



CULTURE : A FORM OF MERCHANDISE LIKE NO OTHER?

Symposium of experts on

Culture, the Market and Globalization

**Organized in collaboration with the French National Commission for UNESCO
with the support of the Canadian and French Governments**

(UNESCO, 14 and 15 June 1999)

FINAL DOCUMENT

The theme of this Symposium was chosen, not only as a follow-up to some recommendations of the Plan of Action approved by the Intergovernmental Conference on Cultural Policies for Development (Stockholm, Sweden, 30 March - 2 April 1998) but also to take into account the recent international factors concerning cultural goods. The working languages of the Symposium were English and French.

The programme included three Round tables - each with a panel of international specialists who spoke for approximately ten minutes, and then took questions from the public - and a dialogue about Copyright.

On Tuesday 15 June : Mr Federico MAYOR, Director-General of UNESCO, took the floor during the proceedings. Ms Sheila COPPS, Minister of Canadian Heritage, and Ms Catherine TRAUTMANN, French Minister of Culture and Communication, addressed the closing session.

The Symposium brought together 250 participants: experts from different regions of the world, Permanent Delegates and other members of Permanent Delegations of Member States to UNESCO, Observers as well as representatives of concerned intergovernmental and non-governmental organizations and members of UNESCO's Secretariat.

I/ Programme and panellists (pages 2 -7)

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I/ Programme and panellists

Monday 14 June :

9:00 am : Opening:

Addresses by :

Ms Milagros DEL CORRAL, representing the Director-General of UNESCO,

Mr Jean FAVIER, Member of the Institute of France, Chairman of the French National Commission for UNESCO

and **H.E. Mr Jacques DEMERS**, Ambassador, Permanent Delegate of Canada to UNESCO.

H.E. Mr Jean MUSITELLI, Ambassador, Permanent Delegate of France to UNESCO was also present.

9 :30 am: First Round Table on: « Economic and creative criteria : how to assess cultural goods ? »

Objectives: *to define the place of culture within the context of an increasingly integrated and global economic system; to look for common ground between art and industry;*

Methodology: *to define the issues of the symposium in the areas of the arts, culture and industries which are related; to examine the challenges faced by public authorities, creators and all professional categories, as well as the private sector; to study certain examples.*

Panellists :

Mr Ivan BERNIER (Canada), Professor of International Public Law, Faculty of Law, Laval University, Quebec. Former Dean and former Director of the International Relations Center of Quebec. Former member of the Canadian Advisory Committee on International Trade, member of the Foreign Affairs Ministry's Advisory Sectorial Group on Cultural Industries as well as special bi-national groups, set up to monitor the Free Trade Agreement between Canada and United States. Author of several publications.

Dr Harald BÜCHEL (Austria), Managing Director of BMG Ariola Austria Ges.m.b.H., former Managing Director of the Austrian National Group of IFPI (International Federation of the Phonographic Industry) and its affiliate copyright collecting societies LSG (records), VGT (video) and the chart-compiling entity Austria Top 40.

Mr Jorge DA CUNHA LIMA (Brazil), Director and Chairman of TV Cultura, author and journalist, former Secretary of Communications and Secretary of Culture, São

Paulo State, Director of the newspaper "Ultima Hora", Director-founder of the magazine "Senhor-Vogue" and Chairman of the Cásper Líbero Foundation for broadcasting and television and the Cásper Líbero Faculty of communications.

Mr Bill MERKIN (United States), Chairman and CEO of Stategic Policy Inc. (Washington). For fifteen years, he was U.S. negotiator at trade negotiations, which also included cultural goods.

Mr Antonio RUDDER (Barbados), Chairman, Advisory Committee on Culture and trade, musician, painter and cultural administrator, former Director of the Barbados Board of Tourism, former President of the Musicians and Entertainers Guild of Barbados, and former Director of the National Cultural Foundation. He is now Chairman or Director of many societies such as the Association of Composers, Authors and Publishers incorporated.

