

INTERVIEW WITH LILIAN RICHIERI HANANIA

To be published in « Kulturelle Vielfalt Online. Im Spannungsfeld zwischen UNESCO, TTIP und Netzgiganten – Interview mit Lilian Richieri Hanania » (Cultural Diversity Online. Between UNESCO, TTIP and net giants – an interview with Lilian Richieri Hanania), in Österreichische UNESCO-Kommission, Jahrbuch 2015/Annual Report 2015, Agnes & Ketterl GmbH, Mauerbach/Vienna, ISBN: 978-3-902379-03-0. (original in English)

At UNESCO the issue of “promoting the diversity of cultural expressions online” is increasingly the focus of debates. What is meant by: “diversity of cultural expressions in the digital realm”?

The expression “diversity of cultural expressions” as employed in the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE) refers to one specific aspect of cultural diversity: the diversity of supply of cultural content in all steps of the artistic value chain (creation, production, dissemination, distribution and access). It implies allowing for rich and balanced exchanges of cultural goods and services from diverse origins - no matter which technologies used to provide them - at the local, national, regional and international levels. Attaining the diversity of cultural expressions in the digital realm means therefore that digital cultural content created, produced, made available and effectively accessed by consumers is culturally diverse.

UNESCO, as the specialized UN-organization for culture, strives not only to promote cooperation, but also to define standards and norms. Taking up the issue of “culture diversity online” implies a need for action. Is there a need for action?

Yes, there is definitely a need for action. Guaranteeing the diversity of cultural expressions, whether in a digital environment or not, requires an active engagement of States and of civil society. Letting the market of cultural goods and services function alone has proven insufficient to guarantee a diversified cultural offer. This explains the adoption of cultural policies by varied States that consider important to ensure national cultural production is available in the market, not only because of their economic importance, but also and most importantly due to their cultural nature and their significance as vehicles of identities, values and meanings. The flagrant imbalance of the market of cultural goods and services in the last decades has led to the negotiation and adoption of the CDCE. The latter legitimates national cultural policies and measures and encourages international cooperation in the cultural field, with an emphasis on development issues. It also recognizes the fundamental role of civil society in those areas.

The Convention legitimizes and calls for an active engagement of the State (and the civil society) to counterbalance imbalances, if needed. What does this mean in the digital context?

Digital technologies require different types of action to promote balanced exchanges and interaction among cultures, but the basic logics stated above remain the same in this new context. While digital technologies have been progressively facilitating cultural creation and production, and Internet provides for theoretically unlimited availability of cultural content, it is still very hard to guarantee distribution and visibility of a diversified cultural offer in the digital market.

Could you name some examples of developments that lead or could lead to imbalances in the digital context?

The “net giants” (e.g. Google, Apple, Facebook, Amazon (GAFA), Netflix) have become powerful new intermediaries that end up establishing the criteria and, consequently, deciding which digital contents are going to be distributed, publicized and have a greater chance of being visualized by consumers. Moreover, the optimum use of digital technologies by consumers still depend, in many countries, on

significant investment in infrastructure, as well as in education policies and capacity building programs to allow for the most diverse participation in cultural life, both at the creation/production and at the enjoyment/access levels.

Speaking of net giants and the internet. State regulation of the internet is not only highly disputed but also soon reaches its limit – in practical as well as legal terms. Which room for maneuver to conduct policies do States have in the digital context?

From a legal point of view and in a few words, the space available for States to adopt and maintain policies in favor of the diversity of cultural expressions based on the CDCE depends particularly on the commitments they have already undertaken in international trade agreements. Those agreements may be multilateral (e.g. World Trade Organization agreements), as well as regional or bilateral (e.g. recent agreements concluded by the European Union with the CARIFORUM countries or Canada). In fact, trade liberalization commitments in cultural sectors may prevent a country from adopting discriminatory policies in favor of its national production (e.g. quotas or subsidies for national audiovisual production) or to establish a preferential relationship with specific countries (e.g. audiovisual co-productions).

So trade agreements also define which policies and measures to promote culture are possible, including in a digital context?

Yes. For this reason, when negotiating international trade agreements, the European Union has ensured that audiovisual services, whatever the technological means used to provide those services, were excluded from liberalization. Through such “cultural exception” in its trade agreements, the EU has reaffirmed the specificity of audiovisual services vis-à-vis other tradable services and has maintained policy space for its Member States in that sector.

