UNIVERZA V LJUBLJANI

FAKULTETA ZA DRUŽBENE VEDE

Paraskevi Karageorgu

**Enotni digitalni trg Evropske unije in ustvarjalne vsebine**

**EU digital single market and creative content**

Magistrsko delo

Ljubljana, 2018

UNIVERZA V LJUBLJANI

FAKULTETA ZA DRUŽBENE VEDE

Paraskevi Karageorgu

Mentorica: prof. dr. Andreja Jaklič

**Enotni digitalni trg Evropske unije in ustvarjalne vsebine**

**EU digital single market and creative content**

Magistrsko delo

Ljubljana, 2018

**Enotni digitalni trg Evropske unije in ustvarjalne vsebine**

Kulturne politike so v zadnjih letih v procesu odločanja znotraj Evropske unije vedno bolj v ospredju. Kljub temu pa se je v zvezi z ohranjanjem kulturne raznolikosti strategija enotnega digitalnega trga obravnavala kot priložnost in obenem grožnja za podjetja in kulturo. Po eni strani je regulacija kulturnega sektorja znotraj mednarodnih trgovinskih sporazumov zelo pomembna, saj zagotavlja zaščito vsebin iz različnih kultur in jih tako ohranja. Po drugi strani pa obstaja zaskrbljenost glede prevlade dominantnih, t.i. mainstream kultur, kjer določeni ukrepi kulturne zaščite (npr. kvote) kljub izvajanju prav tako ne dosegajo svojega cilja, saj pomanjkanje povpraševanja po lokalnih kulturnih proizvodih ter kršitve avtorskih pravic ne vodijo k trajnostnemu razvoju kulturnega sektorja. Potrebo po reviziji nacionalnih kulturnih politik tako poudarjajo različne interesne skupine. Cilj te naloge je analizirati spletno kroženje ustvarjalnih vsebin v luči Evropske digitalne agende in tudi način, kako protekcionistični ukrepi vplivajo na ohranjanje kulturne raznolikosti. Rezultati te analize kažejo, da je EU prepoznala pomembnost čezmejnega kroženja kulturnih in ustvarjalnih del tudi na spletu. Vendar pa je trenutna zakonodaja preveč omejena, da bi naslovila protekcionizem nacionalnih politik, ki omejujejo kroženje kulturno raznolikih del znotraj EU.


Ključne besede: enotni digitalni trg; kulturna raznolikost; cirkulacija ustvarjalne vsebine; multikulturalizam

**EU digital single market and creative content**

In the recent years cultural policies have taken a more prominent place in EU decision making process. However, in regard to the preservation of cultural diversity the European Commission's Digital Single Market strategy has been seen both as an opportunity and as threat for business and culture. On the one hand, regulation in the cultural sector in relation to international trade agreements is very important aspect, as it secures content from different cultures to flourish and be preserved. On the other hand, concerns regarding predominance of mainstream cultures also fall short, when certain cultural protectionist measures are applied (e.g. quotas), but lack of demand for local cultural expressions and copyright infringements do not lead to sustainable cultural sector development. The need for revision of national cultural policies therefore is stressed by different stakeholders. The goal of this thesis is to analyze the online circulation of creative content in the EU in the light of its 'Digital Agenda for Europe' initiative and the way protectionist measures have an impact on the perseverance of cultural diversity. The analysis shows that the EU has recognised the importance of cross-border circulation of cultural and creative works also online. However, current legislation is very limited and cannot tackle national protectionist measures, which as this analysis proves, harm the circulation of culturally diverse content within the EU.

Key words: digital single market; cultural diversity; creative content circulation; multiculturalism

## Table of contents:

# Index of tables

# Index of figures

# List of abbreviations:

| | |
|---|---|
| AVMSD | Audiovisual Media Services Directive |
| AVOD | Advertisement Video on Demands |
| TVOD | Transactional Video on Demand |
| BEUC | European Consumer Organisation |
| CCIs | Culture and Creative Industries |
| CDEC | UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions |
| CNC | French National Centre for Cinema and the Moving Image (Centre national du cinéma et de l'image animée) |
| DSM | Digital Single Market |
| ECJ | European Court of Justice |
| GATT | General Agreement on Tariffs and Trade |
| MS | EU Member States |
| OMC | Open Method of Coordination |
| SVOD | Subscription Video on Demand |
| TTIP | Transatlantic Trade and Investment Partnership |
| VOD | Video on Demand |
| WTO | World Trade Organization |

# 1  Introduction

The advanced technology and its widespread use and the mass digitization and transportability of goods and services via the internet are phenomena from the last few years that have incredibly facilitated communication between people. This is the case also due to the widespread learning of English language, which has become the lingua franca of the globalisation process (Smokotin, Alekseyenkob and Petrovac, 2014). All of these has been enabled by research and development, especially in the sphere of digital technologies. However, in this regards Europe has been falling significantly behind USA and Asia, being the biggest market in the world but only in physical terms. As the vice-president of the Group of the Progressive Alliance of Socialists and Democrats in the European Parliament, Kathleen Van Brempt has said "It is clear that in Europe we are falling behind our main competitors when it comes to digital transformation. If we want to compete with the US and Asia, we need a strong and successful Digital Single Market" (Allan, 2015). Therefore, in 2015 the European union (EU) launched its European Digital Single Market (DSM) completion strategy, identifying it as one of its ten political priorities, as already in 2010, the Commission has identified the significant lagging, spending only 40% of US levels for ICT research and development (European Commission, 2010). Juncker's Commission estimates that the DSM could contribute with €415 billion per year to the European economy and create hundreds of thousands of new jobs (European Commission, 2015). This agenda is part of the process to reach the goals of the infamous 2020 strategy, which states in relation to digitalization that the Internet does not have borders and Europeans should benefit from the best content, deals, and services, wherever they are in the EU, without being geo-blocked (European Commission, 2010). However, one of the most controversial topics of the DSM is the availability of creative content online, due to the special status of culture in international relations. In this regard, in 2012 the European Commission drafted the "Green Paper on the potential of cultural and creative industries", which tackles the issues brought upon by the digital shift. Moreover, the presence of culture and education in European integration discourse has become more visible in recent years. An example being the inclusion of Culture and Education as one of the focuses of the Social Summit in Gottenburg in November 2016. The concepts of culture and the single market, have been battling each other, not since the beginning of the EU, but for long enough that they have always provoked a dispute when included in the same sentence in negotiations or even

discussions. The single market has played a crucial part in these discussions, as many stakeholders perceive the deeper integration and harmonization as a threat for the existing cultural diversity in the EU (Schlesinger, 2015; Barnett, 2001). More importantly, in cultural policy implementation the term 'cultural diversity' varies across academic fields and policy arrangements, therefore in different contexts it may mean a different thing.

The goal of this thesis is to analyse the online circulation of creative content in the EU as part of the digital market agenda and the way protectionist measures impact the perseverance of cultural diversity. I also analyse the benefits/costs of single digital access to culturally diverse expression by using European film industry as a case study. The analysis serves to test the hypothesis that the cultural policies in the EU member states (MS) as they currently stand, limit the circulation of European creative works, which is crucial for the promotion and protection of cultural diversity.

The focus of the thesis will be the increasing 'multicultural' nature of the EU, where consumers are becoming more demanding and access to culturally diverse content is something, seen not only as desirable to fulfil audience's demand, but also as a way to foster multicultural understanding and cooperation. Factors such as trade liberalization, which is more intense especially on a regional level (e.g. the European Single Market) and globalisation, which involves unprecedented growth in international contacts, means that communication goes beyond the geographical borders and increasingly allows global citizens to "physically, legally, culturally, and psychologically engage with each other in 'one world'" (Scholte, 2002, pg. 14). These factors will not disappear, as estimations are that immigration will continue[1] as economic and demographic asymmetries across countries are likely to remain powerful generators of international migration within the medium-term future (United Nations, 2016). Today, no society is immune to external influences and capital, technology, people, and ideas move freely across territorial boundaries and introduce new forms of thought and life. As the political theorist Bhikhu Parekh (2000, pg. 171) states, thanks to the liberal and democratic spirit of our age, various marginalized groups demand recognition, and this is leading to the dissemination

---

[1] The United Nation migration report (2015) estimated that The number of international migrants worldwide has continued to grow rapidly over the past fifteen years reaching 244 million in 2015, up from 222 million in 2010 and 173 million in 2000, with nearly two thirds of all international migrants live in Europe (76 million) or Asia (75 million). It is also important to note that even assuming a continuation of current migration patterns, all major areas of the world are projected to have significantly higher old-age dependency ratios in 2050.

of the old societal certainties.

In Chapter 2 the thesis I will review the theoretical framework on multiculturalism and cultural diversity and their relation to national policies in order to frame the terminology on cultural diversity in the public discussion. This will be the basis of the analysis in Chapter 3, where the theory on multiculturalism (as discussed by Bhikhu Parekh and William Kymlicka) is looked at in parallel with economic and European integration theories in order to explore how theory and legislation relate to each other and how different stakeholders see the same issue. Later on, in Chapter 4 I explore the issue empirically, in particular how cultural industry and cultural policies relate to each other and what is the impact of the technological progress on the cultural industry across EU countries. In chapter 3 I also look at the different stakeholders at EU level and their direct involvement in shaping the access to creative content online. The case study in Chapter 4 on the European film industry and the empirical data on the access of culturally diverse content illustrates in detail the findings from Chapter 3 and connects them with the theoretical framework elaborated in Chapter 2.

The theory on multiculturalism looks at the contemporary theoretical responses to diversity and will explore how they translate into policies and more specifically, how they connect with the goals of establishing the DSM in relation to creative content. The analysis faces the ideas of Bhikhu Parekh and William Kymlicka, which are opposing each other in question to what role the state has to play with regard to cultural diversity and also, the different types of rights communities are to enjoy by the government, regarding of their motive to be in a given state. This is important to analyse in the context of EU, where there are four freedoms to be respected and promoted, leading to new communities, which do not fit in any existing traditional categories (e.g. national minorities, indigenous peoples) in the literature on cultural diversity.

The EU MS are parties of four adopted legislative documents, which regard directly the access to cultural diversity on international level and this thesis I will analyse in detail in Chapter 2.3. On international level these are the General Agreement on Tariffs and Trade (1994)[2] and the UNESCO Convention on the Protection and Promotion of the Cultural Expressions (2005); on regional, EU level, these are The Maastricht Treaty (1992) and the Resolution of the Council of 16 November 2007 on a European Agenda on Culture. Among the crucial documents that

---

[2] More specifically Article IV and the provision for MFN exemptions

have not been adopted, but have further shaped the perception of the access to cultural content in the MS, especially online is TTIP, the Transatlantic Trade Investment Partnership between the EU and the United States. The TTIP negotiations have evoked in the past years a clear position from different stakeholders and have significantly advanced the discussion on CCIs in Europe in the digital era. In relation to the case study chosen, namely the European film industry, the so-called Audiovisual Media and Services Directive (AVMSD) and Copyright Directive, currently under revision are also important to analyse.

It is clear that consumers are moving towards new creative economy, and for some even if the EU does not manage to adopt provisions for its DSM, international corporations (e.g. Netflix, HBO Studios) will manage to establish themselves on the European market successfully, thus the barriers left will be predominantly protectionist measures, which will highly affect the travelling of content within the EU. The threat is that this will push the cultural sector to continue to rely on public subsidies and quotas in order to survive. As trends show increasing streaming via mobile devices (European Commission, 2017), cross-border portability becomes crucial, not only to keep in touch with local culture but also to gain access to new one. This is also true for attendance and audience development, as advertisement has moved online[3].

The notion of 'convergence culture', which will be discussed later on is therefore a fact, which needs to be taken into account. Clearly, culture is not excluded from the technological and media development and outdated legislations urgently need to be adapted to the changes. This thesis will look into the current models and proposals in existing literature for alternative regulations in order for this to happen and will analyse the different stakeholders' position on the matter. The last chapter of the work is an empirical analysis, using different case studies from the cinema sector in order to show how the issues previously discussed are tackled in practice by the stakeholders involved. The focus of the chapter is a survey conducted in order to reveal to what extent the circulation of European cinema within the EU is blocked and how young EU citizens perceive culturally diverse content.

---

[3] According to WARC data, the EU 28 online advertising market generated ad expenditures of EUR 33.3 billion in 2015, surpassing the EU 28 TV advertising market, which generated EUR 30.7 billion in 2015 with a growth of +13% year-on-year. The 17 worldwide key players on the online advertising market take a 66.9% share of total online ad spend, with Google and Facebook taking a combined share of 42.9%. No European player is among these 17 key players (Grece 2016).

# 2 Exposure to cultural diversity – theoretical framework

## 2.1 Philosophy and Political thought on multiculturalism and access to cultural diversity

In order to determine what exactly access to cultural diversity entails, a definition of the term 'cultural diversity' needs to be adopted. However, having in mind that various stakeholders use the term differently, the term 'cultural diversity' will be analyzed and looked at as a concept that is subject to various interpretations. More specifically as explained by Mira Burri: "[Cultural diversity] is employed in various contexts—sometimes as a term close to 'biological diversity', at other times as correlated to the "exception culturelle" and most often, as a generic concept that is mobilised to counter the perceived negative effects of economic globalisation" (Burri, 2010). Cultural diversity's meaning therefore varies from a protectionist measure to a synonym to pluralism of content.

The contemporary thought on multiculturalism has set to provide answers to many difficult questions the EU has been facing. Not only with the raising importance of respect for cultural pluralism, especially in regard to national minorities (with significant contribution to the topic by Kymlicka), but also due to probably the most disputed freedom of the four, the movement of people within the EU. Therefore, the theory on multiculturalism which responds to the challenges associated with cultural and religious diversity is of extreme importance when looking at the EU's internal market and its cultural distribution of cultural and creative content, which is linked to national policies towards cultural diversity.

Access to cultural diversity through creative content is closely connected to people's movement, which influences supply and demand. However, migration policies have always been a challenge for the EU. The delay of free admission of workers after the big enlargement in 2004 and 2007, showed that countries encourage culture of fear and exclusiveness rather the one of confidence and inclusiveness of EU citizens' rights (Carrera and Turmann, 2004). Moving abroad is still difficult for EU citizens, therefore often, the fears already mentioned are overestimated. In fact, culture is mentioned as one of the main reasons why people are not ready to move abroad, as described by Sergio Carrera and Anna Turmann: "on one side of the coin, there is a high level of satisfaction linked to the local quality of life, local habits, local culture and a network of relatives, which seems to act as a disincentive to move abroad. This also explains why cultural differences, the safeguard of their specificities and ways of life are so

important to Europeans" (Carrera and Turmann 2004, pg. 36). This factor is contradictory to the massive critique, which has been coming from anthropologists since the mid-1980s who challenge earlier theoretical construction of culture as homogenised and bounded, and the definition of identity explained as something fixed and stable, as today, in the face of unprecedented translocal flows of capital, labour, people, goods, technology, and media images, national borders have become increasingly permeable (Caglar 1997, pg. 169).

In this light, multiculturalism has been an answer to many concerns regarding xenophobia and nationalism. As described by Modood and Werbner, multiculturalism is the political outcome of ongoing power struggles and collective negotiations of cultural, ethnic, and racial differences (Modood and Werbner, 1997). Multiculturalism presents policymakers with the opportunity to discover a new form of identity, one that is flexible and as Stuart Hall (1992, pg. 598) puts it in his analysis of modern cultural identities, culture moves away from the construct of a story of narrative of the self about ourselves, as the fully unified identity is a "fantasy", giving a sense of comfort and security. His argument is that the systems of meaning and cultural representation multiply and therefore we are confronted by a "bewildering, fleeting multiplicity of possible identities, any one of which we could identify with - at least temporarily".

