



IN FOCUS

VIEWS ON GLOBAL CULTURAL POLICY

In October, as the UNESCO Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions was being negotiated by country delegates, AN invited commentaries for a Views on Policy series on the intersection of anthropology and policy in thinking about intellectual property rights, cultural diversity and the current regulatory framework the UN and others are developing through the convention.

UNESCO and Cultural Diversity

An Unconventional Approach?

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On October 20, during the General Conference of the UN Educational, Scientific and Cultural Organization (UNESCO) in Paris, member states formally adopted the final text of the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, commonly known as the cultural diversity convention. If 30 states ratify the convention, it would set new standards in intellectual property rights, trade and cultural development. UNESCO bills this international policy instrument as a normative safeguard for cultural production against the leveling power of globalization and the inequalities spawned by the digital divide.

Broadly framed, the convention would reinforce the rights of state parties—in keeping with the UN Charter and other international instruments—to “formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions.” In effect, provisions in the convention that encourage state actions to stimulate, cultivate and support all forms of cultural and artistic expression “within its territory” would essentially affirm the idea of “national cultures,” the intellectual content and consumer value of which must be protected. In this vein, cultural activities are understood to be important “vehicles of identity, values and meaning,” and “cultural diversity” as vital to the “common heritage of humanity.”

Exercising Power Politics

Beneath this sheen of good intention, however, there is a view—held primarily by the US—that the convention is more an exercise in power politics than a viable counter to threats to cultural diversity in

the wake of globalization. Although 148 countries voted for the convention, the US has been critical of the initiative, believing that it is primarily driven by a micro-political agenda related to a ruling handed down by the World Trade Organization (WTO) in 1997.

American sources close to the negotiations on the convention point to what is known as the “magazines case” in which the US challenged a tax levied by the Canadian government on certain periodicals imported into Canada, thereby restricting their commercial movement. On top of this, the US also objected to the application of favorable postage rates to Canadian-produced periodicals on the grounds that this afforded them an unfair commercial advantage. In the opinion of the US, both measures violated specific provisions of the General Agreement on Tariffs and Trade (GATT).

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The WTO panel appointed to hear the case ruled that the measures constituted discrimination against a *good*—the magazines—discounting Canada’s claim that the measures applied rather to an excepted *service*—publishing. Under WTO rules, there are no exceptions allowing a discriminatory tax of this kind on goods. It was this interpretive victory for the US that prompted calls in some quarters for regulatory relief that would protect a certain class of goods—particularly cultural goods that express culture in some way—from untrammelled market forces. The UNESCO convention has been put forward by a number of states as the vehicle to accomplish this.

Protecting Cultural Industries

Although it is not entirely clear that any specific member state used the WTO ruling to launch a campaign



In October 2003, French President Jacques Chirac visited UNESCO, where he called for the adoption of a convention on cultural diversity. Chirac has invoked a principle of “cultural exception,” which assumes that “diversity” refers to national cultures rather than the free exchange of ideas between states.

promoting ideas in the convention, it is widely perceived that France assumed a leadership role in framing the negotiating environment. An advisor to the US delegation to UNESCO referenced a speech delivered by French President Jacques Chirac in May 2005 at a symposium for a “Europe of Culture,” during which he remarked that the WTO was not “the right forum for dealing with issues related to cultural exchange.” Chirac—invoking the principle of “cultural exception” granted by the (now failed) Constitution of Europe—defended state subsidies for culture and issued an explicit plug for the convention, noting that “the convention should establish the specificity of cultural goods.” France’s “cultural exception” argument assumes that “diversity” refers to national cultures rather than the free exchange of ideas between states.

Within the vagaries of globalization and the rapid development of new information and communication technologies, countries like France and Canada appear to be seeking protections for their nation’s publishing and audiovisual services. To get around the GATT provisions, such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS) and Information Technology Agreement

(ITA), administered by the WTO since 1995, these and developing countries sought aid through UNESCO and the concept of “cultural diversity,” as a part of forming “sustainable, economic, social and cultural development.” In 2002, UNESCO, for instance, cooperated in organizing with the UN Conference on Trade and Development a meeting of experts on audiovisual services centered on the “cultural exception” argument.

Some thus argue that the cultural diversity convention is being used by a number of states to invoke their claim to control the commercial dimension of their cultural production. It is a symbolic act that captures what Lawrence Lessig refers to as the inevitable “quiet death” of the public domain—a lawyer-free zone, unregulated by the rules of copyright—in an essay in the September/October 2005 issue of *Foreign Policy* magazine.

Where Is Anthropology?

It is curious that the anthropology community has not been engaged in any meaningful way in the debates about the convention, particularly since it tackles the semantics of a globalized “culture.” Anthropologists perhaps knew relatively little, if anything, about the convention, yet anthropologist Richard Kurin believes their general non-participation in the process reflects a broader pattern of disengagement on global cultural policy agreements, agreements that will influence the operating environment for bearers of culture, artists, and others who produce culture.

An irony is that country delegations who negotiate cultural policy documents like the convention are increasingly staffed not by anthropologists but by lawyers, economists and diplomats. The anthropology community is not routinely contributing to the praxis of global cultural policy work. Kurin added that if the world is making treaties on cultural policy, anthropologists simply must be there. The convention on cultural diversity marks a missed opportunity. ■