

## CONFERENCE “CULTURAL DIVERSITY AND NEW TECHNOLOGIES”

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July 2<sup>nd</sup>, 2015

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*Original text in Portuguese*

### INTRODUCTION

#### THE 2005 UNESCO CONVENTION ON THE DIVERSITY OF CULTURAL EXPRESSIONS

*Lilian Richieri Hanania (Lawyer, CEST/USP, Univ. Paris 1 – Panthéon-Sorbonne, Univ. de Rouen, U40)*

The event ***Cultural Diversity and New Technologies*** was focused on commemorating the 10<sup>th</sup> Anniversary of adopting the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE).

Among several UNESCO conventions that approach culture issues and that ultimately aim at cultural diversity, the CDCE deals specifically with rebalancing international exchanges of cultural products and services. It adopts an economic perspective of cultural diversity, linked to the creation, production, distribution and access to cultural expressions disseminated by cultural activities, products and services. The provisions of the CDCE can be summarized into two major topics:

- 1) Recognizing the double nature (cultural and economic) of cultural products and services and, consequently, their specificity; this not only justifies the legitimacy of public policies to promote diversity but also a special legal treatment towards these products and services, including in international trade agreements.
- 2) The promotion of international cooperation, especially focusing on development issues. A key provision of the CDCE consists on the reaffirmation of culture as an integrating part of sustainable development, which demands that the Parties should guarantee the coherence of their actions and positions in the several national and international forums that approach the issue of sustainable development.

Some scholars have challenged the usefulness of the CDCE in the context of new technologies, in which traditional cultural policies, applied to sectors traditionally considered as cultural (e.g.: quotas for national content on the TV, in the movies, in radiobroadcasting, etc.), seem less efficient. However, the Convention is technologically neutral, offering a legal framework to measures and policies related to the protection and promotion of the diversity of cultural expressions no matter which means and technologies used.

The implementation difficulties that the CDCE faces in the digital medium seem to result mainly from the difficulty to understand the reality created by new technologies in each one of the Parties that ratified the Convention. Indeed, if new technologies bring opportunities to cultural diversity, they also raise a series of questions and difficulties that appear in all stages of the cultural value chain, from cultural creation and production to the visibility of contents and access to cultural production.

The Conference held on July 2<sup>nd</sup> aimed to promote discussions and understanding of this new reality brought by new technologies and to share good practices of projects in which the use of new technologies is confronted with or associated to cultural diversity goals.

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<p><b>PANEL I</b></p> <p><b>New Technologies – challenges and opportunities</b> Moderator: <i>Mário Magalhães (CEST/USP)</i></p> <ul style="list-style-type: none"> <li>• Challenges of the digital communication – the example of the digital book– <i>Edson Perin (Journalist)</i></li> <li>• Privacy of data– <i>Vera Kerr (Lawyer, CEST/USP)</i></li> <li>• Internet of Things – <i>Gilson Schwartz (Professor, ECA and FFLCH-USP)</i></li> </ul>
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### SUMMARY OF THE PRESENTATIONS

(General focus of the panel and report of each lecture)

- ***Challenges of digital communication: the example of the digital book – Edson Perin (Journalist)***

Journalist Edson Perin’s lecture focused on how to deal with the rise of new challenges for communication with the advent of digital technologies. At first, Perin presented what in his view would be the main aspects of the communication scenario of the contemporary age. They are the following: the enhancement of communication and culture through the internet; the new online media and social networks occupying the audience in proportions wider than the traditional media; the explosion in the number of communication media with audience pulverization and dispersion (videos on the web are better seen than in traditional media).

In Perin’s viewpoint, what we can note in this new scenario is that *new technologies, the internet and the social networks allow people and companies to take the ‘medias’, that is, have the mass power*. Thus, investing in advertising or press office has got an unlikely return. However, beyond this communication unpredictability nowadays, many opportunities for new companies can be noted. Among them, we can highlight: the capacity of promoting straight communication actions to different audiences and with personalized contents; the capacity to eliminate content mistakes and reduce communication costs; and the possibility of eliminating geographic barriers and enhancing the relationship with customers, suppliers, and collaborators.

In face of this scenario, the communication companies must even adapt themselves to new products. Thus, journalist Perin brings up digital books, online radios and online videos as examples. Perin concluded his presentation going over digital books.

- ***Data privacy – Vera Kerr (CEST/USP)***

Lawyer Vera Kerr started her presentation on data privacy by emphasizing that in contemporary times it is necessary to think about the information society.

According to Kerr, such society is characterized by cost reduction of data transmission, which allowed access to the internet on a large scale, and by the use of simplified storage technologies - people do not need to have a special introduction to the technology to be able to use it. Such characteristics have informational explosion as a consequence, with the transmission of

information in speed and quantity unimagined before, which has in turn allowed a certain deterritorialization of the world by nulling out barriers of time and space, making the virtual world so real as 'the real world'. Also, it guaranteed that the internet could go on to become a global public space. Within this new society context, rights must be thought about again.

