

**THE USE OF STATISTICAL DATA IN UNESCO NEGOTIATIONS ON A NEW
INTERNATIONAL CONVENTION ON CULTURAL DIVERSITY**

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Cultural diversity, as defined in the Draft International Convention on Cultural Diversity drawn up by the International Network on Cultural Policy (INCP), refers to “the plurality and interaction of cultural expressions that coexist in the world and thus enrich the common heritage of humanity.”¹ From this perspective, preserving cultural diversity involves not only maintaining and promoting existing cultural expressions, but being open to other cultural expressions as well.

Cultural expression, or “the creation, as well as the production, distribution, communication, exhibition and sale of cultural contents, in any medium or form,”² meets an essential need of every community. As the UNESCO *Universal Declaration on Cultural Diversity* does, stating that cultural goods and services “as vectors of identity, values and meaning, must not be treated as mere commodities or consumer goods,”³ simply recognizes the vital importance of cultural expression in community life. In fact, as an instrument for social communication, it not only plays an essential role in a community’s democratic functioning, but is also an important factor of social cohesion and an essential ingredient of its economic development. The importance of cultural expression is such that any community that has been stripped of it sees its survival threatened in the long-term. This is also true with regards to openness to the cultural expression of other communities. An inward-looking community that cuts itself off from the contribution of other cultures is doomed to disappearance over time, incapable of adapting to the changes occurring in its environment.

Yet, in what concrete terms can we judge a community’s cultural expression or its openness to the cultural expression of other communities? Cultural expression, viewed as an instrument for social

¹ International Network on Cultural Policy, Draft International Convention on Cultural Diversity prepared by the Working Group on Cultural Diversity and Globalization, Article 1, paragraph 1. See: International Network on Cultural Policy, 6th Annual Ministerial Meeting, Opatija, Croatia, October 2003, working documents, article 1, par 1: http://206.191.7.19/iicd/draft_e.pdf

² Idem, Article 1, par. 2

communication, can take numerous forms. Fundamentally comparable to the creative production of individuals and cultural industries, it includes, among others:

- the creative output of individuals in the performing arts, visual arts and crafts, architecture and design;
- the sounds, images and texts of films and video, sound recordings, books, magazines, newspapers, broadcast programs and other forms of media including multimedia, whether currently existing or yet to be created, that are the product of individuals or cultural industries.⁴

Evaluating a community's cultural expression therefore involves *a priori* looking at its cultural output in the sectors in question. Likewise, evaluating its openness to the cultural expression of other communities requires an examination of its receptiveness to the cultural output of the latter. At first glance, statistical data on this subject would therefore be an invaluable indicator of cultural diversity.

However, cultural production is one thing and its consumption is another. It is upon contact with the consumer that cultural expression truly plays its role. The quantity of books produced in a given country is not necessarily an indicator of their consumption in the country in question, just as the number of films imported into a country is not necessarily an indicator of the percentage of the market it obtains in that country. To paint a more accurate picture of a community's cultural expression and its openness to the cultural expression of other countries, we must take into account not only the statistics concerning cultural production, but those regarding cultural consumption as well.⁵

Moreover, not all countries are on equal footing with regards to their capacity for cultural expression. In a document entitled "Measuring Culture: Prospects and Limits," which appears in the introduction to the statistical section of the 1998 UNESCO *World Culture Report*, Leo Goldstone writes:

³ See UNESCO: http://www.unesco.org/culture/pluralism/diversity/html_eng/decl_en.shtml

⁴ See *supra*, note 1, Article 1, paragraph 4.

⁵ It should be clarified here that statistics on consumption are, themselves, affected by factors such as the availability of local and foreign products, as well as the conditions for their publication. However, it is precisely due to the statistics on consumption that we began to question their influence.

In addressing the question of what quantitative aspects of culture to emphasize and how to present them, one issue immediately arose. It became clear that the production and consumption of cultural goods that could be priced in the market was the area that was richest in indicators. Furthermore, the richer the country, the more cultural goods it usually produced and consumed. Not only did rich countries have more data, but they “scored” higher in the area of producing and consuming cultural goods through market mechanisms.⁶

It is easily understood that for many developing countries, the production of films or television series, which requires relatively sophisticated means, may appear out of reach without outside financial assistance. However, this does not prevent them from dynamic forms of expression in other sectors such as dance, music and visual arts. Thus, it is particularly important to take into account the true situation of each country before passing judgment.

