

RESPONSE TO LEGAL QUESTIONNAIRE FROM CANADA

A General questions

1 When did the UNESCO Convention **enter into force** in your country?

March 18, 2007

2 Are those provisions of the UNESCO Convention that are precise and clear directly applicable ("**self-executing**") in your country?

(x) Yes () No

3 Please list any **non-governmental organizations** that deal with cultural diversity concerns and that represent a substantial part of the stakeholders concerned by cultural policies in your country.

Coalition for Cultural Diversity, Montreal

B Questions on the implementation of the UNESCO Convention so far

*For the purpose of this questionnaire, "**national law**" includes national legislation, regulations, administrative practice and case law that entered into force before or after the entry into force of the UNESCO Convention in your country.*

4 Does your country have national law implementing the UNESCO Convention as of 1 January 2010?

(x) Yes () No

If the answer is "No", please explain the absence of national law implementing the UNESCO Convention and how this treaty is implemented in your jurisdiction as of 1 January 2010:

n.a.

If the answer is "Yes":

Please reply to the questions as follows that refer to the legal situation as of 1 January 2010, and specify for each of your replies, where applicable, whether the relevant national law existed already prior to the entry into force of the UNESCO Convention in your country:

4.1 How does your country comply with points 4, 7 and 8 of article 2 of the 2005 UNESCO Convention ("principle of **international solidarity and cooperation**" and "Principle of **equitable access**" and "principle of **openness and balance**") and with articles 12 to 17 of the 2005 UNESCO Convention ("promotion of international

cooperation”) in its implementing national law?

Article 2.4

Canada’s compliance with principle of international solidarity and cooperation

Canada is very active internationally in promoting cultural diversity. Among the principal mechanisms to achieve this are the following. This is not an exhaustive list.

1. International Network on Cultural Policy (INCP)

Created in June 1998, at the suggestion of Canada, the *International Network on Cultural Policy* (INCP) is an informal, international venue where national ministers responsible for culture can explore and exchange views on new and emerging cultural policy issues and develop strategies to promote cultural diversity. The INCP Liaison Bureau – the Network’s secretariat – is housed in Canadian Heritage’s International Affairs Branch, which also operates the INCP website.

The INCP aims to strengthen cultural policies so that governments, together with civil society, can create an international environment that values diversity, creativity, accessibility and freedom by:

- offering a means through which participants can share their expertise, exchange views and information, and strengthen domestic and international partnerships;
- raising awareness of the importance of cultural diversity and identity to social and economic development;
- advancing dialogue on cultural policy issues by ensuring that culture is "on the table" in international, national and local fora.

2. International Audio-visual Co-Productions

To enable other countries to create and strengthen their means of cultural expression, Canada also supports international co-productions in the audio-visual field. A coproduction is a film and/or television production that has been created by pooling creative, technical and financial resources of Canadian and foreign producers. Governed under the terms of an international treaty between partnering countries, these productions are granted national status and can be used to meet domestic broadcast quotas. These productions are also eligible for federal and provincial tax credits and additional funding sources from the Canadian Television Fund and the Canada Feature Film Fund.

Canada was one of the first countries to recognize the advantages of audiovisual co-productions. These agreements have advanced the audiovisual industry in Canada, strengthening international ties in the cultural sector; and promoting and disseminating Canadian culture abroad. Over the course of 40 years, Canada has signed co-production agreements with 53 countries, and over the past decade, Canada has co-produced over 800 films and television productions.

3. Cultural cooperation agreements

Canada has cultural agreements or cultural memoranda of understanding with many countries to facilitate cultural cooperation. These typically cover a wide range of topics, including: Cooperation and exchange of expertise in the field of cultural statistics; Encourage arts and cultural festivals to include works and performances from the other country; Exchanges of artists and performers; Exchanges between government institutions such as museums, art institutions, broadcasting institutions, libraries and archives; Exchanges of experts in the field of cultural heritage; Sharing of

best practices regarding the promotion of indigenous cultures and languages; Cooperation in film and television; Cooperation in publishing. Canada also maintains a cultural centre in Paris and London.

Article 2.7

Canada's compliance with principle of equitable access

Canada is very open to cultural expression from other countries.

Virtually all Canadian broadcasters include programming from other countries in their program schedules. Apart from French and English broadcast services, Canada also licenses Canadian TV services in Spanish, Portuguese, Chinese, Hindi and Greek, the schedules for which are predominantly filled with foreign programming in those languages. In addition, Canada permits general interest foreign language broadcast services from around the world direct access to Canadian homes.

