



DIRECTORATE-GENERAL FOR INTERNAL POLICIES 
POLICY DEPARTMENT B 
STRUCTURAL AND COHESION POLICIES 



Implementing the UNESCO Convention on Cultural Diversity in the European Union

A Study by Germann Avocats
and its multidisciplinary research team
www.diversitystudy.eu

Overview: A Study on three pillars

- Fact finding mission and discussions on www.diversitystudy.eu
- Short Version of the Study:
 - Part I on facts and stakeholders' opinions (questionnaires)
 - Part II on new ideas (intellectual property and competition, civil society and cultural genocide prevention)
 - Part III on EU's external relations
 - Part IV on EU's internal policies
 - Part V with conclusions and recommendations
- Long version (Study Papers for Parts I to IV)

Originality of the Study

- Critical approach towards intellectual property and selective state aid:
 - Some copyright, but not too much
 - Clear separation between state and culture
- Reform the system: cultural sector specific competition law and non-discrimination principles “Cultural Treatment” and “Most Favored Culture” (CT & MFC)
- Induce market dominating corporations to promote diversity of cultural expressions
- Beyond cultural goods and services: early prevention of mass atrocities and genocide

Challenges for European policy makers

- De facto “soft law”, but policy tool with great potential
- Absence of formal discussions at the WTO
- EU supported US in WTO litigation against China concerning cultural industries without formal discussion
- Coherence in regional and bilateral agreements (Cultural Cooperation Protocols) → towards a plurilateral reference agreement?
- Lessons from existing initiatives: ACP film fund and internal programmes
- Institutional design: stock taking, synergies, new bodies

Opportunities and threats for private and public stakeholders

- The UNESCO Convention provides considerable space for civil society's participation.
- **Policy makers can enrich their political programmes and enlarge their constituencies.**
- If policy makers only listen to the economically strongest and loudest actors, they will fail in materialising those features of the Convention that we consider the most valuable.

A good governance tool for policy makers and civil society activists

- Translate the Convention on cultural diversity into a new treaty to promote “human diversity”
 - **Maximize the wealth, and settle tensions resulting from the diversity of cultural, political, ethnical, religious and national expressions**
- **Immunize civil society against conflict entrepreneurs**

The UNESCO Convention on cultural diversity: A limited free pass

- Article 5 – General rule regarding rights and obligations
The Parties, in conformity with the Charter of the United Nations, the principles of international law and universally recognized human rights instruments, reaffirm their **sovereign right to formulate and implement their cultural policies and to adopt measures to protect and promote the diversity of cultural expressions** and to strengthen international cooperation to achieve the purposes of this Convention.

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Principles of equitable access, openness, balance, solidarity, cooperation and sustainable development

- Legal safeguards against the worst case scenarios:
 - **Cultural imperialism or colonialism** (dictat of the politically and economically strongest)
 - **Cultural piracy** (by analogy to biopiracy)
 - **Cultural protectionism and relativism** (versus cultural diversity and universality of human rights and fundamental freedoms)
 - **Cultural genocide** (destruction of a human group as such by destroying its cultural expressions)

A cultural interest

Being aware that **cultural diversity creates a rich and varied world, which increases the range of choices and nurtures human capacities and values**, and therefore is a mainspring for sustainable development for communities, peoples and nations,

A democratic interest

Celebrating the importance of cultural diversity for the full realization of human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights and other universally recognized instruments,

An economic interest

Making money locally...

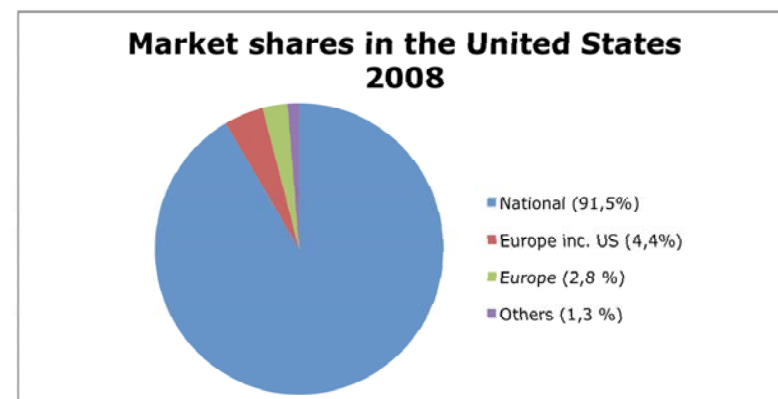
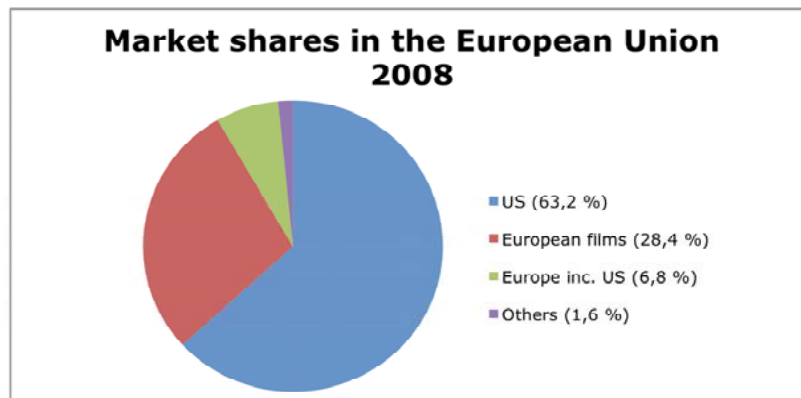
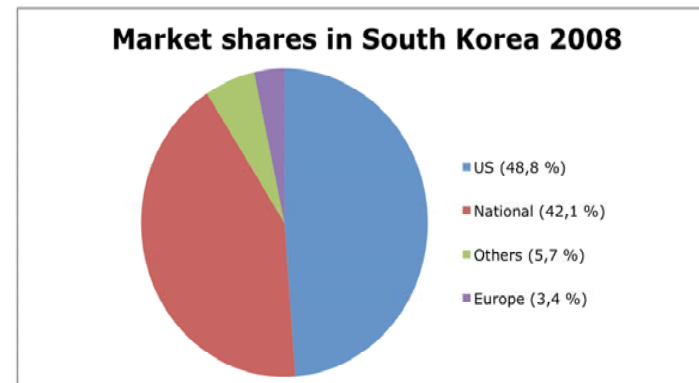
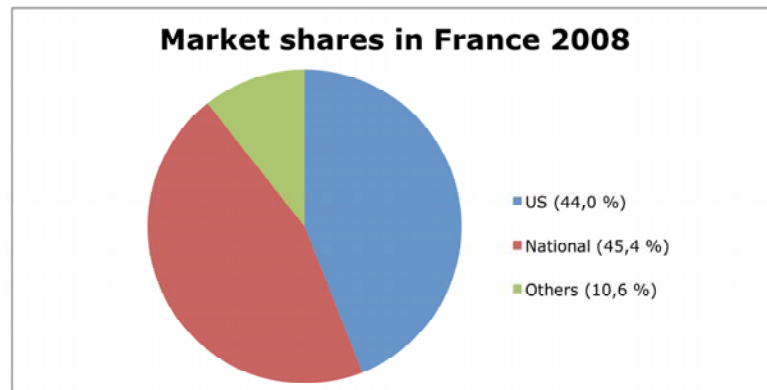
Trade and culture

