committed through the WTO and NAFTA. The issue is not isolated to current trade relationships because as developing markets are liberalized, the recognition of social and cultural influences will become only more relevant to open trade.

### ***International Guidelines***

International guidelines for the treatment of cultural goods and services in trade are found within the World Trade Organization (WTO) and its agreements including the General Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), Trade-Related Aspects of International Property Rights (TRIPS), and the proposed Multilateral Agreement on Investment (MAI). These treaties act as important parallel texts due to the Convention’s controversial Article 20 that relates it to other free trade agreements.

GATT is specifically structured so that countries can protect audio-visual services from trade-liberalizing measures by “opting out.”<sup>21</sup> There is a long history, even preceding GATT, on both sides of the Atlantic of “public and private actions to restrict market access and promote domestic production of films. Government quotas and taxes restricted trade, as did private boycotts, while governments provided funding to assist local production.”<sup>22</sup> When GATT was negotiated in 1947, screen quotas were permissible in response to the growing American dominance in film that began during the interwar period. Films were recognized as a way to promote national trade, and American success in the business of culture had reached such a height that in 1926 only 5% of films shown in Britain were made by local companies employing British artists.<sup>23</sup> Europeans struck back with quotas and other means of promoting their national

industries. The U.S. response was to circumvent the quotas by establishing American firms to qualify as local production, a move often encouraged by host European countries that is utilized today in the form of co-productions. In 1989, the most recent round of negotiations expanded the cultural exemption applicability from film to the entire audiovisual sector at European insistence. The premise of GATT and its sister GATS, which since 1994 has governed service commitments, is that countries who make commitments in these sectors will work towards free market access and adhere to the Most Favored Nation (MFN) rule meaning that equal treatment will be given to suppliers of all other members, and additionally, that a nation's own (domestic) suppliers will receive no special treatment in relation to other (foreign) members' suppliers.

### **Mobilization for an IICD**

Canada found itself in a quandary following the verdict of the WTO ruling on the *Sports Illustrated* case. Its attempts through NAFTA to create a legal insurance against saturation of American goods backfired as the ambiguity of the language proved flexible enough to be interpreted by each side to its own advantage. The WTO proved itself inadequate to address Canada's need to protect itself from foreign, and in this particular case American, cultural goods and services. Unwilling to take the chance that the cultural exemption clause would prove completely useless in Canada's pursuit of promoting Canadian content and cultural goods and services, uncertain of and finally disappointed with the results from the WTO, Canada spent the next decade organizing and building coalitions to discuss, draft and promote an international document that would give nations the right to protect as they termed it "shelf space." Canada had begun actively defending its culture in the early 1980's, spurred on by internal cultural challenges from its francophone province of Quebec and the dominance of its markets by U.S. products. Utilizing incentives, quotas, tariffs and other protectionist measures in its "cultural tool box," Canada channeled its concerns of global cultural homogenization into one of the loudest champions of cultural diversity, and the use of cultural exemptions as a legal and necessary tool within free trade agreements.

Sheila Copps, in her capacity as Canada's Minister of Heritage, convened a meeting in 1998 of Cultural Ministers that emerged as the International Network for Cultural Policy (INCP). The group representing over 59 countries describes itself as "an informal, international venue where national ministers responsible for culture can explore and exchange views on new and

emerging cultural policy issues and to develop strategies to promote cultural diversity.”<sup>24</sup> It must be noted that the United States was not included as it has no Minister of Culture, and because one of the group’s primary purposes was to discuss cultural issues in a safety zone unthreatened by U.S. influence.<sup>25</sup> The group’s rationale for promotion of an International Instrument on Cultural Diversity (IICD) is based on their belief that:

“Existing international agreements in the cultural sector do not sufficiently address the policy issues inherent in ensuring cultural diversity. Most instruments are of a declaratory nature only and are unable to balance out the international trading system with its enforceable dispute settlement mechanisms.”<sup>26</sup>

In 2000, this same informal group gathered to endorse an IICD, and their follow-up included drafting a preliminary text.

The International Network for Cultural Diversity (INCD) is a similar group representative of civil society fostered by the Canada Council for the Arts which firmly advocates that “disputes about the trade in cultural goods and services” should be “adjudicated by cultural experts, under its terms, rather than by trade experts, under trade agreements.”<sup>27</sup> Both groups acknowledge the inadequacy of the current trade instruments for providing guidance on the treatment of cultural goods and services. In 2002 the cultural minister members of La Francophonie, a fifty member organization including Canada that is linked by their common language of French, also lent their support to an instrument on cultural diversity. In addition the Coalition for Cultural Diversity and the Council of Europe, through their own 2000 Declaration on Cultural Diversity, have endorsed such an instrument. Cultural industry and trade issues are also on the agenda in the Organization of American States, in bi-lateral free trade agreements, and in the World Intellectual Property Organization (WIPO). These multiple international forums and groups dedicated to the pursuit of an IICD indicate strong consensual support for a Convention on Cultural Diversity and suggest that the applicability of an international instrument on cultural diversity would have to hold relevance beyond UNESCO’s niche forum to act as a reference in trade arenas for disputes concerning cultural industries.

### ***Ultimate Destination: UNESCO***

UNESCO became the avenue of choice to pursue the conversation surrounding cultural diversity at the recommendation of French President Jacques Chirac expressed at a meeting of the INCP. However, UNESCO has been studying the creative industries, national identity and

cultural diversity since its declaration of the Decade for Culture and Development in 1980. Its two World Culture Reports, released in 1998 and 2000 respectively, were constructed around the themes of *Culture, Creativity and Markets* and *Cultural Diversity, Conflict and Pluralism*. Previous normative agreements include the 1950 Florence Agreement in which states agreed to “dismantle customs barriers” for products that are educational, scientific, and cultural including books, art, and audiovisual material. The Nairobi Protocol of 1976 amended the treaty to extend the principle of the free circulation of goods to new technologies and also to protect the development of national cultural products through import restrictions which essentially described the principle of cultural exemptions.<sup>28</sup>

In 2001, UNESCO’s 31<sup>st</sup> General Conference formally and unanimously adopted language in relation to Cultural Diversity by instituting the *Declaration on Cultural Diversity* that set forth 21 points and represented a moral commitment of its members. The next General Conference in 2003 committed to drafting an International Instrument on Cultural Diversity and requested through Resolution 32C/34 a “standard setting Preliminary Report accompanied by a Preliminary Draft of a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions.” In addition, UNESCO created the The Global Alliance for Cultural Diversity as a parallel organizing tool that worked in partnership with the INCD and the INCP.

The Convention was drafted and negotiated in just one year following the initial September 2004 meeting of Independent Experts who congregated in Paris to comment on a preliminary text. Fifteen independent experts selected by UNESCO congregated in December of 2003, March 2004, and May 2004 to draft a preliminary UNESCO Convention. These experts included Tyler Cowen, an American citizen, and Ivan Bernier, a Canadian expert, both of whom participated in this study. Official delegations first met at the Intergovernmental Meetings of Experts in September of 2004 to review the draft. Countries were then invited to submit comments by that November, the drafting Committee met in December of 2004, and negotiations began in full force between member states in January and February of 2005 at the Second Session of the Intergovernmental Meeting of Experts. An entirely new reconciliation draft was distributed prior to the third and final session of the Intergovernmental meeting of Experts in May and June of 2005 and it was this draft that was recommended for approval at the General Conference in October of 2005.

Placing the dialogue within the forum of UNESCO gave Canada and other supporters of cultural exemptions a distinct advantage as the U.S. was not a member and had been absent from the organization for almost twenty years. However, with several of its major trading partners, including Canada, aggressively pursuing policies both on a national and international level to constrain American cultural influence on their populations and within their territories, it was essential for the U.S. to actively participate in the negotiations that initially were intended to create a binding agreement to protect culture from free trade.

### **America Returns**

The U.S. claimed to have rejoined the UNESCO because of security and in support of the organization's mission to further cultural understanding and find global solutions to global problems. At the time of re-engagement American President George W. Bush justified the change in the United States' policy saying, "As a symbol of our commitment to human dignity, the United States will return to UNESCO. This organization has been reformed and America will participate fully in its mission to advance human rights, and tolerance, and learning."<sup>29</sup> The website established by the U.S. delegation to UNESCO describes the United Nations agency as of critical interest to the U.S. in the promotion of free and independent media, cross-cultural understanding, and ultimately in the pursuit of peace and security as written in the UNESCO charter; "since wars began in the minds of men, it is in the minds of men that peace must be constructed."<sup>30</sup>

The United States entered negotiations on the Convention at a time when global opinions of American policies were at an all-time low due to its post 9/11 actions that were exacerbated by the war in Iraq. In international circles, it was believed extremely unlikely that the U.S. would come to the table with a legitimate interest in negotiating and supporting such a document. The United States, only recently having rejoined the organization in October 2003, was not prepared to take on a Convention for Cultural Diversity. At that time there was little incentive for the U.S. to commit to an agreement that provided a framework for its major trading partners to pursue restrictive trade barriers to U.S. goods and services based on the rationale of preserving cultural diversity. However, rather than immediately dismissing the efforts out of hand, the U.S. stepped into a very hostile arena and sent a delegation headed by its top cultural officials to the negotiations.

## **Dueling Over Diversity**

In her first 2003 speech to the UNESCO Executive Board, the U.S. Ambassador to UNESCO Louise Oliver, specifically addressed the United States' perspective on cultural diversity:

“[W]e all agree that cultural diversity is something to be treasured, and indeed we in the United States see it as one of our nation’s greatest sources of strength. The challenge is to define the appropriate scope of an international instrument in this area, and we applaud the Director-General for taking a very methodical approach that seeks to clarify these issues before pushing ahead with an instrument. I hope that all here would agree that it is worth taking the time to reconcile different points of view on this topic to ensure that whatever instrument might emerge from these discussions is acceptable to all, and promotes rather than restricts the free flow of information and ideas that strengthens cross-cultural understanding and allows the rich diversity of human culture to flourish.”<sup>31</sup>

Canada’s published official position on cultural diversity explained its interests in reconciling its domestic policy goals with its international trade obligations:

“Cultural Diversity is important from both a social and economic perspective. From a social perspective, it stimulates the vibrancy that draws communities—geographic or interest-based—together and allows them to adapt to change. From an economic perspective, it is linked to creativity and innovation, and thus to our continued success in the new economy.” . . . “Policy challenges for the Canadian cultural sector include: ensuring a place for Canadian stories in the domestic and global marketplaces; supporting business and investment opportunities while ensuring consumer choice and a diversity of voices and opinions; and providing Canadian creators and entrepreneurs with the skills they need to be successful both at home and abroad. New technologies combined with industry convergence and consolidation (mega-mergers) and the globalization of the economy are increasingly exerting pressure on cultural policies that have served to create a strong diverse Canadian culture. These trends are blurring definitions in international trade agreements and can limit the impact of the traditional exemption approach Canada and other countries have taken regarding cultural industries (e.g. by negotiating cultural exemptions, such as in the FTA and NAFTA, or by not assuming obligations on cultural industries as in the WTO/GATTs).<sup>32</sup>

Canada further states, “an international instrument would also reconcile this right of governments to pursue their cultural policy objectives with the structure of the international trading system.”<sup>33</sup> Canada has been an active agent in promoting these views in meetings of Cultural Ministers, UNESCO, the International Network on Cultural Diversity, La Francophonie, the WTO, the GATT agreements, WIPO, and the OAS, often acting as a drafter of language ensuring the right to protect and defend national culture from outside forces.

At the conclusion of the last intergovernmental drafting meeting in June of 2005 the perspectives of Canada and the U.S., as articulated in their final statements, remained

irreconcilable towards the Convention. The following excerpt from the Canadian statement was presented by Delegation Chief Jacques Paquette, and the American points were presented by Bob Martin the former Co-Chair of the American Delegation.

### **Canada**

*Ce travail intense nous a permis de définir un texte d'une importance majeure. Un texte qui fera une différence. Un texte qui donne tout son sens à ce que signifie la diversité des expressions culturelles. Un texte qui nous fournit un outil unique pour la protection et la promotion de cette diversité.... Le Canada à toujours cru en cette idée, maintenant élaborée en détail dans un texte. Le Canada se réjouit sincèrement du résultat de cette session de négociation d'experts.*

*"This intense work permits us to define a major important text. A text that will make a difference. A text that gives all of us a sense of the significance of the diversity of cultural expressions. A text in which we provide a unique tool for the protection and the promotion of this diversity.... Canada has always believed in this idea, now elaborated in detail in text. Canada sincerely rejoices in the result of this negotiating session by experts."* Jacques Paquette (Translation provided by the author of this paper.)

### **United States**

As presented by Bob Martin Co-Chair of the American Delegation:

*"The draft convention produced by this Working Group is deeply flawed and fundamentally incompatible with UNESCO's Constitutional obligation to promote the free flow of ideas by word and image...*

*However, as this meeting progressed, we have not only observed but have been told repeatedly that this convention is not about culture. What we have seen in various press reports and official statements is that this convention is actually about trade. In fact, the trade agenda was so compelling that we even had to bend UNESCO's long-established rules to accommodate the participation of the European Commission, which has competency for trade, not culture.*

*Because it is about trade, this convention clearly exceeds the mandate of UNESCO. Moreover, it could impair rights and obligations under other international agreements and adversely impact prospects for successful completion of the Doha Development Round negotiations. In so doing, it will set back progress toward the economic liberalization that has done so much to increase prosperity throughout the world, particularly in developing countries, where culture plays such an important role in development....*

*[T]he United States still hopes there remains a possibility to achieve a truly consensus convention worthy of UNESCO."*

If the U.S., along with its major trading partners, had been able to use this "neutral" forum to draft a Convention they could unanimously support, the document could have provided essential guideposts for the cultivation of cultural diversity and the specific treatment of cultural goods and services in the context of trade. But, the United States did not find sufficient incentive

or evidence to support the document despite its victory to include language in the 2<sup>nd</sup> point of Article XX that declares it must be considered in relation to other instruments. In June 2005, the United States, in anticipation of the unveiling of the document in October, began lobbying to place the Convention on the backburner until the next meeting of the General Conference in 2007 in order to continue negotiations. The stated hope was to continue negotiations to craft a document that would allow for cultural diversity ensured by the free flow of goods and services and freedom of expression. In contrast, Canada was a primary catalyst for the document's inception and October adoption of the June draft.