Judging a community’s cultural expression and openness to the cultural expression of other communities therefore proves to be a not only complex, but risky task, given the number of factors to consider. However, as noted by the majority of participants at an international symposium on cultural statistics held in Montreal in October 2002, obtaining statistical data on cultural production and consumption remains crucial for gaining a better understanding of the changing needs in this area and, more generally, for formulating national policies on cultural matters.⁷

Nevertheless, there is another, more urgent reason for the interest in statistical data on cultural expression. In the context of the current UNESCO negotiations aimed at signing an international convention on cultural diversity, there is a risk that a truncated vision, or worse, a false vision of the reality underlying and justifying such a project could be detrimental to it. Some recent examples have indicated the dangerous way statistics might be used in this context.

In a recent study aimed at demonstrating that the WTO, rather than UNESCO, is the appropriate framework for negotiating an arrangement likely to ensure the preservation of cultural diversity, Keith Acheson and Christopher Maule⁸ mention, to support their argument, a study conducted under the auspices of UNESCO by Phillip Ramsdale,⁹ which states, among other things, that developing

⁶ UNESCO, *1998 World Culture Report*, Paris 1998, p. 387

⁷ Institut de statistique de l’UNESCO et Institut de la statistique du Québec, Actes du Colloque international sur les statistiques culturelles, Montréal, 21-23 octobre 2002, See: http://www.colloque2002symposium.gouv.qc.ca/PDF/colloque_complet.pdf

⁸ See Keith Acheson and Christopher Maule, “Convention on Cultural Diversity,” Economics Department Carleton University, Canadian Economic Paper, CEA 03-05, June 25, 2003.

⁹ UNESCO, Division of Cultural Policies and UNESCO Institute for Statistics, *International Flows of Selected Cultural Goods 1980 - 98*: <http://www.unesco.org/bpi/eng/unescopress/2000/01-05e.shtml>

countries as a whole export more cultural goods than they import. Acheson and Maule use this study to show that developing countries, as a whole and individually, have a considerable interest in the liberalization of international trade. However, upon a closer look, this study states that the data concerning “cultural goods,” in fact, includes goods such as photography equipment, sound recording media (blank tapes, etc.), musical instruments, film equipment, television sets, radios and sports equipment. Under these conditions, it is possible that the statistics in question support the conclusion that developing countries as a whole export more so-called “cultural” goods than they import, since we know that these countries have become the major exporters of radios and televisions in the world. However, these statistics in no way show that they export more cultural content than they import—in fact, statistics indicate that, to the contrary, they remain largely dependent on foreign cultural content for their consumption¹⁰—such that their use, which is in fact to show the irrelevance of the UNESCO international convention on cultural diversity, is somewhat deceptive.

Another example of the potentially misleading use of statistics on cultural trade is found in the recent presentation by the Vice President of the Motion Picture Association, Ms. Bonnie Richardson, at a conference entitled *Free Trade versus Cultural Diversity*, held in Lucerne in June 2003. Talking about Canada, which she described as one of the most visible countries in the Draft International Convention on Cultural Diversity, she asserted that, far from being threatened by the liberalization of trade, this country instead fully benefited from it, as it demonstrated in 1999-2000, with 57% of all revenue linked to the distribution of Canadian productions being generated by exports.¹¹ However, this statistic, taken from Statistics Canada, must be put into context. It should be clarified that the share of distribution revenue for cultural content (including revenue from film, paid television, network television, videocassettes and the non-commercial market) did not exceed 13.1% of all revenue generated on the Canadian market that same year, the remainder going to foreign content, which was essentially American. And if we take into account the commercial market (movie theatres and drive-ins), the figure in question dropped to 2.7%. In other words, earnings generated by the export of recent Canadian films remain rather negligible overall when compared to revenue generated on Canadian market alone. In this sense, the statistics mentioned by

¹⁰ It is sufficient to carefully examine the statistics on the distribution of cultural trade according to category, Table 16 (books, films, television sets, etc.) in the *2000 World Culture Report* to come to this conclusion.

