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General exceptions: art. XX GATT and art. XIV GATS otherwise inconsistent with GATT/GATS measures justified because they are necessary to serve certain public interests (e.g. public morals, public order); the chapeau test: application of the trade restrictive measure may not constitute an arbitrary or unjustifiable discrimination between countries, or a disguised restriction on int'l trade art. IV GATT: 'screen quotas'; states 'may require the exhibition of films of national origin during a specified minimum proportion of the total screen time' or 'reserve a minimum proportion of screen time for films of a specified origin

other than that of the Member'.

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Idexibilities under the wto law GATT vs. GATS; much greater flexibilities under the GATS: MFN exemptions and tailored commitments for NT and market access audiovisual services: the least covered services sector (only 26 members made specific commitments; only Central African Republic, Philippines and US in all 6 subsectors; EC and CH: no commitments) all-or-nothing approach; in contrast to telecommunication services: deep commitments, further-reaching rules negative spillovers to other domains (notably digital trade)

Indument

| Sector or Sub-Sector | Description of measure indicating its inconsistency with Article II | Countries to which the measure applies | Intended duration | Conditions creating the nee for the exemption |
|-------------------------|--|---|-------------------|---|
| Audiovisual services | To confer national treatment to audiovisual works covered by bilateral or plurilateral agreements on coproduction in the field of audiovisual works, in particular in relation to access to funding and to distribution | All countries with whom cultural cooperation may be desirable (at present agreements exist with member countries of the Council of Europe and with Canada) | Indefinite | Promotion of common cultural objectives |
| | Measures granting the benefit of support programmes, such as MEDIA and EURIMAGES, and measures relating to the allocation of screen-sine which implement arrangements such as the Council of Europe Convention on Transfrontier Television and confer national treatment, to audiovisual verkies meeting specific European functional meating and audio ricital works and/or to supplies of audiovisual services meeting specific European ongin criteria | European countries | Indefinite | Promotion of cultural objectives based on long- standing cultural links |
| The Parliance | Concessions for the operation of radio or television broadcast stations may be granted, normally on the basis of bilateral agreements, to persons of countries other than Switzerland | All countries with whom cultural cooperation may be desirable | Indefinite | Promotion of common cultural objectives, and to regulate access to a market limited in scale (given the size of Switzerland) in order to preserve diversity of supply |

| Sector | Limitations on Market Access | Limitations on National Treatment | Additional Commitments | Notes |
|---|---|---|---|-------|
| 2. Communication Services | | | | |
| D. Audiovisual Services | | | | |
| a) Motion picture or video tape distribution services (CPC 96113) | 1)Unbound 2)Unbound 3)) Only thread the set of the set regime to the set of the set incorporated outside India incorporated outside India I) Import of this restricted to 100 per year | Unbound Unbound Stoject to the prescribed authority having certified that the motion particle of the prescribed authority having certified that the motion particle of the prescription of the international film festivals notified by the international film festivals notified by the Ministry of Information & Broadcasting, Government of India; or participated in any of the official sections of the notified international film festivals; or cereved good reviews in prestigious film journals notified by the Ministry of Information & Broadcasting, Government of India. | | |
| | 4)Unbound except as indicated in the horizontal section | Unbound except as indicated in the horizontal section | Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural | |



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flexibilities under the wto law

· flexibilities not found sufficient

forum-shopping: solutions outside the WTO

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- preferential trade agreements: since 2002, US-PTAs with Australia, Bahrain, Chile, Morocco, Oman, Peru, Singapore, South Korea et al.: minimal restrictions for digital products (negative list approach)
- deference to the culturally inspired measures in audiovisual services, provided that these are 'frozen' and relate to conventional 'offline' technologies only
- EU: exclusion of cultural services from trade commitments, while promising cultural co-operation

UNESCO Convention on Cultural Diversity

- a remarkable success in int'l treaty-making: a legally binding instrument in the field of culture
- only 2 states voted against its adoption (US and Israel); 4 states abstained (Australia, Honduras, Liberia and Nicaragua)
- 2005 adopted; 18 March 2007 entry into force
 - presently, 133 parties; incl. Switzerland as of July 2008 http://portal.unesco.org/la/convention.asp?KO=31038&language=E

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UNESCO Convention: an appraisal

no real obligations for the State Parties
 (best endeavour commitments)

- an extensive block of rights (art. 6)
- · centrality of state sovereignty
- no distinction between licit and illicit measures; no proportionality test
- fuzzy concepts
- no working 'conflict of laws' provision
- substantive incompleteness
- no compulsory dispute settlement
- implementation: positive turn possible?

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rights rather than obligations

Articles 7-19 of the Convention Article 5: General rule regarding rights and obligations

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- The Parties (...) reaffirm their sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions and to strengthen international cooperation to achieve the purposes of this Convention.
- 2. When a Party implements policies and takes measures to protect and promote the diversity of cultural expressions within its territory, its policies and measures shall be consistent with the provisions of this Convention.

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art. 20: conflict of laws

- 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, they:
- (a) 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.