This project provides clues as to whether the American government's protest of the process and objections to the Convention indicates that the U.S. never intended to sign, or whether there were other important issues not adequately addressed which make the document legitimately flawed enough for the U.S. to reject it independently of its trade interests. Analysis of delegation composition and position development provides insight as to the true motivations of Canada and the U.S. in the crafting of the Convention. This research also considers whether UNESCO, and the nation-state approach, was the proper body to discuss an instrument on cultural diversity and if UNESCO was able to effectively create and manage a tool to foster and ensure cultural diversity.



### **III. THEORETICAL: Citizens or Consumers?**

The premise underlying the debate on cultural exemptions as it applies to cultural diversity is derived from an interpretation of how effective an individual's choice as a consumer can be toward supporting diversity of choice in the marketplace of cultural goods and services. Diversity describes the origin of the product, the type of content, and the format of cultural material available to consumers in specific markets. Nations in favor of cultural exemptions believe that when markets do not reflect a specific kind of diversity, based on national identity, this failure justifies government intervention to ensure a proportionate supply and availability of content choice that reflects local and or national voices. These same nations, in particular Canada and France, believe that the normal rules of free trade, which discourage protective economic policies, should not apply to cultural goods and services and as such they should be exempted from trade agreements.

Canada and the United States have adopted contrary strategies in respect to representing their cultural and economic interests pertaining to the cultural industries that are derived from each nation's definition of what constitutes culture. Canada's stance that culture is not a commodity, because culture and the market place do not share the same goals or values, justifies their goal of protecting itself from the United States' cultural industries. Although in practice the United States has allowed exemption provisions in multi and bilateral agreements for cultural products and industries, the United States rejects the theory that culture is never a commodity, and rests its case on the free market argument which allows consumers to decide for themselves. Canada's position has been motivated both by forces of trade and stability as Canada has been forced to confront challenging issues of national identity, catalyzed by the internal cultural separatist forces of Quebec, and externally by the near saturation of its domestic cultural markets with American products.

These policy strategies reflect a disagreement over whether individuals are primarily citizens, thus requiring government intervention to provide content that is "good for them" and expressive of national viewpoints in the creative industries, or if consumers who as individuals,

as expressed through their demand for specific products, are able to ensure a sufficient supply of diversity within the marketplace. This debate over whether the role of citizen or consumer is more pertinent to consider when promoting cultural markets that represent diverse voices is influenced by three related policy issues: defining cultural diversity, the unique economics and hybrid nature of cultural industries, and the preservation of national identity. Each of these issues are profiled in their relation to current U.S. and Canadian policies.

### ***Cultural Diversity***

Creating public policies to support the diversity of cultures is challenging because there is no workable definition of cultural diversity. In fact, the term is often defined in a circular reference, by what it is *not*, or in relation to other broader concepts. For example, cultural diversity is not one homogenized viewpoint, practice, or choice; according to the *Universal Declaration on Cultural Diversity*, it is an embodiment of the “uniqueness and plurality of the identities of the groups and societies making up humankind.”<sup>34</sup> The Convention provides even less definitive language. In Article 4 (Definitions) of the intended authoritative document the term is defined not directly but in reference to:

“the manifold ways in which the cultures of groups and societies find expression. These expressions are passed on within and among groups and societies.

Cultural Diversity is made manifest not only through the varied ways in which the cultural heritage of humanity is expressed, augmented and transmitted through the variety of cultural expressions but also through diverse modes of artistic production, dissemination, distribution and enjoyment, whatever the means technologies used.”

This definition does recognize both the cultural and economic aspects as demonstrated by articulating the steps of production and consumption and focusing on the “cultural heritage of humanity.” However, it proves insufficient in describing perimeters to evaluate the achievement of cultural diversity and neglects to provide clues illustrating the significance that this term symbolizes. On its website, UNESCO explains more clearly through guiding principles that, “Cultural Diversity presupposes respect of fundamental freedoms, namely freedom of thought, conscience and religion, freedom of opinion and expression, and freedom to participate in the cultural life of one's choice.”<sup>35</sup>

If the goal is for everyone to participate in the cultural life of one's choice then cultural diversity is irrelevant. Francoise Benhamou states that the “search is not for diversity per se, but

the much more difficult question of quality, innovation and aesthetic value.”<sup>36</sup> Cultural Diversity has taken on such significance because of the fear of potential negative effects on cultural choice from the homogenizing forces of globalization including hampering the human species ability to adapt and survive relative to the loss of indigenous traditional knowledge. Attempts to justify the importance of cultural diversity are linked to rationales supporting preservation of linguistic diversity, intangible and tangible heritage, and biodiversity. Using these frameworks, cultural diversity becomes easier to quantify and address through governmental intervention and international cooperation because it is possible to document the fact that one language disappears on average every two weeks,<sup>37</sup> or track the location, or preservation status of artifacts through inventories. Rob Albro asserts that the *Convention for Cultural Diversity* and the *Convention on Intangible Cultural Heritage* “work together to grant to diversity an instrumental importance, not just as a source [for innovation and creativity], but as a resource.”<sup>38</sup> These examples demonstrate that despite cultural diversity’s reference to multiplicity of expression, its significance in relation to human survival, and the expressions of humans through culture and commercial processes, an applicable and practical understanding of the goal and management of cultural diversity remains elusive.

In all the literature, economist Tyler Cowen alone breaks down the theoretical concept of cultural diversity by identifying four relevant notions of diversity: diversity across societies, diversity within society, diversity over time, and operative and practical diversity, which “refers to how well we take advantage of the diversity out there.”<sup>39</sup> He recognizes that: “cross-cultural exchange tends to favor diversity within society, but to disfavor diversity across societies.”<sup>40</sup> Professor Cowen believes that even though a globalized world will “alter or disrupt many particular cultures,” the benefits of globalization to provide diversity within cultures and to stimulate innovation justifies the loss.

In his book Creative Destruction, Cowen argues that the ability for influences to permeate culture advances cultural diversity through increased choice, and it is this view which supports a market driven theory that best theoretically reflects the American perspective on cultural diversity. Cowen’s argument for unrestricted global trade is based on several principles of cultural enrichment through trade: access to new technologies and principles, stimulus of a larger global market for greater specialization and niche production, and finally, inspiration from foreign arts.<sup>41</sup> He concludes that, “Modernity destroys so many cultural communities only by

creating so many in the first place.”<sup>42</sup> However, even as he provides a strong argument for the benefits of globalization, Cowen recognizes excess clustering, “where one country’s industry dominates the world market,”<sup>43</sup> as an exception.

### ***The Cultural Policy Toolbox***

As information highways become developed and distribution channels evolve through new mediums, countries motivated to protect a social or national identity from American dominance feel strongly that they have no alternative but to separate culture out of trade in order to provide a “space” for local voices. In a system devoted to open market access, government intervention is justified in order to correct a market failure. The inability of market forces to determine desired outcomes can be corrected by measures such as subsidies and quotas.<sup>44</sup> Considering culture a public good, Canada has determined that because its Canadian cultural products do not hold the majority of domestic market share, that this reflects a market failure to be corrected. As such, it employs standard strategies of promotion and protectionism to ensure diversity across societies that include financial support through subsidies and grants, and preferential treatment through quotas to indigenous or national forms of cultural expression to ensure local content and rectify the deficiency. The current Canadian “Cultural Policy Toolbox” strategy describes the interventionist policies articulated through the 1999 (Canadian) Cultural Industries Sectoral Advisory Group on International Trade (SAGIT). This group describes the following measures for cultivating Canadian cultural industries: “financial and program incentives, Canadian content requirements and other regulatory support mechanisms, tax measures, foreign investment and ownership, and measures to protect intellectual property.”<sup>45</sup>

Despite their similarities in federalist governmental structure, and decentralist education policies which are primarily made at the state and province level, the United States and Canada utilize fundamentally different systems of investment to support their cultural ecosystems. The United States has a historic mistrust of government which is reflected in the federalist system where a significant amount of power rests with its fifty states. Dana Goia, NEA Chair, stated this perspective publicly in his address to the U.S. Commission to UNESCO in June 2005: “The United States has a long tradition of individualism, private enterprise, decentralization, and suspicion of federal authority.”<sup>46</sup> These national characteristics are reflected in the fact that government support for culture is made through investment policies that give individuals and

corporations tax incentives to support aspects of culture through their own personal selection. Direct federal funding for the arts and culture in the U.S. is disbursed through the National Endowment for the Arts, the National Endowment for the Humanities, the Institute for Museum and Library Services and the Department of the Interior which supports Park Service and Preservation initiatives. However, the strong U.S. commitment to diversity of choice within society as determined by individual choice and the markets is reflected in a recent report distributed by the National Endowment of the Arts which cites government funding of the arts to be less than 1% of financial support for the field.<sup>47</sup>

Canadian investment in culture is disbursed primarily through the Department of Canadian Heritage, which has the primary responsibility for culture and whose 2005 budget of \$(CA) 3 billion<sup>48</sup> supports its activities and those of the independent Council for the Arts and the National Arts Center. Secondary departments supporting culture include the Departments of Foreign Affairs and International Trade, the Department of Finance, the Department of Immigration and Citizenship, the Department of Human Resources, the Department of Indian and Northern Affairs, and the Department of Industry.<sup>49</sup>

Canada governs 9,984,670 sq km,<sup>50</sup> the second largest sovereign territory in the world, which is organized into 10 provinces and 3 territories. Despite its vast size, it has a relatively small population of 32,805,041,<sup>51</sup> 90% of which is concentrated over 5,514 miles that border the U.S.<sup>52</sup> The threat of influence by proximity is matched by internal cultural separatist movements from the francophone Canadian province of Quebec. Nationalist Quebecois movements culminated in a narrow referendum vote for secession in both 1980 and more recently in 1995 where the province voted to remain “Canadian” by less than one percentage point. These factors have attributed to Canada taking a heavier federal hand in culture to preserve its cultural sovereignty.

### ***The Economics of Culture***

The doctrine of free trade is derived from Adam Smith, the father of capitalism, who believed in pacifism founded on commercialism through trade which through greater connectivity would reduce the likelihood of conflict leading to war. In the Wealth of Nations, he articulates that “[C]ommerce and manufacturing gradually introduce order and good government, and with them, the liberty and security of individuals, among the inhabitants of the

country, who had before lived almost in a continual state of war with their neighbors, and of servile dependency upon their superiors.”<sup>53</sup> Capitalist ideology also puts stock in the theory of laissez-faire: a leave it alone warning to government intervention in markets based on the belief that market forces can more fairly, efficiently, and effectively rectify discrepancies or inefficiencies relating to labor, capital, pricing, production, and distribution in the market.<sup>54</sup> *No* nation, however, takes the position that only pure market driven forces should be utilized in maintaining a strong national economy and both the United States and Canada have found that some meddling is warranted in specific industries to correct market failures or to ensure national security.

Justification for cultural exemptions is supported by the fact that cultural products are different from widgets and other services. Table II, “Why Cultural Products Are Not Like Other Commodities,” on pp. 23 demonstrates the economic attributes of cultural products in comparison to ordinary commodities.

**Table II: Why Cultural Products Are Not Like Other Commodities**

<b>Attribute</b>	<b>Ordinary Commodity (e.g. Car, Detergent)</b>	<b>Cultural Good or Service (e.g. Book, CD, TV Broadcast)</b>
<b>Nature of Product</b>	Serves utilitarian purpose	Communicates ideas-information or entertainment
<b>Nature of Production Process</b>	Assembly line; each unit requires significant resources	Expensive one-time process; creates intellectual property that then can be cheaply stored, duplicated and delivered
<b>Marginal Cost of Unit of Product</b>	Significant	Insignificant
<b>Predictability of Demand</b>	Demand largely predictable month after month	Difficult to estimate demand in advance of incurring cost
<b>Substitutability</b>	Large degree of substitutability with competing brands	Limited substitutability; product is perceived as unique; copyright law protects monopoly on each title
<b>Time Line of Demand</b>	Demand for product continues indefinitely until next product cycle (measured in years)	Demand falls off sharply after introduction of the product and when next product replaces it (measured in weeks or months)
<b>Who Determines Demand</b>	Ultimate consumer	Ultimate consumer in the case of books and movies within the choices made by gatekeepers; advertiser in the case of magazines and commercial broadcasting, cable or satellite gatekeeper for niche broadcast channels
<b>Setting the Price</b>	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
<b>Pricing Latitude</b>	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
<b>Nature of Composition</b>	Each unit of production is consumed and is not available to others	Original intellectual property is not consumed but can be made endlessly available; “public good” attributes
<b>Time Line of Advertising</b>	Continual advertising over many years to reinforce brand	Intense advertising at time of introduction of product before it is displaced by next product

Source: Grant, Peter S., and Wood, Chris. Blockbusters and Trade Wars: Popular Culture in a Globalized World. Vancouver, British Columbia, Canada: Douglas & McIntyre, 2004 pp. 44-45

Cultural commodities share the characteristics of initial high fixed investment costs but marginal reproductive costs. It is this ability to be inexpensively reproduced that has led to dumping charges of cultural goods and services on nations whose infrastructure is unable to compete with more developed nations' products and distribution channels. Grant and Wood reveal in their chart that the ultimate consumers are the gatekeepers and advertisers. These industry actors do play an important role in limiting choices, but it is the individual who then chooses to experience that product despite the limiting factors that makes the final choice. Ultimately, just because a cultural product is available doesn't mean that it will be consumed. In fact, the lack of desirable choice in a particular good or service may lead a consumer to an alternate cultural activity or experience that are increasingly available through new technologies and the internet that enable a bypass of traditional gatekeeping by domestic markets.