One problem, which the EU faces with its multiculturalism policies is the contradiction between legal enforcement and reality. Here, an interesting example of this clash is given by William Kymlicka, who explains that in regard to minorities meeting European standards has become a test of a country's readiness to enter the EU and 'join Europe', a proof for candidate countries that they have abandoned the "ancient ethnic hatreds and tribal nationalisms" and are prepared to join a "modern liberal and cosmopolitan Europe" (Kymlicka, 2005). However, opposite to that Parekh argues that one thing is calling for legal arrangements and another the respect for them, which requires changes of people's attitudes and ways of thought. The notion that there is not only one correct, true, or normal way to understand and structure the relevant areas of life stresses the responsibility of the society to recognize the legitimacy of the existing differences within it. Parekh argues for a pluralist view on cultural diversity (Parekh, 2000). This theory can be applied to the EU, being a common multicultural space, where citizens can call upon common rights and responsibilities.

Another problematization of seeing culture as cultural identity is the equitization of cultural community with national community, where it connects the concepts of liberalism and

nationalism and for some scholars talking about liberal theory of majority rights seems paradoxical (Orgad, 2015, pg. 168). In Kymlicka's theory, the concept of societal cultures offers the crucial connection between individual freedom and autonomy on one hand and the group on the other. He argues that access to a societal culture is the precondition of the liberal value of freedom of choice. A societal culture being a culture, which "provides its members with meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres" (Kymlicka, 1995, pg. 76). This notion of culture is closely related to the concepts of 'nation' or 'people' and is strongly criticized by Seyla Benhabib (Benhabib, 2002). She claims that there are no 'societal cultures' because there is no single culture which extends across the full range of human activities nor a single principle which encompasses both public and private spheres (ibid., pg. 60). Parekh (2000, pg. 168) similarly explains that culture is a product of different influences, containing different strands of thought and is open to different interpretations. All attempts to homogenize it and every imposition of a simplified and singular identity therefore must be rejected. Some scholars go even further that one should completely avoid the concept of collective identity, which determines who belongs to a certain demos (see e.g. Kaufmann and Raunig, 2002). However, as scholar Monika Mokre (2006) claims, this seems hardly possible until polity shall be organised in a democratic way, where she is making the important connection between the concepts of culture, identity, and contemporary democracy.

Alongside Parekh, also Benhabib criticizes different aspects of Kymlicka's theory. She objects to the distinction between national minorities and ethnic groups and accuses him of cultural essentialism[4] as his distinctions alone "cannot suffice for us to differentiate between the recognition claims and aspirations of distinct human groupings" (Benhabib, 2002, pg. 64). While Kymlicka accepts that there are many ethnocultural groups that do not fit into the two categories, one of the groups that do not fit into are economic immigrants, who remain at the end of the spectrum for political and economic rights (Kymlicka, 1995; Rawls, 1999). As Parekh's criticism states: "[Kymlicka] advances the strange theoretical argument that they have in fact waived that right by voluntarily leaving their country of origin" (Parekh, 2000, pg. 103). This notion is exactly the contrary of what EU policies evoke and encourage through the

---

[4] The term 'cultural essentialism' is here referred as the idea that people and things have 'natural' characteristics that are inherent and unchanging.

12

Union's four freedoms, while at the same time the EU law does not define how immigrants are to integrate into a new (EU) country, leaving this realm on each individual MS.

For the above-named reasons cultural theorists have difficulty to evaluate the strengths of the access to cultural diversity and the way to be implemented by governments. It is clear what the value of culture is, but there is no extensive literature on the topic of the value of cultural diversity. Kymlicka for example, sees it as options expansion (Kymlicka, 1989, pg. 64). However, as Parekh argues, this value goes beyond 'increasing our options' as this argument does not give a strong reasoning to why one is to cherish cultural diversity, especially for those who are "perfectly happy with their culture and lack wish to add to the options provided by it" (Parekh, 2000, pg. 165).

The market and the way it enhances cultural diversity has its place in the current discourse, which often is underestimated. John Stuart Mill in "On Liberty" and Wilhelm Von Humboldt in "The Limits of State Action" are linking cultural diversity to individuality and progress, arguing that it encourages healthy competition between different systems of ideas and ways of life, preventing the dominance of any one of them and facilitating the emergence of new truths. It is true, as Parekh notes that Mill weakens his argument by linking it to a particular view of human excellence, however this statement can be used in order to defend access to cultural diversity as an answer to the harmful impact of the dominance of "one truth". Parekh continues that cultural diversity viewed as an 'option' is limiting way of thinking about the concept and it goes beyond that, as there is a need to acknowledge that different cultures correct and complement each other, expand the thought and alert each other to new forms of human fulfillment and meaning (ibid., pg. 166–167).

Another argument put forward by Parekh when it comes to access to cultural diversity is that without it, human beings remain imprisoned within their own cultural construct and tend to absolutize it as the only possible way of life (ibid., pg. 120). He argues that one cannot step out the 'imprisonment' unless there is an access to other cultures in order one to be able to view one's culture from the outside, evaluate its strengths and weaknesses, and deepen the self-consciousness of the choice (ibid., pg. 167). Professor Daniel Weinstock goes even further by connecting this 'self-knowledge" with 'human's freedom'. He argues that since cultural diversity fosters such vital preconditions of human freedom as self-knowledge, self-transcendence and self-criticism, it is an objective good, whose value is not derived from

individual choices but from being an essential condition of human freedom and well-being (Weinstock, 1994, pg. 191).

Looking at the current EU market and cultural policies, one can advance further Parekh argument that even if individuals have a right to their culture this does not mean that cultural diversity will be ensured (Parekh 2000, pg. 166). This is true, as some countries put emphasis on their cultural sectors which is subsidized and other encourage investments in the field. At the same time, smaller countries without these capabilities are in practice dominated by other stronger players. This paradigm is clearly illustrated in practical terms with France, Germany, Italy, Spain, and the UK representing 72% of the total EU creative industries' value added and 68% of the employment (Forum d'Avignon, 2014). These numbers show the inequalities within the EU and countries' vulnerable position on a global level.

This phenomenon is illustrated in Parekh's book in connection to globalisation and the unequal conditions under which non-western countries operate. As cultures cannot avoid the western influence and in fact, no protectionist measure will be able to avoid it, Parekh instead argues that the only course of action open to such societies is to undertake the momentous task of creatively reinterpreting their culture, to incorporate those elements of western culture that they approve of and can assimilate. He stresses that the role of the government is to limit itself only to the creation of the conditions for a national dialogue, encouraging cultural experimentation, ensuring that external agencies do not manipulate and distort the internal debate, and give the indigenous cultural activities and industries judicious *encouragement* and *assistance* (Parekh, 2000, pg. 165).

Another important aspect important for the nature of the EU in cultural terms is that according to Parekh a homogenous society cannot adopt the virtues of a heterogeneous society, while the opposite is possible. Culturally plural society can adopt the virtues of a homogenous society (sense of community, solidarity, common loyalties and a broad moral and political consensus), while the culturally homogenous society can never adopt the creative tensions of an intercultural dialogue, expand imagination and moral and intellectual sympathy and so forth" (ibid., 171). This notion is crucial for the advancement of the EU freedom of movement of people and consequently online goods and services related to culture and to the global phenomena of 'regionalisation' (explained further in Chapter 2).

The value of access to cultural diversity, comes not only from ensuring that different cultures have the right to exist but also from ensuring access (demand) for them in order to survive. However, on the other side is Parekh's controversial argument subordinated to simple market rules, stating that cultures also have the right to cease to exist if they are not relevant anymore. "A culture lacks authority other than that derived from the willing allegiance of its members, and it dies if they no longer subscribe to its system of beliefs and practices. No culture can therefore be preserved by force of artificial means [...] cultures can be constantly unscrambled and replaced by others" (ibid., pg. 169). The other extreme however is the so-called 'full-blooded' naturalism, which insists that human beings are basically the same in all societies and that their differences are shallow and morally inconsequential. As stated by Parekh, both culturalism and naturalism reinforce each other (ibid., pg. 114).

Globalisation, as proposed in the introduction, has led not only to independence and bigger awareness of the existing cultural diversity among and within states, but has brought also the acknowledgment of external influences in shaping cultures that have occurred and have been occurring for centuries, as no culture exists in a vacuum (Brooks, 2016). In this light, Parekh argues that the only choice open to any society today is to maintain and build on the creative potential of its diversity (Parekh 2000, pg. 171–172). This in the context not of globalisation but of an EU integration, is crucial for the new MS, specifically the ones, which were part of the Eastern bloc.

## 2.2 Digital culture and democracy in the 21st century

The accessibility of culture made possible through the development of cultural and creative industries (CCIs) is however a controversial topic due to the widespread criticism against the 'commodification' of culture. While since the 90s, CCIs in Europe are somehow accepted terminology in cultural studies[5] and international relations theory[6] (Flew and Cunnigham, 2012; Moore, 2014), the 'industry' concept has been introduced with a negative connotation.

---

[5] It is important to note that some countries have embraced the term in its entirety and it has become part of their political agenda, while others remain skeptical. In the United Kingdom a 'hands-off' approach to the relations between culture and the state is observed. However, this approach quite differs from the more activist cultural traditions of Austria, France and in the Scandinavian countries. If we see how Germans sees the term 'industry', it is a concept restricted to mass products, and regarded even as 'antithesis of culture' (MKW in Flew 2012).

[6] The UNESCO definition of CCIs is "sectors of organised activity whose principal purpose is the production or reproduction, promotion, distribution and/or commercialisation of goods, services and activities of a cultural, artistic or heritage-related nature."

Theodor Adorno, member of the Frankfurt School, firstly described mass popular culture as a product of the 'culture industry', meaning anything produced for mass consumption. Adorno is seen as a high culture defendor, however he does not analyse the effects of bringing high culture to the masses, instead speaks of the formulaic and predictable forms of popular culture as something that makes the masses politically impotent and impoverished. More importantly, Adorno distinguishes authentic and inferior forms of culture (Walton, 2008), which is of crucial importance for the clash between democratization of culture and cultural democracy - a thought advanced in the 60s. While the democratization of culture centres on artwork being disseminated widely, the cultural democracy centres on providing an individual with the opportunity to exercise free choice (Evrard, 1997).

The discourse over trade and culture has been developed in length also in the works of Max Horkheimer and Walter Benjamin, criticising the emerging radio, film, and recorded music sectors. This approach lost ground in the 1970's and 1980's where Nicholas Garnham used the term 'cultural industries' to describe "those institutions in our society which employ the characteristic modes of production and organisation of industrial corporations to produce and disseminate symbols in the forms of cultural goods and services, generally, although not exclusively, as commodities" (Garnham, 1987, pg. 25).

Today, the mass consumption of culture through press and TV has transferred to the online media. And while the utterly predictable nature of cultural consumption has continued, also 'high' culture has become accessible and in this way, has democratised a cultural area seen as reserved only for certain (elite) parts of society. From this point of view, the government's role is to extend access to cultural works to mass audiences who would not otherwise access it due to their lack of income or education (Evrard, 1997). However, criticism of this 'democratization of culture' argues that this process focuses on the 'civilising value of the arts' and prioritizes access of the general to mainly European forms of high culture (Matarasso and Landry, 1999; Baeker, 2002). Cultural democracy, meanwhile, emerges in European cultural policy debates in the 1970s, largely as a critique of democratization of culture, which was perceived as a 'top-down' elitist homogenizing approach to culture, while ignoring the cultural expressions and practices outside the mainstream movements (ibid.).

The digital space on its turn, allowed both democratization of culture and cultural democracy to flourish and nurture each other as it gives opportunity to everyone to learn and act not as a

mere consumer but also as an active cultural content creator/curator, individually, or as part of a community (Burri, 2012) and exactly this characteristic of the internet is under threat when creative content online is sought to be centralized and controlled by governments (McIntyre and Scott, 2008 and Lessig, 2006 in Meyer 2017, pg. 2). At the same time the so-called digital revolution (being the third one after the agrarian and the industrial one) has brought the high arts (opera, national galleries) closer to the people. Wayne Clough, Secretary at Smithsonian Institution claims in his book that for museums, technology has created a golden age of opportunity, where "online access to digitized objects, images, and records is democratizing knowledge, enhancing the visits of the many who come to us in person, and extending our reach to the millions who cannot. Coupled with social media's powers of connection, digital technology exponentially increases the capacity of individuals to engage with our collections and upload their own stories" (Clough, 2013, pg. 2).

Criticism to this statement point out at the utopian idea of democratization of culture during the digital revolution. As scholars are pointing out that still, access to culture is westernized and cannot be generalized as not every household in the world has access to the internet (Enhuber, 2015; Castells ,2010; Tzanelli, 2010). However, if analyzing specifically the EU's households, the democratization of culture in the digital age can be applied as in 2016, 85 % of the European households had access to the internet from home. This share has been gradually increasing since 2007, when only 55 % of households had access to the internet (European Commission, 2017). In fact, the 2020 goal of segment of Digital Agenda is to secure 30 Mbps for *all* its citizens and at least 50% of European households to have a subscription to internet connections above 100 Mbps (European Commission, 2010).

The digital revolution has provided possibilities to safeguard and promote cultural diversity, but at the same it has been estimated that it could harm indigenous cultures through misinterpretation and appropriation of culture. George Nicholas and Deidre Brown (2012) conclude in their paper dedicated to digitization of culture in relation to the Māori and Canadian First Nations people's cases that the digitization of cultural heritage introduces new ways where harm can be done to indigenous peoples, because of the emerging new forms of appropriation and commodification. However, "those same technologies are facilitating new initiatives, both proactive and reactive that promote more collaborative research practices and knowledge sharing, as well as models for more satisfying political, economic, and legal solutions grounded in indigenous sensibilities and world views" (Nicholas and Brown, 2012, pg. 320).

Another interesting impact of digitization of culture and its democratic effect can be observed in the case of Nigeria and the so-called Nollywood[7], as Olufunmilayo Arewa argues that Africa did not have to undergo the process of firstly developing a traditional film production and infrastructure, thus it came of age during the digital era. In this way, Nollywood has shown the potential of the democratizing cultural and business impact of digital technologies (Olufunmilayo, 2017, pg. 230). Therefore, theory of multiculturalism may be linked to cultural democracy where each regional integration taste, or each subculture can find a legitimate expression (Evrard, 1997).

Professor Yves Evrard finds a parallel in the evolution of media theory from a study of media effects (what it does to people) to an analysis of media usage (what people do with it). She says that analysis of audiences goes beyond numbers of attendance and that the emphasis on audience shifts towards viewing it as a major player in the differentiation between the two cultural policy paradigms (democratization of culture and cultural democracy), thus leading one to consider research on consumer behaviour. Here, Evrard is confronted with 'business' theory and its application on culture. She explains that the usage of the word 'consumer' is because it is widely used in the study of contemporary societies, despite the fact that it applies 'poorly' to culture as the word refers to destruction (consuming), while a fundamental characteristic of a work of art is that it lasts: even when the subject shifts in taste and fashion, an art work outlives its "consumption" (ibid., pg. 171).