¹¹ Bonnie Richardson, “Hollywood’s Vision of a Clear, Predictable Trade Framework consistent with Cultural Diversity,” Lucerne, June 2003. The Statistique Canada reference is the following: <http://www.statcan.ca/Daily/Francais/020325/q020325b.htm>.

the Vice President of the MPA are somewhat misleading. It is not unlike if we were to include films made in Canada by major American studios in statistics on Canadian film exports, knowing that these films are made in Canada because it's inexpensive, and that "their value (the rights) is immediately removed elsewhere by its owner, then re-exported to Canada as a finished product, so that Canadians may pay to see it and thus send their money abroad."¹²

Thus, it is important to be able to rapidly acquire reliable and convincing statistics for the negotiations that will generate a sustained commitment to the plan for an international convention on cultural diversity. Exactly what type of statistics may be used to this end remains to be determined. As it is clearly impossible to address in this chronicle all of the indicators of cultural diversity that can be used in each cultural sectors, and because the audiovisual sector holds a unique place in the area of cultural expression due to its large impact, we will limit our study to the film and television sectors. First, we will discuss local content as an indicator of cultural expression, and, secondly, address foreign content as an indicator of openness to foreign cultural expression. Our decision to only consider these two indicators is justified by their current use in the cultural statistics of many countries, as well as in the statistics of cultural organizations such as UNESCO and the Council of Europe. However, this decision in no way constitutes a judgment regarding the relevance of other indicators that might clarify the issue.¹³

I Local (or national) content as an indicator of cultural expression in the audiovisual sector

The relevance of the concept of local (or national) content as an indicator is considered here from a cultural point of view rather than an economic one. This clarification is necessary as it is equally possible to consider the issue from a strictly economic point of view. In the previously mentioned study by Acheson and Maule, the authors object to using the concept of local content to evaluate the cultural expression of a given country in the following words:

With films, television programming, recorded music and book publishing, the success of a smaller country in a liberalized setting will not be revealed by focusing on the proportion of domestic content broadcast, shown on its movie screens, or sold in its record or book stores as compared to the proportion in larger

¹² John Ralston Saul, *Culture and Foreign Policy*, Media Awareness Network; see: http://www.mediaawareness.ca/english/resources/articles/sovereignty_identity/culture_policy.cfm?RenderForPrint=1

¹³ The use of statistics on film and television program exports, for example, could enable the identification of the major exporting countries in the field. However, from a cultural point of view, they provide less information than those regarding production, and most importantly, consumption.

countries of the same language... The balance of royalties and fees in the balance of payments and not the domestic world class content that is shown at home is the proper measure of how a small country's community is faring in an open world.¹⁴

Such an approach, which only takes into account the economic effects of cultural trade, has nothing to do with the essentially cultural issues that we are addressing here. However, while remaining a strictly economic perspective, it appears that the point of view of Acheson and Maule regarding the relevance of statistics on local content for evaluating the effectiveness of cultural policies is not shared by all economists. In an article entitled, "Regulating Culture: Has it 'Gone with the Wind'?" Patrick Messerlin, in addressing the issue of how to measure the success of cultural policies in the film sector, states: "*A better indicator of success is the share of 'national' films in theatre ticket sales (the number of tickets for 'national' films divided by the total number of theatre tickets) or, alternatively, the share of US films...*"¹⁵

In order to stimulate the development of their cultural expression, many countries have indeed turned to the demands for local content, either to protect an essential space for their own production, or to stimulate domestic production by providing aid only to their own producers. Thus, in Article 4 of the *Broadcasting Services (Australian Content) Standard* of 1999, adopted in accordance with the *Law on Radio Broadcast Services* of 1992, the aim of legislation, which establishes requirements for the domestic content of private radio broadcasts, is described as "...to promote the role of commercial television in developing and reflecting a sense of Australian identity, character and cultural diversity by supporting the community's continued access to television programs produced under Australian creative control."¹⁶ Similar requirements also exist in Canada, where Article 3 of the *Broadcasting Act* of 1991 stipulates that "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" and that the programming provided by the Canadian Broadcasting Corporation "should be predominantly and distinctly Canadian and actively contribute to the flow and exchange of cultural expression." These obligations, as interpreted by the Canadian Radio-television and Telecommunications Commission (CRTC), require that Canadian content constitute 60% of total programming and 50% of programming broadcast during peak listening

¹⁴ Supra, note 8, p. 20-21.

¹⁵ Patrick Messerlin, "Regulating Culture: Has It 'Gone with the Wind'?" The Australian National University, Achieving Better Regulation of Services, Conference Proceedings, Australian National University, Canberra, 26-27 June 2000, p. 303.