Focusing on data privacy, Kerr says that, in spite of the fact that espionage is constant in societies, such issues have grown in importance in Brazil after Edward Snowden stated that the US spy on Brazilian leaders. This fact propitiated both the legal coverage of areas that had not been covered yet and the reactivation of the discussion around a "civil framework for the internet" in Brazil, which, after regulating the internet, deals with the data protection issue (though not being a text specific about privacy). It is worth noting that the bill on the civil framework for the internet got out of the Agenda 25 times; however, after the US espionage episode, the law finally passed.

Furthermore, Kerr presented how Brazil is ensuring itself regarding data protection. For such, she spoke about some specific legislation, listed below:

**Law 12.737/12 (Law Carolina Dieckmann)** is considered the first data regulation framework in Brazil. After a virus stole information from actress Carolina Dieckmann's computer, Article 154-A of the Criminal Code was introduced and entered into force in March 2013, criminalizing the conduct of 'invasion of cyber device'. Until this law was enacted, the Brazilian criminal law did not provide for 'proper cybercrime' ('crime informático próprio'), which is characterized as the crime committed against an information technology system, and which differs from 'improper cybercrime', in which the technology is simply used to commit the crime.

**Law 12.965/14 (Civil Framework of the Internet)** is considered as the 'Constitution of the Internet', since it establishes the principles and rights related to the protection of registers, enacted in June, 2014. In these terms, contents may be revealed only under judicial order (such as telephone interception), ensuring the internet users' right to remain anonymous as well as his/her equilibrium in face of the commercial use of data (big commercial value of data) and its use for investigation and unlawful purposes. According to researchers, the framework touches the question of data protection and presupposes a specific future law about the issue.

Other legislations were mentioned, such as the positive register law (12.414/11), the consumer's code (specifically, Art. 31), and the law of access to information (12.527/11). None of them, however, is specific for data protection. According to Kerr, a draft bill about data privacy is on the way. However, some researchers and jurists question whether this draft bill will affect the jurisprudence over commerce of data on credit among companies.

Kerr concluded her presentation questioning whether the technology will, in fact, be able to protect internet data. This reinforces the need for a technical and juridical alignment. It is necessary to understand the technological capacity of protecting data so as one can think about a coherent regulation which can be applied effectively.

- **Internet of Things – Gilson Schwartz (Professor, ECA and FFLCH-USP)**

Prof. Gilson Schwartz started by saying that, in face of the worldly diversity and inequality, it is pretentious to bring universality of natural sciences onto human sciences. However, what can be verified is that the technologies lead to a universalization of habits. The book technology, for instance, causes learning in Brazil or in Japan to have the same technology-based resource.

From this statement, Schwartz identifies that we experience a denser and denser extension of technologies, in which everything turns out to be information. There is, therefore, a confrontation among the universal, the particular and the flows of information. Thus, he puts forward some questions: To what extent does the informationalization of the world provide a human convergence towards universal values? Is that possible and desirable? How can one prevent the universalization of information technology (in which a certain particular element can become universal as much as a universal element can become particular) from being oppressive? Otherwise, how is it possible to make it emancipatory?

In fact, we will never have all the information we need, since part of this information is found in one 'no-place', which is the future. In face of this uncertainty as the future is concerned, the economy and the market create mechanisms to deal with this unpredictability, being the money one of them.

In Schwartz's viewpoint, money is the technology that universalizes trades. Money is the universal representation of value. It is what makes the main bridge between the universal and the particular. However, its effects on suppressing the differences and inequalities experienced within human societies are absolutely ridiculous. On the contrary, money makes inequalities wider and wider. We have been living a big crisis of capitalism in which money tends to favor the capital and not this bridge between the universal and the particular.

The big question brought to the lecture is to know how money will work in the digital and the internet age. Apart from the digitalization of transactions, there is something new about some money not created by a Central Bank but that creates a market in which it circulates within a digital scope. It means other models of representation of value. Thus, the universality of the value is put in a tight spot.

Closing his presentation, Schwartz showed a research project called *City of Knowledge*, in which experiments with non-conventional coins are carried out and the impacts upon the relationship between people are checked out. From this project, a second one is being created, the *Youth Portal*, which in turn will invite young people of São Paulo to create their own circulation coin through the internet.

#### **SUMMARY OF THE DEBATE (main topics raised during the debate)**

The following points were debated: social coins; insufficient education about digital rights; and, specialization of judicial courts to deal with technology-related cases.

In relation to the social coins, it was discussed how they symbolize the search for other models of value representation. Thus, the information that several banks, including the central banks, are open to money-related, social-technological innovations was brought up. The monetary crisis we live in is one of the reasons for that, thus opening new creation perspectives.

Concerning the insufficient curriculum of law schools about digital rights, it was brought up that, in fact, the studies of law and the internet are not yet being developed as a specific subject matter; only a few colleges are introducing this subject matter in graduation courses. One of the reasons is the big difficulty in finding professors with experience and background in this area and a little knowledge in technology as well, which would be necessary.