Evrard's observation on the role of the development of media studies and the changed role of the audience can be observed with controversial players on the EU market, e.g. international (US) companies such as Netflix, HBO Studios, and Amazon Prime. These actors had a transformative effect in the relationship between consumers and content providers in the twenty first century, where only Netflix has over 100 million subscribers worldwide in over 190 countries (Netflix, 2017). As previously observed, media and democratization of culture have always been linked, however with services like Netflix that additionally exploit the technological potential in the field, the democratization process increases as it leads to, as defined by Henry Jenkins, a 'convergence culture', where convergence means "the flow of content across multiple media platforms, the cooperation between multiple media industries, and the migratory behaviour of media audiences who will go almost anywhere in search of the

---

[7] The term Nollywood refers to the cinema of Nigeria

kinds of entertainment experiences they want" (Jenkins, 2006, pg. 2). In fact, here is where the governmental role of encouraging the arts is criticized, due to the gap between the actors in charge of choosing which works of art are to be subsidized and the consumers. This phenomenon therefore triggers conflicts because of the questioned legitimacy of the government's 'superior' taste (Evrard, 1997, pg. 172). This notion finds a clear expression in people's behaviour and can be observed in relation to on-demand cultural content and problematization of the democratization paradigm. Evrard illustrates these two perspectives with a clear example: when the theater audiences are expected to have the same sociodemographic structure as the whole population, the democratisation paradigm implies an equality of outcomes, while the democracy paradigm implies an equality of opportunities where the market structure needs to be reflected in the respect for taste diversity (Evrard 1997, pg. 173).

The two paradigms may, however, drift to extremes if taken too far. As Evrard points out in cultural democratization the idea of a core culture may lead to elitism, while cultural democracy, on the other hand, may drift to populism, which emphasizes the ways cultural content is used simply as entertainment and is dependent on audience ratings (ibid.), much alike to the Frankfurt school thought. This phenomenon is of crucial importance for EU policy-making, as democratization of culture and cultural democracy are both policy objectives: the first focuses primarily on access to the works of a single culture and the second focuses on inclusion, diversity, and access to the means of cultural production (Gattinger, 2011).

## 2.3 Overview of the role of culture in European integration theory

Across literature on the role of culture in European integration, often there is a quote assigned to the founding father of the EU project Jean Monnet, "Si c'était à recommencer, je commencerais par la culture"[8], which is believed to be a myth born in the 80s (Shore, 2001; Mokre, 2006; Sassatelli, 2006). However, the quote has no confirmed authenticity. As scholar Monika Mokre (2006) writes: "Historians specialized on European integration have uttered serious doubts on the authenticity of this very popular quotation of Jean Monnet". However, as Mokre continues, irrespectively of the authenticity of the quote, the latter "does not make any political sense". She bases her argument on the notion that culture is not a good starting point

---

[8] "If I had to do it again, I would begin with culture"

for a political project, at least not for a project of integration and in fact, according to Roberto Dainotto (2011) the sole existence of this quote is only proving the increasing democratic deficit in the EU and the need to reform it. The evocation of cultural differences strengthens antagonisms within or between states -, or as in our days, between whole parts of the world, world religions etc. (Mokre, 2006). Therefore, building a common political unity through free trade area and opening of political and economic borders seem to be a much more adequate way to integration (ibid.), a notion closely connected to the neo-functionalist theory, which is to be explained later in this chapter. However, as Cris Shore (2001, pg. 107) analyses, the Monnet 'misquotation' is important for two reasons: it shows the increasing importance of including culture in the EU scope from the 80s on and that culture cannot be excluded from the context of European integration.

It is important to note that the founding EU Treaty, the Treaty of Rome did not formulate a Community cultural policy, and had very few provisions related to culture and some authors such as Roberta Sassatelli argue that culture was intentionally dismissed in the early days of the European integration, being regarded as a domain that belongs to other international organisations namely the Council of Europe and UNESCO (Sassatelli 2006, pg. 25). The Maastricht Treaty was the first legal document to establish clear competences of the EU in the field of culture at supranational level, through the inclusion of article 128[9] (ibid., pg. 27). In it, the legislative power of the Union is explained as adoption of "incentive measures, excluding any harmonisation of the laws and regulations of the Member States" and is bringing common cultural heritage to the fore, "while respecting [Member States] national and regional diversity" (Treaty of Maastricht, 1992)[10]. Article 128 emphasizes that the aim is not to build a homogenous European culture but rather "celebrate the diversity of the EU" (ibid.). As Nina Obuljen sums up, according to Kaufman and Raunig's analysis of Article 128 and its significance, the first paragraph points to the tension between two crucial concepts – an assumed shared history on the one hand, and the cultural diversity of the people now living in Europe on the other (Kaufman and Raunig, 2002 in Obuljen, 2005). While, the authors interpret the second paragraph as a new sign of responsibility of the European Union for cultural matters (Obuljen, 2005, pg. 34).

---

[9] later on to become article 151 in the Amsterdam Treaty and article 167 in the Lisbon Treaty

[10] Treaty of Maastricht, signed on 7 February 1992 and entered into force on 1 November 1993, Article 128

After the 1950s there is a significant progress of the role culture had to play in the intercultural dialogue between MS. Between 1950 and 1990 there are number of initiatives adopted: the European capital of culture and the EU Literature prize on the one hand and also the unrealized ideas that have emerged at the time such as the creation of an EU TV and EU football team. Also, the first meeting of the Ministers of Culture held in 1982, as pointed out by scholar Nina Obuljen, discussed among others the need to "explore possibilities for the promotion of cultural cooperation with special emphasis on audio-visual media" (Obuljen 2004, pg. 129). Between 1984 and 1986 the EC further adopted resolutions on the following topics: fighting piracy, the distribution of European films, treatment of audio-visual products of European origin, all concerning the need to adopt measures to combat audio-visual piracy and the harmonization of the rules on the distribution of films by the various media, introducing initiatives intended to open the audio-visual market to competition and to promote high-definition television (Obuljen, 2005, pg. 32). These aspects, being part of the current discussion regarding the Commission's 'Digital Agenda for Europe'.

It can be concluded, that the EU's audio-visual policy mainly deals with the economic aspects of the audio-visual industry and has adopted its rules with the principles of competition and free movement within the single market. The main goal being to create a single market for production and distribution in the audio-visual sector and freedom of television transmission, while at the same time maintaining the responsibilities of the MS over the organizing, financing, and programming content. Part of this policy line is the adoption of a programme aimed to help the European film and television production industry to become more competitive and better equipped (Obuljen, 2005, pg. 41). It is evident that already in the 80s the need of harmonization of aspects that closely regard travelling of content today were advanced by the European Parliament and the European Commission, whereas Obuljen (2015) points out the European Parliament was calling for harmonization of copyright legislation and of tax laws relating to culture, while the Commission was favouring regulations in favour of free circulation of goods, tax regulations or copyright and promotion of cultural exchange.

The raising importance of culture and its role in EU integration and consequently its stagnation, could be explained with the rise of the neo-functionalist theory developed by Ernst Haas, which emerged in the 1950s (Schmitter, 2002). Neo-functionalism claims that removing of barriers to free trade and fostering integration in one sector, forces other sectors to follow through the so-called 'spillover effect' (Bornschier, 2005). This meaning that the cultural sector would be

affected when the EU goes further into political integration. In these terms, neo-functionalism assumes that actors involved will change significantly in the course of the integration process (Haas, 1958).

On the other side, realism with its intergovernmental and liberal intergovernmental modifications, takes an opposite position since its key assumptions are that dominant actors remain sovereign national states, pursuing their national interests and controlling the pace and outcome of events through careful measurement of their mutual treaty obligations (Schmitter, 2002). This is so, according to Bornschier (2005), because the governments are elected by citizens, and thus governments are to defend national interests. Therefore, according to this argument, only if the EU would have been elected by a common EU civil society (without the notion of national belonging) these interests could be European as well.

Haas's neofunctionalist explanation however is that the elite groups (not individual governments) have the greatest impact on national decision-making, which is why a majority is not required to make a policy. Instead, a pivotal role is played by non-governmental actors, which have a greater saying in shaping international policies. For Haas economic integration is at the core of integration, while ignoring nationalism. His argument being that "not *cultural unity* but *economic advantage* proved to be an acceptable shared goal among the Six" (Haas, 1958, preface to the 1968 edition). This gives space for the 'unavoidable dual nature' of the cultural industry as stated by the European Parliament in 2002 and by the UNESCO "Convention on the Protection and Promotion of the Diversity of Cultural Expressions" (2005) to create an everlasting dispute among various stakeholders. Especially in a situation, whereas Nina Obuljen notes "traditional divisions between different policy areas are changing and it is sometimes difficult for national governments to determine what is internal and what constitutes foreign policy", thus allowing supranational intervention in sectors, which are in fact, excluded from the EU's domain (Obuljen, 2015, pg. 12; Humphreys, 2007).

From an economic point of view, market integration is justified through consumer advantages, such as accessibility or price. From a political point of view, other interests, such as those of producers, culture, or environment, could cause conflicts, which can eventually lead to disadvantages for consumers. This notion is also regarded as one of the reasons, as explained later on, on why the EU currently treats culture predominantly as an 'economic' good. Another

crucial justification for this approach was also the Dassonville case[11], which reinforced the basic rule of the single market, that any trader or manufacturer in any part of the EU have the right to export their goods unhindered to any other Member State in the EU. Dassonville confirmed that there must be an economic justification for European interference with national regulatory autonomy (Maletic, 2013, pg. 10), which has led to the conclusion that the European audiovisual policy has been driven primarily by an economic rationale and privileged the neo-liberal approach to regulation (Venturelli, 1998) in order to be effective.

Consequently, the place of culture in integration theory is difficult to explain in literature due to its so-called 'dual nature'. As Philippe Schmitter (2002) states, any comprehensive theory of integration, should not only explain why countries decide to coordinate their efforts across a wider range of tasks and delegate more authority to common institutions, but also why they do not do so or why they decide to defect from such arrangements.

The implementation of the single market integration can be approached in a 'positive' or 'negative' way. Positive integration introduces certain standards believed to be reasonable across the Community, while negative integration rules out certain national standards as being excessive (Unberath and Johnston in Maletic, 2013, pg. 6) and in this regard, the harmonisation remains without doubt the most effective tool for integration at EU level (Maletic, 2013, pg. 7). However, the single market itself is being contested by scholars. While some see it as the core of European integration (Haas, 1958; Egan 2011; Lelieveldt and Princen, 2011) and the reason EU was able to face the financial crisis (Egan, 2011; Lelieveldt and Princen, 2011), others claim the EU single market has increased economic inequalities within the Union (Blackburn, 2011) and point out at the democratic deficit of the Union (Føllesdal and Koslowski, 1998; Beetham and Lord, 1998; Brzinski, Lancaster and Jachtenfuchs, 1994).

The top-down, negative integration is viewed as lot easier to achieve, resulting as Scharpf concludes, in the constitutionalisation of the EU competition law, which is primarily a neo-liberal approach (Scharpf, 2010). Peter Humphreys further explains there is also a good reason for the application of the negative integration is the easier approach to achieve the desired outcomes, as not only the positive one is a lengthier process, but it also requires negotiations in the EU Council and co-operation or co-decision procedure with the EP, thus it is far more

---

[11] Case 8/74 Dassonville, (1974), ECR 837, paragraph 5.

'efficient' to use alternative integration methods in more 'sensitive' areas (Humphreys, 2007, pg. 93).

An example of the negative harmonisation approach regarding audiovisual services are the Television Without Frontiers Directive (TWF Directive) from 1989 and the Audiovisual Media Services Directive (AVMS Directive), which amended the TWF Directive from 2007. Both are focused on broadcasting and films. Academia relates these Directives as based on neoliberal principles such as mutual recognition and country of origin regulation. In fact, the TWF Directive is considered to be a cornerstone for the audio-visual sector harmonisation, which even if does not officially take part of the acquis communitaire, is part of it due to the intervention by the Commission and the European Court of Justice (Humphreys, 2007, pg. 93). This is to say that the role of the European Court of Justice (ECJ) was equally important in the establishment and interpretation of the European cultural policy and the increase of the EU's prerogatives in the cultural sector (Obuljen, 2005, pg. 33). The role of the Court being crucial for integration and an example of the way the Union executes its supranational powers and gives the integration process a new dynamic in decision making (Sweet, 1998; Scharpf, 2010).

Also, in relation to culture harmonisation of rules, being positive or negative, much effort has been dedicated to focus on protectionist measures aimed predominantly at the United States. This is easily observable trend in EU cultural policies, especially for the audiovisual media sector as the EU High Level Group on Audiovisual Policy put it in 1998 that "at the heart of the matter is the question of whether the predicted explosion in demand for audiovisual material will be met by European productions or by imports. […] The danger is that the channel proliferation brought about digital technology will lead to further market fragmentation, making it more difficult for European producers to compete with American Imports" (European Commission 1998). There has been a set agenda established to protect European (national) audiovisual markets from the dominant US creative industry (de Smaele, 2007; Pauwels, Vinck and Rompuy, 2007; Boyer and Sükösd, 2011, pg. 234; Iapadre, 2014). This issue has been dealt in detail by Jonathan Buchsbaum in his book "Exception Taken: How France Has Defied Hollywood's New World Order" (2016). Consequently, in literature, probably the most common denominator across the role of culture and its entrance into the market domain is the

connection between the need of cultural exception [12] due to the rise of neoliberalism (Buchsbaum, 2016; Flew and Cunningham, 2012; Chan-Tibergien, 2006; Pauwels et al, 2007; Humphreys, 2007).

Already in the year 2000 the United States stated that "we are now faced with a situation that is significantly different from the audiovisual sector of the Uruguay Round when negotiations focused primarily on film production, film distribution, and terrestrial broadcasting of audiovisual goods and services" (WTO, 2000)[13]. The discourse over trade and culture, has therefore been formulated as a debate continuing to the present day with cultural critics criticising the decreasing "quality standards", due to the commercialisation of culture, particularly in the audiovisual industry. As scholars Mary Footer and Christopher Graber (2000) add, citing Emile G. McAnany and Kenton T. Wilkinson, "the introduction of satellite communication as a medium for the distribution and diffusion of culture has further fuelled the debate". A good illustration of this debate is the 'battle' during the GATT negotiations, where the US on the one side, and Europe and Canada, on the other were negotiating and the existing restrictions which different GATT contracting parties have been imposing on the broadcasting of television programmes (ibid.). Many European governments have introduced measures to protect their film industries by implementing screen quotas through the "Special Provisions Relating to Cinematograph Films". These provisions were part of the GATT in 1947 with Article IV permitting quotas for "the exhibition of cinematographic films of national origin during a specified minimum proportion of the total screen time" (GATT, 1947)[14].

Europe has been seeing the US position as threat, which challenges national cultural expression and linguistic diversity (Footer and Graber, 2000). However, the EU has been facing difficulties to compete with the US offering due to its fragmented market and protectionism has seemed the only option to sustain its production. In fact, this position was highly criticised by the US, who labelled such policies as "an excuse for the continued protectionism of national film,

---

[12] The underlying tension between these two opposing views led to the introduction of a "cultural exception" to multilateral trade rules at the Montreal, mid- term Ministerial meeting in December 1988. This term can be also met as "cultural exemption", "cultural specificity" exc.

[13] World Trade Organization. (2000). Communication from the United States: Audiovisual and Related Services, S/CSS/W/21.

[14] The General Agreement on Tariffs and Trade. (1947). Article IV: Special Provisions relating to Cinematograph Films.

television, and media industries in those countries" (Footer and Graber, 2000, pg. 119) and in this way encouraging the dependency on public money.