¹⁶ See: <http://www.pc.gov.au/inquiry/broadcst/finalreport/chapter11.pdf>

hours.¹⁷ This is also the case for France, where the measures set forth in the *Law of January 18, 1992*, require all television stations to devote 40% of their total broadcasts to original French programs and 60% of their broadcasts to European programs¹⁸, as well as for a number of other countries which are too numerous to mention here. In certain cases, such as Chile, requirements for local content are even stipulated in special reservations in its Free Trade Agreement with the United States.¹⁹

In countries where local content requirements are in force, it can be reasonably assumed that the level of local content is at least that which is established by national legislation. In fact, two studies, one French and the other Australian, confirm this theory. In the case of France, the following table, produced by the *Conseil supérieur de l'audiovisuel*, shows that in 1997 and 1998, requirements for national content were met or exceeded by all television channels²⁰:

Audiovisual programs broadcast in 1997 and 1998 (*)

	TF1		France 2		France 3		Canal +		La 5e		M6	
24 hr/day Quotas	1997	1998	1997	1998	1997	1998	1997	1998	1997	1998	1997	1998
European programs (60%)	60.7%	62.1%	69.2%	70.3%	67.2%	65.7%	65.2%	62%	76.5%	77%	63.4%	62.7%
EOF programs (40%)	53.5%	51.9%	50.8%	49.1%	51.8%	55.3%	52.5%	48.4%	59.8%	63.6%	46.4%	45.4%
Peak listening hour quotas (1) or significant listening hour quotas (2)												
European programs (60%)	60.4%	67.5%	68.9%	68.6%	82.6%	81%	61.7%	75.7%	-	-	60.3%	60.8%
EOF programs (40%)	53%	57%	57.7%	55.6%	57.9%	65.9%	50.2%	61.6%	-	-	40.6%	41.5%

(*) Source: C.S.A. Reports 9 and 10

¹⁷ Canadian Radio-television and Telecommunications Commission (CRTC),

¹⁸ See Emmanuel Derieux, *Droit de la Communication*, 3^{ième} édition, L.G.D.J, Paris, 1999, p. 222. The quotas in question were established by modified Decree No. 90-66 of January 17, 1990.

¹⁹ For the text of this agreement, see: *Chile – U.S. Free Trade Agreement*, [<http://www.chileusafta.com/>] or [<http://www.ustr.gov/new/fta/Chile/text/index.htm>]

²⁰ This data is provided by the *Conseil supérieur de l'audiovisuel* and can be found at the following Internet address: <http://www.culture.gouv.fr/culture/dglf/rapport/1999/quotas-diffusion.html>

In the case of Australia, the special report by the Productivity Commission Inquiry into Broadcasting, which covers 1996, 1997, and 1998, also shows that the requirements for Australian content according to hours of broadcasting and category (dramas, documentaries, children's shows) have been, on the whole, met and often exceeded.²¹

However, what is the situation in countries without requirements for national content, as is often the case regarding television, and almost always for film? In these cases, only the collection of data on local and national content can provide an approximate idea about the consumption of cultural goods and services that are locally or nationally produced. Some countries have, in fact, put into place somewhat sophisticated mechanisms for collecting data on this topic. We will only give two examples of this, one covering the television sector, and the other the film sector.

Regarding television, one particularly interesting experience has been that of New Zealand. Every year since 1990, New Zealand on Air, a government agency whose mission is to reflect and promote the development of New Zealand culture through radio programming, has calculated the number of hours of local content on national television stations and, since 1997, has added data on the operations of non-national companies to these statistics.²² In 1999, New Zealand on Air published a comparative study of local content on television in 10 countries, including, in addition to New Zealand, the United States, the United Kingdom, Canada, Norway, Australia, Finland, South Africa, Ireland, the Netherlands, and Singapore. This study concluded that New Zealand ranked last among the countries in question concerning the percentage of local content on television, with a result of 24%.²³ Since then, efforts have been made to improve this result and, in 2002, a slight improvement was evident for the first time. The New Zealand experience shows quite clearly that the collection of statistical data on local content on television played an important role in the recent changes in New Zealand's policy regarding the audiovisual sector.