Canada also supports TV-5, the international service in the French language.

Canada is also open to print media from around the world. There is no duty payable on the importation of foreign books, magazines, or newspapers.

Article 2.8

Canada's compliance with principle of openness and balance

Canada is very open to the cultures of the world, which is understandable given that a large percentage of its population was born outside Canada and emigrated to Canada. In terms of cultural expression from all these diverse cultures, the Canada Council for the Arts, provincial arts councils, and regional and municipal governments support artists from diverse cultural backgrounds and disciplines. Municipal, regional and national museums, archives and libraries showcase the cultural and scientific achievements of Canada's many peoples. Other Canadian institutions provide funding and support for artistic expression from diverse cultural traditions. Community centres and municipally funded continuing education programs also support classes in traditional dance and music.

Canada is also active in supporting diverse languages. Canada is officially bilingual and Government of Canada services are offered in both English and French across the country. More than two million students are taking second-language courses--350,000 in immersion programs. In addition to Canada's two official languages and Aboriginal languages from Cree to Inuktitut, community centres and schools in many parts of the country offer courses in the languages of Canada's numerous cultural communities, including Arabic, Cantonese, German, Hebrew, Hindi, Ukrainian, Vietnamese and many others.

Articles 12 to 17

Canada's compliance with promotion of international cooperation

Canada is involved in many ways in international cooperation and coordination to support cultural diversity in other countries. In that connection, Canada actively participates in the International Network on Cultural Policy (INCP), noted above, the Commonwealth Foundation, the Francophonie (where Canada is part of a working group on cultural diversity), and the Organisation of American States (OAS) (where Canada has chaired the cultural intergovernmental

committee).

Canada is very involved in the work of the UNESCO Convention itself. Canada is an active member of the Intergovernmental Committee created by Article 23. Canada is also a major contributor to the International Fund for Cultural Diversity created under Article 18.

The Canadian Coalition for Cultural Diversity, a civil society organization based in Montreal, also acts as the headquarters for the International Federation of Coalitions for Cultural Diversity.

4.2 What **measures** in the sense of articles 6, 7 and 8 of the 2005 UNESCO Convention, including but not limited to measures aimed at protecting and promoting linguistic diversity, were adopted in your country by the implementing national law?

Measures adopted by Canada in the sense of Articles 6, 7 and 8

To protect and promote the diversity of cultural expression within Canada, Canada has adopted a wide variety of measures. The principal measures include the following:

1. *Broadcasting Act, Statutes of Canada, 1991, chapter 11*

This statute provides key support for cultural diversity. It requires broadcasting undertakings to obtain a licence from the Canadian Radio-television and Telecommunications Commission (CRTC), an independent regulatory agency, and to impose licence conditions and to issue regulations binding on its broadcast licensees which implement the “Broadcasting Policy for Canada” set out in section 3 of the Act. That policy reads as follows:

Broadcasting Policy for Canada

3. (1) It is hereby declared as the broadcasting policy for Canada that

(a) the Canadian broadcasting system shall be effectively owned and controlled by Canadians;

(b) the Canadian broadcasting system, operating primarily in the English and French languages and comprising public, private and community elements, makes use of radio frequencies that are public property and provides, through its programming, a public service essential to the maintenance and enhancement of national identity and cultural sovereignty;

(c) English and French language broadcasting, while sharing common aspects, operate under different conditions and may have different requirements;

(d) the Canadian broadcasting system should

(i) serve to safeguard, enrich and strengthen the cultural, political, social and economic fabric of Canada,

(ii) encourage the development of Canadian expression by providing a wide range of programming that reflects Canadian attitudes, opinions, ideas, values and artistic creativity, by displaying Canadian talent in entertainment programming and by offering information and analysis concerning Canada and other countries from a Canadian point of view,

(iii) through its programming and the employment opportunities arising out of its operations, serve the needs and interests, and reflect the circumstances and aspirations, of Canadian men, women and children, including equal rights, the linguistic duality and multicultural and multiracial nature of Canadian society and the special place of aboriginal peoples within that society, and

(iv) be readily adaptable to scientific and technological change;

