TRADE AND CULTURE 3.0:

TRADE AND THE FUTURE OF CULTURE IN THE DIGITAL AGE
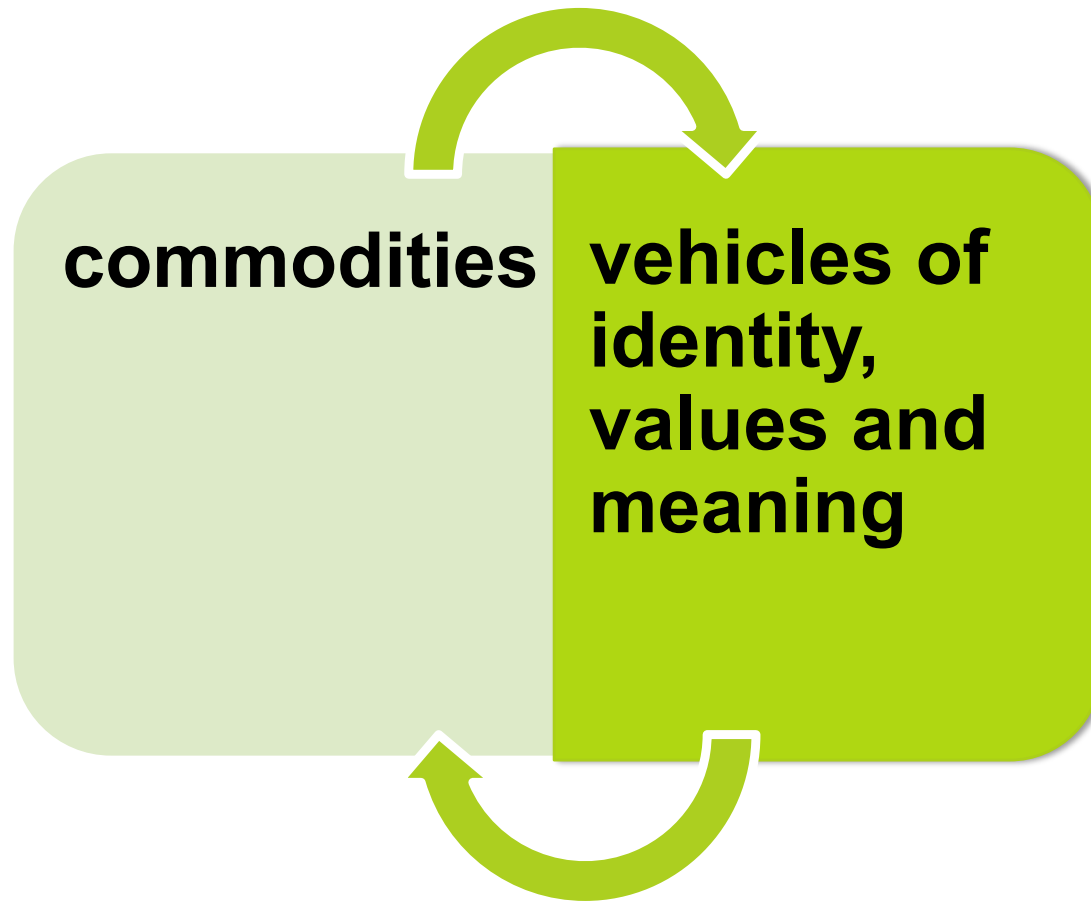
LEGAL DESIGN FOR A SUSTAINABLE CULTURALLY DIVERSE MEDIA ENVIRONMENT