Nevertheless, national approaches to statistics regarding local content on television are not without problems when it comes to establishing a comparative picture of the situation on an international scale. The first difficulty is in defining the concept of local content used for statistical purposes. In

²¹ Australia, *Report of the Productivity Commission inquiry into Broadcasting*, 2000, chapter 11, p. 295: <http://www.pc.gov.au/inquiry/broadcast/finalreport/chapter11.pdf>

²² For the most recent report concerning local content, see *New Zealand on Air, Local New Zealand Television Content 2002* : <http://www.nzonair.govt.nz/media/policyandresearch/policypdfs/Local%20Content.pdf>

the case of New Zealand, for example, local content signifies any material that is essentially produced in New Zealand and reflects the identity and culture of New Zealand. Thus, programs that are produced in New Zealand but fail to reflect the New Zealander reality are not included in local content, nor are programs about New Zealand that are produced by foreign television stations. However, this is evidently New Zealand's own concept of local content. In Canada, the definition of a Canadian program used by Statistics Canada is that established by the Canadian Radio-television and Telecommunications Commission, which is a program whose producer is Canadian, whose creative team members are Canadian, and for which 75% of production and post-production costs are paid to Canadians.²⁴ Other countries have different definitions of local content for statistical purposes, although they may overlap on certain points. The second difficulty concerns gathering statistical data regarding local content on television in developing countries. In many countries, such statistics simply remain unavailable.

In the film sector, many countries also keep statistics of national market distribution according to the nationality of films. In this regard, it is difficult to ignore the considerable work of France's *Centre national de la cinématographie* concerning the collection of statistical data on the film industry.²⁵ Among these statistics is the following table, which shows the number of films produced annually:

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002
French initiative films (1)	101	89	97	104	125	148	150	145	172	163
<i>co-produced films</i>	34	28	34	30	39	46	35	34	46	57
foreign majority films(2)	36	22	32	27	33	32	31	26	32	37
total approved films (1)+(2)	137	111	129	131	158	180	181	171	204	200

The number of French initiative films is the most relevant measure of national production. These are films that are produced and financed, in whole or for the majority, by French partners, as opposed to films for which French partners act only as minority co-producers rather than project initiators.

²³ <http://www.nzonair.govt.nz/media/policyandresearch/otherpublications/issues.pdf>

²⁴ See: http://www.crtc.gc.ca/eng/info_sht/g11.htm

²⁵ The following tables are provided by the *Centre national de la cinématographie*: see http://www.cnc.fr/d_stat/fr_d_annuelle.htm

The most interesting tables, however, are those concerning film consumption. Among these, the two following tables deal with market shares according to film nationality. The first is based on movie theatre admissions:

Market shares according to film nationality (%)

		1993	1994	1995	1996	1997	1998	1999	2000	2001	2002*
	French films	35.1	28.3	35.2	37.5	34.5	27.6	32.4	28.6	41.4	35.0
which are:	100% French	22.9	20.6	27.1	26.7	29.2	24.3	17.9	21.8	31.4	26.0
	French majority	11.5	5.7	5.6	7.2	4.2	2.3	11.8	5.4	8.6	7.4
	French minority	0.7	2.0	2.5	3.5	1.1	1.0	2.8	1.3	1.5	1.7
	American films	5.1	60.9	53.9	54.3	52.2	63.2	53.9	62.3	46.5	49.9
	European films (outside France)	4.4	8.7	8.4	6.2	10.0	7.6	11.1	6.3	7.8	8.4
which are:	British	2.7	7.0	6.5	5.1	8.9	4.5	8.7	4.7	5.7	4.9
	German	0.3	0.5	1.1	0.4	0.2	0.2	0.6	0.6	0.9	0.8
	Italian	0.2	0.2	0.1	0.1	0.2	2.1	0.9	0.4	0.3	0.2
	Films of other nationalities	3.4	2.0	2.4	2.0	3.3	1.6	2.6	2.8	4.3	6.7
	Total	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Another way to calculate market shares according to film nationality is to look at box office revenue. As we can see in the following table, the results are more or less the same:

Market shares in box office revenue

(%)	French films	European films (outside France)	American films	Other films
1993	33.6	4.0	55.7	6.7
1994	28.3	8.6	61.3	1.9
1995	35.2	8.4	54.0	2.4
1996	37.3	6.0	54.7	2.0
1997	34.2	10.0	52.2	3.5
1998	27.2	7.2	64.0	1.7