- (e) each element of the Canadian broadcasting system shall contribute in an appropriate manner to the creation and presentation of Canadian programming;
- (f) each broadcasting undertaking shall make maximum use, and in no case less than predominant use, of Canadian creative and other resources in the creation and presentation of programming, unless the nature of the service provided by the undertaking, such as specialized content or format or the use of languages other than French and English, renders that use impracticable, in which case the undertaking shall make the greatest practicable use of those resources;
- (g) the programming originated by broadcasting undertakings should be of high standard;
- (h) all persons who are licensed to carry on broadcasting undertakings have a responsibility for the programs they broadcast;
- (i) the programming provided by the Canadian broadcasting system should
- (i) be varied and comprehensive, providing a balance of information, enlightenment and entertainment for men, women and children of all ages, interests and tastes,
 - (ii) be drawn from local, regional, national and international sources,
 - (iii) include educational programs and community programs,
 - (iv) provide a reasonable opportunity for the public to be exposed to the expression of differing views on matters of public concern, and
 - (v) include a significant contribution from the Canadian independent production sector;
- (j) educational programming, particularly where provided through the facilities of an independent educational authority, is an integral part of the Canadian broadcasting system;
- (k) a range of broadcasting services in English and in French shall be extended to all Canadians as resources become available;
- (l) the Canadian Broadcasting Corporation, as the national public broadcaster, should provide radio and television services incorporating a wide range of programming that informs, enlightens and entertains;
- (m) the programming provided by the Corporation should
- (i) be predominantly and distinctively Canadian,
 - (ii) reflect Canada and its regions to national and regional audiences, while serving the special needs of those regions,
 - (iii) actively contribute to the flow and exchange of cultural expression,
 - (iv) be in English and in French, reflecting the different needs and circumstances of each official language community, including the particular needs and circumstances of English and French linguistic minorities,
 - (v) strive to be of equivalent quality in English and in French,
 - (vi) contribute to shared national consciousness and identity,
 - (vii) be made available throughout Canada by the most appropriate and efficient means and as resources become available for the purpose, and
 - (viii) reflect the multicultural and multiracial nature of Canada;
- (n) where any conflict arises between the objectives of the Corporation set out in paragraphs (l) and (m) and the interests of any other broadcasting undertaking of the Canadian broadcasting system, it shall be resolved in the public interest, and where the public interest would be equally served by resolving the conflict in favour of either, it shall be resolved in favour of the objectives set out in paragraphs (l) and (m);
- (o) programming that reflects the aboriginal cultures of Canada should be provided within the Canadian broadcasting system as resources become available for the purpose;
- (p) programming accessible by disabled persons should be provided within the Canadian broadcasting system as resources become available for the purpose;
- (q) without limiting any obligation of a broadcasting undertaking to provide the programming contemplated by paragraph (i), alternative television programming services in English and in French should be provided where necessary to ensure that the full range of programming contemplated by that paragraph is made available through the Canadian broadcasting system;

- (r) the programming provided by alternative television programming services should
 - (i) be innovative and be complementary to the programming provided for mass audiences,
 - (ii) cater to tastes and interests not adequately provided for by the programming provided for mass audiences, and include programming devoted to culture and the arts,
 - (iii) reflect Canada's regions and multicultural nature,
 - (iv) as far as possible, be acquired rather than produced by those services, and
 - (v) be made available throughout Canada by the most cost-efficient means;
- (s) private networks and programming undertakings should, to an extent consistent with the financial and other resources available to them,
 - (i) contribute significantly to the creation and presentation of Canadian programming, and
 - (ii) be responsive to the evolving demands of the public; and
- (t) distribution undertakings
 - (i) should give priority to the carriage of Canadian programming services and, in particular, to the carriage of local Canadian stations,
 - (ii) should provide efficient delivery of programming at affordable rates, using the most effective technologies available at reasonable cost,
 - (iii) should, where programming services are supplied to them by broadcasting undertakings pursuant to contractual arrangements, provide reasonable terms for the carriage, packaging and retailing of those programming services, and
 - (iv) may, where the Commission considers it appropriate, originate programming, including local programming, on such terms as are conducive to the achievement of the objectives of the broadcasting policy set out in this subsection, and in particular provide access for underserved linguistic and cultural minority communities.

(2) It is further declared that the Canadian broadcasting system constitutes a single system and that the objectives of the broadcasting policy set out in subsection (1) can best be achieved by providing for the regulation and supervision of the Canadian broadcasting system by a single independent public authority.