Moderator : **Mr Jacques RIGAUD** (France), Chairman and CEO of "la Compagnie luxembourgeoise de télédiffusion" – Radio-Télé Luxembourg (CLT-RTL). Former personal assistant to Jacques Duhamel, then Minister of Culture, former Assistant Director-General of UNESCO, Chairman-founder of ADMICAL (Association pour le mécénat industriel), author of several books, including «La culture pour vivre » ("Culture for life") and, recently, «l'exception culturelle » (cultural exception)

2:30 pm : Second Round Table on « Cultural goods and market internationalization : how to promote cultural diversity ? »

Objectives: *to develop an open economy and permit all cultures to benefit from the development of communications; to avoid the danger of standardization and reinforce pluralism, keeping in mind the economic and technological parameters;*

Methodology: *to propose new methods to reinforce and improve exchange within the cultural sector, taking into consideration international economic decisions and current negotiations, existing legal instruments and practices carried out successfully in different parts of the world¹.*

Panellists :

Mr Férid BOUGHEDIR (Tunisia), Film Director and Critic, member of the Cannes Film Festival Jury, Professor, University of Tunis, author of many books about the history of Black African Cinema and Cinema in the Maghreb and Middle East. He directed two full-length documentary films, « Caméra d'Afrique » and « Caméra arabe ». He organized a debate on the "cultural exception" during the Carthage Festival.

Mr Ben ZULU (Zimbabwe), Executive Director of the African Script Development Fund, Harare), former Executive Director for Media for Development Trust. He previously worked in business in the areas of marketing and advertising for large

¹ This approach will be completed, with regard to legal aspects of NTIC, in the framework of the Dialogue about Copyright.

corporations. He lectured on marketing at the Graduate School of Zimbabwe University.

Mr Péter INKEI (Hungary), Director of the International Budapest Observatory, a new regional agency for the financing of culture in East and Central Europe, in charge of an Open Society Institute project on legislation in the book sector, former Deputy State Secretary for Cultural Affairs; earlier, he successively served as Deputy General Director of the publishing house of the Hungarian Academy of Sciences, Head of Office for Publishing, a branch at the Ministry for Culture and Education and then Eastern European representative of several American and British publishers.

Mr Isanori ISOMURA (Japan), President, Japanese Cultural Institute in Paris. For thirty-eight years, he worked with the NHK (Japanese public television) as editor in Tokyo, Washington and Paris, and, then, as Director-General, information and administration, for Europe.

Mr Hector MUNRO (United Kingdom), Director of Export Promotion of the British Council, London – including promotion of Britain’s creative industries around the world. His involvement in the creative industries began with the founding of local festivals; since then he has worked on educational and cultural projects around the world with the British Council.

Mr Jack RALITE (France), journalist, former Minister, Senator-Mayor of Aubervilliers, Founder of the States-General for Culture. He was a strong opponent of the draft Multilateral Agreement on Investments (MAI).

Ms Bonnie RICHARDSON (United States), Vice-President for Trade and Federal Affairs with the Motion Picture Association of America, Washington. She works with several government agencies to reduce foreign trade barriers and improve protection of intellectual property for the U.S. motion picture, television programming and home video industries. Before, she worked at the U.S. Trade Representative’s Office as Director for Services Negotiations. She was chief U.S. negotiator for the services market access negotiations in the Uruguay Round of multilateral trade negotiations. She also led market access negotiations with Japan.

Moderator: **Mr Robert PILON** (Canada), Vice-President for Public Affairs, Disk, Show and Video Association of Quebec. Economist and Sociologist, he has taught economics, particularly at the University of Montreal, Quebec. He led economic research for the Commission of Investigation on the future of Canadian broadcasting and was a member of the private office of Ms Flora McDonald, Canadian Minister of Communications

5 :45 pm : Dialogue on : « Copyright/Author’s Rights in an age of new technology: is it possible to reconcile legal traditions? »

At the heart of the questions to be considered by the Symposium, and, especially those concerning the notion of “cultural exception”, we find “Copyright” or “Author’s Rights”. The development of digitalization and multimedia products as well as the huge success of the INTERNET have changed the conditions of use and exploitation of artistic productions. The time for debate and research concerning new

international rules is now over. However, implementation of the approved dispositions is only beginning and the source of fundamental conceptual disagreement, discussed on the eve of the digital age, remains. In fact, since its origin, two concepts exist at the international level and sometimes appear to be in conflict: the concept of "copyright" which is dominated by commercial considerations and the concept of "author's rights", born from personalist philosophy and which considers that individual moral rights are the most important of all. Beyond the compromise reflected by the texts, can we hope to synthesize the two concepts ?

Panellists :

Mr Antonio MILLE (Argentina), international lawyer, Founder of « El Estudio Millé », Vice-President of "Committee R - Computer and Technology Law", International Bar Association IBA - Business and Law Section.

