



IRMO - CULTURELINK Guest Lecture Series

Twenty Years of the 2005 UNESCO Convention on the Diversity of Cultural Expressions: From Negotiation to Implementation

Dvadeset godina UNESCO-ove Konvencije iz 2005. o zaštiti i promicanju raznolikosti kulturnih izričaja: od pregovora do provedbe

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Twenty Years of the 2005 UNESCO Convention on the Diversity of Cultural Expressions: From Negotiation to Implementation

I. The origins of the 2005 UNESCO Convention: the “Trade and Culture” debate

- WTO Agreements and case law
- Bilateral and regional trade agreements

II. Implementation and impact over 20 years

- Cultural policies and the exchange of good practices
- International economic agreements
- Culture and sustainable development
- International cooperation and assistance

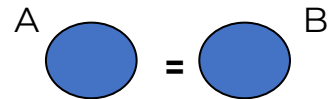
III. Implementation in the digital era

- Challenges brought about by digital technologies
- Implementation efforts (Operational Guidelines, Roadmap)
- The UNESCO Reflection Group on the Diversity of Cultural Expressions in the Digital Environment

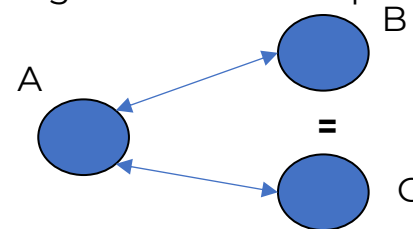
IV. Conclusion

I. The origins of the 2005 UNESCO Convention: the “Trade and Culture” debate (1/2)

- Double (cultural and commercial) nature of cultural goods and services: **trade agreements are applicable**.
- Nondiscrimination rules in WTO and in bilateral/regional agreements:
 - ❖ **National treatment:** no discrimination between national and foreign products and services – measures that give an advantage to national products and services compared to foreign « similar » products and services are forbidden.



- ❖ **Most favored nation treatment:** no discrimination between products and services coming from different countries – every preferential treatment granted to a product or service coming from one trade partner must be extended to products and services of other partners



- **National cultural policies and measures** (quotas, subsidies, restrictions in capital control or nationality of administrators...) may be in contradiction with commitments undertaken in trade agreements.
- To keep **policy space**: some countries have decided not to adopt liberalization commitments in cultural sectors (e.g.: EU: audiovisual services; Canada: cultural services in general).



I. The origins of the 2005 UNESCO Convention: the “Trade and Culture” debate (2/2)

- **At the multilateral level (WTO):**

- Difficulties encountered in negotiations (risk in the Doha Round)
 - General movement towards liberalization
 - Culture as a bargaining counter
- Limited duration of MFN exemptions
- *Canada – Periodical* case (DS31)
- Proposals from some WTO members in 2000-2001: but no consensus in the WTO
- New sectors (e.g., new technologies) complexifying the classification of services sectors (WTO Services Sectoral Classification List: https://www.wto.org/english/tratop_e/serv_e/serv_sectors_e.htm)

- **At the bilateral and regional levels:**

- Proliferation of bilateral and regional trade agreements in which cultural goods and services were treated as any other good and service (e.g., US agreements)

➤ *Need for a « cultural counterpart » for trade agreements, allowing for a specific legal treatment for cultural goods and services.*



II. Implementation and impact over 20 years

- Cultural policies and the exchange of good practices
 - Periodic reporting
 - Policy Monitoring Platform <https://www.unesco.org/creativity/en/policy-monitoring-platform/grid>
- International economic agreements
 - Incorporation of explicit references to the 2005 Convention
 - EU Protocols on Cultural Cooperation
- Culture and sustainable development
 - #culture2030goal campaign <https://culture2030goal.net/>
 - Mondiacult 2022 - 2025
 - CSR/ESG issues
- International cooperation and assistance
 - EU/UNESCO Expert Facility - EU-financed program “Advancing evidence-based policies and actions, and supporting policy making to enhance the contribution of creative sectors and industries to sustainable development
 - Projects funded by the International Fund for Cultural Diversity



III. Implementation in the digital era (1/7)

Impact of digital technologies on the market of cultural goods and services

- False perception of diversity – lack of real exposure diversity / discoverability issues
- Algorithms, moderation, curation
- Processing of personal data
- Market concentration
- Strengthening of inequalities (Internet access, digital illiteracy, remuneration of creators, under-representation of women and minorities online)

Audio-visual streaming platforms and profiling

- **Filtering an increasing volume of content...**
 - (non-optional) personalization of content based on
 - Previous consumption of content and viewing habits (titles/tracks selected and viewed/listened to, how those titles/tracks were rated, lists/playlists created, users' searches and interactions with the platform and other users)
 - tastes of users who appear statistically similar (e.g., age)
 - general location data and popular content in user location
 - information collected in users' social media network



III. Implementation in the digital era (2/7)

- **... through recommendation algorithms**
 - No human intervention (fully automated systems)
 - Opaque process, difficult to understand by most users
 - Based on criteria defined by the platform and (at least so far) insufficiently disclosed
- ❖ **Impact of algorithms** Edge Rank, created by **Facebook** - initially only 3 key criteria (Lucas Lago, CEST/USP, 2016):
 - Age of the information
 - Popularity of the information
 - Similarity of the information to what was marked with a “Like”
- **Google**: personalizes search results. In more than 90% of searches, people never click on the second results page.
- **Netflix**: personalized initial page with suggestions based on previously watched movies; 75% of the movies/series watched on Netflix result from these recommendations.
- **YouTube**: initial page with recommendations and “related videos”. According to the Web Foundation (July 2021), YouTube’s algorithm drives 70% of watch time on the platform.