To implement these objectives, the CRTC has done the following:

- (a) licensed a national public broadcaster, the Canadian Broadcasting Corporation/Société Radio-Canada, to provide radio and television services in both official languages (English and French) across Canada. In addition to broadcasting across the country in English and French, CBC/Radio-Canada broadcasts programs in eight Aboriginal languages in Canada's North. Canada supports the CBC with an annual parliamentary appropriation of about C\$1 billion. The CBC also operates Radio Canada International (RCI), one of the most respected shortwave services in the world, which broadcasts programs in eight languages worldwide.
- (b) licensed six provincial educational TV broadcasters based in five provinces in Canada.
- (c) licensed commercial TV broadcasters serving every significant city in Canada. These broadcasters are Canadian-owned and controlled and are required to air a minimum of 60% Canadian programming overall (50% in evening hours), and to air 8 hours a week in prime time of so-called "priority" Canadian programming (e.g. drama).
- (d) licensed cable and satellite distribution companies (so-called "broadcasting distribution undertakings" or BDUs) to provide, in competition with each other, packages of TV services to households across Canada. About 90% of Canadian households currently subscribe to the services of a BDU. Each BDU over a minimum size is required to devote at least 6.5% of its gross subscriber revenue in the previous year to Canadian programming, with up to 2% of the 6.5% to fund a local community channel, 1.5% to fund

local TV news and other local programs, and the rest (3%) to assist in the funding of national Canadian drama, long-form documentaries or children's programming. Regulations also require that most Canadian services be carried by the BDU, subject to CRTC arbitration if necessary, and that a majority of the services in any overall package offered by BDUs to Canadians consist of Canadian TV services.

- (e) licensed over 150 Canadian pay and specialty programming services to be offered to Canadians through BDUs. Each service is Canadian-owned and controlled and is required to offer programming in a particular niche (e.g. children's women's, home and garden, sports, news, history, drama, etc.). All services are subject to conditions of licence requiring them to air a certain proportion of Canadian programming in their genre, and most services are required to expend a certain proportion of the previous year's advertising and subscription revenue on such programming.
- (f) licensed commercial radio stations to serve every significant city in Canada, subject to regulations which require that at least 35% of their musical selections must be Canadian. To be Canadian, the selection must meet at least 2 of 4 attributes – music, lyrics, artist or production by a Canadian.
- (g) licensed radio and TV services operating in aboriginal languages;
- (h) licensed a number of religious radio and television stations;
- (i) licensed a number of ethnic radio and television stations; and
- (j) licensed broadcast services for the hard-of-hearing and the visually-impaired

2. *Department of Canadian Heritage*

This department of the Government of Canada administers a number of programs which subsidize creative expression by Canadians. They include the following:

(a) Canada Book Fund

The principal objective of the Canada Book Fund (formerly known as the Book Publishing Industry Development Program) is to ensure access to a diverse range of Canadian-authored books in Canada and abroad. The program seeks to achieve this objective by fostering a viable Canadian book industry that publishes and markets Canadian-authored books. The program has two main supports: Support for Publishers and Support for Organizations and Associations

(b) Canada Periodical Fund

To ensure the continued vibrancy of the Canadian magazine industry, the Government of Canada created the Canada Magazine Fund in 2000. The Fund has contributed toward the production of high-quality magazines showcasing the work of a wide cross-section of Canadian creators. The Fund also helped build industry capacity through support for business development of small magazine publishers, industry development projects and support for arts and literary magazines. In 2010, this fund is being replaced with the Canada Periodical Fund (CPF) which will provide financial assistance to the Canadian magazine and non-daily newspaper industries so they can continue to produce and distribute Canadian content in the

face of systemic disadvantages in the marketplace. The CPF has three components: Aid to Publishers, Business Innovation, and Collective Initiatives. Aid to Publishers provides funding to eligible Canadian print magazines and non-daily newspapers calculated using a formula based on eligible copies sold or distributed by verified request over a 12-month period. At least 5000 copies must have been sold or distributed by request during this period. Publishers are able to use funding to support the creation of content, production, distribution, online activities, or business development. Business Innovation offers support for projects to eligible small and mid-sized printed and online

(c) Canada Television Fund

The Canadian Television Fund (CTF) has played a pivotal role in the creation and broadcast in peak viewing hours of high quality, distinctively Canadian programming for television. Since its creation in 1996, the CTF has supported over 4,000 projects, producing more than 20,894 hours of new Canadian television programming in the four genres: drama, documentary, children's and youth, variety/performing arts in both official languages and in Aboriginal languages. Funded programs include: *Degrassi: The Next Generation*, *The Collector*, *DaVinci's Inquest*, *Les Bougons*, *Francoeur* and *Vice caché*. The CTF is a public-private partnership funded by the Government of Canada, cable companies and direct-to-home satellite service providers. With an annual budget of approximately \$250 million, \$115 million of which comes from the government, its role is to assist the creation and broadcast in peak viewing hours of high-quality, culturally significant Canadian television programs in both official languages by both majority and minority official languages production sectors.