And last but not least, it was discussed that specialized lower courts in the technology area are necessary. In the debaters' viewpoint we still do not have judges prepared for that, and,

thus, the cybercrimes today falls within any police station indiscriminately. Besides, there are jurisdiction-related issues, since most of the companies that dominate the internet, such as Google and Facebook, are located in other countries.

#### **FINAL COMMENTS (conclusions and recommendations referring to the Convention)**

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The tone of the debate was around the new society context we live in, with the advent of the new digital technologies and the innumerable potentialities brought together (and still not fully developed) in the market sphere, including with respect to the use of money. How the society works today in a virtual world, which is as real as the so-called 'real world', also brings new challenges to regulation. Thus, the relation we can establish with cultural diversity and, more specifically with the 2005 Convention on the diversity of cultural expressions, is that this new pattern of social relations also creates new values and new ways of creation that bounce directly into the way we live culture and its diffusion.

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<p><b>PANEL II</b></p> <p><b>New technologies and cultural creation</b></p> <p>Moderator: <i>Piatã Kignel (U40, Cultural manager)</i></p> <ul style="list-style-type: none"> <li>• Project “<i>Mais diferenças</i>” (approximate translation, <i>More differences</i>) and the App <i>WhatsCine</i> – <i>Luis Mauch (Mais Diferenças)</i></li> <li>• Initiative of the “Makerspace” - <i>Gabriela Agustini (OLABI)</i></li> <li>• Project “<i>Vídeo nas aldeias</i>” (approximate translation, <i>Video in the Indigenous Villages</i>) – <i>Vincent Carelli (Vídeo nas Aldeias)</i>.</li> </ul>
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### SUMMARY OF THE PRESENTATIONS

(General objective of the panel and report of each lecture)

- **Project “*Mais diferenças*” (approximate translation, *More differences*) and the App *WhatsCine* – *Luis Mauch (Mais Diferenças)***

Manager Luis Mauch presented the experiment of the NGO *Mais diferenças (More differences)* in the cultural political field, bringing up some basic concepts of the universe of accessibility, as well as some international treaties and national policies related to disabled people’s rights. The institution is more than 10 years old and works on the production of accessible cultural goods and services, besides contributing to the construction of legislative policies and changes to include disabled people.

In the beginning of the lecture, and in an effort to identify an evolution line in this relationship, Mauch brought up the history of how the society has dealt with disability. Initially, one can point out that there was a process of elimination of those individuals that were born disabled – which still remains in several cultures today. A second process observed was segregation, which means leaving on the sidelines of social life such individuals considered unable to live life to its fullest. In a first approach to these individuals, there was the process of integration, essentially with assistencialist policies and practices, and, eventually, one can identify the process of inclusion in the society going beyond medical assistance and onto the inclusive development of society, assuring that these individuals should have all the rights which are their own as human persons. In today’s opinion, the problem does not lie on the individual but on the environment and society. In other words, one can perceive that the individual is ‘more’ or ‘less’ disabled depending on the environment or society he/she lives in.

Concerning specifically access to culture, Mauch brought up the data collected in 2007 from research developed under the request of the Ministry of Culture. In this investigation, one can note that the Brazilian society in general is excluded from the cultural life of its own country, showing very low percentages of audience in movies, museums and theaters. This problem becomes worse when the disabled audience is considered, since the cultural products as well as the cultural spaces accessible to the diversity of disabilities (hearing, visual, physical, and intellectual) are extremely rare. Furthermore, the speaker went over Article 30 of the UNESCO Convention that deals with the rights of disabled people. Such article refers specifically to the right to participate in cultural life. As from this norm, Mauch enumerated the possible inclusive

cultural policies that must be developed. It is necessary to expand the offer of accessible cultural products by forming cultural producers and managers so as they can work with accessibility tools; moreover, it is necessary to enlarge the demand for such products, since the disabled people do not frequently go to these cultural spaces and, therefore, they must be stimulated; also, it is necessary to foment the production of knowledge, experimentation, and systematization of cultural accessibility tools, as well as it is necessary to incorporate into the current legislation the rights related to the disabled people's participation in cultural life both as audience and creator. Thus, it is necessary to understand accessibility beyond assistance – for instance, to understand the audio-description of a show or a film as a 'narrative layer' turned to the visual disabled and other people interested in it as well – and require that the production of disabled artists should have an esthetic quality beyond an assistencialist reverence.

Mauch ended his presentation with the project *WhatsCine*, an app that brings up the possibility of watching a film by accessing audio-description tools, captions and *Libras* (the Brazilian sign language). This is a tool non-exclusive to disabled people, though serving to all people, but that specially ensures that disabled people have access to cinematographic works. Since it fundamentally works with interactivity, the app provides the creation of interactive advertisement actions, fidelity programs, and cellular games with movie screen among other capabilities. As it is estimated that more than 10 million people are in need for more accessibility, the app can increase viewers in the movie theater by 10%. Initially, the app was thought to be for audiovisual works; however, it can be adapted to other cultural formats.