III. Implementation in the digital era (3/7)

Data protection issues involving recommender systems - In the EU:

GDPR - Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

Art. 4.4 - **Profiling** refers to “any form of automated processing of personal data consisting of the use of personal data to **evaluate certain personal aspects relating to a natural person**, in particular **to analyze or predict** aspects concerning that natural person’s performance at work, economic situation, health, personal preferences, interests, reliability, behavior, location or movements.”

- A certain judgment is applied to a person
- Conclusions drawn on a person (predictions) based on the data collected and statistical deductions
- Possible decision to be made based on such conclusions
- Risk of erroneous analysis, increased when decisions are fully automated (and profiling seems particularly prone to error, since it is based on inferences, data taken out of context and combined to produce predictions)

GDPR Principles applicable to profiling: Transparency, Nondiscrimination (lawfulness and fairness), Purpose limitation, Data minimization, Accuracy (hidden biases), Correction of data, Limited retention



III. Implementation in the digital era (4/7)

GDPR users' rights with respect to profiling

- Right to be informed about
 - the purposes of processing
 - the sources of the data
 - the way data is processed, including for profiling
- Right to know in which categories/segments of users they have been placed
- Right to correct, complete or delete their profile or certain data
- Right to object to processing (and to profiling)
 - for streaming platforms = non-use of the services provided by those platforms
- Prohibition of fully automated decisions that
 - produce legal effects on an individual or
 - that similarly significantly affect him or her*unless (inter alia) if it is necessary to perform a contract, or based on explicit consent

*CNIL (France) 2018: when an automated decision “results in influencing the person’s environment, behavior, choices or results in a form of discrimination.”



III. Implementation in the digital era (5/7)

- If personalized recommendations correspond to fully automated decisions that significantly affect a user in a similar way as a legal effect, and if a contract or consent authorizes such processing - additional **safeguards** are needed:
 - Right to obtain human intervention from someone with the power to change the decision
 - Right to express his/her point of view
 - Right to challenge the decision made about him/her
 - Impact assessments to measure risks involved in automated decision-making
 - Regular assessments of data to check for biases (audit of algorithms, regular reviews of the accuracy of decision-making process)
 - Anonymization or pseudonymization techniques
 - Providing information to the user about the existence and logic of the automated decision-making process
 - explaining the consequences of such processing, and
 - establishing a clear and easy-to-use procedure for individuals to both oppose the decision made by the automated mechanisms and express their opinion
- **EU 2022 Digital Services Act:** transparency and accountability of online platforms, including with respect to recommender systems (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065>)
 - (art. 27) Providers of online platforms that use recommender systems
 - (art. 38) Providers of very large online platforms and of very large online search engines that use recommender systems (https://ec.europa.eu/commission/presscorner/detail/en/IP_23_2413)



III. Implementation in the digital era (6/7)

The 2005 UNESCO Convention in the digital era

- **Operational guidelines** on the Implementation of the CDCE in the Digital Environment, approved by the CDCE Conference of Parties at its sixth session (Paris, 12-15 June 2017)

<https://unesdoc.unesco.org/ark:/48223/pf0000378132>

“strategic framework for understanding, interpreting and implementing the [CDCE] in a digital environment where cultural goods and services are created, produced, distributed, disseminated, consumed and/or stored electronically.”

- 2019 **Roadmap for the implementation of the guidelines** to promote the diversity of cultural expressions in the digital environment <https://unesdoc.unesco.org/ark:/48223/pf0000374410>
 - Germany (2021), Canada and Quebec (2021), Republic of Korea (2021), France (2022):
<https://www.unesco.org/creativity/en/policy-and-monitoring>

- **Recommendations of the Reflection Group** on the diversity of cultural expressions in the digital environment

https://unesdoc.unesco.org/ark:/48223/pf0000392215_eng



III. Implementation in the digital era (7/7)

Recommendations of the Reflection Group

- **Area of action 1 - Normative action**

1: Adopt an Additional Protocol to the Convention in the digital environment

- **Area of action 2 - Exchange of information and good practices**

2: Optimize the collection and sharing of information

3: Revise the framework for quadrennial periodic reports

- **Area of action 3 - Awareness raising and advocacy**

4: Create a consultation and dialogue framework

5: Support advocacy actions

6: Raise public awareness on culturally responsible practices and behaviors in the digital environment through cultural education initiatives

- **Area of action 4 - Capacity building**

7: Creation of national digital culture capacity plans

8: Update arts education curricula and methodologies

9: Support the creation of new UNESCO Chairs in digital culture

10: Creation of a global network of experts in digital culture and AI

- **Final recommendation to UNESCO**

11: Reinforce UNESCO's action on AI and culture



IV. Conclusion

The 2005 Convention as a cornerstone of cultural policy and governance

- ▶ Cultural policies and measures, including in the digital environment
- ▶ International economic agreements (need to keep cultural policy space)
- ▶ International cultural cooperation
- ▶ Involvement of civil society, private sector
- ▶ Cultural dimension of sustainable development



All the best to you and...

THANK YOU!

HVALA!