In 2009, the Government of Canada announced that the name of the CTF would be changed to the Canada Media Fund, that its governance would be reorganized, and that the Fund would focus on audiovisual projects with two or more television platforms, including the use of new media..

(d) Canada Music Fund

The Canadian music industry includes a wide range of creators and entrepreneurs who create, produce and market original and diverse Canadian music. To help the industry meet new challenges, the Government created the Canada Music Fund. The Canada Music Fund is the primary tool implementing the three major objectives of the government's policy, *Canadian Sound Recording Policy, From Creators to Audience*, which are:

- to enhance Canadians access to a diverse range of Canadian music choices through existing and emerging media;
- to increase the opportunities available for Canadian music artists and entrepreneurs to make a significant and lasting contribution to Canadian cultural expression; and,
- to ensure that Canadian music artists and entrepreneurs have the skills, know-how and tools to succeed in a global and digital environment.

The Canada Music Fund consists of seven complementary components, each one contributing uniquely to these goals:

Creators' Assistance Component
Canadian Musical Diversity Component
New Musical Works Component
Collective Initiatives Component

Music Entrepreneur Component
Support to Sector Associations Component
Canadian Music Memories Component

(e) Canadian Film or Video Production Tax Credit (CPTC)

The Department also administers a significant tax credit program, which is available to support Canadian audio-visual productions. In order for a production to qualify as Canadian content for tax credit purposes, the production must meet specific criteria for key creative personnel and production costs, which are outlined in its guidelines.

3. *National Film Board*

Established in 1939, the National Film Board of Canada (NFB) remains a major cultural institution. To date, it has received 4,724 awards in Canada and abroad, including 11 Oscars. Its productions reflect the diversity of Canadian society. They often explore subjects related to immigration and the cultural mosaic. The NFB provides opportunities for ethnic communities in Canada to tell their stories. In 2003-2004, there were 147 original films and multimedia titles: 94 original NFB productions and 53 original co-productions. Of these, 79 were in English, 42 in French, and 26 in other languages. In addition, 25 percent of all productions were the work of artists from Aboriginal and ethnocultural communities. The NFB supports numerous festivals that screen films representing diverse cultures, such as the First Peoples Festival, the Journées du cinéma africain et créole, the Toronto Hispano Film Fest and the Toronto Reel Asian Film Festival.

4. *Telefilm Canada*

Telefilm Canada is a federal cultural agency dedicated to the development and promotion of the Canadian audiovisual industry. Headquartered in Montréal, Telefilm provides services to the Canadian audiovisual industry by means of four regional offices located in Vancouver, Toronto, Montréal and Halifax. It acts as one of the Canadian government's principal instruments for providing strategic leverage to the private sector, supplying the film, television and new media industries with financial and strategic support. Telefilm's role is to foster the production of films, television programs and cultural products that reflect Canadian society, with its linguistic duality and cultural diversity, and to encourage their dissemination at home and abroad.

5. *Canada Council for the Arts*

The Canada Council for the Arts is Canada's national, arm's-length arts funding agency. Its main areas of activity are (a) grants (funding is provided to individual professional artists and arts organizations through a peer assessment process) (b) endowments and prizes (each year fellowships and prizes are awarded to some 200 artists and scholars); and (c) research, communications and arts promotion activities to further its mandate to support, promote and celebrate the arts. The Canadian Commission for UNESCO is administered through the Canada Council.

6. *Foreign Publishers Advertising Services Act, Statutes of Canada 1999, chapter 23*

This legislation was enacted following the decision of the World Trade Organization (WTO) in

1997, striking down Canadian legislation taxing the publication of so-called “split-run” magazines, i.e. editions of foreign magazines with Canadian ads inserted in place of foreign ads. (Foreign magazines with their original ads has always been freely permitted to be distributed and sold in Canada.) The 1999 legislation now allows the publication of foreign split-run editions, provided that the Canadian ads do not take up more than 18% of the space of the total ads, and subject to tax rules that do not permit Canadian advertisers to write off their ad expenses in such publications unless over 50% of the editorial matter consists of new original content created for the Canadian market. Under this legislation, few if any split-run editions have been published in Canada.

7. Foreign Investment Rules in the Cultural Industries

Under the *Broadcasting Act*, only Canadian-owned and controlled companies may be licensed to operated broadcasting services in Canada, although a wide number of foreign broadcast services are permitted to be distributed in Canada if they do not compete directly in format with Canadian services. Through the *Investment Canada Act*, the Government of Canada has also limited new investment in certain culturally significant sectors to Canadian owned and controlled companies. The sectors include book publishing, periodical publishing, sound recording companies, film distributors and retail bookstores. However, foreign-owned companies that were active prior to 1988 in these sectors have been grandfathered.