• **Initiative of the “Makerspace” - Gabriela Agustini (OLABI)**

Manager Gabriela Agustini presented the OLABI experience, a space created about one year ago in Rio de Janeiro, and which is configured as a makerspace. The makerspace is a blank space in which people can create. In the OLABI experience one seeks an appropriation of new technologies not only as a consumer but mainly as a producer.

The OLABI works by trying to enlarge access to new technologies, and it brings up the concept that the devices and technological apparatuses and digital tools that surround us can not only be consumed but created as well, and developed for several purposes. For this, a space was created with tools, robotics equipment, carpentry, electronics, 3D print and a series of components that provide people with experimenting/learning a new skill and also prototyping a product that may be developed and become an enterprise, an initiative of their own.

When providing this kind of access, one is seeking to bring diversity onto the production of new technologies, and how to think of an endogenous technological development. We live in a world in which a big part of the activities is mediated or based on technological tools and apparatuses produced in most part by few countries and mentalities ('the white men from the North'). Few are the producers of technology that the rest of the globe consumes.

When we perceive technologies and algorithms as non-neutral elements, that is, loaded with meanings and cultural components, we can understand how important it is to enlarge the access to this production and permit the South, the women and minorities to take ownership of these languages and tools. In other words, realizing that digital is the language that prevails in the 21<sup>st</sup> century, it is necessary to dispute the production of technologies as a way to bring to light other visions, strategies, and development ideas and beyond those hegemonically dominant. The technological empowering can be one of the possible paths to reach the necessary social justice.

In practical terms, the OLABI develops several projects focusing on women in low-income communities, and in cooperation with countries from the south of the globe. Some of them were

indicated by Agustini, as the *Gambiarrafavela.tech*, in partnership with the Rio's Slums Observatory; the *Rodada Hacker*, designed for women and with a participation in the *Global Innovation Gathering*, a net that gathers experiences focusing on technologies to solve social problems, among others.

• **Project “*Vídeo nas aldeias*” (approximate translation, *Video in the Indigenous Villages*) – Vincent Carelli (*Vídeo nas Aldeias*).**

Provoking the audience, Vincent Carelli started by saying that once he heard Daniel Mundukuru (Brazilian historian, philosopher, psychologist and writer, from the Brazilian indigenous nation Mundukuru) say, ‘In Brazil there is no such a thing as indigenous people’. And continued: in Brazil there are mundukurus, kaiapós, xavantes and 300 hundred more peoples and indigenous cultures which are reduced to just one denomination in the country. His project *Video in the Indigenous Villages* has as one of its objectives to register this cultural diversity so unknown to us.

With more than 30 years of age, the project *Video in the Indigenous Villages* mobilized the interest of the elders at first. When they discovered the audiovisual language, they realized there was a way to have a straight access to oral culture and that it represented a kind of sounding board for their cultural resistance. The young indigenous, so stimulated to disown their culture, obtained with the audiovisual resources a domestic reevaluation of their knowledges, cultural features and even the elders’ recognition. Thus, quoting Carelli, the key question to the audiovisual resource for the indigenous is the possibility of safeguarding the memory of their cultural heritage.

During the workshops of the project *Video in the Indigenous Villages*, it is expected that, when taking hold of the audiovisual production tools and with the film-making itself, an indigenous village should break up with the everyday life and some taboos and, consequently, open itself to new relations and new ways of diffusing knowledge and expression.

According to Carelli, each one of the indigenous peoples and each culture have its specific process. Everything that is discovered through the audiovisual production goes back to school, becomes an indigenous teacher’s project, etc. Outside the indigenous villages, the circulation of the produced works bring up new impacts. It creates relationship with other communities, helps to know the identities of these peoples and in special it states the specificity of each of them, breaking up that standardizing concept of “Indian” and avoiding the fossilization of the idea of an indigenous that we hold till today.

Beyond the social and symbolic impacts, the project also forms indigenous video-makers (not film directors). The main point is to achieve a work of excellence and not compassion for these indigenous peoples. The work is developed continuously, having as a consequence the insertion of these emerging movies in the Brazilian cinematographic space. For this, one of the focuses of the NGO is to diffuse the produced material. Making this indigenous audiovisual production reach the Brazilian elementary and secondary education is a goal not achieved yet.

**SUMMARY OF THE DEBATE (major topics raised during the debate)**

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In the debate, two points were talked over: first, how can we relate the Convention on the diversity of cultural expressions with the projects presented? And second, what are the possible cultural policies to be developed, having in view the experiences reported?