In this sense, cultural diversity is placed in the realm of the dominating realist paradigm in international relations, which views culture as a soft power used by diplomacy and being a by-product of a long history of viewing international relations in terms of economic and military power (Melissen, 2005, pg. 4). This is reflected also in the position of EU countries regarding culture in the GATT negotiations and some link the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDEC) from 2015 to these negotiations, adopted as a defensive reaction to globalisation (Burri, 2012). As Hahn and Sauvé (2016, pg. 28) sum up in their study conducted for the European Parliament, one of the CDEC raisons d'être was to "create a safe haven for protectionist measures aimed at ensuring cultural diversity, read: for allowing WTO Members to legally provide shelf-space for domestic productions in television programs and cinemas". In addition, the neo-realist theory points at the balance of power, where integration is a mean to strengthen the cooperation among alliance partners against a common threat (in this case the American cultural industry domination) and the integration deepens when the bilateral (multilateral) conflict intensifies (Moravcsik, 1998). As academics Dominic Boyer and Miklos Sükösd explain, "both pan-European and national media culture could be seen as antidotes to hegemony of American media content" (Boyer and Sükösd, 2011, pg. 235). In diplomacy theory one of the options available in front of the EU in order to tackle US administration's decreased commitment to a liberal multilateral order is to use its own non-military sources of 'soft' economic and cultural power (Nye, 2002). If this paradigm is applied, this could mean that promotion of European cultural content travelling across borders can have the same success as the American one only if its instrumentalised as a "soft power" tool, part of its cultural diplomacy strategy.

Thus, while intergovernmentalism is seen to be prevailing in EU relations due to the domination of big countries over small ones, Moravcsik (1998, pg. 38) proposes a new theory: liberal intergovernmentalism, where economic and political integration are reliant on the bargaining power of the MS. In this theory, the European Union is of secondary importance for the integration process. Moravcsik (1998) gives an example with the adoption of environmental protection policies, which are harming more the already industrialised countries than the pre-industrialised ones. However, so far there is no legislative framework in order for this to happen.

Articles 2(5) and 6 of the Treaty on the Functioning of the European Union (TFEU)[15], state that culture forms part of the policy areas where the EU or the Union shall have competence to carry out actions that 'support, coordinate, or supplement'. This meaning that it can have very limited possibilities for action and it can only support the cultural sectors of the MS, as national competences are still the authority having the main responsibility in this area.

A document from 2007, the European Commission's communication on the European agenda for culture in a globalizing world (European Commission, 2007) has opened a new chapter of cultural cooperation, which was not only the first agenda to set concrete policy goals, but is still the most important document related to the cultural cooperation between MS. In 2007, the European Commission proposed to shape the European cooperation on culture around three strategic objectives: promoting cultural diversity and intercultural dialogue; promoting culture as a catalyst for creativity and growth; and promoting culture as a vital element in the EU's external relations (ibid.).

Andrew Moravcsik however argues that cultural policy is one of these policies that are not a "promising candidate for communitarization and that the single market has already been declared complete, though incremental expansion continues" (Moravcsik, 2005, pg. 365). However, that was the reason why in 2000 the European Commission implemented the idea of the Open Method of Coordination (OMC), which was an alternative way to deal with sensitive policy areas. Also, OMC is seen as a tool suitable for policy fields where competence remains primarily with the member states, because it consists of non-legally binding and volunteer agreement on common objectives, following up progress towards them, exchanging best practice, without requiring the homogenisation of domestic policy regimes (Hemerijck and Berghman, 2004; Zeitlin, 2005; Héritier, 2001).

The OMC in relation to culture, consists of meetings of EU's cultural ministries[16]. They discuss issues, among which are intercultural dialogue, access to culture, and mobility of works of art. However, the Commission's role in OMC is only co-ordinational as it is the responsibility of national governments to designate the members of each group involved for the specific OMC meeting. It is also important to note that the cultural OMC does not feature benchmarking,

---

[15] European Union. (2007). *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01.

[16] Since 2008 there have been 14 OMC groups

target-setting, or monitoring as this instrument represents a "a more flexible approach and a voluntary reporting system [...] conceived as a non-binding framework for structuring cooperation around the strategic objectives of the Agenda for Culture and fostering exchanges of best practice" (European Commission, 2013). Also, as Armstrong points out, there is an important distinction between OMC, whether it promotes convergence or cooperation. The former "works with the autonomy of states to define their policies but promotes elective and selective learning across states" (Armstrong, 2010, pg. 41).

Therefore, OMC is crucial for the establishment of the DSM, while there is no general consensus in the Union about its completion. The European Commission has set few key objectives that are connected to the access of creative content within the market, among them are to increase the availability of works for people across Europe and to provide new distribution channels for creators and bring the EU's cultural heritage to the forefront. In order to implement this, the Commission has set the following three measures: to create favourable conditions for cross-border distribution of television and radio programmes online; to increase the availability of audiovisual works on VOD platforms; and to facilitate the digitisation and dissemination of works that are out-of-commerce (European Commission, 2016). This is connected to the wider agenda of the European Commission in the establishment of the DSM based on three pillars: (1) better access for consumers and businesses to digital goods and services across Europe; (2) creating the right conditions and a level playing field for digital networks and innovative services to flourish; (3) maximising the growth potential of the digital economy. However, as explained through the GATT negotiations, these measures cannot be adopted while cultural protectionism is not dealt at EU level (European Commission, 2015).

The phenomena of cultural protectionism, especially vocal in Western European countries, has been described with the term 'cultural fundamentalism', which endows cultural differences with a new kind of divisive force (Stolcke, 1995) and it has also been explained with the theory of 'cultural defence of nations' in the book of Liav Orgad (2015). This theory is based upon principles of international law and moral philosophy and identifies legal and moral constraint, imposed upon states in order to limit migration based on culture and for the purpose of the majority's continuity (Orgad, 2015, pg. 15). As the principle of subsidiarity has dominated EU cultural policy however, some authors see it as a precaution measure(ab)used by member states' governments, serving them as a justification for defending nationalism and control (Gordon and Mundy, 2001). At the same time, many are the factors that indirectly increase physical

proximity among EU citizens, foster indirect integration e.g. the convergence of EU education systems towards more compatible cycles of study, the broadening knowledge of foreign languages, the development of cross-border communication networks and the reduction of transport costs (Carrera and Turmann, 2004), all of which contributing to the further blurring of the clear outline of the immigration categories.

In the internet era media production and distribution models are clearly changing the production-consumer paradigm and are demonstrating the need for policy-makers to adopt a different approach. As Flew and Cunningham (2012) argue, the focus should be not only on the regulation of media corporations and provision of support for public service media, but also on emerging issues, such as the future of copyright and intellectual property, open source versus proprietary software, user-generated content media and open access to repositories of creative content.

The core problem of these issues is the exact definition of what cultural industry includes and most importantly what it excludes in order to define its place in European integration. One can argue that the concepts of the 'cultural industry' and 'cultural policy' have started to merge due to the transformation of the economic and technological structure of the 21st century (Flew and Cunningham, 2012). Also, the advancement of this merge is seen by some as encouraged by the fact that the EU was lacking prerogatives in the cultural sphere and that is why it put emphasis on socio-economic integration and internal market objectives in full recognition that "audiovisual media services are as much cultural services as they are economic services"[17] in order to be able to adopt measures and policies related to it (Irion and Valcke, 2015).

The EU legislation in the audiovisual sectors therefore has been gradually moving motivated by the economic integration and internal market objectives and it has endorsed its neoliberal marketisation in order to pursue its own cultural agenda, focusing on the role of culture in the knowledge based economy agenda, which was introduced by the Lisbon Treaty in 2009. Therefore, the development of the concept of 'cultural industries'; the wider consumption of cultural goods and services and the followed recognition that culture and commerce are not mutually exclusive, bring forward the discussion on culture and its relation to the EU market

---

[17] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

(Craufurd Smith, 2004, pg. 26 in Lasan, 2014). This is reflected in the Cultural Agenda from 2007[18] where it is stated that the MEDIA programme, supporting the European audiovisual sector is to promote the competitiveness of the European audiovisual industry and is also designed to promote *intercultural dialogue*, *increase mutual awareness among European cultures* and develop cultural potential (European Commission, 2007) and also the the 'Digital Agenda for Europe', which makes an attempt to set the European cultural sector into the modern, digital revolution, age.

Therefore, the recognition of the audiovisual media as a service per se is something that it is relatively new and still not accepted by all stakeholders even though, the Court of Justice of the European Union (CJEU former European Court of Justice, ECJ) in one of its conclusions regarding television signal and its nature of provision of services, stated that audiovisual activities are of a dual nature representing a peculiar mix of economic and cultural services[19] (Irion and Valcke, 2015), which was also re-affirmed by CDEC, where in the preamble is stated that the parties are "convinced that cultural activities, goods, and services have both an economic and a cultural nature, because they convey identities, values, and meanings, and must therefore not be treated as solely having commercial value" (CDEC, 2005, preamble). However, the fact that still there is no resolution to the conflict of this dual nature, reinforces two battling perspectives, one that is stating that new technologies will lead to the collapse of traditional boundaries in the telecommunication sector, while the other argues that economic regulation should be kept distant from the non-economic public interest goals (Humphreys, 2007, pg. 98).

The European Single Market and the Single Market, no matter the integration theory they are put in and the battles between the principles of liberalism vs protectionism and deregulation vs regulation, have been a crucial part of the creation of close ties between the European MS, especially for the creation of trade partnerships between Western and Central and Eastern Europe. In relation to the further market integration, theories on globalisation are exploring currently more in depth the theories of regionalisation and the so-called 'new Regionalism'. The new regionalism looks at examples where countries in the Americas and Asia are grouping and creating regional blocks in order their voices to be heard on an international level and

---

[18] European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world, adopted 2007

[19] CJEU. 1974. Case 155/73, Sacchi, ECR 409

analyses the effects of globalization that have led states to seek membership in supranational institutions (Warleigh-Lack, Robinson and Rosamond, 2011). Thus, these are all directions towards which the EU is already headed and the single market, both digital and physical, are a crucial part of the 'global' process of further 'regionalisation'.

# 3 The impact of liberalisation on access to creative content in the EU

## 3.1 Market overview

Néstor García Cancilini (1998, pg. 159) states in his UNESCO World Culture Report that "the internationalisation of economics and cultures, which has marked the whole of the modern era, consists in opening the geographical frontiers of each society to messages and goods from other countries". Therefore, the digital revolution is significant for the role culture has to play in economic international relations. The digital space has been showing for the past decade the transformative powers of social exchange, eroding the effectiveness of protectionist measures (Burri-Nenova, 2008, 2010 in Ipadre, 2014).

The data for 2016 shows that 64% of Europeans use the internet to play or download games, images, films, or music, doing so increasingly through mobile devices. In a survey carried out in 2015, the data says that one in three Europeans want cross-border portability. For young people, this possibility is even more important (European Commission, 2017). This trend demonstrates that the generation of tomorrow is and will access cultural content online.

Consumers are increasingly interested in accessing online audio-visual content such as films, TV shows, sport events or documentaries from providers across the EU and are ready to access it illegally, if there is no easily accessible legal option. A recent survey from Germany shows that 70% of German consumers would like to subscribe to foreign offers for sports, films, and TV series and that the demand for foreign content is even higher among young people (The European Consumer Organisation, 2017). However, due to outdated copyright laws and anticompetitive practices, providers are prevented from offering content across borders. In Europe's Digital Single Market, there is a need of clear rules to facilitate licensing and acquisition of broadcasting rights in order to increase the circulation of content across the EU. As currently, the licensing agreements while initially aimed to protect EU markets from US industry domination, have created an environment where only big international companies are able to afford it and distribute content across the continent. An example is the acquisition in February 2017 of a German TV Series by Amazon Prime, which made it available in more than 200 countries (Meza, 2017).

In relation to the video-on-demand (VOD), and more specifically paid VOD services, this new model of distribution has been seen as one with very limited economic weight. Fontaine and Simone (2017) in a research conducted for the European Audiovisual Observatory, estimate that regarding the global audiovisual market a financially sustainable distribution strategy cannot be based on VOD alone and more importantly, there is no consensus on what is the best placement for VOD for cinemas within their current windows system[20].

However, access to VOD and other creative content platforms vary and different models have emerged for online supply. Pay-on-demand model is a payment per download/rental model where right holders receive a commission per transaction (e.g iTunes, Google Play), while the subscription model is payment made on a monthly basis where the consumer gains access to a curated catalogue of contents (e.g. iTunes, Netflix, MUBI, Hulu, Amazon Video). The second model being the ideal option for consumers as they receive an 'all you can watch' formula for a flat monthly sum, which offers low-risk consumer's investment, while giving visibility to lesser known contents (Fontaine and Simone, 2017). The increasing importance of the VOD subscription model is proven by the leading film market in Europe, France. The French National Centre for Cinema and the Moving Image (CNC)[21] marked an impressive rise of 182.3% for subscription model revenues, as shown in table 3.1.1:

Table 3.1: Data for the revenue from video on demand (VOD) in France (M€)

|  | 2014 | 2015 | change |
|---|---|---|---|
| one-time payment | 235.8 | 235.0 | -0.3% |
| subscription | 29.2 | 82.5 | +182.3% |
| total | 265.0 | 317.6 | +19.8% |

Source: Gfk — NPA Conseil in CNC (2015)

---

[20] As described by the International Federation of Film Distributors' Associations, the current business model used by distributors in Europe is based on release windows. Distributors sell rights in a specific chronology. For example, the majority of films are shown in the cinema first, followed by DVD, online and then TV. Each window has a specific duration designed to ensure the maximum number of people have access to an important cultural and creative experience. The windows system differs in each EU country.

[21] Centre national du cinéma et de l'image animée (CNC)

One of the reason why travelling content online doesn't seem a viable option for producers is connected to the argument made by scholars Footer and Graber (2000) that the relatively low tradability cultural products is because they are aimed at the local market with distinguished cultural specificity. Therefore, such products do not have an appeal to the critical mass of consumers outside the domestic market. However, the evaluation of the MEDIA II programme provides a positive analysis of the TWF Directive, stating that partly because of it, the production of national European stock programs grew rapidly during the 1990s. The evaluation also states that "national fiction won back market shares on all the national markets", at the same time it recognises that there is a "stagnation" and even a "decline" in the transnational circulation of European programs (BIPE, 2002, pg. 269). Boyer and Sükösd write in relation to the MEDIA II evaluation that "the resurgence of national media cultures is dismissed precisely because this juxtaposition of national successes", which is "insufficiently 'European' in its character" (Boyer and Sükösd 2011, pg. 233), being dominated by "banal nationalism"[22]. As Jakubowicz and Sükösd (2011, pg. 3–9) explain, culture is essential part among symbols and practices as it becomes an emotional source for unification. This notion is closely connected to the already mentioned notion that 'national' is very often used as opposite to 'multicultural' (Burri, 2012) and where media systems are still dominated by nation states (Collins, 1994).

While the European Commission pushes for changes and with the help of the European Parliament operates with a budget for cultural and creative industry boost, the EU audiovisual policy is limited due to the lack of resources. For example, for the television production the EU funding represents 10% of the total budget between 1996–2000 and the MEDIA programme represents 0.02% of the global resources invested in European television in this same period (Boyer and Sükösd, 2011, pg. 238). For the current Creative Europe programme (2014–020) the budget is set at €1.46 billion, which represents 0.14% of the total budget of the Multiannual Financial Framework (Dossi, 2016). This shows that the EU alone cannot provide the so-much needed competitiveness of the European creative sector. This number is also overshadowed by announcements such as the one Netflix has made in March 2017, where it committed to invest $1.75bn in European production (Parfitt, 2017).

Therefore, the EU Audiovisual sector remains domestic in its origin and consumption, despite the support mechanism employed in the last 15 years. However, transnational flows of people

---

[22] See Billig, M. (1995). *Banal Nationalism.* London: Sage.

and integration of markets challenge the traditional formulations of citizenship connectedness and social cohesion, which is influenced to a bigger extent by the 2004 enlargement of the EU (Sarikakis, 2007). Also, with the exception of France, there is a lack a clear commitment to exploit the potential of digital technologies to increase the visibility of European content. In general, not only European creative works, but also European exchange, innovation, and politics are marginally represented in national digital networks (Jakubowicz and Sükösd, 2011, pg. 9).