8. FACTOR and MUSICACTION

The Foundation to Assist Canadian Talent on Recordings (FACTOR), based in Toronto, was established in 1982 to support production of Canadian sound recordings featuring existing and emerging Canadian musical artists. MUSICACTION is a counterpart organization based in Montreal which assists musical artists recording in the French language. The organizations are funded by commercial radio stations and satellite radio services, as well as by the federal government. Commercial radio stations are required to make annual “Canadian content development” contributions of up to 0.5% of their revenue, at least 60% of which must go to FACTOR or MUSICACTION. The satellite radio services licensed in Canada must contribute at least 5% of their gross revenue to eligible third parties associated with Canadian content development, including FACTOR and MUSICACTION. In addition, when radio stations are sold in Canada, 6% of the transaction price must be expended on Canadian content development, at least a third of which must be contributed to FACTOR or MUSICACTION.

FACTOR and MUSICACTION are non-profit organizations that are dedicated to providing assistance toward the growth and development of the Canadian independent recording industry. In addition to administering contributions from radio broadcasters, the organizations administer two components of the Department of Canadian Heritage’s Canada Music Fund to support the Canadian music industry. Support is provided to Canadian recording artists, songwriters, managers, labels and distributors through various programs which all aid in the development of the industry. Whether an artist is looking to record a demo, full length sound recording, market and promote an already existing album or showcase and tour domestically and internationally, funding is available.

FACTOR currently provides over \$17 million annually to support the Canadian music industry, \$9 million of which comes from Canadian broadcasters and \$8.5 million from the Department of Canadian Heritage. MUSICACTION provides over \$7 million annually, \$5 million of which comes from the Department of Canadian Heritage, and \$2 million from

Canadian broadcasters.

9 *Provincial Agencies*

A number of provinces have agencies that support cultural expression and cultural diversity. These included the Ontario Media Development Corporation, the Quebec Société de développement des entreprises culturelles (SODEC), and a number of provincial and municipal arts councils. Most provinces also administer tax credits for qualifying audiovisual productions.

4.3 How is article 11 of the 2005 UNESCO Convention ("**participation of civil society**") regulated in the implementing national law?

Regulation of participation of civil society in Canada

Canada supports efforts to promote cultural diversity in civil society, particularly through the following organizations:

The *Coalition for Cultural Diversity* (CCD), based in Montreal, which consists of 38 Canadian national associations in the cultural milieu. The CCD was active in calling for a binding convention on the diversity of cultural expressions, and encourages the creation of sister coalitions in other countries to support similar objectives. The CCD receives major funding from the Governments of Canada, Quebec and Ontario.

The *Canadian Commission for UNESCO* (CCU), an arm's-length organization operating under the aegis of the Canada Council for the Arts. The CCU has served as a key forum for dialogue between government and civil society. The CCU has a network of approximately 400 members across the country which includes federal departments and agencies, intergovernmental bodies which represent provinces and territories, NGOs, institutions and individual members. The CCU's mission is much like those outlined by UNESCO for all National Commissions. These bodies form a network within the United Nations system and ensure outreach to and mobilization of civil society partners, as well as relations with parliamentarians and municipalities in support of UNESCO's visibility and program priorities across all regions.

4.4 How are articles 20 and 21 of the 2005 UNESCO Convention ("**relationship to other treaties**" and "**international consultation and coordination**") regulated in the implementing national law?

Regulation of relationship to other treaties and international consultation and coordination by Canada

In the negotiation of future trade or other international agreements, Canada is well aware of the importance of maintaining its sovereign ability to implement its cultural policies without fear of trade or other retaliation. In that regard, its negotiators – whether at the WTO, WIPO or in other bilateral or multilateral fora- interface with Canada's heritage ministry to ensure that its cultural protection and assistance measures can be maintained and enhanced.

Canada also discusses these matters within the fora noted in the response to Question 8 below,

including the INCP, the Commonwealth Foundation, the Francophonie and the OAS, and of course, within UNESCO itself..

4.5 How does your country assess and insure the compliance of its efforts to implement the UNESCO Convention with respect to its **human rights obligations**?

Compliance by Canada with human rights obligations

In addition to supporting the principles enunciated in the *Universal Declaration of Human Rights*, Canada has ratified the six United Nations human rights treaties and submitted reports on its implementation of each of these treaties.