Concerning the first point, Guilherme Carboni shared the experience he had with the negotiation in Tupã, located in the western part of the State of São Paulo, about the indigenous people's rights and the museum that is being created in the city. About the second issue, related to the new challenges in terms of cultural policies, Luis Mauch reminds us that cultural policies only recently started to incorporate the demands of the disabled such as accessibility to public libraries, recognition of the deaf culture, etc. Gabriela Agustini reinforces that we should not only repeat the molds already elaborated but create new ones as well. For such, it is necessary to build policies that foment this empowering of the technology and, furthermore, that ensures the continuity of these policies. For Agustini, our big problem is not the lack of public projects attentive to the diversity issue, but their instability and discontinuity. And last but not least, Vincent Carelli reinforced that we still have a long way to go to guarantee rights and respect to the precepts brought up in the several legal documents such as the Convention and even our Federal Constitution. An example of this is the indigenous people themselves.

### **FINAL COMMENTS (conclusions and recommendations with reference to the Convention)**

In this panel we saw some cases of institutions and projects that have been using digital technologies as a way to enlarge the production and the distribution of culture in Brazil. The examples varied from the assisted technologies that make it easy for the disabled to access cultural products and spaces, the endogenous production of technology in partnership with countries from the south as a way to oppose the hegemonic production of technology that we live today, up to the cultural impacts of the Brazilian indigenous communities' audiovisual productions (not only digital). All the examples are aligned to the ideas of cultural diversity and demonstrate the necessity of an appropriation of the technology by the most varied social and cultural segments as a way to enhance diversity itself. Technology exerts strong interference into social life; however, one must keep in mind that it is a creation and an instrument that can be used not only for standardizing and homogenizing culture but also it can substantially contribute to what is contrary to that, by promoting cultural diversity, heterogeneity of products and hybridization of identities.

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<b>PANEL III</b>
<p><b>New technologies and access to cultural offer</b> Moderator: <i>Guilherme Carboni (Doctor in Law, Lawyer)</i></p> <ul style="list-style-type: none"> <li>• Conciliate protection of copyright and access to diversity – the example of Chile – <i>Daniel Alvarez Valenzuela (Lawyer and founder of the NGO Derechos Digitales Chile)</i></li> <li>• Online Movie Festival – example “<i>My French Film Festival</i>” – <i>Paule Maillet (Audiovisual attaché of France in Brazil)</i></li> <li>• Digitalization of the Journal of the Faculty of Law, University of São Paulo – <i>Antonio Carlos Morato (Professor of Law - FDUSP)</i></li> </ul>

### SUMMARY OF THE PRESENTATIONS

**(General objective of the panel and report of each lecture)**

**• *Conciliate protection of copyrights and access to diversity: example of Chile – Daniel Alvarez Valenzuela (Lawyer and founder of NGO Derechos Digitales Chile)***

In his presentation, the lawyer Daniel Alvarez Valenzuela defended a path to conciliate the protection of copyrights and access to cultural diversity. He started from the premise that copyright is a human right, and protection must be considered before when and with whom something is published. In his view, it is necessary to lead more debates about the access to this right, aiming at a greater equilibrium in its protection. Thus, one can say that if, on the one side, there is a major necessity of safeguarding copyrights, on the other side, it is necessary to think over the limit within which copyright and authorial heritage will give more access to distinct audiences.

He emphasizes the Chile case as an example. From 1834 to 2010, what was basically and gradually achieved were laws that strongly focused on the protection of copyrights and very little on the possibilities of access to the authorial heritage. He points out two factors of equilibrium in this equation: one internal and one external. For the latter, it was assured to have freedom of expression, access to culture, education, information and knowledge – vital factors to enhance cultural diversity. For the other, the strengthening of public domain through time reduction (traditionally, it is 50 years after the author’s death, but in many countries it is more than 70 years. Does that not restrict other interests?), digitalization of collections and the gradual negotiations of exceptions due to the social rights involved: from 2010 on, there has been an increase in permits for visual disabled, libraries, private use, executions and uses in a family scope; however, there are still several limitations to the access to and exercise of copyrights in Chile – and some are so restrict that they end up restricting the possibility of a new authorial creation starting from an existing one.

In Valenzuela’s viewpoint, the CDCE remains neutral as digital technologies are concerned; but the negotiators of this Convention did not understand, and saw digital technologies as a threat. The latter, if on the one side they propitiate opportunities of democratization of and access to distinct works of authorial heritage, on the other side they allow detecting limits and obstacles such as uneven charges for connection all over the world, which prevent an equanimous access to this collection; lack of training of users for such and even the legal voids open to discussion

such those relating to remixes, among others. Therefore, the challenge lies on balancing how the copyright laws can stop having too much weight on protection and start favoring greater access.

• ***Online film festival: example of the “My French Film Festival” – Paule Maillet (Audiovisual Attaché of France in Brasil).***

Audiovisual French attaché Paule Maillet started speaking about the role of Unifrance, an agency financed by the French government and that follows up possible actions to enhance audiovisual French culture, especially the cinematographic one such as the negotiation and sale of French films outside France, organizations of festivals, among other strategies. The agency also monitors these promotion activities.

Maillet starts with a scenario and a question; the scenario is given from some surveys that show the following: good French films that are not able to cross the boundaries; moviegoers outside the country that are getting old; and the number of movie theaters that is dwindling down. Then, the question is put forward: how can the new technologies help workaround the lack of movie theaters and the lack of exportation of the French films and catch even more the young viewers?