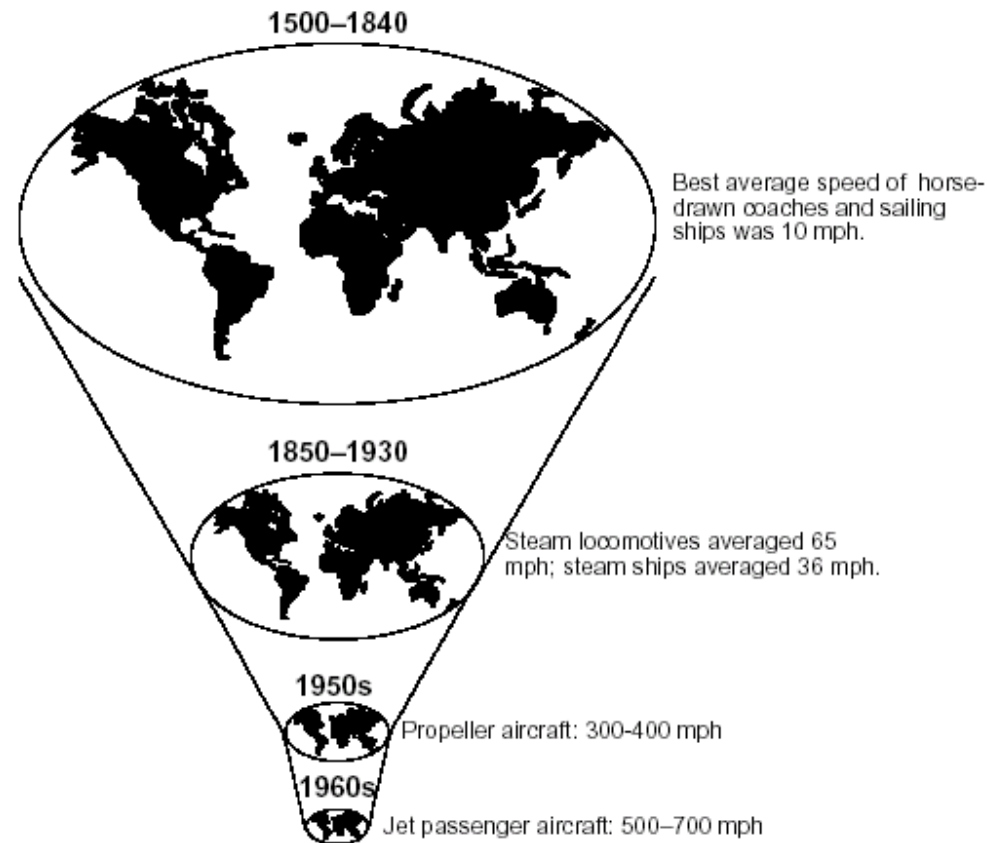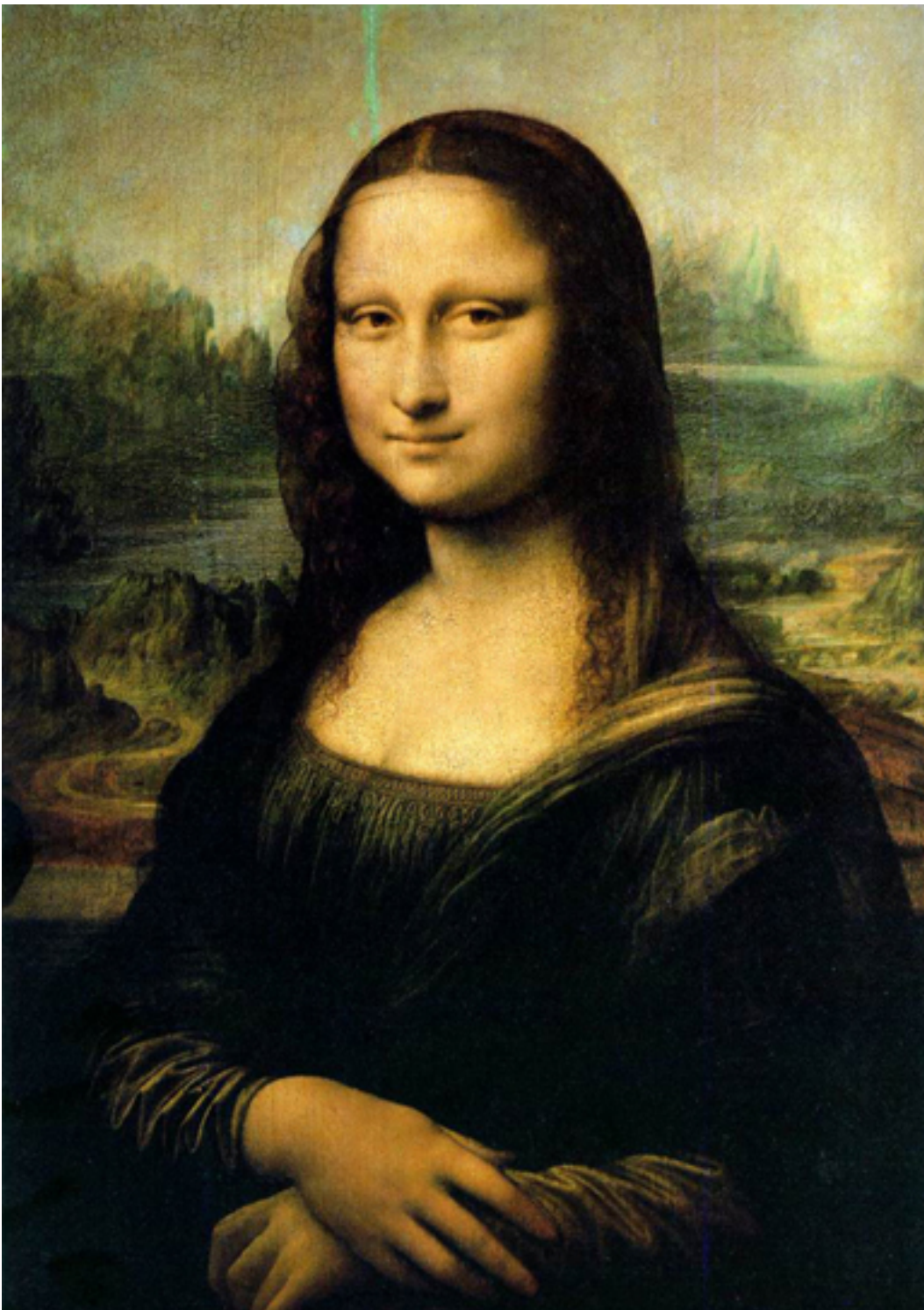
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DUAL NATURE OF CULTURAL GOODS AND SERVICES