However, as shown with examples so far, other major players are taking advantage of the new technologies. In addition, if looked at closely, US cultural dominance is not happening in unfair terms. In fact, the piracy issue in Europe concerns not so much EU content, as US creative content suffers the biggest losses due to pirating practices. In 2011 the American Assembly of Columbia University in New York put forward the theory that European films are only marginally affected by piracy: "At present, the most important EC and EU-country interventions in regard to distribution are in the area of IP enforcement. This is a serious mistake because the piracy debate is a distraction. Piracy is fundamentally a sign of demand. Because demand for European movies is low, there is very little piracy of them" (Karaganis, 2011, pg. 1). Scholar Joe Karaganis shows data provided by the analysis of Torrentfreak online platform concerning downloads from Bittorrent, demonstrating that 74 of the 99 top downloaded films are purely Hollywood productions and only three are purely European productions (ibid., pg. 7)[23].

A home market effects analysis conducted by Lelio Iapadre (2014) shows that literature in the cultural sector is based on the "home market effect", meaning that the dominant position in export markets owes its success to its large domestic audiences. The analysis argument is based on the assumption that consumers prefer home products, other things being equal, due to cultural allegiances (Iapadre 2014, pg. 386).

However, the expansion of services such as Netflix in Europe, deeply influence the digital landscape for creative content in Europe, where consumers now pay for content, which was illegally accessed before. On the other hand, the company has taken advantage of the advertisement opportunities, where a massive promotional investment result in increased

---

[23] Production from the United Kingdom is treated as non-European, which is another interesting point while analyzing performance, due to its proximity to US audiovisual industry

consumer awareness of upcoming products/content (Fontaine and Simone, 2017). In contrast, European advertising and promotional investment totals of only 8.4% for distribution and 3.6% to promotion (Katsarova, 2014, pg. 4). The strong performance of US companies is explained with their vertically integrated system, allowing them to spread risks over several films, and reinvest profits in new films. This business strategy does not have yet application in Europe, where the focus is almost entirely on production (Katsarova, 2014). Crucial data regarding European content is that despite the protectionists measures adopted, the European film market share in 2014 was 33.5 percent for European cinema and 63.2 percent for American films (see figure 3.2). Therefore, as Iapadre states (2005, pg. 85) government support may only mildly reduce the dominant position of the US audiovisual sector with an average dominance of 65.4% on the EU market for 2009-2014 (European Audiovisual Observatory, 2015).

Figure 3.1: Film market share in the EU for 2009–2014
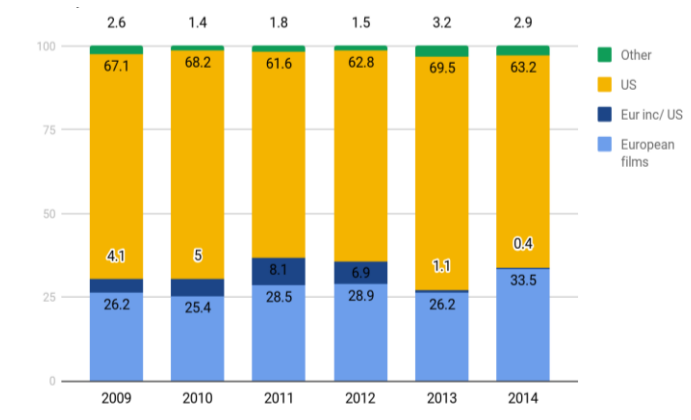


Source: European Audiovisual Observatory/Lumiere (2015)

## 3.2 Access to cultural diversity in legislation

Access to cultural diversity is important to analyze, as circulation of content within the EU is closely related to the concept of protecting diversity and promoting dialogue between cultures, which are set objectives by both the EU and UNESCO. However, having in mind the diverse approach in estimating the worth and value of access to cultural diversity, the latter varies in policy implementation and causes confusion when analyzing the political objectives of different policy guidelines, which often clash with each other. While cultural diversity as a legitimate policy goal in a state's internal and external policies, the concepts 'diverse' or 'multicultural' are often used as opposed to 'national' (Burri, 2012). An example is the way scholar Pamela

Samuelson reflects on the existing copyright issues. She argues that intellectual property rules ensure the protection of cultural values, which are connected to the national, hence cultural, identity. The equalisation of national to culture identity is what makes evaluation of cultural diversity so difficult. And while Samuelson's stand is that "intellectual property products, such as artistic and literary works, are incompletely commodified" (Samuelson, 1999, pg. 97–98), others would say they are 'democratized'. Academia strongly encourages the EU to adjust the debate on culture due to the intensified trade within the cultural sector (Barnett 2001; Burri 2012; Tanaka and Jinji 2015) as even if the MS protectionism policies may be justified, there are outdated and do not reflect current technological and cultural developments (Burri, 2012; des Beauvais, 2014; Schlesinger, 2015). There are several documents that are crucial for setting up the structure for the circulation of creative content at EU level, however the adjustment to new realities is being slow as table 3. 2. 1 demonstrates:

Table 3.2: Overview of the progress of audiovisual sector regulation legislation at EU level

| Document/Policy Area | Proposal for revision | Current document(s) entry in force date |
|---|---|---|
| Directive on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission | No | 1993 |
| Directive on the harmonisation of certain aspects of copyright and related rights in the information society | Yes | 2001 |
| Directive on the enforcement of intellectual property rights | Yes | 2004 |
| Rental and lending rights | No | 2006 |
| Audiovisual Media Services Directive | Yes | 2010 |
| Orphan Works[24] Directive | No | 2012 |
| Telecom Package | Yes | 2002–2012 (5 directives and 2 regulations) |

---

[24] Orphan works are works like books, newspaper and magazine articles and films that are still protected by copyright but whose authors or other rights holders are not known or cannot be located or contacted to obtain copyright permissions

While legislation adoption has been slow, the challenges for the cultural sector in recent years have only increased. Creative content provided online in the era of the Internet is way ahead the television disputes from the 90s, and EU legislation is not only outdated, it is also irrelevant. The AVMS Directive was firstly adopted in 1989 and is being under revision for the past two years. This document demonstrates that the majority of theory and practice available to analyze the relation between trade and culture have emerged under the conditions of analogue/offline media. Moreover, copyright in the EU is currently regulated by 10 directives adopted throughout 1996 to 2014. Rapid developments in the sector also show that "markets around new digital communication and information technologies has tended globally to subdivide audiences to an unprecedented degree", as stated by scholars Dominique Boyer and Sükösd, 2011, pg. 239) in their analysis in the article "European Media and the Culture". Furthermore, they explain that the era of analogue and offline is connected to the era of "national publics" and "national media" movements, while today the online space is targeting more specialized audiences, which go beyond borders (ibid.).

The AVMS Directive in its current form explains that on-demand audiovisual services have the potential to partially replace television broadcasting and should, when practicable, promote the production and distribution of European works and thus contribute actively to the promotion of cultural diversity (Audiovisual Media Services Directive, 2010)[25]. However, there are two main weaknesses with the AVMS directive: the abundance of online content needs to find a way to give prominence to European works from different EU countries, without including in this quota national production, which is often the case (Burri, 2012; Irion and Valcke, 2015; Higson, 2015), and second, for providers there is no requirement to promote European works by independent producers (Irion and Valcke, 2015). The quota system therefore can be seen as a "protectionist scheme supporting the European creative industries by securing exposure of the produced works – now also online", while its efficacy i.e. the actual consumption of diverse (including European) works remains doubtful (Burri, 2012, pg. 192).

Therefore, even though the discussion is still around the "dual nature" of culture, already with the Amsterdam Treaty was stated that public services are not non-economic. While their importance is recognized, and their independence needs to be assured, they also need to comply

---

[25] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services.

with the EU competition law. In this context, Article 128 could be interpreted as one that is encouraging protection of national cultures and is impeding further attempts of harmonization in the cultural field in the European institutions.

So far, it can be concluded that treatment of culture in EU documents has only one approach in its cultural policy-making process in the European Union and that is the concept of cultural exception[26]. Even though this term has been used primarily to describe European policy of excluding the audiovisual sector from the international trade negotiations, Nina Obuljen poses the strong argument that is possible to claim that the same logic of excluding culture from `other rules' is also applied internally within the EU (Obuljen, 2005, pg. 36). This is also the perception of CDEC, whose premise is that it is cultural diversity between nations and not within nations that needs to be protected and promoted, and this stand shapes the cultural policy measures taken by the Convention's parties. As Mel Van Elteren (2016) explains, while ignoring the market can contribute to the protection of cultural identities it is also likely to be 'detrimental' to cultural diversity as CDEC does not promote multilateralism but 'nationalizes' cultural diversity. Scholar Peter Katzenstein while analysing EU relations goes further with his argument that the European states guard their cultural sovereignty more jealously against political initiatives from Brussels than against movies from Hollywood and that the European space remains 'plurinational' rather than becoming 'non-national; or 'European' (Katzenstein, 2005, pg. 173)

CDEC describes cultural diversity as a term that "refers to the manifold ways where the cultures of groups and societies find expression […] whatever the means and technologies used" (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, Article 4.2). Also, previously in 2001, the UNESCO Universal Declaration on Cultural Diversity[27] states that "As a source of exchange, innovation and creativity, cultural diversity is as necessary for humankind as biodiversity is for nature" (UNESCO Universal Declaration on Cultural Diversity, 2001, Art. 1).

Scholars draw a specific attention to two very important aspect of the CDEC, where there are two conditions which are necessary in order to protect cultural diversity as defined by the

---

[26] The political concept introduced by France in General Agreement on Tariffs and Trade (GATT) negotiations in 1993 in order to treat culture differently from other commercial products

[27] Adopted in Paris, November 2001

Convention: the ability of the governments to protect and stimulate domestic production and the subsequent circulation and exchange of this production (Pauwels et al, 2007). Both conditions being applied insufficiently at EU level. While the first one is implemented (as demonstrated by the strongest home market in the EU, namely Italy, Spain, France, and the United Kingdom), the second one is to a larger extent ignored. And while this is understandable on a global level, it is not on an internal EU level, which shares a single market in addition to all EU countries being signatories of the Convention.

UNESCO recognizes that quantity is more important than the qualitative aspect, where there is much effort dedicated to the supply, but not as much to the demand aspect of the cultural diversity promotion paradigm (UNESCO, 2001). Therefore, clearly the increased production in the EU is not enough to promote cultural diversity (Karsarova, 2014; European Audiovisual Observatory, 2014).

One of the main issues is the lack of accountability where there is no obligation for countries to report on the state of their cultural diversity and if a country does nothing to protect or enhance diversity, there is simply nothing to report (Smith, 2007, pg. 38). Therefore, where there is no promotion of circulation even when there is respect for cultural diversity, cultural domination from abroad is inevitable. Countries with strong domestic production, which encourage the audiovisual industry with special state policies are therefore better placed to react to the competition from abroad (Graber and Footer, 1999, pg. 135). This is leaving weaker countries (especially new MS) vulnerable to external influences.

Another important aspect is that as advertising budget is a lot higher for US productions and exposure to it is predominantly happening online, majority of the EU audience is exposed to international, cross-border advertisement. Data provided by the The International Union of Cinemas (UNIC), shows that 80% of Europeans watch trailer online, 87% of cinema goers use their mobile phones after seeing a film, and more than 50% of the visitors discuss their experience on social media platforms (The International Union of Cinemas, 2017, pg. 16–17). Therefore, demand provides a supply (Keynes, 1936), despite protectionist measures and due to the ability of the consumer, as suggested by the convergence theory, to access the desired content at any cost, be it via legal or illegal way. A Commission's report states that the issue of access is due to the lack of public demand and that this can be resolved with 'audience development' or in other words, with education (European Commission, 2017), while ignoring

the diversity of tastes (as pointed out by Evrard, 1997) and advertisement (Katsarova, 2014; Grece, 2016). In other words, marketing is a key aspect for European cultural content in order to create a demand for it on national and international level as currently there is little or no interest for foreign audiences for what European content has to offer (Henze, 2014; Higson, 2015).

In addition, CDEC directly addresses the access to cultural diversity from other countries stating that countries "shall endeavour to create in their territory an environment which encourages individuals and social groups to have access to diverse cultural expressions from within their territory as well as from other countries of the world"[28] (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, 7.1.b) and is also encouraging the signatories to "promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions" (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, 12.d). However, the document is evaluated as a protectionist and ambitious project due to its weak binding power and no real commitment to create a sustainable diverse cultural environment (Burri, 2012; Vlassis and Hanania, 2014; Tanaka and Jinji, 2015). The Convention is described by Mira Burri as a manifesto with a low impact and lack of guidance on what is cultural diversity and how it is to be attained (Burri, 2012). Therefore, the CDEC is viewed as a document without a real obligation and its existence is mostly related to the GATT negotiations and the lobbying activities to exclude the audio-visual sector from it.

CDEC begins with strong wording, such as affirmation that "cultural diversity is a defining characteristic of humanity" and recalls that "is indispensable for peace and security at the local, national, and international levels". In addition, the preamble addresses few points that are directly connected to the access to cultural diversity: it is aware, that "cultural diversity is strengthened by the free flow of ideas, and that it is nurtured by constant exchanges and interaction between cultures" (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, Preamble). More importantly among the CDEC objectives are "to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of

---

[28] UNESCO. 2005. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed in Paris, entered into force on 18 March 2007

peace"; "to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples"; and "to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national and international levels" (ibid.).

In the objectives there are statements that reassure that promotion of local content on international level should be secured. The Convention has done a lot in practice in order to increase the awareness for the need to protect cultural diversity. However, there is not much done in regard for the circulation of cultural goods. It is also important to emphasize that since 2005, the digital era has advanced significantly and there is a need to update the Convention in order to address these new realities. Especially since, the principle of "equitable access" and "openness and balance" are part of the Convention, namely in Article 7, which states that the *Principle of equitable access* is the "access to a rich and diverse range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity", and Article 8 describing the *Principle of openness and balance*, where "states adopt measures to support the diversity of cultural expressions" and should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present state (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, art. 7 and art.8). Moreover, in 2005, states have committed to the following rights and obligations, which name the measures to promote cultural expressions in two ways: first, "to create, produce, disseminate, distribute, and have access to their own cultural expressions" and second, "to have access to diverse cultural expression from within their territory as well as from other countries of the world" (UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, 7.1.b)[29]. This 'all inclusive' approach signals that the Convention's objective has been, as argued by Rachael Craufurd Smith, "to endorse forms of market intervention rather than to preclude them" (Smith, 2007, pg. 40).

In fact, in the cases of the documents explained above both on EU and UNESCO level, the term cultural diversity fluctuates and varies drastically. Most importantly, the term 'cultural diversity' was replaced by the term 'cultural exception', which was promoted by France and

---

[29] UNESCO. 2005. Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed in Paris, entered into force on 18 March 2007

Canada in 1993 (Vlassis and Hanania, 2014, pg. 26). Thus, the term used on international level is in fact a protectionist measure in the audiovisual sector, where 'culture' has become synonymous with the word 'audiovisual' (Footer and Graber, 2000, pg. 6).

Therefore, the role of culture in the single market has remained unchanged, despite that the Single European Act (SEA) was introduced in 1957 and came into force in 1987. This is so not only because of the problematic inclusion of culture in the GATT negotiations, or the terminology of what consists 'cultural diversity' in UNESCO conventions, but also because of the difficulties in defining what are the CCIs and the individual meaning it bears for each MS. This is so, as the term cultural industry, has very often been linked to neo-liberalism (Flew and Cunningham, 2012) and because the term cultural diversity has in fact emerged as a response to neoliberal globalisation (Chan-Tibergien, 2006). However, examples like China prove that neoliberalism can hardly explain the phenomena of global capitalism or any other cultural, national, political, economic, or cultural process (Flew and Cunningham, 2012).