The consumption of cultural goods is limited by individual audience preference, and thus the quality of the product in variety, diversification, dissimilarity and multiplicity *are* important factors in distribution. Cultural value can enhance economic value whereby elements including aesthetic, spiritual, social, historical, or symbolic value increase the commercial value.<sup>55</sup> The link between “consumer demands and content is sometimes why the consumption of cultural products has sometimes been (erroneously?) associated with the use of leisure or simply with recreation or entertainment.”<sup>56</sup> This association directly refers to the previous way in which the United States has categorized the creative industries and explains their emphasis on providing no special treatment under trade regulations. Ivan Bernier, a Canadian law expert, explains though why the cultural industries do have a unique identity; “Cultural products are seen as assets which convey values, ideas and meaning, or in other words, instruments of social communication which contribute to fashioning the cultural identity of a given community.” He goes on to state the Canadian position that “as such, they must accordingly be excluded” from trade agreements.<sup>57</sup>

UNESCO's report on the “Creative Industries,” however, shows that there are local (domestic) limitations on cultural products and states that, “{t}he necessity to supply an ever-growing volume of diversity and variability in culture, as incomes rise, and the amount of free time increases, implies that ‘local’ reservoirs of symbols, myths, images, and messages cannot supply the demands placed on them,” causing local content to hold less resonance.<sup>58</sup> This perspective provides more support to an open flow of cultural products to fill the demand. With the economic contributions of the creative industries increasing annually, the attention paid to



these issues of cultural protectionism in global markets will only increase.

Wilkerson and McAnany put forth that, “It is crucial to appreciate that linguistic and cultural factors are determinants in the formation of audiences or markets, both domestic and export, and hence have to be considered as having their own level of economic effects.”<sup>59</sup> Many economists further argue that on top of natural language barriers, the protectionist measures sovereign nations utilize to coddle and interfere in domestic cultural industries actually limit the success of the industries they hope to support. This line of thought argues that the protected industries lose competitive vitality with the result that “protection actually decreases an industry’s chance of competing successfully in world markets.”<sup>60</sup>

Within any cultural production ecosystem there are many diverse constituents with different agendas. Special interest groups have the power and resources to influence their environment so that it reinforces their bottom line. Acheson and Maule explain:

“Protectionist forces tend to be strongest among producers of content such as authors, film and television producers, and music composers, especially when they face import competition. Those providing carriage services tend to seek out the content that is commercially profitable and accessible to a large audience. In an open market, these industry actors provide gatekeeping through selection motivated by price and projected ratings thus restricting consumer choices. Without government incentives, restrictions or guidelines they have little incentive to distribute national content unless it is financially rewarding. Thus, booksellers, broadcasters, newspaper publishers, and theater owners tend to favor open markets unless they are offered subsidies or tax incentives to distribute national content,”<sup>61</sup>

In contrast to the cultural entrepreneurs, content producers prefer protective supportive measures. Therefore, protection efforts cannot be separated from the special interest groups who have a stake in national funding. Furthermore, large media and cultural industries, and their trend toward consolidation, have sparked tension between private and public interests. National policies, in free societies valuing freedom of the press, have proven to have an impact on culture and media in terms of guaranteeing impartiality of the source, access to information, and diversity of ideas.

Concerns about concentrated media ownership of radio, television, and print have been heightened globally and even in the United States. In June of 2003, the American public was galvanized in protest of Federal Communication Commission (FCC) guidelines that would allow for increased cross media ownership through deregulation of the media industry. These regulations were developed as part of the FCC’s biannual review as mandated by the 1996 Telecommunications Act to review broadcast media ownership rules and determine “whether any of such rules are necessary in the public interest as a result of competition.”<sup>62</sup> The FCC

maintained that these new rules protected diversity, localism, and competition and were enforceable based on empirical evidence factored through their diversity index that determines size and scope of media markets.

Over 97% of an estimated 500,000 public responses to the FCC in 2003 were not in favor of the new regulations, and in Congress there was wide bipartisan support for overturning them.<sup>63</sup> The concern was and remains that media ownership will effectively provide censorship by decreasing the number of independent voices. With only five companies owning the broadcast networks, 4 of the major movie studios, 90% of the top 50 cable channels, and producing 75% of programming of the top markets<sup>64</sup>, the public was concerned that these large media companies could effectively dominate the airwaves, and thus public debate, with views that are homogenized and shaped by corporate interests with no room for local or independent voices. This perspective was reinforced by the 2003 Project for Excellence in Journalism which found that TV news operations owned by small companies ranked twice as high on issues of quality. Herman and McChesney in their book, The Global Media, echo similar concerns and include a weakening public sphere and the degradation of local cultures in their list of possible negative externalities of the commercialization of culture and the media.

In contrast, the argument for media consolidation supports the positive attributes of market driven forces. It is argued that the free market, through competition, checks bias and strengthens the industry. By consolidating, the industries have more financial strength theoretically allowing them to support more diverse products. It is also cited that due to new technologies, like the internet and satellite, there is no need for concern because of the increased access and choice. Many of the creative industries, and particularly television, are financed through advertisers who find cross-ownership attractive; 100% of TV revenue is based on advertising. Those in favor of consolidation believe that the quality and quantity of news is actually improved by newspaper publishers' involvement in TV and radio.

Media and industry's commercial interest and the maintenance of cultural quality and freedom of speech are not necessarily mutually exclusive. If industries can increase the bottom line, and the public maintains access to diversity and quality, then who owns the media or culture is irrelevant. Behind the maelstrom surrounding media consolidation are a few basic yet fundamental questions. The "elephant in the room" is whether or not the amount of media a company owns and its nationality effect the diversity, balance of viewpoints, breadth of topic and

sourcing of broadcasting. Canada would argue that it does and further contends that cultural goods are not mere commodities, but are a public good essential for the development of “social cohesion, economic prosperity, and human security,”<sup>65</sup> justifying governmental intervention.

It must be noted, however, that although on the surface cultural diversity’s role as a public servant seems a strong argument to justify its value, the definition and selection of the “public interest” is defined by governments and often special interest industries, and thus is not necessarily a true representative of citizens who, it might be argued as consumers, vote with their pocketbooks. The idea of “public” is flawed further by the reality that within specific communities and nations there exist internal tensions between preservation of a collective culture and a new generations’ interpretation and assertion of their collective and individual identities.

### ***The Role of the State: Crafting National Identity***

Historically, a shared cultural national identity that was formed by common ethnicity, religion, language and history was an important component of concentrated power and political stability. “Intangible cultural capital exists in ideas, traditions, beliefs, and customs shared by a group of people, and it also includes intellectual capital, which exists as language, literature, {and} music.”<sup>66</sup> A nation’s interest in maintaining national cultural identity and heritage against the tides of homogenization is an understandable priority, but is unsupported by historical precedent or global realities. This viewpoint presupposes that the individuals of the world who exercise their choice and creativity will be forced into the same mold and choices, and that local culture will be distorted, if not rendered extinct, by the powers of globalization. In contrast, Mel van Elteren in the *Journal of American Culture*, puts forth the idea that in modern times, “a national culture” is never purely locally produced; it always contains the traces of previous cultural borrowings or influences which have been part of a thorough assimilation process and have become “naturalized.”<sup>67</sup>

Cultural identities are becoming more complex with globalizing forces and international collaborations making it increasingly difficult to determine the “nationality” of film and other cultural products. Canada, along with most other developed countries like France, Australia, and the Netherlands, has created sophisticated systems to determine the eligibility of media products and services for state support which is deemed a priority in preserving national culture.

However, the state’s role in both determining and preserving cultural identity is best understood

in relevance to the current challenges states face with changing demographics and in the case of European nations with their new relationship to the EU. For those reasons, the flexibility of allowing state intervention seems justified in order to provide tools for states to create cultural policies and tools that foster national identity and products of local cultural content.

France, as a member of the EU and as Canada's cohort in the promotion of an IICD, serves as an excellent example to examine the changing role of the state and its effectiveness in fostering cultural diversity to support national identity. The snowballing efforts of European unity, motivated by economic strategy to remain competitive in an increasingly interactive financial arena, have forced European nations to rethink the concepts of community, culture, and identity. The European Union's deliberate attempt to create a single market and eliminate barriers to trade, including culture, among its members is challenging European nations' individual ability to protect their culture. Philip Schlesinger states that, "In constructing a new sense of European identity expectations have centered on the audiovisual media of television and the cinema. These are the principal contemporary diffusers of popular culture, and they are surrounded by assumptions about their implications for the exercise of political, economic, and cultural power."<sup>68</sup> In 2004, the European Culture Commissioner announced to the press that European support for film and audio-visual services would rise from 500 million Euros to over a billion based on the rationale that "audio-visual works represent the main factor for the transmission of cultural, social and democratic values." She added that the specific policy objective was to widen the market for European content, a clear economic motive, so that the number of films traveling abroad would increase from 10-20%.<sup>69</sup>

Many nations recognize that often artistic products are achieved through collaboration. The economics of film often require partners to support the production of the work which requires a large initial investment. France and Italy are the countries which most frequently collaborate with foreign citizens and in France the number of co-productions in a given year has at times been greater than the number of strictly national productions.<sup>70</sup> Co-productions, while becoming a more popular way of doing business, make it increasingly difficult to determine to which nationality an artistic endeavor belongs. In Europe "the concept of nationality of a film is often primarily linked to the financial aspects of the film business."<sup>71</sup>

Three basic types of co-productions often regulated through country treaties are: official co-productions, twinning, and co-ventures. Official co-productions require that each partner

must make an “effective creative, artistic, and technical contribution to the production” which is in proportion to its financial contributions. Minimum financing shares are between 15-30%, with revenues split proportionally according to investment shares. Twinning productions occur when separate national production teams collaborate for a final work with projects of equal size and type. These works are eligible for domestic production status and domestic content rules which allow them to benefit from government grants and tax incentives.<sup>72</sup> Co-ventures are characterized by their lack of a treaty. There must be a domestic producer or co-producer, and the arrangement allows distributional assistance with outside producing expertise, marketing connections, and flexible funding.<sup>73</sup> Acheson and Maule in Much Ado About Culture: North American Trade Disputes remind the reader that twinning and co-ventures are industrial policies aimed at promoting the industry of culture and not national culture itself.

Within each nation there are cultural sub forces and voices driven by the individual’s search to find meaningful cultural identity that are challenging the state’s secular view of culture. In his essay on *Brazilian Television and the Role of the State*, Straubhaur asserts that:

“People are increasingly acquiring multilayered identities that correspond in many ways to the multiple layers of world media: global, cultural-linguistic-regional, national, provincial, and local. These layers of identity, framed by language, cultural history, and personal cultural experience, define markets for culture in ways that even global firms must respond to. The state and national media are still powerful in this process, because through schooling, national media, language policy, and national organization of institutions like militaries, education, and commercial associations, the state in many countries continues to reinforce and define these nationally based conceptual frames.”<sup>74</sup>

Traditionally nation building has centered around a common ethnicity, religion, language and history, but defining national culture has always been a thorny thicket to navigate. One concept is that of the “notion of culture as the spirit of a people” with “self-contained moral universes that define values, practices and identities.”<sup>75</sup> Another expresses the idea as an ethos, a “special feel of flavor of a culture...a shared cultural matrix for interpretation, rather than a narrow conformity of opinion.”<sup>76</sup> UNESCO offers “that culture should be regarded as the set of distinctive spiritual, material, intellectual and emotional features of society or social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”<sup>77</sup> Ray Wagner offers the caution though that providing a definition of culture is done within the context of one’s own culture and thus cannot be truly objective or free from the self-identification process.

Despite state advocacy of particular symbols, stories, and viewpoints, individuals will find their own definitions of identity in ways that are useful and relevant for themselves. A mandated definition of certain aspects or notated cultural heritage can never be complete or indicative of the true wealth of a people.

“Collective Identities are relatively fluid constructions rather than eternal essences. The construction of a collective identity also generally involves active strategies of inclusion and exclusion whereby the boundaries of a given collectivity are policed. Hence, collective identities may be sustained not only by the auto-identification of a group but also by hetero-identification.”<sup>78</sup>

France currently is confronted with the interpretation of its value of secularity (*laicite*) which has been the country’s solution to multiculturalism. France continues to ban Muslim women from wearing headscarves in public places like schools and businesses. With a rising Muslim population (the last French census indicates that Muslims currently make up 20% of the population) indicating a clear demographic change from the traditional Caucasian, Catholic French population, it becomes clear that France’s cultural identity is changing and that the state’s mandated national culture is not adequately recognizing the individual cultural affiliations of its citizens and residents. Frederick Van Der Ploeg points out that “Much of subsidized culture benefits the higher educated, middle aged, local people and is not of much interest to the growing group of migrants in Europe.”<sup>79</sup> Recently, these tensions between assimilation promoted by the state and the discontent of minority groups have led to outright violence in France and the burning of suburban community infrastructure like schools and community centers as well as personal property.

Cultural survival is at the heart of the debate surrounding cultural diversity and remains a key element of national efforts towards defining national culture. Cultural survival as a static unchanging identity is a fairy tale. “Invoking an absolute ‘right’ to one’s culture involves too strong a moral claim given that cultures are both synthetic and ever changing.”<sup>80</sup> Culture and heritage are increasingly divorced from geographic territory as the number of powerful cultural diasporas throughout the world signifies. The divorce from property becomes more common with successive generations and should not deny an individual his sense of identity if they feel connected to tradition and a community from which they are descended. Specific ethnic populations thus find themselves changed not only by external forces but by the division between young and old.

On the other hand there is much evidence that “despite five centuries of relentless pressure, many core elements of native cultures retain their vitality.”<sup>81</sup> The current thought on preserving culture is a total heritage approach with culture’s merits linked in a static, frozen historical plane, albeit safeguarded from exploitation, as represented in the UN-commissioned “Protection of the Heritage of Indigenous People” (*Daes Report*.) The report advises “native peoples to itemize their cultural resources”<sup>82</sup> and “takes for granted that indigenous people are not part of any public other than their own enclosed conceptual universe and the piece of territory to which it belongs.”<sup>83</sup> In direct contradiction to the *Daes Report*, there is ample proof that “indigenous societies include a growing number of intellectuals and political leaders equipped to move with agility from one social world to another.”<sup>84</sup> This same concept is relevant to any ethnic group because individuals increasingly have more options of mobility through the internet and new technologies.

Cultural survival and adaptability are not mutually exclusive. One definition or aspect of culture does not fit all. Michael Brown in Who Owns Culture explains that:

“Native rights activists often reject notions of culture rooted primarily in language, religion, co-residence, or shared leadership [the traditional tenants of national identity.] What remains are things such as collective sentiments and oral traditions shared by networks of friends and kin—a diffuse basis for asserting a distinct social identity that collectively merits recognition as a ‘nation.’”<sup>85</sup>

All elements of any culture will not remain static, and in order to thrive must change according to its members’ needs and growth. The destiny of a people and the vital essence of their heritage and culture must be collectively decided by that people and not defined by outside forces or nations intent on exploiting the system or people for their own growth or means.