Universal Declaration of Human Rights.

Adopted and proclaimed by the UN General Assembly on December 10, 1948.

1. *International Covenant on Civil and Political Rights (ICCPR)*. Accession by Canada in May 1976.
2. *International Covenant on Economic, Social and Cultural Rights (ICESCR)*. Ratified by Canada in May 1976.
3. *International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)*. Accession by Canada in October 1970.
4. *Convention on the Rights of the Child (CRC)*. Ratified by Canada in December 1991.
5. *Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*. Ratified by Canada in December 1981.
6. *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)*. Ratified by Canada in June 1987.

At the domestic level, the *Canadian Charter of Rights and Freedoms* was proclaimed in force in 1982. Focusing on its implications for diverse cultural expression, the Charter states that everyone has certain fundamental freedoms, including freedom of conscience and religion, and freedom of thought, belief, opinion and expression, “including freedom of the press and other means of communication.” These rights and freedoms are “subject only to such reasonable limits prescribed by laws as can be demonstrably justified in a free and democratic society.”

*As a complement to your replies to questions 4.1 to 4.5, please provide a copy of, or references to, your country’s implementing **national law**, if any, together with related commentaries and web site addresses where such national law and related documentation may be found. [See response to Question 14 below]*

5 Does your country intend to ask for a contribution to one or more own projects from the **international fund** for cultural diversity according to article 18 of the UNESCO Convention for the purpose of implementing the UNESCO Convention on the national level?

() Yes (x) No

If yes, please describe the project(s) for which your country will ask for funding:

n.a.

6 Is your country affected by **special situations** contemplated under articles 8, 12 para. 1, 17 and 23, point 1 of the UNESCO Convention ("special situations where cultural expressions on its territory are at risk of extinction, under serious threat, or otherwise in need of urgent safeguarding")?

Yes (x) No ()

If "Yes", please describe these special situations, and the measures that your country adopts to redress these situations?

In terms of its two official languages (English and French), Canada does not consider that cultural expression in those languages is under serious threat, given its existing cultural policies. However, it does recognize that cultural expression in certain aboriginal languages may be under threat and it has adopted a number of measures to try to address this. Canada will depend on its own resources to address any problems that may arise in its own country and will not be looking for financial or other support from any other country.

7 What **institutional measures**, if any, does your government take to facilitate dialogue and coordinate action between culture and trade ministries and other relevant ministries (e.g. foreign affairs ministry) on the national level in order to meet the objectives of the UNESCO Convention?

Institutional measures between ministries in Canada

The Government of Canada has created an Interdepartmental Committee which meets at least once a year to discuss the interface between cultural policies and trade and other issues. The Committee includes representatives from the Heritage, Foreign Affairs and International Trade ministries and the Privy Council office. Canada also meets regularly with its counterpart officials in the Province of Quebec to coordinate action in this area.

8 How does your country contribute to meet the objectives of the UNESCO Convention on the **regional and international levels** (e.g. coordination and collaboration with regional organizations, promotion of exchanges between National UNESCO Commissions, involvement in negotiating the operational Guidelines of the UNESCO Convention, activities within the Intergovernmental Committee)?

Participation by Canada at regional and international levels

Canada actively participates in a number of international fora where cultural diversity is discussed. These include the International Network on Cultural Policy (INCP), noted under the response to question 4.1, the Commonwealth Foundation, the Francophonie (where Canada is part of a working group on cultural diversity), and the Organisation of American States (OAS) (where

Canada has chaired the cultural intergovernmental committee).

The Canadian Commission for UNESCO, as part of the European grouping of such commissions, meets regularly with its European counterparts.

Canada is very involved in the work of the UNESCO Convention. It chairs the Intergovernmental Committee created by Article 23 and is an active member of the Conference of Parties established under Article 22.

The Canadian Coalition for Cultural Diversity, a civil society organization based in Montreal, also acts as the headquarters for the International Federation of Coalitions for Cultural Diversity.

C Questions on the further implementation of the UNESCO Convention

To reply to the following questions, you may consult with the competent agency within the Ministry of Culture of your country, or with your national contact point for the UNESCO Convention (articles 9, letter b, and 28) as listed in

www.unesco.org/culture/fr/diversity/convention/3igc/3IGC_INF6_Points_de_contact_des_Parties.pdf

9 Which **major problems**, if any, related to the implementation of the UNESCO Convention does your country identify so far?

Major problems

Canada has identified three major challenges ahead for the UNESCO Convention, which will need to be addressed.