1999	32.2	11.1	54.1	2.6
2000	28.2	6.0	63.1	2.6
2001	41.5	7.3	46.8	4.3
2002*	34.8	8.4	50.2	6.7

* Preliminary figures

These statistics on market share according to film nationality rely on the definition of film nationality established by French national legislation. However, when French statistics are compared with those of other countries, the issue of a work's nationality arises once again. To this end, it seems appropriate to cite the following words by the European Audiovisual Observatory:

Defining the nationality of a film is a complex task. There is no international or even European definition of the criteria on which a film's nationality is based. Mr. Györy carried out a study for the Observatory²⁶, examining the different criteria used in the various national regulatory systems. This is not only a legal problem, but also a statistical one. It is enlightening to compare the lists provided by the different national sources that we have used: countries involved in a joint production are not always indicated (even when the main co-producer is from another country). Different national records—and the statistics on which they are based—can show the same film as having a whole range of nationalities. Market shares are quite different if, for example, a James Bond film is considered to be a joint British/American (GB/US) production rather than purely American (US).²⁷

However, an international system for the identification of films and audiovisual programs is currently being established by the International Organization for Standardization (ISO), which should enable the creation of comparative databases on the nationality of films.

In spite of the difficulties surrounding the collection of statistical data on the production and consumption of films and television programs, two international organizations on culture, UNESCO and the Council of Europe, have for some time worked towards providing recurrent access to databases on this topic. UNESCO provided examples of such data in the *World Culture Report* of 1998 and 2000. Unfortunately, these statistics concerning television provide little information on the share of total national production for television consumption. With regards to film, however, the figures concerning the number of films produced according to country and number of films imported by those countries during a given period are provided. While these statistics may not concern consumption as such, they do, however, provide an idea of its distribution between local

²⁶ Michel Györy, *Production et distribution de films en Europe. La question de la nationalité*, Observatoire européen de l'audiovisuel, Strasbourg, 2000. See: http://www.obs.coe.int/online_publication/reports/natfilm.html.fr

²⁷ See: <http://lumiere.obs.coe.int/web/sources/EN/astuces.html>

production and foreign production, particularly in those countries that have no domestic film production. Moreover, it should be noted that barely 50% of UNESCO member countries were able to provide data for the reference periods (1990-1995 for the 1998 World Culture Report and 1994-1998 for the 2000 World Culture Report).

In the case of the Council of Europe, the European Audiovisual Observatory has published a report since 1998 entitled, *FOCUS-World Film Market Trends*, which presents a concise analysis of results and trends country by country, with the key figures of the year. It contains much clearer statistics regarding national film production and, since 2000, includes statistics on national market share distribution between nationally produced films, American produced films, and films produced by other countries. However, these last two categories are not always separated. In 2003, such statistics concerning market shares were available for the United States, Canada, Australia, the European Union, Germany, Spain, France, Italy, the United Kingdom, Belgium, Luxemburg, the Netherlands, Switzerland, Denmark, Iceland, Finland, Norway, Sweden, the Russia Federation, Japan, and South Korea.²⁸ Although these statistics are primarily based on data provided by the countries in question, their publication in a comparative report does provide a better idea of the situation of each of them regarding cultural expression.

As we can see, the use of local or national content in assessing a community's cultural expression in the film and television sectors is becoming increasingly common for countries and international cultural organizations. This development shows the interest and relevance of such an indicator in national governance regarding cultural and in the coordination of cultural activity on the international level. We shall later address the preliminary conclusions that can be drawn from these statistics. First, however, we must examine the complimentary role foreign content plays as an indicator of openness to foreign cultural expression.

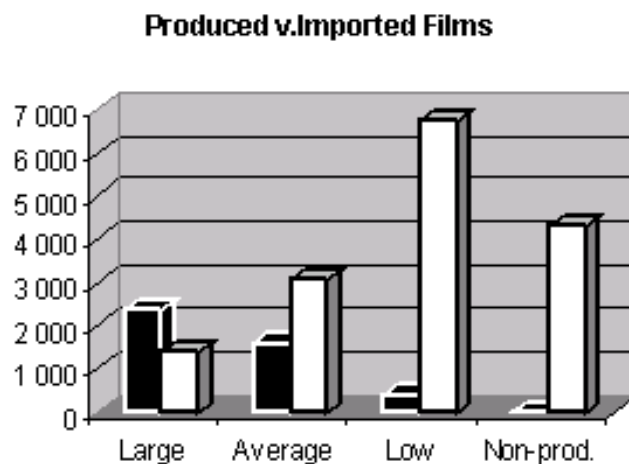
II Foreign content as an indicator of openness to foreign cultural expression