So excluding audiovisual services from trade agreements – that is: not negotiating about any liberalization in the areas of film, TV and radio – is sufficient?

The digital context complicates the matter, firstly because States are still struggling to understand this new and extremely dynamic environment in order to be able to adopt appropriate cultural policies. Secondly, this new changing reality raises doubts on the way it should be dealt with in trade agreements. Which sectors should be excluded from a trade agreement in order to maintain a country’s policy space when it comes to new digital products and increasingly converged and interdependent economic sectors (e.g. mobile phone manufacturers and operators, or Internet providers that propose cultural content as part of the good or service offered to consumers)?

A currently much debated example of trade agreement is the TTIP. Are audiovisual services part of these negotiations?

In June 2013, the EU Member States agreed on the exclusion of audiovisual services from the European Commission mandate for negotiations of the Transatlantic Trade and Investment Partnership (TTIP) with the United States. Unless a unanimous decision by the Member States is made during the negotiations to modify that position, liberalization commitments should not be undertaken in that sector – the EU should remain free to adopt cultural policies and measures in that field.

So there is no cause for concern? Film, TV and radio, be it “analogue” or online will not be affected by TTIP?

Caution remains necessary in order to make sure that other sectors that may have an impact on cultural goods and services, especially those provided online, are also not liberalized. This concerns,

for instance, the sector of information and technology communication services. The EU and the US signed “Trade Principles for Information and Communication Technology Services” in April 2011 in the framework of the Transatlantic Economic Council (TEC). It aimed to establish trade-related principles to support the development of international technology networks and services. Those principles not only blur the traditional distinction employed by the EU between “content services” and “services related to the transportation of content”, but may also have a large impact on market access.

Another matter that will require attention is electronic commerce. In recent trade agreements, the United States have managed to introduce a category of “digital products” which are subject to liberalization, while not contesting reservations from its trade partners regarding traditional audiovisual services. The difficulties mentioned earlier in fully comprehending and responding to the digital reality, as well as in determining the most appropriate policies for the diversity of cultural expressions in such context, require significant vigilance from the EU Member States in order to maintain their cultural policy space.

How does the UNESCO-Convention relate to this? The Convention recognizes the right of States to cultural policy – also in the digital realm. If a State liberalizes this sector in trade agreements, it renounces or limits this right. Can the Convention have an effect in this regard?

The CDCE does not oblige a Party to exclude cultural sectors from its trade agreements and cannot change previously undertaken trade commitments. But it provides political support in future negotiations if that Party decides to maintain a policy space in cultural matters as large as possible. This is all the more important in the digital context, because of the flexibility and rapidity needed when adopting policies and measures addressing such a constantly changing environment. Technological development requires thus greater vigilance from the CDCE Parties when negotiating trade commitments.

As mentioned in the beginning, UNESCO is currently debating the promotion of the diversity of cultural expression online. What can UNESCO do in this regard? What role can UNESCO play?

UNESCO can play a fundamental role in promoting the diversity of cultural expressions in the digital context. It has demonstrated its efforts towards that objective in recent years, among others through the works and discussions that led to the decision, by the CDCE Conference of Parties in June 2015, to prepare specific operational guidelines to foster the CDCE implementation in the digital environment.

Nevertheless, the adoption of operational guidelines by itself will not solve challenges in implementing the CDCE in the digital environment. Its implementation will still require strong political will of its Parties and active engagement of civil society. UNESCO may contribute to it, among others, through the following actions:

- raising awareness around the CDCE and its technological neutrality;
- clarifying the object and objectives of the CDCE vis-à-vis other UNESCO conventions;
- promoting discussions, studies and understanding on the new reality brought by new technologies;
- identifying successful cultural policies and measures, as well as best practices adopted both by governments and the civil society, aimed at the diversity of cultural expressions in the digital market;
- encouraging the CDCE Parties to formulate national strategies and roadmaps as detailed as possible, in order to stimulate implementation of the CDCE in the digital context;
- fostering debates among the CDCE Parties on the specificity of cultural goods and services (including those provided electronically) and international trade agreements;

- advocating coordination by the CDCE Parties, at the domestic level, among different governmental bodies and ministries whose work addresses sectors of the creative economy and, more largely, sustainable development issues;
- working closely with other international organizations whose actions may have an impact on the supply of digital cultural content and, more generally, promoting coordination and coherence with the work of other international organizations that deal with different facets of sustainable development, in order to ensure greater usefulness and efficiency of actions.

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