1. The first challenge is to achieve widespread ratification of the UNESCO Convention from all regions of the world and in as many countries as possible. The World Heritage Convention, signed in 1972, now has 187 of the 193 UNESCO member countries assenting to it. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions now has 104 members and one regional economic integration organization, the European Community. While this is an excellent start for such a short time, efforts should continue to expand this number, particularly in the Asian and Arab world where progress is lagging.
2. The second challenge will be to ensure that the International Fund for Cultural Diversity established under Article 18 has sufficient resources to do a meaningful job.
3. The third challenge is to ensure that UNESCO itself has the proper human resources to handle the working of the Convention.

10 Which **best practices** related to the implementation of the UNESCO Convention does your country identify so far?

Best practices

There is no central repository of Canada's cultural policies or "best practices". Observers of the

Canadian environment therefore need to consult a variety of sources, including those noted in the response to Question 14 below. The Quebec government issues a highly regarded bi-weekly newsletter in English, French and Spanish on the internet that monitors international conferences, speeches and developments relating to cultural diversity.

11 What are the **expectations** of your country regarding the further implementation of the UNESCO Convention

11.1 in the best case scenario?

In a best case scenario, (a) the UNESCO Convention would be ratified by 150+ countries, (b) the Fund would provide meaningful support for developing countries, (c) there would be universal acceptance of the importance of cultural policies that provide space and choice for a diversity of cultural expression worldwide, and (d) there would be significant implementation of these policies by countries around the world..

11.2 in the worst case scenario?

In a worst case scenario, ratification efforts would come to a halt, developing countries would receive little or no support for their efforts in cultural expression, and cultural policies would become increasingly embattled and ineffective.

11.3 in the most likely scenario?

In the most likely scenario, there would be mixed results.

12. From the perspective of your country, what will be the **priorities** when implementing the UNESCO Convention in the near future?

Priorities

Canada already has a panoply of cultural policies of varying effectiveness. These will need to be constantly re-evaluated and re-invented to ensure that they work well. A key priority will be ensure that Canadian cultural expression is maintained and even enhanced despite the impact of the recession and the impact of new technologies.

13 Which concrete actions in terms of **legal and policy measures** does your country contemplate to take in order to implement the UNESCO Convention in the near future?

Legal and policy measures

By virtue of its existing measures, Canada does not need to take any new legal or policy measures in order to implement the Convention.

14 If you have **further comments** on the questions of this survey or **additional information** that is useful for assessing the implementation of the UNESCO Convention in your country, please state them here:

The following sources may be useful:

Canadian Film and Television Production Association, *Guide 08/09* (22nd edition)

This annual guide is an industry directory to broadcast support funds, production subsidies and tax incentives

CRTC, *Communications Monitoring Report, 2009*

This annual report, available from the CRTC website, provides useful statistics on the broadcasting sector in Canada

Peter S. Grant and Chris Wood, *Blockbusters and Trade Wars: Popular Culture in a Globalized World* (Vancouver: Douglas & McIntyre, 2004); also published simultaneously in the French language as *Le Marché des Étoiles: culture populaire et mondialisation* (Montréal: Boréal, 2004)

This book, while including examples from around the world, details the Canadian “cultural tool kit” of measures used to protect and promote Canadian cultural expression.

Peter S. Grant et al, *Canadian Broadcasting Regulatory Handbook* (Tenth Edition, 2010); *Regulatory Guide to Canadian Television* (5th Edition, 2010); and *Regulatory Guide to Canadian Radio* (2nd Edition, 2008)

These handbooks are standard references on the broadcasting sector in Canada and include references to all relevant CRTC regulations, orders, decisions and policy statements. They can be ordered from the website of McCarthy Tétrault LLP, Toronto, at www.mccarthy.ca.

The following websites of the major Canadian agencies noted above provide additional information:

CRTC: www.crtc.gc.ca

Department of Canadian Heritage: www.pch.gc.ca

Quebec cultural diversity website: www.diversite-culturelle.qc.ca

CFTPA: www.cftpa.ca

D Identification of respondent to this questionnaire

Name: Peter S. Grant

Organization: McCarthy Tétrault LLP

Position (title) within the organization: Counsel

Postal address: PO Box 48, Suite 5300, TD Bank Tower, 66 Wellington St W, Toronto, Ontario, Canada M5K 1E6

Phone: 416 601-7620

Fax: 416 868-0673

Email: pgrant@mccarthy.ca

Website: www.mccarthy.ca

Date and place: Toronto, February 9, 2010