Mr Ndéné NDIAYE (Senegal), Magistrate of Senegalese Courts and Tribunals and, subsequently, Director-General of the Senegalese Copyright Desk and Chairman of WIPO's Permanent Committee, Legal Adviser to the International Confederation of the Societies of Authors and Composers – CISAC.

Moderator : **Ms Milagros DEL CORRAL**, Director, Division of Creativity, Cultural Industries and Copyright & UNESCO Publishing Office, former Director of Libraries, Spanish Ministry of Education, and former Secretary-General of the Spanish Publishers Federation.

Tuesday 15 June:

9 :00 am :Third Round table on: « Public policies and strategies of action: how can culture be kept alive? »

Objectives: *to associate all partners involved in public action with the development of cultural pluralism in a changing world; to mobilize decision-makers and citizens in bringing parties closer together so as to reinforce culture;*

Methodology: *to examine the process so that action, resulting from international interventions, national and regional policies, governmental and non-governmental initiatives, with the support of creators, other professionals and the public, can be given more coherence; to calculate the advantages and disadvantages resulting from the principal measures when faced with economic factors.*

Panellists:

Ms Carmen BARVO (Colombia), Director of the Regional Center for Book Promotion in Latin America and the Caribbean (CERLALC), until June 1999 .

Previously manager of Librería Nacional of Colombia, bookseller, editor and director in important publishing companies.

Ms Claire DENIS (France), Film Director. Her filmography began in 1998 with her famous «Chocolat». Her other successful productions include «S'en fout la mort», «US Go Home», «Boom-Boom», «J'ai pas sommeil» and «Nénette et Boni» in 1996.

Ms Mira NAIR (India), Film Director. She now lives in South Africa. Her first big success was the documentary entitled «Salaam Bombay», in 1979. This Indian, born near Calcutta, was a student at the University of Delhi before going on to Harvard. She began with the theatre, in India and in the United States but she is particularly known for her cinema films. Her work is largely intercultural.

Mr Ken STEIN (Canada), Senior Vice-President, Corporate and Regulatory Affairs, Shaw Communications Inc., which is a Canadian communications company whose core business is cable television. He is also a member of the Board of the Canadian Cable Television Association and Chairman, Cultural Industries Sectoral Advisory Group to the Minister of International Trade (SAGIT). He was involved in a number of software development and marketing projects in the computer industry and he spent fifteen years with the Government of Canada where he held several positions.

H.E. Ms Aminata TRAORE (Mali), Minister of Culture and Tourism of the Republic of Mali, Doctor in Sociopsychology, former Director of Research, to the Planning Ministry of Côte d'Ivoire and, then, in charge of projects with UNDP, UNICEF and UNFPA. She proposes her vision of culture and development in a recent book entitled "L'état" (the "vice"). This book was regarded as a passionate plea for Africa.

Mr José Luis VASCONCELOS (Portugal), Film Producer. He participated in the production of twelve full-length films in collaboration with V.O. Films of Paulo Branco. He went on to found «Opus Filmes» and produced some famous films like «O testamento do Senhor Napumocento», which won many awards. He organized the first Cape Verde International Film Festival.

After the panel members' speeches, address by Mr Federico MAYOR, Director-General of UNESCO.

Moderator : Ms Milagros DEL CORRAL

12.00 : Conclusions by the Rapporteur-General of the Symposium (see next part)

Immediately after his studies at the French National Administration School, the Rapporteur-General, **Mr Jacques RENARD** (France) chose to join the Ministry of Culture. He worked in many cultural fields: architecture, theatre, music, plastic arts, archives. He was member of the executive office of Mr Jack Lang, then Minister of Culture. He participated in various activities at the Council of Europe. He is an Associate Professor at the University of Grenoble Pierre Mendès-France. He is the author of the book entitled: "L'élan culturel" (cultural impetus).

12 : 30 pm :Closing:

Addresses by:

H.E. Ms Sheila COPPS, Minister of Canadian Heritage

and

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H.E. Ms Catherine TRAUTMANN, French Minister of Culture and Communication.

II/ Conclusions by the Rapporteur-General

This symposium continues the work already begun by UNESCO with the report by the World Commission on Culture and Development, chaired by Mr Javier Pérez de Cuéllar, Our Creative Diversity, and the Intergovernmental Conference on Cultural Policies for Development (Stockholm, 1998). This Conference adopted an action plan which no longer poses the question but asserts that «cultural goods and services should be fully recognized and treated as being not like other forms of merchandise».