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why regulate media?

economic rationale (market failure)

- cultural products as public goods
- economies of scale
- externalities (positive and negative)
- collective action problems

societal rationale (media as critical for the functioning of the democratic state and as cultural products and services)

cultural diversity: politically laden concept; actual contents unclear; concept problematic from the viewpoint of the nation state?

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media markets: state of affairs

- US motion picture and television production industry remains highly competitive: in 2007, the enduring value and appeal of US entertainment around the world earned \$15 billion in audiovisual services exports, a 23% increase over 2006 and over 50% more than in 2003
- positive balance of trade: in 2007, surplus was \$13.6 billion, or 10% of the total US private-sector trade surplus in services. The motion picture and television surplus was larger than the combined surplus of the telecommunications, management and consulting, legal, and medical services sectors, and larger than sectors like computer and information services and insurance services

| 2005 | | 2006 | | 2007 | | 2008 | | 2009 | |
|---------------|-------|---------------|-------|---------------|-------|---------------|-------|---------------|------|
| India | 1,041 | India | 1,091 | Nigeria | 1,559 | India | 1,325 | India | 1,28 |
| Nigeria | 872 | Nigeria | 1,000 | India | 1,146 | Nigeria | 956 | Nigeria | 987 |
| United States | 699 | United States | 673 | United States | 656 | United States | 759* | United States | 734' |
| Japan | 356 | Japan | 417 | China | 411 | China | 422 | China | 475 |
| China | 260 | China | 330 | Japan | 407 | Japan | 418 | Japan | 448 |



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| f | rade in cultura | Inroducts | |
|--|-----------------|-------------------------------------|--|
| | | • | |
| TABLE 1. Top 20 Exporters of Core Cultural Goods (\$Million) | | | |
| | Country | Total Exports of Core Cultural Good | |
| 1 | United Kingdom | 8,549 | |
| 2. | United States | 7,648 | |
| 3. | Germany | 5,789 | |
| 4. | China | 5,275 | |
| 5. | France | 2,521 | |
| 6. | Ireland | 2,277 | |
| 7. | Singapore | 2,001 | |
| 8. | Japan | 1,805 | |
| 9. | Canada | 1,577 | |
| 10. | Austria | 1,561 | |
| 11. | The Netherlands | 1,546 | |
| 12. | Spain | 1,532 | |
| 13. | Switzerland | 1,384 | |
| 14. | Italy | 1,381 | |
| 15. | Mexico | 1,244 | |
| 16. | Belgium | 1,130 | |
| 17. | Sweden | 875 | |
| 18. | Hungary | 720 | |
| 19. | Hong Kong | 578 | |
| 20. | Denmark | 499 | |



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digital media: characteristics

- · freed from the need of a tangible medium
- dense: very large amounts of digital information can be stored in small physical spaces
- · easy to manipulate
- · perfect copies of the original
- digital information can be shared between large numbers of users simultaneously
- new modes of organising and accessing information (e.g. Dewey vs. Google)

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- the 80/20 rule (Pareto distribution)
- Chris Anderson, Wired Magazine, 2004:
- the tail of available variety is far longer than we realise (almost no end)

the long tail theory

- it is now within reach economically
- all those niches, when aggregated can make up a significant market
- changing business models: it becomes
 economically viable to sell niche products

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| web 2.0 | gulation O |
|---|------------|
| Foldson Simplicity Foldsonomy Wikis Folksonomy Wikis Folksonomy Wikis Social Software recommendation Social Software recommendation Blogs Academic Social Software Blogs Academic Social Software Mobility Social Software Mobility Social Software Mobility Social Software Blogs Academic Software Mobility Social Software Blogs Academic Softw | |







user participation

The Internet as a new creative outlet has altered the economics of information production and led to the **democratisation of media production and changes in the nature of communication and social relationships** (sometimes referred to as the 'rise - or return - of the amateurs'). Changes in the way users produce, distribute, access and re-use information, knowledge and entertainment potentially gives rise to increased user **autonomy, increased participation and increased diversity.** These may result in lower entry barriers, distribution costs and user costs and greater diversity of works as digital shelf space is almost limitless.

OECD, Participative Web, 2007

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nccr trade regulation selected effects of digital media

- as there is no scarcity, rationales for creating reserved shelf-spaces for domestic content and barriers to entry to foreign cultural content become redundant; if such measures maintained, they do not work(!)
- esp. as we move from **push** to **pull** mode of cultural content consumption
- empowerement of the consumer

nce in Research (MCCR) are presearch intrument al the Sola Aleferral Science Reundation (3AD)

- need to readjust the tools of media/cultural policies
- new challenges



| legal hindrances and implications | |
|--|--|
| a great deal of legal uncertainty duration of copyright / fair use / applicable law / | |
| orphan works | |
| DRMs and licensing as overriding user's rights / statutory exceptions and limitations | |
| copyright impacts on the selection of materials for digitization; libraries and archives avoid the complexities of copyright law by digitizing | |
| materials that have passed into the public domain and are no longer covered by copyright restrictions (e.g. Europeana only 2% audiovisual works) | |
| a bubble of limited (digitally available) information? | |
| New York Construction of the American Constru | |