When we have statistics on local or national content on television and in films (expressed as a percentage of total programming time for television and percentage of the national market for film),

²⁸ See: http://www.obs.coe.int/online_publication/reports/focus2003.pdf

we in fact also have a complimentary statistic, which is foreign content. This figure concretely measures a country's openness to foreign cultural expression, but does not make a distinction according to the country that produces the television programs or films. Thus, this vast residual category can easily hide a relatively limited number of countries, or even a single one. According to *Focus 2003*, it appears that in 2002, 88.1% of the German film market was occupied by American productions and 11.9% by German productions, which is surprising and a little puzzling. However, in the majority of cases, the figures on foreign content are divided among the main foreign supplier, generally the United States, sometimes the second largest supplier, and the rest of the world. Thus, according to *Focus 2003*, distribution on the French national film market in 2002 was as follows: national production: 34%, American production: 56%, and production by the rest of the world: 10%.

When we talk about openness to foreign cultural expression in the audiovisual sector, however, it should not be assumed that this openness is always the result of a deliberate political aim. In fact, one could almost state as a general rule that this openness is inversely proportional to the production capacity of each country in this sector. This theory appears to be confirmed by the Survey on National Cinematography conducted in 1999 by UNESCO.²⁹ In this survey, UNESCO raises the issue of the relationship between locally produced films and imported films. A table making this distinction among large-, average-, low-, and non-producing countries shows the following results:³⁰



²⁹ See: http://www.unesco.org/culture/industries/cinema/html_eng/survey.shtml

³⁰ See: http://www.unesco.org/culture/industries/cinema/html_eng/table6.shtml

Thus, according to the figures, those countries that are most open to foreign cultural expression have almost non-existent production capacities in the film and television industries and must, therefore, turn to imports to meet their needs. As we have already seen, this is the case for many least favoured nations and micro-states. On the other hand, a country whose production and marketing capacity in these sectors is more considerable also has a more limited market share reserved for foreign products, such as the United States. According to *Focus 2003*, in 2002, distribution of the American film market was as follows: American production: 93.9%; European production: 4.5%; production from the rest of the world: 1.5%. Thus, for countries that are largely invaded by foreign production, as well as for countries that are almost exclusively open only to nationally produced films, there is reason to worry about the preservation of cultural diversity.

The situation appears particularly troublesome in countries whose film production is low or non-existent, which, according to the previously cited UNESCO study, includes over half of the organization's member countries, mostly developing countries, but also some developed countries.³¹ Unfortunately, the forced recourse to foreign films to meet a country's demands cannot replace national production, which is essential for its cultural development. The problem is even more serious when such a recourse is limited not only to the film sector, but also exists in the television sector, which is the case for many developing countries, often to significant extent. A country cannot be stripped of its own cultural expression in the film and television industries without suffering consequences for its society.

On the opposite end of the spectrum, there is the problem of the extremely low distribution of foreign films on the American market, and to a lesser degree, the European market, which, from a cultural point of view, is an equally troublesome issue. With regards to the United States, statistics show that, year in and year out, the share of foreign films on the American market rarely exceeds 6%.³² Various explanations have been put forth regarding this apparent lack of interest in foreign film production, ranging from the intrinsic quality of American films (rhythm, special effects, accessibility, etc.) to the predominance of art-house films in the foreign film sector.³³ However, such explanations, even when proven, remain incomplete. They say nothing about the extreme

³¹ These are countries producing at least 20 films per year, on average.

³² Supra, note 25.