More generally, this meeting took place at a time when the major implications of the cultural industries are recognized, which was perhaps not the case only ten or twenty years ago: these implications are economic, political and cultural. They also concern the status of works of minds in this broader context – after all, the industries of the imagination, content, knowledge, innovation and creation clearly are the industries of the future as we move into the 21st century. They are also important contributory factors to employment and economic growth.

The underlying principles and objectives of the symposium proceedings can be recapitulated briefly: the importance of the cultural dimension of development, preservation of cultural identities, international cultural cooperation and dialogue between cultures, together with the notion that access

to the information society and the role of the new technologies are one of the major challenges facing cultural policy today and still more so in future.

The first round table focused on the definition of cultural goods. A consensus view acknowledged the «essential duality» of cultural products, in particular in the light of the comments made by Mr Ivan Bernier: cultural goods are at one and the same time commercial objects and assets which convey values, ideas and a meaning. Hence the specificity of cultural goods. Of course, it might be maintained that a cultural good is not primarily a form of merchandise, but above all a work, a creation, with all that this implies in terms of boldness and risk-taking. But when it comes to the cultural industries, there is no getting away from the fact that these goods are produced, circulated and exploited according to a logic, which is economic and market-related. So it is perfectly legitimate to recognize their economic dimension too.

Cultural goods are a form of «merchandise», but they are not «just like any other». Should the emphasis be placed on the first proposition or on the second? Clearly sensitivities, traditions and approaches vary from country to country and the speakers' comments made this abundantly clear. For instance, a number of speakers referred to differences in vocabulary and outlook between the term «culture» denoting «high culture» and the concept of «entertainment». Here too, however, a second consensus seems to have appeared: this distinction is perhaps less valid today because, in our information society, «high culture» is becoming accessible to everyone and much of the culture acquired by individuals now comes from mass cultural products.

The idea of the «cultural exception» was also raised. Contrasting views might have been expected on this subject but did not materialize. Mr Jack Ralite made a brilliant plea in favour of this exception, but it was particularly significant that Ms Bonnie Richardson felt that, as long as this term meant that culture was not only a matter for the economy or an economic concept, she could agree with it.

The discussion enabled the implications of the international trade negotiations to be reviewed, together with the role which cultural products should or should not play in them. The former General Agreement on Tariffs and Trade (GATT), the draft Multilateral Agreement on Investments (MAI) and more recently the World Trade Organization (WTO) and its next «Round» were mentioned. On the subject of the place of cultural goods in this context, discussions centered on the possible strategies, which might be adopted: should cultural goods be excluded completely from these negotiations, at the risk of isolating them? Should they be included while rejecting any commitments in respect of the audio-visual and cinematographic sector in particular, as was the

case in GATT with the affirmation of the cultural exception? Should we fight to maintain the status quo or ask that new services enjoy the same treatment in future? Should we subscribe to Mr Bill Merkin's proposal and put in place specific rules in the international negotiations in the WTO or even go so far as to draw up international conventions on cultural products designed to preserve cultural diversity as Mr Kenneth Stein preferred? Those are some of the possible strategies between which it was not for this symposium to reach a verdict.

The second round table focused on globalization and the promotion of cultural diversity. Globalization can have positive effects on cultural life because it multiplies exchanges of goods and services and is also beneficial to the consumer, user or citizen by giving them broader access to cultural goods. It may also have negative effects when it is accompanied by the process of market deregulation and economic concentration with the twofold threats which result: the domination of strong countries over others or the domination of powerful multinational companies over local, national or independent businesses. Does globalization threaten cultural identities? Yes, if it engenders cultural standardization. However, Mr Isanori Isomura, among others, referred to the «hybrid», «syncretic», «nomadic» culture which is perhaps now seeing the light of day and revealing each individual's plural affiliations.

This leads on to a more general reflection: culture is essentially a dialectic of the universal and the particular. Identities must be preserved, but excessive emphasis on «identity» avoided because it leads to the exclusion of others. That is the exact opposite of the promotion of identity. Men and women must also be offered common values and references, not forgetting the specific features handed down through the ages, history, memory and respect for identities. Divergent views were expressed on this point. Ms Richardson held that internationalization of the markets encouraged cultural diversity, which is facilitated by technology, while the growing demand from the different sectors of the public is itself increasingly diversified. Other speakers felt that cultural diversity was increasingly at risk because economic power relationships introduce a fundamental inequality into exchanges. Several participants from the developing countries expressed their heartfelt convictions on this subject and stressed their own difficulties: Mr Jorge Da Cunha Lima, Mr Férid Boughédir and Mr Ben Zulu. Mr Peter Inkei stated that the countries of Central and Eastern Europe were confronted with a similar situation.