commodities

vehicles of identity, values and meaning

The shrinking world: The impact of transportation technology on effective distance

1500–1840

Best average speed of horse-drawn coaches and sailing ships was 10 mph.

1850–1930

Steam locomotives averaged 65 mph; steam ships averaged 36 mph.

1950s

Propeller aircraft: 300-400 mph

1960s

Jet passenger aircraft: 500–700 mph

MONA LISA
Leonardo da Vinci
(1503–1505)

L.H.O.O.Q.
Marcel Duchamp
(1919)

Shrek 2 (2004)
No 19 all-time box office $880,871,036

TRADE AND CULTURE:
LEGAL FRAMING

media law and policy

cultural law and policy

UNESCO / other soft law action

international trade law

TRADE AND CULTURE

- **various regulatory measures but (very) narrowly focused**

- **carving out culture-related measures from international trade law (as institutionalized in the WTO)**

- **outside the WTO, cultural diversity emergent as a public policy objective**

- **2005 UNESCO Convention on Cultural Diversity as a pinnacle of the international community's efforts**

>> **all existing measures grounded in the offline/analogue environment**

TRADE AND CULTURE 1.0

TRADE AND CULTURE 2.0

- **profoundly transformed information and communication environment >>**

  - 3 strands of transformation particularly relevant:

  - **unlimited 'shelf-space', abundance of content, different organization of information**