The EU in the meantime expands the scope of application of its media regulation signalling the EU's desire "to retain its competence to introduce culturally motivated measures across the electronic communications field and [...] not [to] accept the US 'standstill' agenda" for digitally delivered products and services (Smith, 2007, pg. 49). An example being Article 13, in the AVMS Directive which adds the obligation for the MS to ensure that media service providers are to "promote, where practicable and by appropriate means, production of and access to European works"[30]. Yet again, what "practicable" and "appropriate means" exactly entails is not clearly defined, as both in bilateral and regional agreement, the EU has secured exclusion of cultural services from trade commitments, while promising intensified cultural co-operation (Burri, 2010, pg. 1071). The complex role culture has to play in international negotiations was demonstrated once again during the debates surrounding the Transnational Trade Partnership between the United States and European Union. Different stakeholders were consulted and almost unanimously confirmed the cultural exception approach towards culture in international (trade) relations. This is evident from position papers issued by various stakeholders e.g. the opinion of the Committee on Culture and Education for the Committee on International Trade on recommendations to the European Commission on the negotiations for the Transatlantic

---

[30] Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive), Art. 13

Trade and Investment Partnership (TTIP) (Trupel, 2015); the position paper issued by the Germany's Economics and Culture Ministers Sigmar Gabriel and Monika Grütters (Blaney, 2015), who stated that "The planned exceptions for audiovisual services as foreseen in the negotiation mandate must be placed on a solid footing for the future"; the position presented by the the Nordic Councils of Artists, stating that "We would therefore like to emphasise the importance of a broad and future-proof exclusion of audiovisual services that should be technologically and platform neutral, covering notable audiovisual services offered on the Internet" (Nordic Councils of Artists, 2014). In fact, due to the French insistence on cultural exception and its powerful position, the negotiations on TTIP nearly failed altogether in 2013, till an agreement was reached. All these events made scholars such as Marlene Bartsch to conclude that TTIP revived the concept of the 'cultural exception' (Bartsch, 2014). Also, a study conducted by Michael Hahn and Pierre Sauvé for the European Parliament about the Culture and Education aspect of the CETA agreement, states that "to this day, no such thing as a 'cultural exception' exists in WTO law" and that "only cinematographic films are the subject of an exception" (Ehring and Hahn quoted in Hahn and Sauvé, 2016, pg. 25). This is not to say, that under the cultural diversity protection in the CEDC the EU does not interpret different types of cultural production, but that the European countries have decided to focus their defensive energy exclusively on audiovisual services (Hahn and Sauvé, 2016, pg. 38).

Access to cultural diversity therefore, is a controversial issue for European integration, especially looking at the Single Market, being physical or digital. The four freedoms that the EU has incorporated have been more or less implemented, with issues occurring especially with two of them: border crossing of people and services (Carrera and Turmann, 2004). The issue of people is important, from an immigration point of view as the first chapter has already showed the tight connection between multiculturalism and government policies regarding cultural diversity access. However, the societies in Europe have begun to transform already from the late 1940s with big waves of immigration and settlement of people from outside the EU (Modood and Werbner, 1997) and with enlarged Union, now consisting of 28 countries. This has rendered many cities across the EU multicultural, as Marco Martiniello (2014, pg. 1) claims: "Empirically it is indisputable most midsize and large cities are de facto multicultural and display a wide variety of ethnic, racial, impartiality, cultural, and religious affiliations and identities". Nevertheless, as Carrera and Turmann (2004) observe, the positive economic impact of migratory flows on the country of destination is not always acknowledged in public opinion

or in the policy measures taken by national authorities and this highly influences the attitude towards foreign goods. As scholar Verena Stolcke (1992, pg. 1) puts it, "The political right in Europe has in the past decade developed a political rhetoric of exclusion in which Third World immigrants, who proceed in part from its ex-colonies, are construed as posing a threat to the national unity of the "host" countries because they are culturally different".

A finding from the Pew Research Centre shows that on average, more than half of the EU citizens believe there are "too many foreigners" in their country, of them huge majorities being from Greece (86%) and Italy (80%). More than half in the United Kingdom and France have responded in this way, while in Spain a bit less than half, namely 47%. In Germany and Poland, the public is closely divided between those who want less immigration and those who say immigration levels should remain about the same. The desire for less immigration is particularly strong among people on the right side of the ideological spectrum (Pew Research Centre 2014). This phenomenon enhances policy measures that safeguard national culture and adopt protectionist measures, achieving this goal often at the expense of cultural diversity and confirming Burri's statement that 'multicultural' is used in opposition to 'national'. An example are policies adopted on an international level regarding cultural content, especially services and more specifically, online services that provide cultural content and are being blocked or national policies using other means of protectionism, such as language barriers and copyright licensing. Barriers of this kind may impede the real access to cultural content, the engagement in active intercultural dialogue or various creative activities. This therefore means, as scholar Mira Burri concludes, that discrete decisions taken in one policy domain may have repercussions on cultural diversity as well (Burri, 2007; 2012).

### 3.3 Diverse positions within the EU

It is important to state, that there are different positions within the EU regarding the role of culture in European affairs. The European Commission's approach has been evaluated as "neo-liberal" (Venturelli, 1998; Boyer and Sükösd, 2011; Lasan, 2014), while the Council of the EU and to some extent the European Parliament are assigned to the protectionism paradigm, due to fears of US cultural domination (Lasan, 2014; Hahn and Sauvé, 2016). A good illustration of this is the statement made in the Regulatory Framework by the European Parliament and Council of the EU, where it is explained that the framework does not cover the content of services delivered over electronic communications, such as broadcasting as the Framework on

the Audiovisual Policy and Content Regulation are "undertaken in pursuit of general interest objectives, such as freedom of expression, media pluralism, impartiality, cultural and linguistic diversity, social inclusion, consumer protection and the protection of minors" [31].

A main argument used by national governments in the Council of the EU is that culture falls out of the scope of the principle of subsidiarity. However, authors, such as Ian Henry state that policy areas such as broadcasting policy clearly require supranational regulation as broadcast cannot be restricted to national boundaries, like the environmental policy (Henry, 2001, pg. 241). This therefore being especially true in the digital era, where there are no 'physical' borders.

On the other hand, the attitude of the Commission has been treating culture predominantly as an industry, applying policies regarding its economic impact. This attitude is to be seen as a negotiation strategy in order to include culture in the integration process (Lasan, 2014). One of the reasons for this being the opposition coming from countries such as the United Kingdom and Denmark, and recent fears that the EU interferes with the functions of other international organizations, corresponding with the neo-functionalist approach. In contrast, the European Parliament has been doing the opposite: it has been emphasizing the non-economic role of culture, issuing many non-binding documents in order to clarify its stand on the issue (ibid.).

Dominic Boyer and Miklos Sükösd (2011), analysing the role of the European Commission, have concluded that besides the estimations that the Commission deals predominantly with the economic side of culture in order to have a saying in the sector, it has also been trying to strike a balance between the cultural and economic value of creative content. This is shown in its MEDIA II evaluation report and is an important achievement having mind that even within the Commission there are big differences in opinion, as policies designed in one part of the Commission e.g. DG Culture will differ drastically than the ones adopted in other DG's like DG Internal Market or DG Competition (Levy, 1999; Humphrey, 2007; Collins, 1994). However, there is a consensus in the Commission that culture is related to the need of the emergence of a 'Pan-European culture', which is to strengthen European identity. "Symbols play a key role in consciousness-raising, but there is also a need to make the European citizen

---

[31] Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services (Framework Directive) Official Journal L 108 , 24/04/2002, 33–50

aware of the different elements that go to make up his European identity, of our cultural unity with all its diversity of expression, and of the historic ties which links the nations of Europe" (Commission of the European Communities, 1988)[32].

The MEDIA II evaluation report states, that the circulation or programs across continents is essential for the emergence of an industrial sector in order to strengthen companies, their level of capitalisation and allow them to be independent from national broadcasters and be able to export. Overall, the evaluation concludes that, the cultural and economic objectives strengthen each other (MEDIA II), and as Boyer and Sükösd put it (2011, pg. 233), MEDIA's message is clearly expressed: "in order to reach a competitive scale in global broadcasting, Europe needs to exist as more than a patchwork of national media cultures". The authors support this argument with statistics demonstrating that even though there is a 'cultural exception' in place, the data from 1994 to 1999 shows growth in North American import of fiction program market in the EU, while European production has been more or less steady (ibid). The data provided by the European Audiovisual Observatory for 2015 (Table 3.1.2), shows that this trend hasn't changed.

More importantly the 'pan-European' paradigm is put into question, being the drive of cultural policies implementation on a supranational level, especially in a situation where the terms diversity and plurality are vaguely defined. Therefore, Boyer and Sükösd (2011) conclude, that if the goal is to move towards more integration, the creation of a common identity is the wrong approach as it will always backlash with countries' cultural defence (ibid).

The simple equalisation of national to culture identity is an expression of the phenomena of instrumentalising culture for national purposes and it has been analysed by various scholars exploring the paradigm of a national political hence cultural identity and the attempts of the European Union to create a EU demos along the same lines. Mokre (2006), citing Thièsse (1999) and Gellner (1983), also confirms the connection between political and cultural collective identity in Europe: "In Europe, the concept of the nation as the demos of the nation state is the predominant model of a political collective identity - and this identity is foremost a cultural one". She concludes that cultural identity constructions of European nation states and their political structure are inextricably intertwined (Mokre, 2003 in Mokre, 2006) and that

---

[32] Commission of the European Communities. (1988). Bulletin of EC, Supplement 2/88

therefore in Europe, collective identities are traditionally understood as cultural identities. This conclusion is reached also by scholars Mary Footer and Christoph Beat Graber who have examined already in 2000, the problematic relation between global trade liberalisation and cultural goods and services. They argue that culture is a mean for countries to protect national identity, values, and beliefs (Footer and Graber, 2000). On the other side of the spectrum is the criticism toward the construction of a common European identity based on shared cultural heritage and values (Shore, 2001; Mokre, 2006). There is a clear misunderstanding of what exactly protection of cultural diversity entails, especially when looking at scholars such as Parekh (2000), Kaufmann and Raunig (2002), and Hall (1992) who argue that shaping one, political (hence cultural) identity should be rejected and ignoring external influences in shaping cultural phenomenon is wrong. In fact, cultural identity, as Mokre (2006) claims is a subject to change and must "open up different possibilities for identification".

## 3.4 Protectionism in practice

As already stated, online distribution of creative content needs a supranational intervention due to the liberalised market and undoubtful economic aspect of culture. However, the question remains on what kind of regulation is appropriate. On the one hand is allowing cross-border accessibility within the EU and on the other, is regulation giving preference to national creative content through protectionist schemes (Tanaka and Jinji, 2015, pg. 4–5).

Referring to the theory developed in the first chapter of this thesis, it can be concluded that the principle of subsidiarity has been used as a precaution and has been (ab)used by member state governments, serving them as a justification for defending nationalism and control (Gordon and Mundy, 2001). An example is the economic nature of the AVMS Directive, which does not tackle sensitive issues and therefore has given space for national governments to use media policy to pursue national interests (Jakubowicz and Sükösd, 2011; Burri, 2012), which find expression in various 'operational difficulties'.

There are numerous aspects, demonstrating the operational difficulties in implementing single digital market for creative content. These operational difficulties are often used as barriers to cross-border circulation. According to Christopher Gordon (2010, pg. 107–107) in relation to the EU structure and operation, there seem to be at least eight operational difficulties, which can lead to unclear actions at EU level in different policy areas: Linguistic issues, with 24 official EU languages – with leakages in meaning and understanding through translation;

Historical perceptions and inflexible positions; Differing cultural assumptions and differences; National political and policy tradition differences; Differing national legal systems; Structural differences; Professional diverse public administration practices; Professional management traditions. To Gordon's list may be also added differing 'national history perceptions'[33].

## 3.5 Linguistic barriers

The 'national' production and consumption of content is enhanced due the linguistically organised structure of culture and creative industries in MS, submissive to the so-called 'monoglot standards' or "national standard languages' (Boyer and Sükösd, 2011, pg. 240).

At the same time dubbing films is also a practice, which works against consumers: from the one side it distorts the form of art in its original form and from the other it limits the possibilities in a foreign country to enjoy cinema from international communities: not only in theatres but also at home, as subtitles are provided only in the local language. Again, forcing consumers to turn to piracy. A study requested by the European Commission, Directorate-General Education and Cultures and executed by Media Consulting Group found a strong correlation between subtitling and knowledge of foreign language, where in countries with a tradition of subtitling, knowledge of foreign languages (and of English in particular) is close to that of the mother tongue of the population, whereas in countries with a tradition of dubbing the majority of respondents evaluated their skills at a level of 3 on a scale of 5 (Media Consulting Group 2011, pg. 4). This conclusion has been reached also by other studies (Koolstra and Beentjes, 1999; van Parijs, 2004). In terms of language learning, also subtitles prevail as the more effective option of the two[34], and more importantly as tolerance for subtitling develops through practice (Van Parijs 2004, pg. 229; Media Consulting Group, 2011). In addition, scholar Mark Kaiser (2011, pg. 243) states in his article that "the disadvantage of a dubbed film is that one loses the foreign language and with it much of the culture". Therefore, dubbing is harming the access to

---

[33] The role differing national history perceptions has in European integration is dealt in detail in the book "Perceptions of Europe: A Comparative Sociology of European Attitudes", eds. Daniel Gaxie, Nicolas Hubé and Jay Rowell, published in 2013 by ECPR Press

[34] J. Birulés-Muntané and S. Soto-Faraco explain the existing opinions in literature, where Vulchanova et al (2015) claim that both intra and interlingual subtitles (in the language of the soundtrack, or the listener's native language, respectively) result in improved plot comprehension and vocabulary learning, while some other studies argue that intralingual subtitles are superior than interlingual ones in facilitating content comprehension, vocabulary acquisition, and second language production, because in intralingual subtitles lexical information allows the listener to link sounds with known word spellings, thus promoting the formation and/or returning of perceptual categories for a better decoding of speech input.

cultural diversity, as foreign languages are hardly ever heard on TV or in the cinema especially in major (self-sustained) speech communities (Gottlieb, 2004, pg. 83). This is in direct conflict with the European Commission's policy aiming at developing a language-friendly living environment, where "different languages are heard and seen, and where speakers of all languages feel welcome and language learning is encouraged" (Almeida and Costa, 2014, pg. 1). In addition, the European Survey on Language Competences reveals that Europeans still need to improve their knowledge of foreign languages and there is a wide range of ability across European countries. Therefore, for bigger countries, which access a wide range of contexts in their own language has the side effect of making it increasingly difficult to learn other languages (Almeida and Costa, 2014). Moreover, scholar Philippe Van Parijs makes a strong connection between the knowledge of foreign languages (and more specifically English as it is the lingua franca) and democracy, whereas banning dubbing "will better equip a large proportion of the population to express themselves in a language in which it will be increasingly crucial for them to be able to express themselves in order to be heard" (Van Parijs, 2004, pg. 228). He makes this statement as he sees dubbing as "inflicting a linguistic handicap on the most disadvantaged layers of the populations", which is strengthening the privilege enjoyed by the elite whose access to learn English is far easier (ibid.). Learning a foreign language, specifically English, as Van Parijs (2014, pg. 229) argues, has become part of the agenda to "better equip a large proportion of the population to be able to express themselves in a language in which it will be increasingly crucial for them to be able to express themselves in order to be heard by those who they will need to be heard by"[35].