A number of concrete proposals were put forward as ideas rather than projects. Mr Boughédir suggested compulsory financing of African productions by the broadcasters who put out images in Africa by satellite or cable. Mr Stellio Faranjis, Secretary General of the Haut Conseil de la langue française (Senior Council for the French Language), suggested a «book cheque» for

Africans, a UNESCO «label» for those who create new technologies taking account of linguistic pluralism and a UNESCO «radio» station broadcasting songs from different sources by satellite.

The dialogue on intellectual property «set apart» or rather «reconciled» the two protagonists who finally stated their complete agreement. Three conclusions emerged: firstly, the differences of underlying approach between «author's rights» and «copyright» remain evident; on the one hand, Western Civil Law and on the other Common Law. The former places the emphasis on protection of the author and the second on that of the work and through it of the audience and users. However, this differentiation is tending to become blurred with the progressive evolution of legal systems at domestic level and under the impact of international conventions (WIPO, TRIPS agreement – «Agreement on Trade-Related Intellectual Property Issues»); lastly, the advent of the digital age provides a further incentive to break out from this initial duality: the development of the Internet and online networks presupposes harmonization of laws and the adoption of a more realistic attitude. The twofold requirements must therefore be reconciled: respect for author's rights and neighbouring rights which presupposes a reaffirmation of their exclusive right and broad public access to the works. Furthermore, this implies the creation of effective juridical and technical systems to combat piracy.

The final round table dealt with public policies: how can culture be kept alive? The debate centred more on the environment and underlying criteria than on the goals, orientations and procedures of public action. Approaches clearly differ between the industrialized and developing countries. Ms Aminata Traoré and Ms Mira Nair stressed the need for «endogenous development»: the personal search for cultural values and the public action systems which may result. Ms Traoré referred to three lines of action: the definition of a «new vision» in line with Mr Ben Zulu's comments on the reappropriation of a system of specific values; the preservation of cultural goods to create a «new modernity»; direct support for artistic creativity having regard to the mediocre material and financial situation of artists and authors.

Mr Federico Mayor highlighted the importance of democracy not only at national but also at international level. Since the matter at issue was the «centrality» of culture and secondarily the possible public actions, these could not be conducted without the necessary precondition of universal democracy.

A number of other points were made:

- at every opportunity, in the industrialized and developing countries alike, an endeavour must be made to associate public and private partners, business

interests and artists, authors and producers; concertation is vital: public policies cannot be handed down by decree. All these actors in cultural life must be associated to enable an autonomous and rich civil society to remain alive or see the light of day;

- *if public policies are held to be necessary, they must be strong and resolute. Ms Claire Denis reminded the meeting of the importance of such a policy. She quoted the example of France and the policy pursued for many decades in favour of the cinema;*
- *international cooperation and aid for the developing countries must not only focus on the implementation or specific financing of projects such as films, but even more on support for the creation of structuring elements in the respective countries to enable them to build up their own cultural industry.*

In future, related themes might be dealt with in more detail: that of the diversification and clarification of the levels – local, national and international – of public responsibility; the quality of public action whose desirability is recognized, because its purpose is to offset the effects of market forces. But it must also adapt, improve and remain pertinent.

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In conclusion, it is highly desirable for this forum function to be developed and even intensified on matters with which UNESCO may deal. A common basis of reflection must be provided, starting out from viewpoints and opinions, which are not necessarily always the same. Mr Jacques Rigaud stated that this was not simply a matter for governments but also for the community of artists, intellectuals and producers, indeed for all the partners in creation and cultural life. He said that one of UNESCO's roles was to enable all these partners to express their views, speak their minds and take part in the decision-making process in this field.

That being so, three types of discussion might be suggested in future and UNESCO might wish to take the initiative in organizing them:

- *a debate on the strategies to be adopted in international negotiations;*
- *a debate on the contents and procedures of public action;*

- *a debate on sectors (the economics of books, the cinema and records are not exactly the same) and on the major regions of the world.*

Further reflection is imperative, not just on the negotiations which will open in the near future but also, in the hardly more remote perspective of the transition to the 21st century, on the way in which the future may be invented by reconciling two aspirations: those of unity and diversity. The philosopher Gaston Berger saw this very clearly when he wrote: «By taking a long-term view, we begin to shape the future».