  - **new ways of distributing and consuming content**

  - **the user as creator**
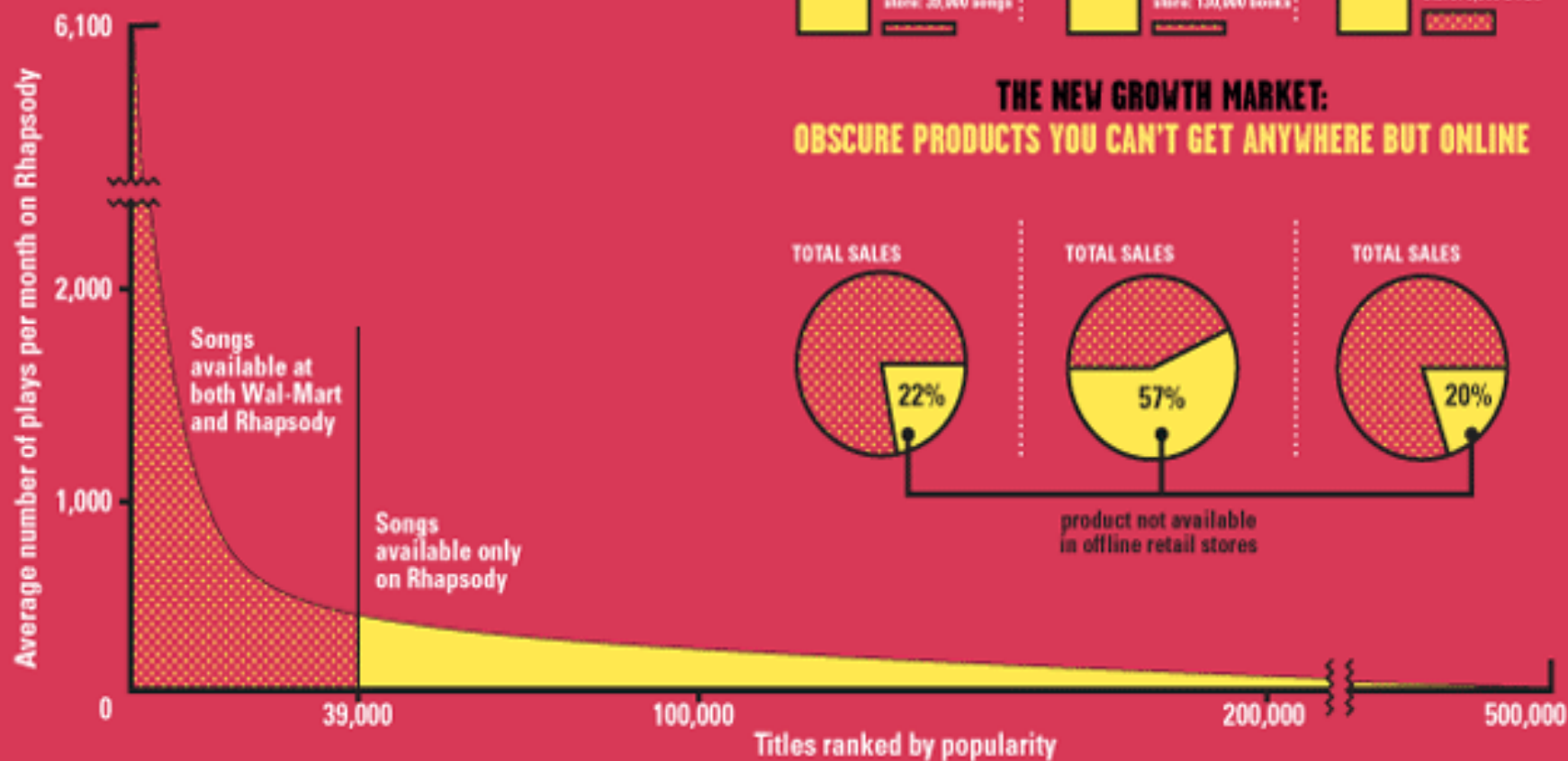
STARK DISCIPLINARY DISCONNECTS

- **advanced media and communication, internet and cultural studies but**

- **disconnect from cyberlaw and new modes of governance in cyberspace** (proliferation of unilateral state actions; regulation through intermediaries; hybrid governance models; regulation through code)