Half of the countries in the EU dub films (13 for cinema and 14 for television). There is a dominance of subtitling in Eastern European countries and the Nordic countries and dominance of dubbing in Western Europe and some Central European countries, illustrated in table 3.3:

---

[35] This is also demonstrated in academia where in order for a scientific research to reach a wider audience across borders, it needs to be written/translated in English

Table 3.3: Dubbing and subtitles practices in cinema and television in the EU

|  | Dubbing/Voice Over | Subtitles |
|---|---|---|
| **Cinema** | France, Italy, Germany, Spain, Poland, Lithuania, Austria, French Speaking part of Belgium, Slovakia, Czech Republic, Hungary, Ireland | Sweden, and the Netherlands, Greece, Bulgaria, Romania[36], Croatia, Slovenia, Portugal, FInland, Estonia[37], Dutch Speaking Part of Belgium, United Kingdom, Poland, Luxembourg, Malta, Cyprus, Latvia, Ireland |
| **Television** | Bulgaria, Germany, Slovakia, Czech Republic, Hungary, Poland, France, Italy, Austria, Latvia, Lithuania, French-speaking Belgium, Spain | Greece[38], Romania, Croatia, Slovenia, Portugal, Finland, Estonia, Malta, Cyprus, Latvia, Luxembourg, Flemish-speaking Belgium, Ireland, Iceland, United Kingdom, The Netherlands, Sweden |

Source: Media Consulting Group (2007)

This data is similar for the online streaming of films, when available. In France, foreign films are or dubbed or provided exclusively with French subtitles, similarly in Belgium and Germany. In general, DVD's have been seen as one of the options for language choice, however with the decline of DVD purchases this option has been marginalized. There are paid services that provide multiple language choice. Netflix has option to change the audio and the subtitles to various offerings of its catalogue, that are constantly expanding. YouTube also has started to provide various subtitle options.

However, a major issue with the implementation of subtitles across the EU is that such a ban would directly harm the interests of professional actors, who use dubbing as a way of providing income due the financial insecurity film and theatre contracts can provide (Van Parijs, 2010, pg. 229). In addition, studies show that the harming effect for certain sectors will be buffered, if not offset, by a significant increase in the demand for local production abroad, as the trend is clear that majority of people prefer dubbing to subtitling (Media Consulting Group, 2011). Also, teletext technology makes it possible to offer a wide range of individual choices for subtitle

---

[36] An interesting example from Romania is the outburst HBO caused when trying to introduce dubbed film, which led to 4,000 subscribers signing a petition asking the channel to stop dubbing films.

[37] Some voice-over in Estonia (33% of programs broadcast with voice-over, and 66% subtitled).

[38] With the exception of SKAI Tv

languages (this was the case with DVDs offering diverse options in audio/subtitles languages and also is demonstrated in on-demand services such as Netflix).

In regard to professional dubbing actors lobby, Van Parijs states that a "tiny minority cannot legitimately block a move that would massively benefit a large, comparatively disadvantaged majority" (Van Parijs 2004, pg. 229) and as Thomas Bräutigam (2017) writes "however convenient dubbing may appear, stripping other cultures of their language and voices impairs rather than promotes cultural transfer".

Another harmful effect from dubbing is the 'localization' of foreign art expression and makes the audiences unaware of its true cultural differences. An example is change of city names, which correlate with a meaning in another country, 'masterful' dubbing which matches dialects in a given country and other examples of localising context. An example is the dubbing of Hollywood films in Italy, which takes the form of using various dialects from country in order to reinforce certain traits, e.g. the bad characters will be voiced by actors with dialects from southern Italy (Centeneo in Kaiser, 2011, pg. 243).

As the EU does not have one common language on its own, circulation of content is difficult to achieve. However, the English language has been seen as the mean of communication in the globalized world (Smokotin et al, 2014) and it has open new opportunities for different groups: not only elites, but also professionals, intellectuals, education, youth, contributing on its turn to socio-economic integration (Boyer and Sükösd 2011, pg. 245) and democratization of culture. Proof for this is that now everyone (at least in the EU) has access and opportunity to learn a new language, thanks to technology and lifelong learning programmes provided by the Union. In addition, spectators generally have a positive attitude towards the English language, since it is considered to be an appreciated language for international contacts. Particularly young people find English a 'cool' language (Koolstra and Beentjes, 1999). According to a recent survey from the European Commission from 2015, the younger the respondents, the less likely they are to only watch with audio or subtitles in the national language(s), 45% of those aged 15–24 vs. 57%-71% of older people) (Eurobarometer 411, 2015, pg. 8).

In the analysis on this 'soft' protectionist measure, there is also a strong correlation between using languages for nationalistic purposes. As Patrícia Albergaria Almeida and Patrícia Dinis Costa (2014) analyse, this process has started in the 30s where cultural policies were essential to reinforce the nationalism and the standardization of the language of countries such as

Germany, Italy, and Spain, which are pioneering the dubbing practice nowadays. In these three countries with nationalist regimes at that time, cultural policies were made competitive by means such as censorship and quotas on imports of foreign films (Rundle and Sturge, 2010 in Almeida and Costa, 2014, pg. 1236) and encouraged national unity (Danan, 1991; European Commission, 2011 in Almeida and Costa, 2014, pg. 1236). However, as Almeida and Costa (2014) note, this information needs to be taken consciously as there are exceptions such as Portugal.

## 3.6 Copyright: Licensing & Territorial Exclusivity/Geo-blocking

There is a strong relation between copyright and MS national agenda in constructing a demos, a collective identity, observed as necessary for contemporary democracies (Samuelson, 1999; Mokre, 2006; Shore, 2001; Thièsse, 1999; Gellner, 1983; Burri, 2012). The sole issue of copyright in the cultural sector is elevating culture not to a simple commodity which reflects national/cultural identity as argued, but as a product, which is profitable, hence needs to be protected from abuse. As academic John Frow (1996, pg. 92) explains, copyright makes a distinction between the "idea" and it's "expression". In the first case, is a common good accessible to all in the public domain and in the second case, a subject susceptible to property claim.

One of the issues of copyright in Europe is the dominant roles of governments, which acting as the sole financier of cultural and creative goods. This is allowing for example secondary use rights, often administered exclusively by one collecting society, authorised by the government. In the view of the US, the existing schemes for mandatory collective administration violate countries' obligation under article 3 of the Agreement on the treaties administered by WIPO (Footer and Graber, 2000).

Even though that after the 'dot com bubble' governments intervened with the Internet, the online space cannot be controlled (Meyer, 2017, pg. 2). Geo-blocking being overcome with practices such as piracy and VPN apps. And while websites, which are infringing copyrights are being shut down, very often they re-emerge again. The main conflict in online copyright is to find the balance between on the one side, consumer rights, and on the other side the copyright owners interests (ibid., pg. 7). As explained by the European Consumer Organisation (BEUC), "Nobody would accept that a high street record shop or bookshop refuses to sell a CD or a book to a consumer because of his nationality or place of residence. Yet, in the online world this is a

common practice, which leads to consumer frustration" (The European Consumer Organisation, 2017). This is a crucial points, as in some cases EU citizens in one country are denied access to service available in another EU country (e.g. music streaming service Spotify), while in other cases service catalogues vary drastically in different EU countries (e.g. Netflix, MUBI exc.).

The lack of cross-border availability of content has become a prominent problem for consumers, implied by the so-called third wave of regulation in the ICT sector. According to a recent report by DG Competition, 82% and 62% of public and commercial broadcasters respectively use at least one type of discriminatory behaviour for their online services (European Commission 2016). A critic coming from BEUC (2017) in this regard is the established monopoly created by exclusive licensing practices, which does not allow consumers to look for better offers outside their own country (territory of exclusivity) if they cannot find the desired audio-visual content through local distributors (e.g. cable or satellite operator). This is all the more a problem because existing data reveal that consumers are not always satisfied with the content provided locally and would like to access foreign films or TV programmes as shown in the market overview. Even if the Commission has recognised the problem and its solution[39], the Centre for European Policy Studies (CEPS) report states, as long as there are no unified copyright entitlements at EU level, multi-territorial licenses are the only instrument enabling cross-border exploitation (Centre for European Policy Studies, 2013, pg. 1–2). This practice is further encouraged by the profitability of this approach due to unequal penetration of Internet broadband services and varying per capita income from one member state to another (ibid.).

In EU legislation one of the key examples for territory broadcasting rules has been the Premier League case, which was forced to renegotiate its licensing agreements with all broadcasters in the EU. This has significantly narrowed the market: licensees are no longer allowed to offer an optional English language to feed cross-border consumers demand, allowing commentary in the language of the given country. Another restriction was time-like, in order to avoid broadcasting from abroad for a highly desired content (Rompuy, 2014, pg. 2–3). This ruling can be compared to creative content, especially to audiovisual works online, as the mentioned broadcasting rules were enforced in order to keep stadium attendance, much alike to policies aimed at keeping the audiences in the cinema.

---

[39] In 2016, during the MEDIA anniversary event the DSM Commissioner Andrus Ansip stated that: "Portability is key to fight piracy. We must provide better legal access to digital content."

However, scholars argue that the extension of the dominating so far country-of-origin principle to online distribution will not affect Europe's cultural and linguistic diversity, as it is wrong to assume that because consumers should be able to access content from other Member States, they will stop consuming local audio-visual services (The European Consumer Organisation, 2017). Recent data reveals that consumption patterns in traditional distribution channels like cinema remain stable and local TV is still the most used medium to watch audio-visual content (ibid.).

### 3.7 Relation between barriers and pirating

The above-mentioned barriers have led to a bigger problem within the EU, namely pirating. National protectionism for culture does not stimulate consumers to purchase more of a local cultural context. Demand and supply, do not get significantly distorted by national protectionism and cultural exception in the digital era. Moreover, geo-blocking, does little to stop consumers from accessing content they have been exposed to advertising, much in line with the convergence theory. Very often, there are no alternatives for consumers, especially for low-demand or low-cost films, which is the majority of European production.

EU institutions are aware of the piracy issue; however, changes are very slow. Overlapping legislation and deep fragmentation therefore make it profitable for individual MS to exclude the cultural sector from the single market and limit the choice for consumers. This is against the basic principles of the Single Market, consumers' rights and EU competition rules. According to a recent study of the European Union Intellectual Property Office (EUIPO), 6 out of 10 youngsters would stop using illegal sources to access digital content if there would be affordable original products in place (European Union Intellectual Property Office, 2016). Therefore, BEUC argues that contrary to what critics say, the removal of geo-blocking would benefit Europe's cultural diversity, as it would enable consumers to listen to music, read books and play videogames from across the EU's cultural landscape in the most convenient – and – legal way (The European Consumer Organisation, 2017, pg. 2).

In conclusion, it can be said that the very obstacles to the liberalisation of culture and creative works are the ones that slow down the development of the sector for mainly two reasons: it decreases demand, which in turn reduces production and where demand is present it leads to copyright violation as there is no legal way for content access. Therefore, while liberalisation is seen as harmful to cultural industries in Europe, there is little or no discussion on the way

liberalisation can bring also the very much needed regulation of the sector at EU level. While liberalisation without regulation will undoubtedly harm smaller markets, removing the above-mentioned barriers is of crucial importance to allow EU content to travel.

# 4  Case Study: European Film Industry

## 4.1 Access to culturally diverse content

In the Special Barometer from 2013 (which is the latest research conducted by Eurostat on the topic), there is a part dedicated specifically to access to culture from another EU country. According to this data, reading books by an author from another European country is the most common form of engaging with another country's culture (31%). On second place is a TV programme from another country (27%) (European Commission 2013), while accessing film/music content online is not listed as a possible answer. In regard to books, access to eBooks is not part of this survey.

The European Commission published a Eurobarometer survey in 2007, which has examined the impact of cultural exchange and intercultural dialogue. Since then, there hasn't been a similar research. However, key findings have been that almost three-quarters of EU citizens believe that people with a different background enrich the cultural life of their country. As Marco Martiniello (2014) argues that EU cities are undoubtedly multicultural, also intercultural communication is reality. In 2012 almost half of Europeans (48%) have socialised with people from another EU and four out of ten Europeans have visited another EU country (40%). Just over a third have watched a TV programme in a language other than their mother tongue (35%,) and just under a quarter have read a book, magazine, or newspaper in another language (24%), while, the use of the Internet to buy a product or service in another European Union country is 22% (European Commission, 2013, pg. 55).

The dominant sentiment in the EU is intercultural dialogue is beneficial, but for many, carrying on the cultural traditions is equally important. A remarkably high number (83%) of EU citizens that agreed about the benefits of intercultural contacts, and two-thirds were of the opinion that family (cultural) traditions should be kept by the young generations (The Gallup Organisation, 2007, pg. 4). However, besides the general positive view towards the benefits of other culture Europeans' to other EU countries is significantly low standing at 66% as illustrated by figure 4.1. There are also significant discrepancies between countries as shown by figure 4.2.

Figure 4.1: Index of openness to other EU countries in 2013
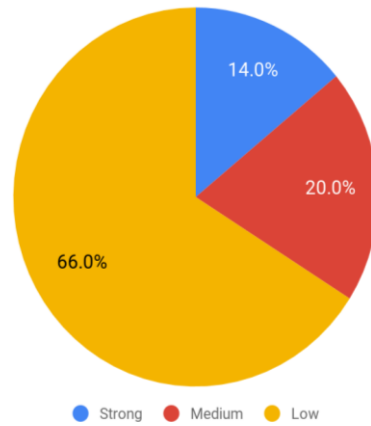


Source: Standard Eurobarometer 80 European Citizenship European Commission (2013)

Figure 4.2: Index of openness to other EU countries per country for 2013
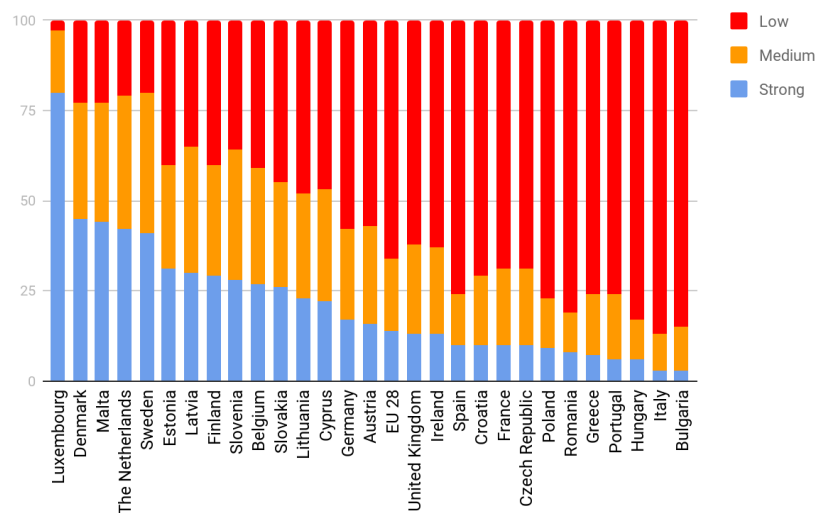


Source: Standard Eurobarometer 80 European Citizenship European Commission (2013)

The audiovisual sector as according to de Smaele (2007, pg. 114) is probably the world that connects the largest numbers of citizens throughout Europe, both old and new, and has a daily impact on millions of citizens. Due to the country-per-country system, some of the new films are released internationally about one year later than in the original European country. In 2015 European films generated an estimated 18% of their "worldwide" admissions outside Europe,

which means have been released in at least one country outside the EU. The average release of European films outside the EU for 2010–2014 being 19.8% The most important market for European films is still the USA (European Audiovisual Observatory, 2015). The weak circulation is presented with the following data: 63% of EU films were only released in one country, mostly their national market, 79% of EU films were released in two countries or fewer. At the same time 80% of US films were released in 20 countries or fewer. Most importantly release in cinema does not mean exposure to audience as EU films represented 64% of the total number of films released in EU cinemas between 2005 and 2014 but accounted for only 27.4% of total admissions (Grece, 2016, pg. 4).