The answer is precisely the experience of the Festival mentioned in the title *My French Film Festival* (MFFF), an online film festival. It creates a website, offers a prize and organizes a jury. The films remain available for a month. The project cost 400 thousand euros, 300 thousand of which are sponsored by companies and 100 thousand referred to Unifrance’s funds. There was a first moment of negotiations with exporters in order to move away concerns over piracy and the fact that the process is free of charge.

Thus, the commercial use of the rights to the video on-demand of the productions takes place, going 50% of the costs to the exporter and 50% to the MFFF platform or partnership. The technical costs are about 90 thousand (understanding, captions); 120 thousand (captions translated into 13 languages); 100 thousand (copyrights); and 90 thousand (other expenses). To put on an online festival, 10 feature films and 10 short films are necessary, and which normally happens between January 16 and February 16, with 207 countries in 13 languages, with a total of 560 thousand viewers, and Brazil being the second biggest country in 2014: 380 thousand.

• ***The digitalization of the Journal of the Faculty of Law of the University of São Paulo – Antonio Carlos Morato (Professor of Law - FDUSP)***

Antonio Carlos Morato, professor and lawyer, started from the digitalization experience of the *Journal of the Faculty of Law, USP*, a concrete experience centered on the referred Faculty, the Federal University of Minas Gerais (UFMG), and the Federal Senate in face of the proposal that permits the use of works in private domain. The *Journal of the Faculty of Law, USP*, started on April 26, 1893.

Morato went over the presentation of his Chilean colleague, Valenzuela, and discussed copyright according to their patrimonial value and a moral perspective. The function of copyright is to recognize the patrimonial rights of the authors (assuring the maintenance of cultural creators) and the moral rights of the authors (referring to the authorship in the work) – the lecturer himself highlighted how a presentation is a protected lecture, according to Article 7 II of Law 9.610/98. The digitalization of the *Journal of the Faculty of Law, USP*, exemplifies the application of copyright law to a legal entity (for collective works), ensuring that the legal person is the holder of the copyrights, in this case, USP, a legal entity of public right.

## **SUMMARY OF THE DEBATE (main topics raised in the debate)**

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Mediator Guilherme Carboni, lawyer, proposes to approach the line that permeates the conflict protection vs. access. The idea is grounded on the individual author at the same time as it is presented as a historical construction; it is something that may be linked to authority. Thus, a question that arises from the contraposition above seems to arise around another one: the increase of limitations vs. alterations in the structure of the copyright.

About access to authorial heritage, a topic in Daniel Valenzuela's speech, Morato recalled that excessive denials of use of copyrighted works may be appealed. Another intervention was around the negotiation to liberate the use of copyright for low-budget films - many times the copyright holders charge values equivalent to those of high-budget productions, and they do not get to see this diversity. (Moreover, if those low-budget productions decide to add the charges of high values to their spreadsheets in response to incentive programs, for example, they tend to be disapproved precisely for the high values charged). Morato reminded that there is always a subjective background for a decision and that in his professional experience he has already managed to negotiate values so as to please both parties.

Another point talked over in the debate on the mediator's side was the discussion around the protection of style – and not of works, properly – taken from a case mentioned about the *novela* Aritana, produced by former Brazilian TV station Tupi, in which the indigenous persons did not want to receive money, but to discuss whether the image of the indigenous people was to be used or not in the production. Carboni, then, touched the point about protection of work or style (Giselle Dupin also mentioned an example from the *candomblé* culture) in face of the authorial identification issue: and, if the author has to be identified, there is then an identification problem, since a certain work or even a style can go back to other cultures and peoples.

And last but not least, Lilian Hanania made an observation to clarify the question of technological neutrality of the Convention in face of the new information and communication technologies, especially mentioned during Valenzuela's presentation. Although the Convention does not have many detailed provisions on new technologies, some of them already mention those new technologies and show that the negotiators had the context of new technologies in mind. Several operational directives adopted to implement the Convention also take new technologies into consideration. It is seen in the preamble of the Convention, but also when the 'cultural diversity' concept is defined, 'any means and technologies employed' being expressly mentioned. Moreover, enhancing the use of new technologies is part of the objectives of international cooperation, as mentioned in Article 12; and the use and transfer of technologies are also a means of creating a dynamic cultural sector in developing countries according to Article 14 of the Convention. In the Conference of Parties held in June 2015, it was decided that the operational directives on the implementation of the CDCE in the digital environment will be prepared, among others, to give a bigger impulse to the effectivity of the Convention embracing the digital medium.