In Mass Media and Free Trade, McAnany and Wilkinson offer:

“Yet it is ever more difficult to find intellectual justification...to support the belief that a nation’s audiovisual products can somehow be an authentic expression of the culture of that nation and so affirm that culture among its recipients. It is clearly the notion of national culture that is the weakest link in the argument. National culture glosses over not only ethnic cultural differences within a nation but other basic kinds of social differences such as gender and class.”<sup>86</sup>

They go on to say that, “The forgotten voice in these debates is frequently the consumer (reader, viewer, listener), although it is often a citizen’s preference for foreign content that drives the policy process to try to alter that choice by promoting domestic content. When domestic content is subsidized, the taxpayer is left to pay for the outcome and told that national unity, identity, and sovereignty are being enhanced.”<sup>87</sup>

The bitter American culture wars of the 1980's illustrate the point that art and culture can prove to be divisive and reveal prejudices rather than a common interpretation and collective identity. While many art supporters would argue that controversial works of art serve their purpose by creating a reaction and pushing people to question their values and perspective, there was clearly resistance to the role of the state in categorizing the works as art and supporting them with tax payer dollars. This situation reveals the truth in Schlesinger's theory of the fallacy of distribution, which refutes the assumption that making available and consumption of the same cultural product leads to a collective interpretation and identity on the part of those who consume it.<sup>88</sup>

The inability and refusal of states to recognize internal diversity within their borders severely weakens the argument that nations should be allowed to determine the means through which to protect and promote the diversity of cultural expressions within and outside their borders. Although the recognition of human and cultural rights are stated within the *Convention for Cultural Diversity*, there is no insurance or means of enforcement for minority groups and their cultural rights. Often, minority residents or refugees, those most jeopardy of having their cultural rights violated, cannot find redress to discriminatory or policies promoting assimilation because the government under which they live has no incentive to respond to the needs of non-citizens.

For these reasons, it is clear that the defense of cultural diversity is unable to be separated from the specific stability, economic, and trade and interests of states. Diversity exists not just among nation states represented by geographic territory but intra-state and supra-state. Placing the conversation in UNESCO ensures that the debate on cultural diversity is ultimately stymied at a nation state measurement of diversity. There is ample need for basic evidence and best practices for fostering cultural diversity that avoid the marginalization of minority groups, which occurs even in democracies, and maximum consumer access to cultural goods and services particularly in regard to threats of media consolidation. The Convention takes the assumptions of national identity as being the primary measurement for diversity and ignores the larger issue of implementation which is intended to be individually tailored by and to each state. The products of this thesis: the delegation positions, and approaches of the U.S. and Canada, as well as individual perspectives of select delegates and experts, will provide a snapshot into the process



of the document that exists today—a document intended to be a guiding map for cultural diversity.

#### **IV. METHODOLOGY**

Research was gathered through a three-prong strategy. Individual interviews were conducted with members of the Canadian and American delegations to the Convention and experts in the creative industries and cultural fields. The author attended two public forums and one private briefing in Washington, D.C. on the Convention. Finally, an examination was made of documents pertaining to the previous trade agreements to which the U.S. and Canada are parties, the suggested texts and recommendations offered by the International Network for Cultural Diversity and by the Canadian and U.S. governments, UNESCO's preliminary drafting versions and the final text adopted by the General Conference in October 2005.

Research was conducted by evaluating and comparing current trade agreements that include reference to cultural exemptions applicable to the U.S. and Canada. In order to provide a historical view, U.S and Canadian government perspectives on cultural exemptions and the role of culture in international trade were compiled. The language of the 1989 United States and Canadian Free Trade Agreement, the North American Free Trade Agreement, World Trade Organization standards, the General Agreement on Tariffs and Trade, and the General Agreement on Trade and Services, to which the U.S. and Canada are parties, have been examined in relation to the final draft of the Convention. These documents are public records. The specific language and adjudication methods of these agreements and forums were compared against the terms outlined in the Convention to determine how it will affect the aforementioned pre-established trade agreements.

U.S. and Canadian delegation compositions were gathered and then utilized comparatively to determine which interests are reflected in each country's negotiations. Members were assigned a field of expertise based on their job location within the government with a secondary field assigned if their department was specialized and reflected interests other than their location within the government. For example, an individual located in Canada's Department of Cultural Heritage assigned to international commerce and trade would be issued a primary field of expertise in culture with a secondary expertise in trade.

While participants were generous with their time and referrals to other experts and delegation members, complete lists of the U.S. and Canadian delegations were not available until the final days of July 2005. The list of Canadian delegation attendees to the final intergovernmental meeting was provided in June by their coordinator, but as late as July 2005 the American delegation did not have a list of delegates. UNESCO provided a complete list of participants for each delegation for all three intergovernmental meetings (September 2004, February 2005, and June 2005) at the end of July 2005. From an organizational point, it was surprising that no delegate could provide a list of their team until after the development of the Convention. This hampered the effectiveness of gathering information and scheduling interviews particularly in relation to contacting Canadian delegates. As a result, all Canadian delegation participants were identified and contacted through referral and are professionally located within the Department of Canadian Heritage. A list detailing American and Canadian delegation attendees for each meeting is provided in Appendix A.

Research was primarily garnered through sixteen conversational interviews directed by a list of twenty-five open-ended questions (See Appendix B) with slight modifications or additional questions dependent on the specific individual and their role and expertise. Participants were adult individuals who hold public, private, or governmental positions pertaining to culture, economics, and free trade in the United States and Canada. These individuals were selected for their position's current or previous relevance to culture and cultural policy, and included officials involved in culture, trade, the creative industries, and diplomacy. Delegation members were selected by expertise, availability and recommendation by other participants or their national commission to UNESCO. Experts in Canadian, American, and cross-comparative cultural policy, as well as experts in the cultural industries, were approached. These conversational interviews were primarily conducted in person, and secondarily via telephone and lasted on average forty-five minutes to one hour.

Responses were recorded by the author as the sole interviewer. Confidentiality was insured if the participant so wished based on a perceived political risk. These participants were given a code and only "on the record" statements are quoted with the participant's full permission in the final context. More than half of the subjects elected to participate "on background" and as such they are listed as participants but are not cited by name in relevance to information given without explicit permission. Each participant signed a release form

(Appendix C) mandated by the George Mason University Human Subjects Review Board that was vetted through the Canadian National Council on Ethics in Human Research. Each interviewee quoted directly had the opportunity to review the information they provided in context of the final document to ensure that they were cited correctly.

The five Canadian participants were all members of the Canadian delegation; Delegation Coordinator Jacques Paquette, Rapporteur Artur Wilczynski, Janette Mark, Yannick Mondy, and Ivan Bernier, the individual who attended the expert drafting meeting in September 2004. American interviewees included six members of the American delegation who attended meetings including Tyler Cowen, the American expert who attended the September drafting meeting, Nancy Weiss, Jane Cowley, Meha Shah, and Ann Hingston. Three additional experts from the creative industries, Bonnie Richardson of the Motion Picture Association of America, Neil Turkowicz from the Recording Industry Association of America, and Jonathan Levy from the Federal Communications Commission were interviewed. Frank Hodson, Deputy Chair of the U.S. National Commission to UNESCO's cultural committee, Board Chair of the Center for Arts & Culture, and former NEA Chair, was interviewed as well as Professor Robert Albro of George Washington University who is an expert in cultural rights, and Kevin Mulcahy a professor at Louisiana State University with expertise on cultural exemptions, particularly in reference to American-Canadian relations. In sum, a total of 16 interviews were conducted between April and mid-August 2005. A chart listing each participant, the date of interview, and their title and role can be found in Appendix D.

During the period of investigation, the author attended two public forums held in Washington, D.C. specifically on the issues surrounding the Convention on Cultural Diversity and the U.S.'s perspective. The first was on April 15, 2005 and briefed the cultural and civil society communities on the U.S. position and the potential implications for civil society. The public forum featured Jane Cowley, the coordinator for the U.S. delegation, and delegation co-chairs Dana Gioia, Chairman of the National Endowment for the Arts, and Robert Martin, Director of the Institute for Museum and Library Services. On July 14, 2005 the investigator attended a discussion sponsored by the German Marshall Fund between Tyler Cowen, the U.S. independent expert, and James Early, from the Smithsonian who is a founding member of the International Network for Cultural Diversity. On July 27, 2005, the U.S. National Commission sponsored a roundtable where NEA Chairman Dana Gioia, Delegation Coordinator Jane Cowley,

and Executive Director of the U.S. National Commission to UNESCO, Marguerite Sullivan, briefed Washington, D.C. based American arts and cultural organizations on the final document that emerged from the final June 2005 negotiating meeting.

Attempts were made to elicit participation from additional Canadian and U.S. representatives from the delegations and industries included in the definition of cultural industries. Every participant interviewed helped with this goal by providing reference and contact information for individuals representing other viewpoints regarding the Convention. These references most often included additional members of a delegation or an individual's counterpart in the other country. In an attempt to interview as many different representative interests as possible, it was possible to discuss the convention with only one member of the American Delegation who had any sort of trade background, and referrals for U.S. trade background officials were given only twice over the course of the investigation. Despite repeated attempts to include other participants from the creative industries, organizations declined because there was no one able to represent their views on the Convention or no response was received. Individuals and organizations that declined participation are listed in Appendix E.

## V. FINDINGS & ASSESSMENT: Negotiating a Convention on Cultural Diversity

### Reconcilable Differences

Following a year of negotiations, at the October moment of adoption, the U.S. led a lonely duo of dissent as it signaled its belief that the Convention on Cultural Diversity does not clarify a balanced relationship between trade and culture and would not be effective in promoting diversity of cultural expressions. By not voting for the Convention, the U.S. fulfilled the expectations of this thesis and the participants in it, 91%<sup>89</sup> of whom projected that the U.S. was unlikely to support the negotiated product. The Convention's adoption was an expected solid victory for Canada, whose Minister of Cultural Heritage enthused, "*The strategy we have pursued all these years has paid off,*" in describing how "Canada had conducted a well orchestrated diplomatic offensive to win international support for the Convention."<sup>90</sup> Although the final vote indicates that the Convention itself was not able to reconcile these two profiled nations' perspectives, it was discovered that these differences are ultimately reconcilable.

### *Negotiations Improve U.S.-Canadian Relations & Understanding*

*The "nature of the relationship between Canada and the U.S. is deeper and broader than a small little Convention...99% of Canadians and an even smaller amount of U.S. citizens are even aware of the process; it's a tiny little bump in the ocean of cultural relations."* Artur Wilczynski<sup>91</sup>

The majority of participants foresaw that the effects on U.S.-Canadian Relations would be minor if the U.S. choose not to support or sign the Convention.<sup>92</sup> The U.S. has a reputation for not signing or ratifying international treaties ie: Kyoto and the ICC, and Canadian delegation members mentioned that Canada, with minimal consequences, also does not sign every international convention. Although the United States and Canada ultimately decided to take different positions in support of the Convention, delegates on both sides expressed that they found the U.S. and Canada had more interests in common than in conflict. Furthermore, the process of negotiating the Convention itself actually improved relations and fostered mutual respect through increased dialogue. Significantly, both countries' representatives stated that they

would be willing to continue the dialogue surrounding cultural diversity regardless of the success of the document's adoption.

### *Paradigm Shift*

The U.S. and Canada, although exhibiting slightly different priorities in regards to the Convention, are on the same page when it comes to wanting clarification on cultural exemptions in trade and the promotion of cultural diversity despite their difference in preferred strategies. The U.S. has not changed its opinion on the positive value of market determination, which comes from a uniquely American approach to ensuring maximum freedom of expression and choice. However, it is encouraging to note from observation of this process, that there has been a small but very important paradigm shift in how the U.S. views culture on the international stage. The past U.S. emphasis on the entertainment industries that held little regard for cultural value has shifted to address them as the “copyright industries.” While this new concept does not bridge the gap to fully and exclusively embrace their cultural value it represents a step in the right direction as the U.S. focus on intellectual property rights is shared by many other nations and reflects association with content ownership because it is believed that copyright protection fuels creative production. The U.S. understands that motivations for “shelf space” are not limited to trade interests and is becoming more aware that it needs to better explain its own positions and motives in international arenas. The failure of the U.S. to garner more support for its dissenting position, despite the widely recognized weaknesses of the Convention, indicates it has further steps to take. Motivation for better U.S. diplomacy in cultural matters is demonstrated by the doubt expressed by Canadian delegates concerning the U.S.'s true intentions, even while professing to understand its fundamentally culturally-unique market based approach.

Ultimately, the differences between the U.S. and Canada remain unresolved because of their opposite perspectives on the potential impact of the Convention. The United States and Canada share common principles with respect to fostering cultural diversity including freedom of expression, the protection of human rights, and the principle of international cooperation. They continue to hold a mutual desire for clarification of cultural industries eligible in trade exemptions. The ambiguities that were the catalyst for an IICD remain and are sure to be tested in the future. Disputes are costly, and it is in both nations' interest as each other's largest trading

partner to have predictable outcomes when creating and implementing policies promoting and protecting national culture.

Canada's Delegation Coordinator expressed his hope that the U.S. could support some of the tenets of the Convention despite its reluctance to accept it in its entirety, because it would not be in the U.S. interest to remain inactive. If the United States is sincere in its support of fostering cultural diversity then the U.S. could uphold its decision not to support the final text but continue to be active in the promotion of cultural diversity and tenets of the Convention like human rights, the sharing of best practices, and support for nascent cultural industries in developing countries. The fundamental and unifying U.S. and Canadian concern for promoting cultural diversity, human rights, and freedom of expression indicate that their positions would have been reconcilable if the Convention had achieved its initial goal of creating a framework to foster diversity and advise on cultural exemptions in trade.

### **Representing Culture through the Language of Trade**

The analysis of position development, delegation composition and determination of national position priorities and motivations leads to the following conclusions:

- The Convention negotiations became hijacked by trade interests
- Canada's position development was more inclusive and proactive in contrast to a more diverse U.S. delegation and reactive position
- The U.S. entered negotiations with the intent of successfully completing them
- The U.S. is not guilty of developing its position primarily on trade interests
- U.S. objections to the Convention legitimately reflect potential effects on cultural expression and are not confined to trade implications

The process of negotiating the Convention was hijacked by trade interests. Evidence that it was discussed in trade terms can be found through the testimony of delegate members, the specific terms employed by interviewed participants, the commercial definition of culture utilized, and the lack of addressing traditional tenets of culture such as religion and language in the text. Neither Canada nor the U.S. were exclusively motivated by economic interests, nor were they innocent from the blemish of trade interests during negotiations. The Convention was discussed in trade terms primarily due to the Canadian propelled preliminary work that informed



the Convention, which was catalyzed by the inability for protective cultural policies to stand up in trade disputes when they conflicted with prior free trade commitments.