- **trade law completely disregarded**

THE PROJECT: TASK 1

- **engages in** multidisciplinary analysis **with a particular focus on trade, culture and digital media**

- **immense challenge: examples: 'long tail'; UCC; communication without 'middlemen'**

- **experience so far more nuanced** (Sunstein 2007; Cammaerts 2007; Hindman 2010; Napoli 2012)

- **specific focus on the 'mismatch' with current regulatory toolkits**

ANATOMY OF THE LONG TAIL

Online services carry far more inventory than traditional retailers. Rhapsody, for example, offers 19 times as many songs as Wal-Mart's stock of 39,000 tunes. The appetite for Rhapsody's more obscure tunes (charted below in yellow) makes up the so-called Long Tail. Meanwhile, even as consumers flock to mainstream books, music, and films (right), there is real demand for niche fare found only online.

RHAPSODY
TOTAL INVENTORY:
735,000 songs

typical Wal-Mart store: 39,000 songs

AMAZON.COM
TOTAL INVENTORY:
2.3 million books

typical Barnes & Noble store: 130,000 books

NETFLIX
TOTAL INVENTORY:
25,000 DVDs

typical Blockbuster store: 3,000 DVDs

THE NEW GROWTH MARKET:
OBSCURE PRODUCTS YOU CAN'T GET ANYWHERE BUT ONLINE

TOTAL SALES — 22%

TOTAL SALES — 57%

TOTAL SALES — 20%

product not available in offline retail stores

Chart (left)

Average number of plays per month on Rhapsody

6,100

2,000

1,000

0

Songs available at both Wal-Mart and Rhapsody

Songs available only on Rhapsody

Titles ranked by popularity

39,000 — 100,000 — 200,000 — 500,000

THE PROJECT: TASK 2

- **provides the single most comprehensive critical legal analysis of the rules at all levels of governance pertinent to trade in cultural products and services in the digital age**

- all layers of the communication model

  - **global level**: multiple regulatory domains relevant (media, telecom, IT, copyright)

  - **regional** (post-Uruguay PTAs: code for digital trade, culture, internet and internet-related IP rules)

  - **EU and US**

media law and policy

copyright (and copyright enforcement)

telecom law

international trade law

internet regulation

interoperability

cultural law and policy

standards

TRADE AND CULTURE 3.0

- **designing a future-oriented model for a sustainable culturally diverse media environment**

- **culturally diversity politically strongly endorsed**

- **no action; no creative use of digital affordances so far**

- **digital technologies may have the potential to foster cultural exchange and diversity but this outcome is not preordained**

- **specify focus of legal engineering**

A MODEL OF SMART CULTURAL PROTECTIONISM FOR THE EU

- **departs from quotas, trade barriers and plain economic protectionism**

- **innovates around digitally enabled processes**

- **grapples with the new digitally triggered challenges** (e.g. audience fragmentation; tailored media consumption; exposure diversity)

- **integrates policies conventionally thought peripheral to achieving cultural objectives** (e.g. net and search neutrality)

- **deals with uncertainty**

MODULAR DESIGN FOR SUSTAINABLE CULT. DIVERSE MEDIA ENVIRONMENT

- **innovates around digitally enabled processes**

- **grapples with the new digitally triggered challenges** (e.g. audience fragmentation; tailored media consumption; exposure diversity)

- **integrates policies conventionally thought peripheral to achieving cultural objectives** (e.g. net and search neutrality)

- **extracts principles for each of the layers of the communication model (Goodman and Chen 2011: connect, curate and create)**

- **how these can be then reflected at the different layers of governance**

- **broader global media governance discussion; global public goods; legal design in times of technological complexity and change**

TRADE AND CULTURE 3.0: WRAP UP

- **creates the missing** interdisciplinary discourse on trade and culture in a digital media environment

- **provides** a comprehensive analysis of the pertinent rules **at all levels of governance**

- **innovates in legal engineering to move towards a model of** smart cultural protectionism

THANK YOU.