## **FINAL COMMENTS (conclusions and recommendations referring to the Convention)**

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The question of authorship and copyright and the question of cultural diversity and the facilitated access to productions and broadcasting – enhanced by the new information and communication technologies (ICTs) – seem to have given the central keynote of the debate. While there is a concrete experience of the MFFF as something that propitiates, via ICTs, the respect for copyright and, at the same time, access to the diversity of audiovisual production of

a country, there are, on the other hand, breaches and challenges imposed by these technologies, both in the sense of not being enhanced for more and bigger available collections and in the sense of fomenting skills and training, besides the use that can, in the name of access, affect the authorship in its moral dimension – a question that becomes even more complex if authorship is thought not as a particular and historical entity, but even more as a collective and recurrent entity. As seen above, these are challenges that are put forward not only for the specialists in Law in the segment but also in the discussions to implement the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

## CONFERENCE “CULTURAL DIVERSITY AND NEW TECHNOLOGIES”

July 2<sup>nd</sup>, 2015

Giuliana Kauark  
Nisio Teixeira  
(U40 Group)

<p><b>PANEL IV</b></p> <p><b>New technologies, citizenship and democracy</b> Moderator: <i>Edson Perin (Journalist)</i></p> <ul style="list-style-type: none"> <li>• Experience of the <i>Hacker Laboratory</i> of the House of Representatives – <i>Cristiano Ferri (LabHacker)</i></li> <li>• Challenges and opportunities of the new technologies for democracy: the example of the Culture Points and the Facebook x MinC case – <i>Giselle Dupin (MinC)</i></li> </ul>
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### SUMMARY OF THE PRESENTATIONS

(General objective of the panel and report of each lecture)

- ***Experience of the Hacker Laboratory of the House of Representatives – Cristiano Ferri (LabHacker).***

Cristiano Ferri starts by explaining the presence of the defamiliarization of the word ***hacker*** in the name: the derogatory character is given because the word is confused with the ***crackers***, those who effectively disrespect the laws of privacy to obtain data. The ***hacker*** would be more associated to the ***nerd*** of computing and technology. Someone that knows the technology so well that is able to change, alter, and disfigure something that is within some order. Thus, the ***hacker*** would have some equivalence to curiosity, innovation, fun, and creativity. A ***hacker*** ethics would then be in the sharing (which is a way to lose power...), opening, decentralizing, freeing access to technology, and improvement of the world.

The idea of the ***Hacker Laboratory*** is to think the government as a platform, a bazaar where public services will be defined in the interaction among actors. Public services are defined in interaction like a platform where there are suppliers and consumers. If some corporations think in these terms, why wouldn't the State take advantage of it? Citizens could give contributions of several kinds, and could also render services, translate the information of the State, and propose new pieces of information. Thus, the ***Hacker Laboratory (LabHacker)*** and the ***Hacker Marathon*** were created with the idea of using the open data of the House of Representatives and 'play' with them in the hacker way.

Some examples of tools developed in the ***Hacker Marathon***:

- My National Congress – a platform that shows who spends more public money, on what companies, and with a link to the *street view* to spot the company's address and check whether it really exists, creating a clearer visual way to access information and giving back to the House a better way to understand their expenses.
- 'Watch the amendments' platform, which proposes the mapping of bill amendments;
- 'Parliamentary Rhetorics' – a page containing the speeches of the Representatives: the topics that the Representatives most talked about appear in bubbles, thus, clearly translating some information that not even the Representatives had.
- Portal and the app Android '*edemocracy*' – the Representatives use this public consultation portal to have the citizens' response towards the draft bills, article per

article; the rapporteur receives the proposals and accepts some of them, allowing for crowdsourcing (incorporation of the collective intelligence) to take place.

The challenge is to think a **Hacker Laboratory** that can account for this experimentation aspect, allied to the limits and restrictions of public expenses.

• **Challenges and opportunities of new technologies for democracy: the example of the Culture Points and the Facebook x MinC case – Giselle Dupin (MinC).**

Giselle Dupin proposed to comment on two experiences: the culture points and the case of the photography involving censorship in the “Facebook v. the Ministry of Culture” case. About the culture points, the idea came up with the program *Cultura Viva* (approximate translation *Culture Alive*) in 2004. On the occasion, former Minister Gilberto Gil proposed how, instead of creating, it could be possible to take advantage of the Brazilian cultural diversity and, stimulating several cultural points in the country, to perform a cultural *do-in* in Brazil. Important axes to the project: its symbolic, economic and citizenship-related nature. Instruments: culture points, big points (articulated especially via training), national registration, and focus on self-management. In 2015 there are 4 thousand points. The target for 2020: 15 thousand points. Challenges consist on the distribution and diffusion of production and on the sustainability of the points.

The Facebook vs. MinC (Ministry of Culture) case involved a photograph among so many of them made available in a report about the collection of the National Library. It is about a photograph dated of 1909 of the indigenous nation Botocudos, in which an indigenous woman appears showing her naked breasts. The photograph was taken off the MinC Facebook page by Facebook. The company claimed a kind of algorithm that can identify naked breasts, apart from the terms of use of Facebook, which also prevent that type of image, based on jurisdiction under Californian law (USA). Eventually, the photo came back to the site.