Aside from Article 20 describing the Convention's relationship to other trade agreements, it was revealed that issues of copyright and intellectual property emerged as important economic priorities. Canadians perceived that the U.S. position reflected trade and conglomerate interests<sup>93</sup> supporting the prevailing expected view of the U.S.'s behavior entering into the negotiations. Several Canadians and two U.S. non-delegation participants believe that the U.S. position could not possibly be about culture because the U.S. values culture so little that there is no "cultural ministry."

U.S. participants confirmed that trade or economic interests were represented in their position followed by copyright which does reflect a priority for U.S. cultural industries.<sup>94</sup> Copyright and piracy are priority issues for the commercial side of the creative industries and presume an economic interest because a significant portion of prospective revenue for the creative industries is affected by copyright and intellectual property violations. Copyright losses in 2004 were conservatively estimated by the IIPA to be \$25-30 billion worldwide with a loss of \$13.4 billion for the U.S. alone.<sup>95</sup> While the U.S. was concerned with the language addressing intellectual property, this was a point on which many nations were united. U.S. participants reciprocated the perception that Canada's position was motivated primarily by trade.<sup>96</sup> Canadians rebut their emphasis on trade by pointing out that Canada can't be accused of promoting protection for trade purposes based on the evidence of foreign market share domination in their domestic markets<sup>97</sup>

#### *A Reactive U.S. Position*

On the eve of the Convention's drafting, the American position on cultural diversity and cultural exemptions was firmly in support of market determination. Following the U.S.'s rejoining UNESCO in 2003, the American Delegation was quickly assembled to reflect a broad interagency approach including drafting lawyers, and government officials representing international relations, those with cultural portfolios, copyright, and albeit minimally trade. According to the members of the delegation, the U.S. wanted to take the treaty at face value and create an environment nurturing of the free flow of ideas where creativity and diversity could thrive. A position was crafted by the Delegation Coordinator Jane Cowley and the cultural

members based on these principles to which was added religion, and consistence with other international commitments.

It was expected that the commercial creative industry representatives would have an unproportional influence. From the beginning of the drafting, the MPAA and the RIAA were forthright in expressing their opinions on cultural diversity and an IICD and during the process of negotiations were regularly consulted by the Economic Bureau at the State Department. These representatives though agreed that the cultural industries are more than just products with a value far beyond that of economics, and furthermore stated that their industries were not ultimately so concerned with the Convention.

Ongoing cultural input was given through an interagency roundtable of the governmental cultural departments that met periodically during the negotiating process to provide feedback and included the NEA, NEH, IMLS, the American Folklife Center at the Library of Congress, and the Center for Folklife and Cultural Heritage at the Smithsonian Institution. Despite this avenue for cultural input, cultural interests from the private sector and civil society did not have the same opportunities to contribute as the creative industry representatives did. Instead, coordinator Jane Cowley did her best to contact the cultural community for their initial input in crafting a U.S. position through an e-mail sent to the cultural organizations in Washington, D.C. that passed through this authors' hands in the summer of 2004. The email resulted in an informal discussion coordinated by the MPAA and the Center for Arts & Culture that included eight government representatives and sixteen private sector and civil society individuals including the U.S. trade office, the FCC, RIAA, the Library of Congress's Folklife Office, the Association for Performing Arts Presenters, Americans for UNESCO, and Tyler Cowen. The summary of this discussion was then shared with the State Department.

Delegates asserted that U.S. policy priorities included human rights, consistency with international agreements, and cultural freedom represented by the free flow of goods and information. Cultural delegates specifically stated that they were there to put the "culture" in cultural diversity and the general feeling among the delegation members interviewed was that the U.S. position was more reflective of culture than trade or other interests. In negotiations, copyright issues were high on the agenda with economic, copyright and trade representatives naturally pushing this perspective. When questioned individually, however, all members of the American delegation interviewed were adamant that they did not represent trade interests and did

not believe that trade interests were primarily represented in the American position. In fact, two U.S. delegates actually stated that trade people should have been present more frequently to mirror the participation by the Trade Commission of the European Union.

The U.S. delegation is more diverse in expertise and background than its Canadian counterpart, but that reflects the U.S.'s decentralized management of arts and culture.<sup>98</sup> A major concern of Canadians, Americans, and civil society was as Bonnie Richardson expressed it, "the U.S. position had not risen to a high enough level."<sup>99</sup> In Canada the issue of cultural diversity is coordinated from the Prime Minister's Office and is highly ranked on the list of national priorities. U.S. participants felt that the lack of an avenue to develop and think of the implications of cultural trade and foreign relations was a setback to advancing the U.S. position. It is the opinion of the author that the lack of a centralized coordinating body familiar with cultural policy issues related to trade and foreign relations impeded the U.S.'s ability to manage the complex issues of the Convention and garner international support, in contrast to Canada who has decades of experience in forming, organizing and implementing cultural policies supported at a high level of government.

In the beginning of 2005, accusations emerged in Washington from the private sector that the development of the American delegation's position had not been transparent enough. At that time, the Convention was not in the public discourse and only two major articles on cultural diversity and the Convention were published in the American press before August, so few understood the significance of the Convention or the U.S. position. The fact that no documents existed publicly, although they had been disseminated to affiliated service organizations, to explain or articulate the U.S. position until after the final negotiating meeting lent credibility to the charge of opaqueness.

The delegation attempted to change this perception by participating in several public briefings: a Smithsonian Institution sponsored event in January 2005, a subsequent April 15, 2005 meeting open to the public, and a third and fourth briefing for the cultural organizations in late July 2005. The large public push to explain the U.S. position and attempt to prolong negotiations past the October General Assembly meeting began in August after the final negotiating round and proved to be too little too late. It was suggested by an American off the record that there was no interest on the part of the U.S. Ambassador to UNESCO to advertise the American position because the U.S. didn't want to be forced into a position or be misinterpreted.

### *A Proactive Canadian Position*

Before negotiations in UNESCO had even begun, Canada's positions were already well developed and reflected in the pre-draft mobilization towards an international instrument. Canadian initiatives, rationale, and actions in support of an IICD were posted publicly on the Canadian Heritage and the Department of Foreign Affairs and International Trade websites.<sup>100</sup> As a result, Canadian delegation responses were more uniform than those of the Americans, often using the same expressions and words to convey their position, indicating their more organized and cohesive framework. Yannick Mondy expressed that "It is our objective to enshrine in international law the dual nature of cultural goods and services"<sup>101</sup> one of the main objectives of the Canadian position. Janette Mark articulated the objective of "lay[ing] out what makes good cultural policy; there has been so little discussion of this, [and] hopefully we will all go back and look at these principles."<sup>102</sup>

Delegates explained that Canada's governmental approach was primarily based on input from four departments: Canadian Heritage, Foreign Affairs, International Trade and Justice. Jacques Paquette elaborated that the Canadian government considered the views of Canada's provinces, the cultural sector, and the Coalition for Cultural Diversity that included creators and creative industry representatives. Civil society and in particular, the Coalition for Cultural Diversity, a 58-member group, and the INCD, contributed their views and influenced the government on the issues reflected in the Convention. Province positions including specific resolutions from Quebec and Ontario were also incorporated.

The delegation from Canada, in a gesture of recognizing internal cultural interests, went so far as to include officials from Quebec in their composition.<sup>103</sup> It is ironic that although the U.S. is more suspicious of federal activity in culture, it was Canada's position that was inclusive of the views of its provinces, while the U.S. did not consult directly with its fifty-states and kept it organized on a federal level. Both delegations neglected to consult with their native populations or representatives of minority ethnic groups on the issues in the Convention. Although they did consult briefly with institutions that are in touch with these native populations during the process, this was a missing element indicating that internal diversity was not a high priority and that the conversation was conducted within a nation-state framework with insufficient consideration of the effects on internal diversity.

### *Delegation Composition*

In contradiction to the original assumption that the U.S. delegation would primarily reflect trade interests, the individuals selected strongly reflect cultural interests (26%) while economic and trade individuals combined reflected only 22%, with trade representation at just 5% with that sole delegate only attending one meeting.<sup>104</sup> In fact, the delegation was co-chaired by Bob Martin, Director of the IMLS at the time, and Chairman Dana Gioia of the NEA, the organization which acts as the *de facto* cultural ministry in American arts and culture circles. Once delegation composition was determined, a secondary purpose of this investigation focused on evaluating whether or not the assignment of cultural leaders and experts to the American delegation was a superficial diplomacy move rather than a real effort to seriously address the goal of cultural diversity.

Primary representation by both the American and Canadian Delegations was by officials whose jobs are in the field of international relations. It is notable that the second field represented in both countries was that of culture at 26% for the U.S. and 37% for Canada. Economic and trade interests came in at 22% for the U.S. and 17% for Canada.<sup>105</sup> These numbers were calculated by utilizing the assigned category of expertise combined with frequency of representation.

Canada was represented by officials from their ministries of Canadian Heritage, Foreign Affairs, and Justice. The majority of members of the Canadian delegation that participated in this study had a solid background in trade issues which superficially seems surprising. Placed into context of the fifteen years development of Canadian expertise on the issue of cultural diversity and cultural exemptions, however, it makes sense that Canadians would have trade specialists in culture and cultural specialists in trade. Canada's representation includes secondary expertise reflecting the interdisciplinary expertise and job descriptions of their officials. Several individuals though based in the Department of Cultural Heritage were actually responsible for trade or international relation interests. These Canadian delegates were assigned a primary category based on their department and a second category, if appropriate, based on their specific role or department.

The United State's total representation was larger (21 delegation members) and more diverse in comparison to Canada's in terms of reflected interests, but when analyzed in relation to population then Canada's overall participation (18 members) was much greater than the U.S.

reflecting the developed Canadian expertise in this issue and its high priority.<sup>106</sup> Six of the American delegates: Jane Cowley, Nancy Weiss and Robert Martin from the cultural sector, Robert Downes from the Department of State's Economic and Business Affairs, and Ambassador Louise Oliver and Nilse Ryman of the U.S. Mission to UNESCO attended all three meetings. Canadians with perfect attendance were Yannick Mondy, Artur Wilzcenski, Andre Dorval and Luc Bergeron.

*U.S. "Not Guilty" of negotiating exclusively on behalf of trade interests*

The U.S. reputation for aggressively pursuing the freedom of markets and for not signing or ratifying international treaties limiting sovereign rights are an easy rationale for the U.S. choice not to support the Convention. The perception entering into the negotiations was that the U.S. never had any intention of signing. It was hypothesized that the U.S. would not be able to support an agreement that further justified cultural exemptions in trade, but the reasons the U.S. has used to rationalize its objections indicate important issues not adequately addressed which make the document legitimately flawed enough for the U.S. to reject it independently of its trade interests.

The most controversial aspect of the Convention was its relationship to previous trade instruments.<sup>107</sup> Article 20 was drafted to specifically establish the Convention's impact pertaining to parallel international treaties.

ARTICLE XX: RELATIONSHIP TO OTHER INSTRUMENTS:

1. Parties recognize that they shall perform in good faith their obligations under this Convention and all other treaties to which they are parties. Accordingly, without subordinating this Convention to any other treaty,
  - (a) they shall foster mutual supportiveness between this Convention and the other treaties to which they are parties; and
  - (b) when interpreting and applying the other treaties to which they are parties or when entering into other international obligations, Parties shall take into account the relevant provisions of this Convention.
2. Nothing in this Convention shall be interpreted as modifying rights and obligations of the parties under any other treaties to which they are parties.<sup>108</sup>

Thus Article XX at face value seems to resolve the issue of cultural exemptions as most of UNESCO's members, including the U.S. and Canada, are parties to the WTO, GATT, and between them NAFTA. However, none of these prior agreements provide clear treatment for the

complex hybrid nature of cultural goods and services, and the ambiguity of their texts and disputed arbitration results were the original impetus for a Convention on Cultural Diversity.

While Article 20 was an indubitably an important component of the U.S. position, U.S. objections to the document are found to be primarily based on other factors. American delegates have affirmed repeatedly, by citing the basic tenets stated in the first November reaction, that their primary concern has been how to foster creative expression and not how to protect trade interests, and adamantly stated that the deal breaking reservations include the language pertaining to freedom of expression. The U.S. Permanent Ambassador to UNESCO Louise Oliver, emphasized:

“We would support a convention on cultural diversity that truly promotes dialogue between civilizations, nations, and cultures, and the free flow of ideas as information as guaranteed in the UNESCO constitution and the Universal Declaration of Human Rights.”<sup>109</sup>

The U.S. delegation has stated in both public forums and privately in interviews that they were, in the words of Jane Cowley, “instructed to negotiate a Convention the U.S. could sign.”<sup>110</sup> The evidence garnered from this study supports the assertion that the U.S. pursued the negotiations in good faith based on orders and intent to negotiate a treaty that the U.S. could ratify. Regardless of Article 20, the U.S. found countless other reasons not to support the Convention and offered twenty-eight amendments to the final document. The crux of the matter comes back to freedom of expression and the potentially discriminatory substance of the treaty in conjunction with the American accusation that the proceedings were flawed and accelerated even though the document was intended to be preliminary. The official U.S. reaction in June 2005 stated that the U.S. would not be signing the current document (which became the final document) because it “excludes very obvious things like language, ethnicity, and religion.”<sup>111</sup>

Realizing that the window of negotiations had closed, the U.S. implemented a strategy to delay the document’s approval until the next General Conference in 2007, justified by claims of an undue rapid process. An American individual from the delegation expressed privately though that even if they were able to prolong consideration, it might not make a difference in final outcomes. U.S. governmental officials at top levels, however, finally embraced the cause in late summer and began campaigning. Dana Gioia made an offensive push through international media to express that, “The United States does and should support the development of guidelines that foster the free flow of culture and ideas, the acceptance of cultural diversity,

respect for cultural heritage, the promotion of cultural legacies and an openness to partnership and change around the world.”<sup>112</sup> Secretary of State Condoleeza Rice contacted cultural ministers to convey American concerns that the Convention’s “extraordinary reach...could be misused by governments to suppress minority viewpoints or minority cultural practices. Adoption of this Convention could also have a chilling effect on on-going negotiations at the WTO.”