³³ See: Paul Warren, *Techniques hollywoodiennes à succès*, Presses de l'Université Laval (Québec) et Presses de la Sorbonne (Paris), 1995.

vertical integration of the American film industry (production, distribution, broadcasting), or strategies to inundate the market (massive advertising) or to preserve loyalty (the star system, remakes of successful foreign films with local actors). In fact, in some ways, the situation is similar to that which the United States criticized in the late 1980s concerning the significant imbalance in its trade with Japan. More particularly, in the automobile sector, the American government used the notion of structural impediments (impediments linked to the organization and operation of the economy rather than to trade policies as such) as an excuse to obtain various measures from Japan to promote the sale of American cars on its market, including, among others, a commitment to add several hundred points of sale for their cars.³⁴

With regards to Europe, the market share of non-European and non-American films, as André Lange notes, varies from 1 to 3.6%. To further support this observation, Lange cites a study by the European Audiovisual Observatory, conducted during the *Conference on Cooperation in the Filmmaking and Audiovisual Sector in the European Union and Third Countries*, which was organized by the Spanish Presidency of the European Union (Madrid, April 18-19, 2002). This study analyzes film admissions in three geographic areas having “privileged” economic and cultural relationships with the European Union, namely Central and Eastern European countries, countries in the Mediterranean region that aren’t members of the European Union, and Latin American countries. This study shows that between 1996 and 2001, films from Central and Eastern Europe obtained only 0.054% of the European Union market, films from the Mediterranean region obtained only 0.084%, and those from Latin America obtained only 0.14%.

It is only through statistics of this kind that we are able to realize the scope of work that remains to be done in order to give the great diversity of cultural expression that exist in the world the chance to be expressed on an international scale. Certain countries, concerned with the lack of access to the diversity of the global film production, have begun to envisage solutions to this problem which is of greatest concern to developing countries, but is also of concern to many developed countries whose film production, for various reasons (limited local market, subdivision into several distinct markets,

³⁴ For general information on the issue of structural impediments, see: Y.S. Lanneaux, “International Trade: Joint Report of the United States – Japan Working Group on the Structural Impediments Initiative” June 28, 1990, Harvard International Law Journal, Vol. 32 (1991); for information concerning developments in the automobile sector, in particular, see: “U.S.-Japan Automotive Agreement Implementation Report, Criteria and Data, Motor Vehicles”: http://www.ustr.gov/reports/japan_auto/apr_1996/vehicles.html

languages, etc.), remains relatively low.³⁵ However, much remains to be done, as is shown by the fact that statistics are practically non-existent on the openness of developing countries to the cultural production of other developing countries.

CONCLUSION

In the Survey on National Cinematography conducted in 1999 by UNESCO, its authors, when commenting on results obtained concerning national film markets from indicators such as the number of imported films, number of theatres, total number of tickets sold annually, and number of national and foreign distribution companies operating in a given country, concluded: “Observing differences between audience attendance for national or foreign films could be more pertinent.”³⁶ Without disparaging the usefulness of other indicators of cultural diversity, as we mentioned in the introduction, it indeed appears more relevant and urgent, within the framework of negotiations on a new international convention on the protection of diversity in cultural content and artistic expression, to complete the remaining work to finally have a database that is credible and as large as possible regarding the cultural expression of existing cultural communities and their openness to the cultural expression of other communities. It will still be possible to then polish the results obtained. Regarding cultural expression, for example, a new perspective on the data gathered could be obtained simply by considering them on a *per capita* basis. The major problem is with regards to developing countries. While some of these countries have gathered statistics on the issues that interest us, the vast majority have not, either because they are unable to do so, or because they do not have their own production or have a minimal amount of production in the sectors in question. Regardless, simply establishing what the situation is for each case would provide extremely useful information in itself and, based on this knowledge, help to formulate appropriate assistance measures for those countries most in need of it.

The purpose of the exercise that we are proposing is not to make the collection of suggested statistical data a condition for the negotiation of an international convention on the protection of diversity in cultural content and artistic expression. The necessity for such a convention is, first and

³⁵ For information about these solutions, see Ivan Bernier, “For Better Access to the Diversity of Foreign Film Offerings,” *Chronique*, July 2003: <http://www.mcc.gouv.qc.ca/international/diversite-culturelle/eng/pdf/update0307.pdf>

³⁶ See: http://www.unesco.org/culture/industries/cinema/html_eng/market.shtml

foremost, linked to the absence of a forum for promoting the development of a cultural view of the relationship between trade and culture. That said, the available data, though far from being complete, already give a good indication of the need for such an international instrument. The challenge now is to make the data in question easily available and to complete them as quickly as possible. It is our hope that such a database, having been polished and expanded to include other indicators, could help to understand why the development of a dynamic cultural expression in the film and television industries still remains a distant ideal for many countries while other countries, for various reasons, remain relatively impenetrable to the diversity of existing cultural expression.