Sharing the cake



- Shall we share?
- With whom shall we share?
- **Who shall share?**
- **How shall we share?**

Just a very little piece of the cake for European SMEs' and the Global South's cultural goods and services



Playing “Duopoly”: Third parties’ cultural expressions between a rock and a hard place



- High intellectual property protection (copyright, trademarks, etc.)
- **No adequate competition law**
- Automatic state aid (quotas, etc.)
- **Selective state aid (“expertocracy”)**

Photo: Pierre-Yves Sabas

Copyright and cultural diversity

- **The rule of the loudest for pharma and film majors:**
 - 40% to make (R&D, creativity), 60% to sell (marketing)
 - 100% protected by patents, copyright and trademarks, respectively
 - USD 60 mil. for ad per film drives providers of cultural expressions without competitive publicity out of the market (Euro 15 mio Media Mundus)
- **The same rule applies to books, music, etc.**

Keep some copyright, but not too much, and replace selective state aid by an automatic one

- **Copyright**

- **Safeguard for the creators' autonomy**
- Adequate competition law balances copyright
- Combine with cultural non-discrimination principles CT and MFC

- **Selective state aid**

- Experts' good or bad taste is not justiciable : *De gustibus non est disputandum*
- Risk of covert censorship and incentive for clientelism and exclusion
- **Bad inspiration for authoritarian regimes**

Integration requires cultural diversity

The UNESCO Convention provides a new instrument with the potential to render the **European integration substantially wealthier, more profound and sustainable.**

In the European Union's external relations, genuine protection and promotion of the diversity of cultural expressions can contribute to improving “world integration” in order to **secure peace and social welfare as existential complements to mere economic globalisation.**

A European interest

Jean Monnet:

“Si c’était à recommencer, je commencerais par la culture.”

Cultural clause in the Treaty of Lisbon



Coal and steel now call for culture



Annex: Survey at www.diversitystudy.eu

- **Goal** gather data regarding implementation practices of the UNESCO Convention
- **Method** survey questionnaires disseminated across diverse national and regional jurisdictions
- **Outcome** broad participation; gathered rich data from stakeholders; highly valuable to the Study's analysis

Survey questionnaire (three types):

1. Civil Society Questionnaire
 - Civil society groups
 - National Coalitions for Cultural Diversity
2. Legal Questionnaire
 - National UNESCO Commissions (in EU Member States)
 - Law and consultancy firms (in non-EU Member States)
3. Regional Organisation Questionnaire
 - Regional organisations

Interview questionnaire:

International organisations (EU, UNCTAD, UNESCO, WIPO, WTO)

Response to the survey questionnaires

Contacted 45 entities:

- Civil society groups (17)
- National UNESCO Commissions (13)
- Law and consultancy firms (6)
- Regional organisations (9)

Response rate:

- 27 participants / respondents
- 60% overall; above 30% target for each grouping

	Participating Countries (Respondents)		No response / declined participation	Response rate
Civil Society	Canada, Croatia, Denmark, France, Germany, Italy, Senegal, Spain, Switzerland, UK	10	Bulgaria, Brazil, China, Ireland, Hungary, Portugal, Tunisia	59%
Regional Organisations	Assoc. of Caribbean States, Commonwealth Foundation, European Commission, ¹ IOF	4	ASEAN, AU, COE, League of Arab States, OAS	44%
National UNESCO Commissions	Bulgaria, Denmark, France, Germany, Hungary, Ireland, Spain	7	Croatia, Egypt, Portugal, Spain, UK, Tunisia	54%
Law firms and consultancy firms	Azerbaijan, Brazil, Canada, China, Senegal, Switzerland,	6		(100%)

¹ The European Commission responded on behalf of the European Community