### **Adopting A Consensus Document**

*“I don’t think the Convention is lacking anything; it has become a ‘Christmas tree’ with everyone adding their own ornament. The product is as it’s negotiated. If any one country drafted a Convention it wouldn’t look like this. You can’t pull the threads. The package represents broader interests and consensus.”* Artur Wilczynski<sup>113</sup>

One of the primary complaints of the American position is that the Convention did not represent a true consensus. A consensus in any international forum is the exception rather than the rule. A study participant expressed, “Getting a public policy consensus is hard nationally and even harder internationally and the debate over the Convention is a good example of this....It is a lot harder to get a consensus on what you are talking about and what values to promote on an international basis.” This complaint is the least powerful protest of the U.S. because clearly the overwhelming support for the Convention indicates a consensus of intent. More convincing are objections that the proceedings were hijacked by trade interests which both Canadians and Americans asserted and confirmed.

Surveyed participants felt that the probability of the General Assembly adopting the Convention in October 2005 was high, but the U.S. believes that the process was unnecessarily and harmfully expediated since the Resolution had called for a preliminary document. According to UNESCO rules, there are specific timeframes to be followed in the construct of a Convention. These timelines were duly fulfilled but American participants were frustrated that the reconciliation document which represented an entirely new text was disseminated just before the last meeting of Intergovernmental meeting of Experts in an environment resistant to further changes in text despite the fact that the negotiated document was intended to be preliminary.

An affirmative vote is just the first step in legalizing the Convention and does not insure ratification and signing by individual nations. In order to take effect, the Convention must be ratified by 2/3 of the member states present or about 30 members. The last convention



pertaining to culture, the *Convention for the Safeguarding of the Intangible Cultural Heritage* has not been embraced as willingly as hoped. Despite its adoption in 2003, it has only been ratified by twenty-one nations.<sup>114</sup> Participants were uncertain on the final impact with the majority (67%) unsure that it would have any important impact if at all. In a post-adoption article analysis, Alan Riding of the International Tribune found that “Worrisome to some UNESCO officials... is the political damage caused by a convention that, years hence, may join many other international treaties in oblivion. In their view, the convention’s principle significance is as a symbol of how the US and some of its closest allies view the world differently –and not only on culture.”<sup>115</sup>

### *Fostering Cultural Diversity*

Despite the Convention’s concentration on the commercial aspects of culture, one of the most encouraging findings of this study was that despite the differences in backgrounds, perspectives and views towards the effectiveness of the Convention, each individual interviewed strongly felt that cultural diversity was an important goal and value. Fifty percent of the participants indicated that they would have followed the issues surrounding cultural diversity even if it had not been part of their job.

Responses addressing how cultural diversity should be managed, reflected the clear ideological differences between the U.S. and Canadian government approaches. Canadians felt for the most part in the words of Ivan Bernier that “diversity first and foremost belongs at the national level but that pressures affecting it are international thus creating a need for an international document.”<sup>116</sup> Americans believe strongly that the government’s role is to not get in the way of diversity and that markets are the primary way of ensuring people’s choice combined with the recognition that they don’t always work, and in these cases subsidies are favored over protective quotas. In addition, concern was expressed that because the Convention’s signatories are nation states, it really doesn’t guarantee any minority rights or ensure diversity within nations.

Two members of the Canadian delegation, the Chief Negotiator and the Rapporteur of the Intergovernmental Meeting of Experts, stressed that the ways diversity is fostered and maintained is up to each country to decide for themselves, and it is this flexibility that the Convention preserves. Jacques Paquette added that “Canada wants to increase international

cooperation to deal with the question of diversity. This principle of flexibility and states rights is considered to be a success for the Convention.”<sup>117</sup> American participants were reluctant to embrace a flexible model of state interference with culture without best practices. The U.S. contends that it takes its treaty obligations seriously and cannot sign something that could possibly undermine freedom of expression through censorship. Support for this position can be found in the fact that even after its withdrawal from UNESCO, the U.S. implemented the treaty on cultural property to which it had committed itself. Article 19 of the Convention does call for the exchange of best practices of diversity but Americans believe that this should have been a necessary preliminary step to the Convention and there is no insurance that diversity would not be repressed. Even initial civil society supporters have commented, “But even the most effective Convention, while an essential foundation, will not bring diversity. Achieving greater cultural diversity requires the development of cultural capacity and creative industries and more balance in the global exchange of cultural goods and services.”<sup>118</sup>

### ***The Forum***

*“UNESCO has the chance to do something good or bad...but nonetheless it is a good forum.”*  
Tyler Cowen.<sup>119</sup>

This research also considers whether UNESCO, and the nation-state approach, was the proper body to discuss an instrument on cultural diversity and if UNESCO was able to effectively create and manage a tool to foster and ensure cultural diversity. UNESCO recognizes that “the protection of cultural diversity is closely linked to the larger framework of the dialogue among civilizations and cultures and its ability to achieve genuine mutual understanding, solidarity and cooperation.”<sup>120</sup> This rationale links UNESCO’s mission to cultural diversity and indicates that UNESCO was an appropriate body in which to discuss cultural diversity. But the way that UNESCO went about it is criticized as the “kitchen sink is not a useful approach to culture.”<sup>122</sup>

Canada has strongly supported the Convention and its principles within multiple international forums, but an unexpected development that emerged through interviews was that UNESCO was not automatically considered the obvious place for an international instrument. According to Jacques Paquette, “the Convention is about culture, and UNESCO is about culture

so it was the logical place. But it was certainly a different type of convention that they usually deal with. UNESCO was not used to that type of negotiation which presented unique challenges and had to adapt. It was good though for UNESCO to address such a controversial and complex issue.”<sup>123</sup> Ivan Bernier expressed a similar sentiment affirming that UNESCO was the proper body but had a reputation for inefficient instruments with no teeth,<sup>124</sup> a charge given to the final document from across the spectrum including the INCED and the INCP.

American participants, although supporting UNESCO as a good forum for cultural issues, felt that the conversation had become about trade and expressed concerns about the process that were echoed in the American response. Bonnie Richardson, from the MPAA, stated “UNESCO could have been a good body for cultural issues; WTO should not be the setting for cultural policy, but this process has been as undemocratic and flawed as ever I’ve seen.”<sup>125</sup> Frank Hodsoll expressed that “UNESCO is a good place to discuss [cultural diversity], I just wish they were more thoughtful about it and less politically and economically motivated.”<sup>126</sup> Another U.S. delegation member echoed that “UNESCO is the right organization because it is about culture and so if focusing on culture then it is proper, but this convention is crossing over into other, and particularly, trade issues though.”<sup>127</sup> Surprisingly one Canadian delegation member confirmed the underlying presence of trade interests in negotiating the Convention through their statement that “for trade UNESCO is an alien environment because its process for developing standard setting norms is very, very different from the usual practice of trade negotiations; it was no one’s first choice but the best option based on universal membership and because it is the focal point within the UN system for cultural policy issues.”<sup>128</sup>

Overwhelmingly<sup>129</sup>, participants believed that UNESCO was the proper body in which to discuss cultural diversity coupled with the predominant perspective that the Convention was drafted with an eye to interests other than promoting culture and diverse expressions, and in particular those representing trade. Despite this belief, participants agreed that, despite the organization’s flaws, that the original cultural intent did make UNESCO the right body in which to discuss the issues of cultural expression and diversity.

### *The Dissatisfied Investor*

While it can be concluded that U.S.-Canadian relations are not in jeopardy, the U.S. relationship with UNESCO is far more rocky and still fragile after a 19 year separation.

Negotiating a hotly debated issue within a forum it had just recently rejoined, and then choosing not to support the final agreement, was bound to have some consequences on the participation of the U.S. in the body and the body's perception of it. The U.S. response by Louise Oliver on September 20, 2005 stated:

“UNESCO’s influence on the international stage can come only from its intellectual rigor, its moral imperative, its universality, and its ability to get things done...Standard setting should not be done at the expense of UNESCO’s programs....Moreover, no normative instrument should be negotiated at UNESCO unless it is truly necessary... If the General Conference does decide to support the development of more instruments, we will insist that all negotiating meetings be paid for from UNESCO’s core budget...[G]iven UNESCO’s limited resources, we believe that the expense of a convention should be borne by the states parties to the convention, not by the organization as a whole.”<sup>130</sup>

The U.S.’s strong denouncement of the Convention has significant potential to affect its future relationship with UNESCO. The United States is UNESCO’s largest investor and provides 22% of UNESCO’s biannual budget. The aforementioned statement demonstrates that the U.S. has a significant difference of opinion concerning the priorities of the organization and resource allocation. The U.S. has further stated its belief that it is the educational program initiatives that it finds most important.

This study found that Americans felt uncertain <sup>131</sup>about international ramifications of the U.S. not signing. Delegation members that did anticipate consequences linked them to the reinforcement of American’s current negative standing in world public opinion, with further marginalization and the solidification of the U.S. reputation as an aggressor. A U.S. official stated that:

“There is a feeling among a lot of people that we are a big and powerful country but that we are not well understood, and that people around the world mistakenly think of us as imperialists but if they knew us better they would think better of us. One way of projecting that is communications including cultural communications. We are falling down in our openness to other cultures. We should be promoting distribution of foreign products here just to inform our own people. There has been a shift since 9-11 toward less openness.”<sup>132</sup>

But, a representative of the American creative industries, countered with, “Blatant Anti-American economic impact will be minimal, this is a very theoretical debate but when applying policy, countries usually take a very balanced position.” Canadian opinion underscored a lesser effect based on the esoteric nature and small audience for the debate. Yannick Mondy expressed that “UNESCO lives in UNESCO”<sup>133</sup> and a fellow delegation member pointed out that “99.9% of the world’s population have never even heard of this Convention and don’t care.”

Surprisingly, the creative industries didn't seem very concerned either. Representatives from publishing and the Canadian Recording industry outright declined to participate in this study based on the grounds that they had no one on staff following the issues.

### **Convention Fatally Flawed**

*The Convention "establishes certain bitching rights, ...it's primarily a moral authority."*  
Participant<sup>134</sup>

The Convention was laden with high expectations from the groups and governments who had mobilized forces to propel the creation of an IICD, and it is by these expectations that the Convention will be judged. In contrast to the final product, that is criticized for its ambiguous language and weak enforcement, the initial intent and goals of the Convention were extremely clear. In UNESCO's 2000 report *Cultural Diversity, Conflict and Pluralism*, Ivan Bernier stated that the "ideal solution" was "a convention which would set out clearly the justification for and limitations of a particular status for cultural products by emphasizing the need to preserve cultural diversity," and that the Convention should act as a last resort to the problems raised within the framework of the WTO.<sup>135</sup> In the same publication, Elie Cohen articulated that what was needed is "a positive definition of what comes under preservation of cultural diversity justifying cultural exemptions."<sup>136</sup>

Initial goals of the convention included its unique value in regarding the equal importance of cultural aspects of development and the dual nature of the cultural and economic services to be covered. The hybrid nature is emphasized because of its implication on the interpretations in the exchange of goods and services. It is the cultural nature that justifies cultural exemptions. Canada stated that "an effective Instrument would articulate and justify what makes cultural products different from other types of merchandise and identify the conditions under which domestic policies/measures could be pursued" and not subject to trade retaliation.<sup>137</sup> The IICD concluded that "predictability is needed for policy makers who wish to design effective policies in support of cultural diversity and for creators, producers, distributors of cultural goods and services and audiovisuals."<sup>138</sup>

With these initial goals in mind, two aspects render the Convention to be fatally flawed: 1.) It does not provide criteria for establishing the conditions under which cultural exemption would be legal in trade arenas. 2.) Diversity is contained in relation to nation-states and there is no insurance of diversity intra and supra state. Furthermore, it must be pointed out that protecting culture, which the Convention seems to do, is not the same thing as protecting diversity, and no examples were given of what results would indicate the successful management of cultural diversity.

The majority of the participants (92%)<sup>139</sup> who addressed this question of cultural exemptions believed that the Convention would not or would probably not be able to reconcile the dispute over trade agreements. Canadians involved with this study felt that the INCD would not affect trade agreements while the Americans felt that it was possible due to the murky language of Article 20. One Canadian delegate expressed his belief that the Convention and trade exemptions are not linked. However, already, officials of first world nations have indicated that the Convention will provide further support for protecting *agricultural* products. The application of cultural value is sufficiently vague so that any product could qualify on those grounds from kimonos, to tables, to foie gras, cheese and tequila. As early as last summer Canada began to use the Convention for moral ground at the WTO in Geneva and it is expected that in December's Doha round the issue will resurface. Developing countries are already finding it challenging to compete with subsidized first-world food subsidies, and if developed countries are able to use the tenets of the Convention to reinforce their subsidy and quota policies, this will undermine the principle of international solidarity and cooperation articulated in Principle 4 because it deprives them from participating in free trade based on a comparative advantage of production.

### *The Silver Lining*

However, the process of mobilizing towards and negotiating a Convention through UNESCO are not without merit. The Convention does symbolize a moral commitment of the majority of international actors within international law to cultural diversity and recognizes the hybrid nature of the cultural industries even if this definition proves woefully inadequate to the resolution of disputes. Potential useful outcomes of the Convention can be found in Article 9 and 19 which respectively require a four year report on measures taken by countries to protect

and promote cultural diversity and the exchange of best practices, statistics, and data collection on cultural diversity. Cited successes by the Canadians include the promotion of cultural policies, the support of nascent industries in developing countries, and states' rights to implement protective action in the promotion of cultural goods and services. The most successful implications of the Convention are:

*Objective e:* the increased awareness of the issue of cultural diversity;

*Objective g:* the recognition of the “distinctive nature of cultural activities, goods, and services as vehicles of identity, values, and meaning;”

*Objective h:* the reaffirmation of state sovereign rights to “maintain, adopt, and implement policies and measures that they deem appropriate for the protection and promotion of the diversity of cultural expression on their territory.”<sup>140</sup>

Surviving difficult negotiations, almost all nations approved the Convention indicating that there is a global belief in the need for such a document. Cultural diversity is an important goal in and of itself as are the abilities of states to intervene to insure that their citizens have the option of accessing their own culture. The pre-draft efforts were considerable and represent the positive impact and change that international cooperation can achieve.