The current minister Juca Ferreira called a meeting to discuss the digital issue in the country. Among the initiatives of MinC as digital is concerned, there is a public consultation about digital governance promoted by MinC around access to information, service rendering and social participation; a public policy of digital collection with structures shared on the same platform (MinC is working on the sharing of the collections, which are today in different platforms); besides the proposal of an “identification name” for cultural matters – an individual or a legal person can sail in different systems of the MinC using the same password/identity so as to make the processes easy. Anyway, there are at least three challenges there: i) Management of the digital identity – how the State uses the data available; ii) Ensure the neutrality of the net – there is a risk of slicing the access; and iii) Deepen the cultural rights on the net, including the protection of copyright in the web.

**SUMMARY OF THE DEBATE (main points raised during the debate)**

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Mediator Edson Perin launched the debate by asking what the possible criteria would be so as to work on citizenship and technology. Dupin highlights the transparency, consultations, and permanent consultation channels. Ferri insists on the experimentation freedom, which is not such a common thing as *governist* actions are concerned. Moreover, argumentation around the need for deep information on the decision processes, for instance, was raised, with experiences around participative budgets put forward. It is necessary to allow the effective participation with deep information on the political processes and direct ways of decision (going beyond public consultations in which the citizen only proposes but do not decide), with the use of new technologies. It is necessary to define an ecosystem of participation, mainly in a country where

digital exclusion is still a big problem, to think of an inclusion of the “digital non-native” and not only the “digital elite”, and of the bureaucratic culture change and political change in order to drive away the fear of using integration channels.

Gabriel Souza asks whether the apps remain in the *LabHacker* site, to which Ferri responded positively, but indicating that only part of them. Giuliana Kauark asks, then, whether only those that are in the interest of the House are selected. Ferri said that not necessarily, for the idea of the laboratory is not to manage all the projects, but to make them available and provide those that were not absorbed with autonomy so that they can follow their own way. As a matter of fact, not all the apps created continue to be available, though. This is one of the problems of the Marathon, since it does not have continuity.

Lawyer Vera Kerr goes over the question of the Facebook case again, which was already the object of intervention in the morning. Article 19 of the Civil Framework of the Internet deals with the judicial order and Article 21 deals with exceptions (but which talks about pornographic nudity). The Civil Framework turned the removal of any content into a legal issue, in order to avoid the censorship of internet providers, requiring a judicial order for such. The provider is not made responsible, unless for nudity scenes and pornography. Facebook cannot really act as a censor. A practical problem comes, however, from the fact that it is an algorithm that is the one responsible for the content selection, though an algorithm cannot go beyond what is permitted by the law.

Then, Mario Magalhães from CEST ends the debate by problematizing whether, once in the net, and submitting this photo to another context, it cannot be legally understood as offensive, despite its time and nature, like, for instance, the possibility of showing it in social networks of some Arabian countries.

### **FINAL COMMENTS (conclusions and recommendations referring to the Convention)**

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About the debate, it is interesting to highlight the governmental solutions around the appropriation of technologies. At the same time, a certain deviation concerning the continuity of good projects is perceived, either in the detail of some development necessary for the self-sustainability of culture points, or in the positive experiences of the *LabHacker*. Even in function of and on behalf of transparency itself, the governmental machine can permit, by using technologies, mechanisms which are, at the end of the day, restrictive to such development. It is obvious that limitation here cannot be attributed only to the new technologies, but to the political-bureaucratic paths and decisions – which, by the way, the private initiative is also far from getting away with. It is curious to note, then, in this counterpoint of the first and second sectors, the raise of the case of the Botocudos’ photos and its censorship being discussed under the range, approach, and cultural context optics, and again the new information and communication technologies for its inclusion or exclusion. Such cultural context is re-problematized in the final question that seems to re-put forward an infinite question around how ample and global can or should be the laws and conventions to cope with the minutia of the cultural and/or artistic local place.

### **CLOSING**

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Prof. Edison Spina and Piată Kignel closed the event. Piată thanked CEST on behalf of the U40 Group and partners for contributing with the discussion around new technologies and the 2005 Convention, pointing out that in the end of the year the inter-governmental committee of the



Convention will go over the digital technologies, when the new directives about the topic aiming to implement the Convention will be elaborated.

#### **GENERAL COMMENTS**

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The event *Cultural Diversity and New Technologies* brought up very useful contributions and raised very pertinent debates relating the topic of cultural diversity with new technologies.

Undoubtedly, the event served to support awareness around the 2005 UNESCO Convention on the Diversity of Cultural Expressions on the occasion of its 10<sup>th</sup> Anniversary, responding to one of the main objectives of the U40 Group. Such awareness remains necessary in a country like Brazil, where the Convention is still very little known and not used in an explicit and even rigorous way.

The partnership developed between the U40 Group, an international professional net, and USP, the major Brazilian university, has a lot to contribute to the search for this objective in the country. Moreover, the multidisciplinary character of the topic “cultural diversity and new technologies” has perfectly fit into the interdisciplinary work developed by the Center for Studies Society and Technology (CEST) of the University of São Paulo.

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