Unfortunately, these successful objectives undermine the document's justification for being. The reaffirmation of sovereignty and the recognized hybrid nature of cultural goods and services indicate redundancies. States' sovereign rights along with free trade are the two greatest underlying paradigms of international relations. Although the statement of the hybrid nature of cultural products is articulated, the text gives no indication of how to apply the principle in areas of dispute. Unfortunately, the adjudication included also reiterates the redundant nature of the Convention.

To be effective, the Convention must hold relevance as a reference in trade arenas for disputes concerning the cultural industries. The Convention includes a dispute settlement in Article 25 that provides four progressive steps of adjudication:

1. Solution by negotiation;
2. Request mediation by a third party;
3. Conciliation Commission;

4. Party can declare it doesn't recognize conciliation procedure provided at ratification, acceptance, approval or accession.<sup>141</sup>

Disputes over cultural diversity are most likely to manifest and be articulated through trade conflicts. Groups or minorities that might be persecuted or are unable to access diverse cultural expression have no recourse to action through UNESCO because they are not states and thus parties to the Convention. It is confusing why a party (state) would want to utilize a dispute settlement at UNESCO in relation to cultural industries, when outside rules of trade engagement that the parties have committed to will continue to bind them. Article 20, although unclear, was specifically designed to enforce these pre-existing trade agreements and did not take on the suggested override capability. Gary Neil director of the INCD wrote that he was "not convinced that it [the Convention] resolves the fundamental tension between trade agreements and culture...it would have done little to help Canada win its fight with the US over magazines at the WTO."<sup>142</sup>

Acheson and Maule assessed the proposed dispute settlement mechanism in the draft Convention and concluded that the WTO offers a workable alternative.<sup>143</sup> Cultural exemptions are already recognized in practice through GATT and NAFTA, and furthermore the integrity of the settlement process in trade and intellectual property forums is not in dispute. It is the decisions passed down which have caused controversy. If the Convention had fulfilled its initial intent to clarify the situations or conditions by which cultural exemptions could be applied, then these conditions could have been adopted in these alternative forums and no additional dispute mechanism would have been necessary.

The absent internationally accepted definition is essential for proponents and opponents of cultural exemption to assess the validity of protection for the cultural industries and its implementation. The establishment of clear universal guidelines originating from a cultural perspective recognizing the hybrid nature of the creative industries could achieve a balance of cultural interests and trade. From that understanding, an international forum of adjudication, whether in a trade or cultural forum, could be useful to effectively and consistently mediate to protect national cultural diversity and ensure that special provisions for cultural industries are implemented only to preserve and protect public space for culture rather than to promote an unfair competitive advantage. UNESCO was the right forum. However, it failed to provide a



reasonable working model for clarification or to manage a reconciliation of the competing economic and cultural objectives of its member states.

Parties on all sides have agreed that the document lacks teeth. What proves most hopeful is that the document can be amended. This gives hope that in the next few years as the document fails to have a real impact, that the group could collectively go back, reassess and improve the document in an eventual evolution towards real guidelines for the treatment of culture in trade and to insure diversity at all levels. One of the largest impediments and threats to real diversity is that of corporations who are increasingly divorced from territory and nationalistic sentiments. The collective attention to cultural diversity neglected to discuss global cooperation in insuring diversity against consolidating media and cultural industries who act as the real gatekeepers.

No determination of how to achieve cultural diversity is given other than allowing each country to decide for themselves. Flexibility should be valued, but unfortunately it could lead to the U.S.'s worst fears of suppressing diversity through freedom of speech, expression, and cultural rights, of which there is ample evidence even in democracies including the United States. Modern nations are confronted with new demographics, and the challenges of the future contain real cultural implications. The conversation was based around trade interests concerning badly defined cultural industries with no recommendations or benchmarks for diversity.

The potential detrimental repercussions undermine the small successes. The Convention does not bring clarification to the ambiguous treatment in trade arenas affecting cultural goods and services. It does reinforce each nation's cultural sovereignty and right, but it does not provide a usable definition of cultural diversity, nor does it indicate any best practices of fostering cultural diversity. In addition, there is no reference to gatekeepers and businesses who are the ones that determine content in markets. In fact, rather than elevating the debate over the ambiguous hybrid nature of cultural products, it just immobilizes it. The dialogue has been motivated by and conducted in relevance to trade interests. The current document will not act as a panacea but serves as a monument in what will be a continuing and necessary debate on proper treatment of the creative industries and their relation to cultural diversity.

## **Building a Monument**

*“If the convention enters into force, governments will have erected a noble monument to the importance of cultural diversity albeit one which takes its place alongside countless skyscrapers consecrated to international commerce”*<sup>144</sup> Luke Eric Peterson

UNESCO has indeed created a monument to cultural diversity through the *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions*. The text’s primary effectiveness is a moral and symbolic stand that restates the premises of the 2001 Declaration on Cultural Diversity, as well as the pre-existing paradigm of state sovereignty in regards to culture. It was the discrepancies and inadequacies of international commerce when applied to cultural matters that this Convention was intended, if not to solve completely, then to ameliorate. However, the Convention is a hollow tribute to the original potential that an IICD could have had in addressing the underlying questions concerning cultural diversity and the legitimacy of cultural exemptions in trade that were sidestepped in this process. Alongside the countless skyscrapers dedicated to adjudicating international commerce, the Convention’s adjudication methods are weak, redundant and are merely symbolic pillars. Much like other monuments, the Convention will remain something to visit, an important landmark in the evolution of an ideal. However, the disguise of economic and symbolic power behind the mask of cultural diversity resulted in it falling far short of solving the problem of maintaining and nurturing cultural and creative expression.

Global concerns over cultural industry consolidation and gatekeeping roles, the recognition of minority cultural rights, and legal determinations of what hybrid products and goods should qualify under what conditions for cultural exemption were the fundamental issues underlying the need for a definitive text. Thus far, this has created an opportunity for inconsistent interpretation in the application of cultural exemptions in trade agreements. It was these trade disputes that originally brought nations and the ideal of cultural diversity to the table and should have ensured that the missing elements of cultural determination as applicable to trade was recognized as the primary *raison d’être* and included real solutions and guidelines to address and clarify this problem.

**APPENDIX A: DELEGATION REPRESENTATION**

American Delegation:

<b>Name</b>	<b>U.S. Governmental Department</b>	<b>Sept-04</b>	<b>Feb-05</b>	<b>Jun-05</b>	<b>Interview</b>
Carol Belassa	U.S. Trade Representative's Office		X		
Barry Bergey	NEA-Folklife		X		
Anne Carson	US Mission to UNESCO	X	X	X	
Tyler Cowen	Private Participant-Economics Professor	X	X		X
Jane Cowley	DOS-International Organization Affairs	X	X	X	X
Robert Downes	DOS-Bureau of Economic and Business Affairs	X	X	X	
Alicia Greenidge	U.S. Mission to World Trade Organization			X	
Dana Gioia	NEA- Chairman	X	X		PFP
Ann Guthrie Hingston	NEA-Government Affairs	X		X	X
Andrew Koss	US Mission to UNESCO	X	X		
Robert Martin	IMLS-Director (former)	X	X	X	PFP
Louise Oliver	Ambassador-US Mission to UNESCO	X	X	X	
Michael Peay	DOS-Legal Counselor		X	X	
Marla Poor	U.S. Copyright Office			X	
Nilse Ryman	US Mission to UNESCO	X	X	X	
Tamara Scott	DOS-Assist Foreign Affairs Officer			X	
Meha Shah	DOS-Office of Legal Advisor	X			X
Michael Shapiro	U.S. Patent Office		X	X	
Wolodymyr Sulznsky	DOS-Dept of Legal Advisor	X			
Nancy Weiss	General Counsel, IMLS	X	X	X	X
Anissa Whitman	DOS-Bureau of Economic and Business Affairs	X	X		
<b>Total:</b>	<b>21</b>	<b>14</b>	<b>15</b>	<b>13</b>	<b>7</b>

**KEY**

- DCH**=Department of Canadian Heritage
- DOS**=Department of State
- IMLS**=Institute for Museum and Library Science
- NEA**=National Endowment for the Arts
- PFP**=Public Forum Participant

Canadian Delegation

Name	Organization	Sept-04	Feb-05	Jun-05	Interview
Jean-François Bergeron	Department of Foreign Relations: International Cultural Relations	X			
Luc Bergeron	Department of International Relations: International Organizations	X	X	X	
Valérie Bisson	Department of Economic Development and Regional/Political Trade		X		
Jean-Pierre Blais	DCH: International Relations and Intergovernmental Cultural Affairs	X			
Laurent Cardinal	Department of Economic Development and Regional/Political Trade	X			
Yvon Charbonneau	Ambassador, Canadian Permanent Delegation to UNESCO	X	X		
Amos Donohue	Department of Justice: International Law			X	
Andre Dorval	Department of Culture and Communications: International Affairs and Cultural Diversity	X	X	X	
David Dubinski	DCH: Commerce and Investment	X			
Denny Gelin	DCH International and Intergovernmental Affairs		X	X	
Dominique Levasseur	Canadian Permanent Delegation to UNESCO		X		
Janette Mark	DCH: Commerce and Investment		X	X	X
Yannick Mondy	Department of International Trade	X	X	X	X
Sabine Nolke	Law: Individual and Human		X	X	
Jean-François Normand	Quebec Delegation: Francophone and Multilateral Affairs			X	
Jaques Pacquette	DCH: International and Intergovernmental Affairs		X	X	X
Jacques Vallee	Quebec Delegation: Francophone and Multilateral Affairs	X	X		
Artur Wilcznski	DCH: International Relations	X	X	X	X
<b>Total</b>	<b>19</b>	<b>10</b>	<b>12</b>	<b>10</b>	<b>4</b>

## APPENDIX B: INTERVIEW QUESTIONS

1. How were you selected to become a contributor/ and or member to the {insert country} delegation to UNESCO? Why did you agree to become a member?  
And/Or...how have you become interested or involved with this issue? What has been your role? Would you have been interested in this issue if you had not been assigned to it?
2. How frequently are you called on to provide advice on this issue?
3. When did the Convention come to your attention? Is your profession tracking this issue?
4. How was your country's position developed?
5. What interests do you think are represented by your country's position?
6. Do you feel that the position of your country represents the issues and interests that your profession holds?
7. Which interests do you think are the most important to be represented when negotiating on this issue?
8. Who do you think should determine factors to insure diversity within your country?
9. Do you feel that diversity is a goal best addressed by public and international policy?
10. Do you think UNESCO is the proper body in which to discuss this issue? Why?
11. Do you think that a signed Convention will have an impact? How?
12. What would you like to see accomplished by the Convention?
13. What do you perceive to be the most important elements of the Convention and why?
14. What do you believe are the most controversial issues of the Convention?
15. Do you believe that this Convention can effectively reconcile the dispute over cultural exemptions?
16. How will the Convention affect the trade agreements your country has already committed to?
17. How will your country's position affect its other policy priorities?
18. If the United States does not sign the convention, how do you think this will affect strategies to implement cultural exemptions in trade agreements?
19. If the United States does not sign, how do you think this will affect its relationship with UNESCO?
20. Where do you perceive the U.S./Canadian (asked for opposite) position as coming from?
21. Why do you think the U.S. and Canada have different positions on this issue?
22. How do you think this issue will affect U.S.-Canadian relations?
23. Do you think it will be possible to conclude the agreement by October 2005?
24. Do you have any other information you think is relevant to this project?
25. Do you have any recommendations of other experts in this field that would be helpful in providing information?

## APPENDIX C: PARTICIPANT REQUEST and CONSENT FORM

### **Background:**

International cultural diversity efforts, although couched in language promoting the protection and cultivation of national resources and identity, have been accused as primarily establishing a pretext for justifying cultural exemption policies in trade agreements and thus the economic benefits of member states rather than the assurance of cultural diversity. The “Convention on Cultural Diversity” is significant to a larger discussion of whether or not a country participating in the World Trade Organization (WTO), regional economic cooperation, and free trade agreements can exempt cultural goods and the creative industries, which are estimated by UNESCO to be \$1300 billion in trade by 2005, from pre-established and future trade agreements. Although there is no universal definition of the creative industries, commonly they are defined as the “copyright” industries; those industries that produce goods or services which combine the creation, production, and commercialization of contents which are intangible and cultural in nature. These industries are usually protected by copyright and include printing, publishing, multimedia, audio-visual, phonographic, cinematography, crafts, and design.

### **Purpose:**

This project intends to discern whether or not the proposed UNESCO *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expression* (Convention on Cultural Diversity) can reconcile the contradictory perspectives of the United States and Canada on the validity of cultural exemptions in free trade agreements, and if not, how the Convention’s outcome will affect U.S. Canadian relations and cultural exemptions within pre-existing trade agreements.

### **Rationale:**

Canada and the United States have similar qualities in their diverse populations, first world economic development status, geographic proximity, democratic governments and because they are relatively newcomers on the nation state scene, in comparison with other more culturally and politically established Western states like France, Spain and Great Britain, who have a more defined national identity and culture. But, while Canada has consciously and aggressively developed cultural policies, the U.S. has not actively developed a national cultural identity, or policies affecting culture.

One can presume based on the U.S. policy of no official cultural policy, that in regards to pursuing national interests concerning hybrid industries that represent both trade and culture, that "culture" has less of a voice in the U.S. than commercial trade interests do. In contrast, Canada seems to be representing both a social and commercial agenda for culture. The cultural and trade relationship between Canada and the U.S. is particularly unique because of their joint efforts in promoting bi-lateral and multi-lateral free trade, their common language of English, and a geographic proximity that facilitates creative industry market penetration and cross-national cultural influences. Profiling these two countries that hold contradictory perspectives towards the validity of cultural exemptions in free trade provides a useful framework to investigate the validity of each nation's viewpoint. Furthermore, it allows a determination of whether or not the “Convention” can adequately and effectively address the competing cultural and economic objectives of its member states.

**Research Methods:**

Through analysis of the Canadian and American delegations to the “Convention” and interviews with experts and public officials working in culture and trade, this thesis will determine which policy interests are reflected and how this affects negotiations on cultural diversity. Delegation composition will be compared and then utilized to determine which interests are reflected in each country's negotiations. In order to give a historical perspective I will be looking at U.S and Canadian government perspectives on cultural exemptions and the role of culture in international trade.

Research will be conducted by evaluating current trade agreements, including NAFTA and the WTO commitments that are relevant to cultural exemptions applicable to the U.S. and Canada. The specific language and adjudication methods will be compared against the terms outlined in the Convention to determine how it will affect pre-established trade agreements if the U.S. decides to support the “Convention.”

## **PARTICIPATION CONSENT FORM**

### **RESEARCH PROCEDURES**

This research is being conducted to determine whether or not the proposed UNESCO *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expression* (Convention on Cultural Diversity) can reconcile the contradictory perspectives of the United States and Canada on the validity of cultural exemptions in free trade agreements. Through analysis of the composition of the Canadian and American delegations to the UNESCO "Convention on Cultural Diversity", this thesis will determine which policy interests are reflected and how this affects negotiations on cultural diversity. If you agree to participate, you will be asked to engage in a conversational interview in person or via phone with the researcher on cultural exemptions and the UNESCO *Convention on the Protection of the Diversity of Cultural Contents and Artistic Expression*.

### **RISKS**

There are no foreseeable risks for participating in this research. If you, as the participant, feel that a specific question will put you at risk in any way, then you may decline to divulge information pertaining to the question.

### **BENEFITS**

There are no benefits to you as a participant other than the furthering of research in the use of cultural exemptions and their affect on relations between the U.S. and Canada.

### **CONFIDENTIALITY**

The data in this study will be confidential on request of the participant. If you elect to participate as a confidential source you will be given a code and your name will not be included on interview notes taken by Ms. Fullman. Only the researcher will have access to the identification key which will not be stored with the materials garnered during interviews. Should the researcher desire to use a direct quote, the researcher will request explicit permission from the individual. The individual in question will then have to opportunity to review the quote in the context of the final document. While it is understood that no computer transmission can be perfectly secure, reasonable efforts will be made to protect the confidentiality of your transmission, should you prefer to participate through electronic communication.

### **PARTICIPATION**

Your participation is voluntary, and you may withdraw from the study at any time and for any reason. If you decide not to participate or if you decide to withdraw from the study, there is no penalty or loss of benefits to which you are otherwise entitled. There are no costs to you or any other party.

### **CONTACT**

This research is being conducted by Aimee Fullman under the supervision of Dr. Toni Michelle Travis of the Public & International Affairs Department at George Mason University. Aimee Fullman can be contacted at XXX-XXX-XXX or at [afullman@culturalpolicy.org](mailto:afullman@culturalpolicy.org). Dr. Travis may be reached at 703-993-1453 for questions or to report a research-related problem. You may contact the George Mason University Office of Sponsored Programs at 703-993-2295 if you have questions or comments regarding your rights as a participant in the research.

This research has been reviewed according to George Mason University procedures governing your participation in this research.

### **CONSENT**

I have read this form and agree to participate in this study

NAME: \_\_\_\_\_

Date of Signature: \_\_\_\_\_



## APPENDIX D: LIST OF PROJECT PARTICIPANTS

### Interviews In Chronological Order:

Name	Title	Organization	Member of Delegation	Country	Date
Tyler Cowen	Professor, Economics Director, Mercatus Center	George Mason University	Y- Expert	USA	4/13/2005
Yannick Mondy	Sr. Policy Advisor, Intellectual Property, Information and Technology	Foreign Policy, Trade Policy Division	Y	Canada	5/11/2005
Neil Turkowitz	Vice President	RIAA	N	USA	5/12/2005
Jane Cowley	Delegation Coordinator	Department of State	Y- Coordinator	USA	5/16/2005
Bonnie Richardson	Vice President	MPAA	N	USA	6/29/2005
Janette Mark	Director, Trade and Investment Policy	Canadian Heritage	Y	Canada	7/6/2005
Ivan Bernier	Former Professor of Law	N/A	Expert	Canada	7/9/2005
Jonathan Levy	Deputy Chief Economist	FCC	N	USA	7/11/2005
Jacques Paquette	Assistant Deputy Minister	Canadian Heritage	Y-Chief negotiator	Canada	7/13/2005
Ann Guthrie Hingston	Director, Government Affairs	NEA	Y	USA	7/15/2005
Rob Albro	Assistant Professor, Anthropology	George Washington University	N	USA	7/20/2005
Nancy Weiss	General Counsel	IMLS	Y	USA	7/21/2005 & 10/14/2005
Kevin Mulcahy	Professor	Louisiana State University	N	USA	7/22/2005
Frank Hodsoll	National Commission for UNESCO	Center for Arts & Culture	N	USA	7/22/2005
Meha Shah	Legal Advisor Office of Legal Advisor	Department of State	Y	USA	7/26/2005
Artur Wilczenski	Director, International Relations and Outreach	Canadian Heritage	Y- Rapporteur	Canada	8/24/2005

**Open Forum Participants:**

<b>Name</b>	<b>Position</b>	<b>Organization</b>	<b>Member of Delegation</b>	<b>Country</b>	<b>Date of Forum</b>
Jane Cowley	Delegation Coordinator	State Department	Y- Coordinator	USA	4/15/2005 & 7/26/2005
Dana Gioia	Chairman	NEA	Y	USA	4/15/2005 & 7/26/2005
Robert Martin	Director	IMLS	Y	USA	4/15/2005
James Early	Director, Cultural Policy	INCD & Center for Folklife and Cultural Heritage at the Smithsonian Institution	N	USA	7/14/2005
Tyler Cowen	Professor, Economics	Mercatus Center, George Mason University	Y	USA	7/14/2005

## APPENDIX E: DECLINED INTERVIEW REQUESTS

Declined Interview Request	Title	Organization	Reason	Country
		Arts & Crafts Association of America	No response	USA
Patricia Schroeder	President	Association of American Publishers	No expert on staff	USA
Graham Henderson	President	Canadian Recording Industry Association	No expert on staff	Canada
		Craft and Hobby Association	No response	USA
Denny Gelinas	Director-General	Department of Canadian Heritage	No response, spoke to representative in this department	Canada
Christopher Gibbons	Cultural Policy Officer, Arts Promotion Division	Department of Canadian Heritage	Spoke to a different representative in this department	Canada
Jean Francois-Bergeron	Senior Policy Advisor, Arts and Cultural Industries Promotion Division	Department of Foreign Affairs	Recommended colleagues	Canada
		Interactive Multimedia Arts & Technologies Association	No response	Canada
		International Network on Cultural Diversity	No response	Intl. NGO
Carol Belassa	Director, Services Trade Negotiation:	Office of the U.S. Trade Representative: Media, Communications and Energy Policy	No response	USA
Michael Shapiro	Attorney Advisor	United States Patent and Trademark Office	No response	USA

## **Appendix F: Objectives and Guiding Principles of the Convention on Cultural Diversity**

### I: Objectives and Guiding Principles

- a. To protect and promote the diversity of cultural expressions;
- b. To create the conditions for cultures to flourish and to freely interact in a mutually beneficial manner;
- c. To encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace;
- d. To foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples;
- e. To promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national, and international levels;
- f. To reaffirm the importance of the link between culture and development for all countries, particularly for developing countries and to support actions undertaken nationally and internationally to secure recognition of the true value of this link;
- g. To give recognition to the distinctive nature of cultural activities, goods, and services as vehicles of identity, values, and meaning;
- h. To reaffirm the sovereign rights 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 on their territory.
- i. To strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

**Guiding Principles:**

1. Respect for human rights and fundamental freedoms
2. Principle of sovereignty
3. Equal dignity of and respect for all cultures
4. Principle of international solidarity and cooperation
5. Principle of the complementarity of economic and cultural aspects of development
6. Principle of sustainable development
7. Principle of Equitable Access
8. Principle of Openness and Balance

**APPENDIX G: TABLES of FINDINGS FROM PARTICIPANT INTERVIEWS:**

**TABLE 5.1 Will the U.S. sign the Convention?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes	0	0	0	0
No-Probably Not	7	3	10	91
Don't Know	1	0	1	9
<b>TOTAL</b>	<b>8</b>	<b>3</b>	<b>11</b>	<b>100</b>

**TABLE 5.2 Will Irreconcilable differences affect US-CA Relations?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes	1	0	1	10
No	3	3	6	60
Maybe	0	2	2	20
Don't Know	1	0	1	10
<b>TOTAL</b>	<b>5</b>	<b>5</b>	<b>10</b>	<b>100</b>

**TABLE 5.3 Interests Reflected in other country's (US or Canada's) Position**

<b>Response</b>	<b>US %</b>	<b>CA %</b>	<b>Tot %</b>
Copyright	0	0	0
Culture	21	0	16
Trade	21	60	32
Human Rights	0	0	0
Conglomerates	0	20	5

This table indicates the interests that Canadians felt were represented in the U.S. position and the interests that Americans felt were represented in the Canadian position.

**TABLE 5.4 Most Important Elements to Address/Include in the Convention**

<b>Response</b>	<b>US %</b>	<b>CA %</b>	<b>Tot %</b>
Freedom of expression	14	20	16
Develop cultural policy	7	60	21
Human rights	14	20	16
Development & cooperation	7	80	26
Hybrid identity	0	80	21
Fund for developing countries	0	60	16
Follow-up mechanisms	0	20	5
Intellectual property/copyright	14	0	11
Access to diverse cultural expression	7	0	5
Right balance and promotion of cultural diversity	21	20	21
Trade	7	0	5
Take trade out	14	0	11
Art 1	0	20	5
Art 4	0	20	5
Art 5	7	0	5
Art 6	7	20	11
Art 8	7	0	5
Art 12	0	20	5
Art 16	0	20	5
Art 20	36	40	37
Adjudication	29	20	26
Definition of goods and services	0	20	5
Cultural Rights	7	0	5
Right of States to determine	0	40	11

**TABLE 5.5 Interests Reflected in your Country's Position**

<b>Response</b>	<b>US %</b>	<b>CA %</b>	<b>Tot %</b>
Copyright	21	0	16
Culture	14	60	26
Trade/Economics	29	40	32
Human Rights	0	0	0
Foreign Affairs	0	60	16
Legal/Justice	0	60	16
Promoting Diversity	7	60	21
Freedom of Expression	14	0	11
Hybrid nature of cultural goods	7	60	21

**TABLE 5.6 Delegation Expertise**

<b>Response</b>	<b>US %</b>	<b>CA %</b>	<b>CA 2nd Exp %</b>	<b>CA Total %</b>
Copyright	7	0	0	0
Culture	26	48	8	37
Economic	17	3	0	2
International Relations	36	28	67	39
Legal	10	10	0	7
Trade	5	10	25	15
Total	100	100	100	100

Expertise was assigned based on an individual's position within their government. Canadian positions often reflected more than one expertise and were assigned a primary expertise based on their Department Position and a secondary expertise based on their job title. For example an individual responsible for trade and commerce within the Department of Canadian Heritage was assigned a primary expertise of culture and a secondary one of trade.

**TABLE 5.7 Most Controversial Elements of the Convention**

<b>Response</b>	<b>US %</b>	<b>CA %</b>	<b>Tot %</b>
Art 1	0	20	5
Art 5	0	20	5
Art 6	0	20	5
Art 20	21	40	26
Promotion of cultural diversity	7	20	11
Definition of Protection	0	20	5
Definition of goods and services	7	20	5

**TABLE 5.8 Is UNESCO the Right Forum/Body to discuss cultural diversity?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes	5	5	10	83
No	0	0	0	0
Maybe	1	0	1	8
Don't Know	1	0	1	8
TOTAL	7	5	12	100



**TABLE 5.9 If the U.S. doesn't sign, will this affect its relations with UNESCO?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes-Improve	1	0	1	25
Yes-Won't Improve	1	0	1	25
No	0	0	0	0
Maybe	0	0	0	0
Don't Know	2	0	2	50
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>100</b>

**TABLE 5.10 Can the Convention reconcile the dispute over cultural exemptions in trade?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes	0	N/A	0	0
No	7	2	9	75
Maybe	0	0	0	0
Probably Not	1	1	2	17
Not Linked	0	1	1	8
<b>Total</b>	<b>8</b>	<b>4</b>	<b>12</b>	<b>100</b>

**TABLE 5.11 Perceived Priorities for Other Country**

<b>For Other (CA/US) Country</b>	<b>US %</b>	<b>CA %</b>	<b>Tot %</b>
Art 5	0	0	0
Art 6	0	0	0
Art 20	0	60	16
Adjudication	7	20	11
Entertainment Industry Perspective	0	20	5

**TABLE 5.12 Participant Concerns/Comments**

<b>Concerns/Comments</b>	<b>US %</b>	<b>CA %</b>	<b>Total %</b>
Media consolidation	0	40	11
Commercial definition of culture is represented	7	0	5
Intellectual Property	7	0	5
Wish more about the promotion of cultural diversity	7	0	5
Too much about trade	7	0	5
Most important is what is not there	7	0	5
Failure to define goods and services	7	0	5
National boundaries of distribution being obliterated	7	0	5
Creative unions are not realizing they are being marginalized	0	40	11
Would like to revisit definition of cultural diversity	7	0	5
Would like transparency and exchange of information	0	20	5
Little disagreement over copyright	7	0	5
Convention reflects poorly defined goals and accountability	7	0	5

**TABLE 5.13 Diversity: How/should it be addressed through public policy?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
International Role	4	4	8	23
Domestic Role	6	4	10	29
Public Policy Role	8	4	12	34
Markets	5	N/A	5	14
Each country can decide for themselves	0	2	2	6
TOTAL Responses	23	12	35	N/A

**TABLE 5.14 Will the Convention pass the General Assembly in October 2005?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes or Probably	2	2	4	40
No or Probably Not	0	0	0	0
Maybe	0	2	2	20
Don't Know	3	1	4	40
TOTAL	5	5	10	100

**TABLE 5.15 Will an INCD affect trade agreements?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes	0	0	0	0
No	0	3	3	43
Maybe	4	0	4	57
Don't Know	0	0	0	0
TOTAL	4	3	7	100

**TABLE 5.16 Will an INCD have an impact?**

<b>Response</b>	<b>US</b>	<b>CA</b>	<b>TOTAL</b>	<b>%</b>
Yes	0	3	3	33
No	0	0	0	0
Maybe	4	1	5	56
Don't Know	1	0	1	11
TOTAL	5	4	9	100

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## CURRICULUM VITAE

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