There is also a significant discrepancy between individual foreign-movies share in national terms. This is illustrated by the statistics available for movies that need to be translated. A survey conducted by the European Commission in 2011 found out that in 2009, in the United Kingdom only 35% of box office releases needed translating, while in Bulgaria, Belgium, Croatia, Estonia, and Iceland more than 90% of films have to be translated (European Commission, 2011). This shows the weak state of national production and the weak circulation of non-English films. As already stated, CEPS reported that this is to a higher extent owed to the way films are funded, the discrepancies in MS purchase parity and linguistic differences. The same report argues that simplification of licensing in the film sector is possible even though, in order to preserve contractual freedom of both content owners and commercial exploiters, EU legislative measures cannot deprive copyright holders of the opportunity to target a specific public and to make licensing fees for online exploitation proportionate to the particular audience reached by content transmissions (Centre for Educational Policy Studies, 2013).

Another reason for the weak circulation being the need for dubbing and the vulnerability of the distribution sector, as Simone and Fontaine predict that DSM might lead to the disintermediation of traditional players giving an example with distributors (Simone and Fontaine, 2017). However, as Wutz and Perez argue, the distribution and export of European cinema should not only be considered from the financial point of view, but attention should be paid to the cultural benefits that it brings (Wutz and Perez, 2014).
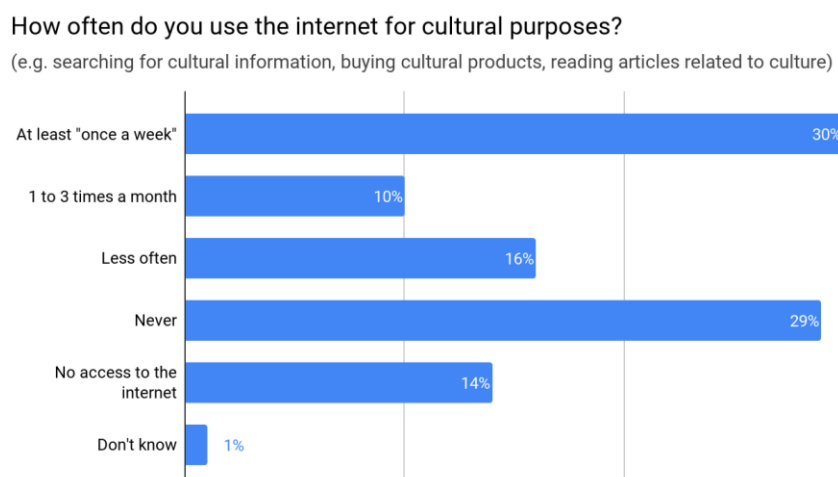
From the perspective of economics, due to the structure of the world-wide audiovisual market, art films are in competition with Hollywood's big budget mainstream movies. Whereas the

average production cost of a Hollywood film for 2015 is $60m to produce and estimated another $40m to market and distribute to theatres across the globe, however American indie films are also produced for a lot less, e.g. the Oscar nominated American indie Manchester by the Sea being produced for $8.5m (The Economist, 2016; 2017), when combined indie and blockbuster films the average cost for US film is €12 (Katsarova, 2014). In Europe, an average production costs range from €11 million in the UK, €5 million in Germany and France to €300 000 in Hungary and Estonia (ibid.). In 2009 state aid to the audiovisual industry in Europe amounted to 2.1 billion Euros of public funds and 1 billion Euros in tax incentives, of those 70% are for audiovisual works production. Direct public funding for the financing of films varies from around 42% in Spain and Italy up to 60% in other countries (The European Consumer Organisation, 2016). However, this leads to even bigger fragmentation of the EU film industry.

Half of all audiovisual media services established in the EU at the end of 2016 were concentrated in three countries: the UK, France, and Germany (European Audiovisual Observatory 2017). Content travelling in Europe therefore struggles, as it is not made for worldwide sales in contrast with the US, which pursues such market strategies (Iapadre, 2014, pg. 386). Therefore, the DSM and the low-cost margin of investment in distribution is seen as one of the possible models to improve European exports. A European Commission survey has found that 30% of consumers use the internet for cultural purposes as shown in the figure 4.3.

Figure 4.3: European consumers' use of the internet for cultural purposes
Source: Eurobarometer European Commission (2013)



How often do you use the internet for cultural purposes?
(e.g. searching for cultural information, buying cultural products, reading articles related to culture)

| | |
|---|---|
| At least "once a week" | 30% |
| 1 to 3 times a month | 10% |
| Less often | 16% |
| Never | 29% |
| No access to the internet | 14% |
| Don't know | 1% |

A national analysis focusing on the aggregated results for "every day", "several times a week" and "once a week" reveals significant variations between EU Member States: more than four

in ten respondents say that they use the Internet for cultural purposes at least once a week in Luxembourg (48%), France (43%) and Sweden (41%). The proportion falls below 20% in Austria (17%), Greece and Bulgaria (both 18%) (European Commission, 2013).

An analysis of socio-demographic factors indicates that the youngest respondents are most likely to use the Internet for cultural purposes; 44% of 15–24 year-olds do so at least once a week, compared with 39% of 25-39 year-olds, 32% of 40-54 year-olds and 17% of respondents aged 55 (European Commission 2013). In terms of purpose, more often people use the internet to read articles online (53%), searching for information for products and events (44%), streaming radio and music (42), downloading music (31%), watching streamed or on demand movies/ Tv programmes (27%) (ibid.).

### 4.2 Trends in online distribution

Online distribution of films is at the end of the distribution hierarchy, as the exploitation of films is traditionally based on two pillars: a release windows chronology, mainly agreed upon on a contractual level, with theatres being the first (usually exclusive) window. Then follows a territorial (territory per territory) exploitation of rights (Fontaine and Simone, 2017). The current media chronology in EU countries beings with exclusive window for theatrical release, which is between 3 to 4 months. After the release in cinemas a film can be exploited online on Transactional Video on Demand (TVOD), or pay-per-view services and/or in DVD. The Subscription Video on Demand (SVOD) is the last window to be exploited before the Advertisement Video on Demand (AVOD), which is free in charge and is available on platforms such as YouTube. There can be a certain variation in the length of each release window across different countries (Fontaine and Simone, 2011).

In 2015 in France (the strongest European film production market) feature films generated 75.2% of VoD revenue, which is estimated at €317.6 million. The performance at the national box office is 31.6% of the revenue for French films, while US films generated 56.9% (CNC, 2015). Films from the US accounted for 54.6% of all films watched as VoD, films from France for 34.7% and films from other countries for 10.7 percent. In total in France, in 2015 there were 14,827 feature films downloaded at least once, which is 2016 more than in 2014 (ibid.).

Like in France, in Germany as well, online sales and rentals have been gaining popularity. Some 80 percent of the population now has access to the internet, and of them, 80 percent use high-

speed connections, with the expected positive effect on the growth of online services. More than 4 million units were sold in 2011, an increase of over 40 percent. The growth rate for VoD streaming being even higher at 55 percent. In 2011, a total of 9.4 million films were downloaded and growth in Italy was with 300% (Wutz and Perez, 2014, pg. 113). In Europe, TV content is available both on SVOD and IPTV[40]. However, In certain countries there are gaps between the time content is broadcasted on TV and its availability on IPTV, leading to piracy and illegal streaming (Fontaine and Simone, 2017).

Younger respondents are also more likely to use the Internet for entertainment-related cultural content than older citizens; as might be expected, 15–24 year-olds are more likely than those aged 55 and over to download music (50% vs. 13%), listen to music (53% vs. 28%), download TV and film podcasts (33% vs. 12%), stream TV and film (38% vs. 15%) and play computer games (36% vs. 14%) (European Commission, 2013).

The research conducted by Gilles Fontaine and Patrizia Simone for the European Audiovisual Observatory gives a detailed inside in the way VOD is developing in Europe, analysing data from 2011 to 2015 (Fontaine and Simone, 2017). For this period the growth of VOD is particularly striking in the case of SVOD revenues, which have marked a rise by 95% from 2014 to 2015, with a compound annual growth rate of 161% over the researched period. In addition to this data, Media Intelligence Service research shows that SVOD subscribers in Europe grew 56% in just one year between 2014 and 2015, and are expected to reach 50 million homes by 2020 (European Broadcasting Union, 2016).

TVOD services revenues have also experienced a considerable increase. However, in spite of the clear growth trend, VOD revenues are still scarce when compared to the overall audiovisual sector. In 2015 VOD represented only 3% of the total revenues in the EU audiovisual market (Fontaine and Simone, 2017, pg. 13). However, EU works struggle to enter VOD platforms in the first place and lack of advertising and promotion campaigns contribute to the lack of increased revenues. Only 47% of the 10.828 EU films theatrically released in the European Union between 2005 and 2014 were available on at least one TVOD service, which means that this service could also be only a national-territory based one. On the other hand 87% of all US films released in EU cinemas were available on at least one TVOD service, which shows a clear

---

[40] Internet Protocol television (IPTV) is the delivery of television content over Internet Protocol (IP) networks.

connection with the demand and supply paradigm (Fontaine and Simone, 2017, pg. 18). These numbers indicate that on VOD, EU films tend to circulate less than US films. The data also show that, when available on TVOD, EU films are available in a smaller number of countries than US films. This is so, as releasing films on VOD is more difficult for content with lower commercial potential or not supported by a successful theatrical release upfront (which is applicable for any film, and is not limited to EU productions).

Therefore, key issues recognized by Fontaine and Simone are closely connected to the 'cultural exception' attitude towards culture, which benefits only big countries with high enough demand to sustain their market. However, the increased availability of foreign production in the EU and the clear dominance of US platforms across EU countries, shows that also self-sustained markets will begin to suffer from the lack of competition and innovation. EU films seem to face a series of issue in regard to their availability on VOD: only a minority of EU films released in cinemas are released in VOD; when available on VOD, EU films are only released in a small number of EU countries; when available on VOD, European films suffer from a lack of promotion (Simone and Fontaine, 2017, pg. 22).

In 2007 a Eurobarometer survey, suggested that the disparity in cultural participation may be narrowed in time by increased Internet access, and that this could transform the cultural sphere. This has turned out true, however, even with recent developments in the digital sphere, the overall cinema attendance has not declined, but the opposite: among cultural participation activities only cinema-going has seen a 1-point rise in 2012 (European Commission, 2013). Therefore, the Eurobarometer (ibid.) analysis' conclusion is that the Internet is changing the way both "consumers" and "creators" of cultural activities access cultural content, while at the same this phenomenon does not lead to the disappearance of the 'old' ways of cultural participation.

It is also to be noted, that the blockbuster Hollywood movies are driven purely by demand and Hollywood domination on the EU market is not happening in unfair competition terms. There are several reasons for that and namely five major competitive advantages that drive this demand: 1) unrivalled technical and organizational capacities[41] 2) popularity and widespread

---

[41] As Kevin Evers writes "The fact is that up to 70% of a movie's revenue can come from overseas. And which U.S. offerings play well in other countries? Blockbusters. Why? No other country can create movies on the same scale. Dramas, romantic comedies, genre pictures—studios around the world can make those. But only Hollywood has the technology and the talent (including world-famous celebrities) to churn out nine-figure spectacles".

usage of the English language 3) unique pool of talent drawn from many different countries (Scott 2002, 2–4) multinational operations the majors directly control distribution systems in all their principal foreign markets, as well as in many more secondary markets 5) Hollywood motion pictures have always depended in significant ways on strong political federal support who have continually pressed foreign governments to open their doors more widely to American films. Therefore, without a united (physical and digital single) market, the European countries will never be able to overcome these competitive advantages.

Another important point that researchers analyze is the digital shift as a phenomenon that is a 'threat' to the blockbuster industry (Scott, 2002; Mumford, 2017), as technology makes it possible to distribute films directly and at low cost directly to the consumer without intermediaries. This is especially helpful for small and independent production, while increasing the amount of creative content available to consumers, thereby broadening the market (Scott, 2002). In fact, is also important to note that not all blockbusters are successful, and a well-note strategy of US studios has been to invest in number of projects, expecting only few of them to succeed and cover the losses of the unprofitable ones (Evers, 2013; Katsarova, 2014).

In addition, the discourse so far has been limited to the damaging effect of the domination of American cinema, which has been equalized to blockbuster cinema. However, not all American films entering the EU market are blockbusters. The discourse, therefore needs to move on as to what kind of market in the EU would be sustainable and how to use the emerging technologies to the MS advantage, without instrumentalising culture in order to establish imagined borders in the virtual space between MS.

## 4.3 Survey analysis

The following survey was conducted in order to find out to what extent citizens of different EU MS are exposed to the latest releases of European cinema and how they access cultural and creative works. The participants were also asked how they evaluate the cinema sector from their native country and from another EU MS. The survey's aim is to fill the existing statistical gap as most surveys discuss numbers and habits in the entertainment sector in general and do not concentrate on the issues within the EU.

The survey was conducted online, targeting EU citizens and focusing on young respondents (between 18 and 34 years old) and English-speaking people, which is also a key market segment for audiovisual content provided online as shown by the Eurobarometer statistics (European Commission, 2013). The survey was conducted as online questionnaire accepting answers between 2015 and 2016 and targeting users to express their opinion on European films and film-related habits. In total, the survey gathered 264 responses, of which 248 come from the EU. Of the total EU respondents 28% live in another EU country. The following analysis includes data only for EU respondents. Figuress 4.4 and 4.5 show the respondents according to their nationality and age respectively:

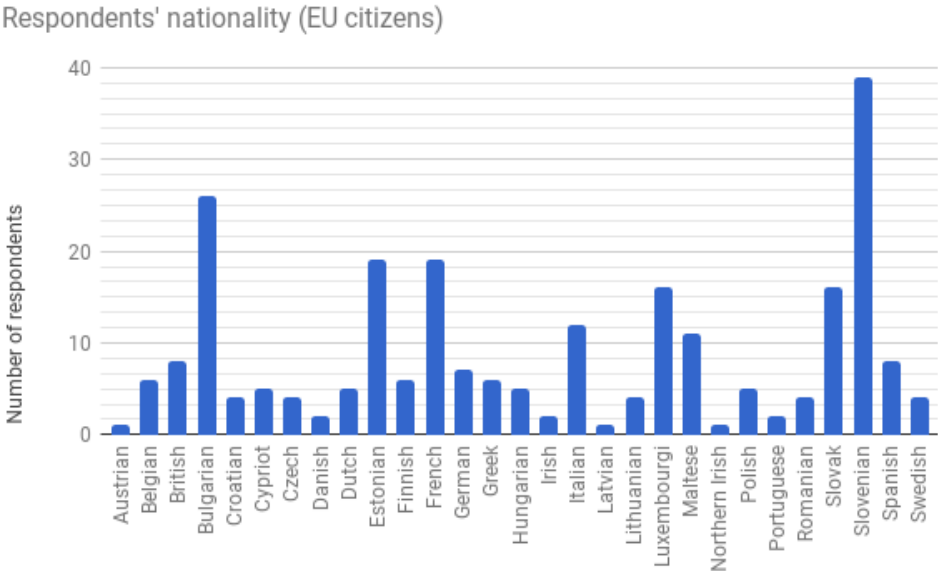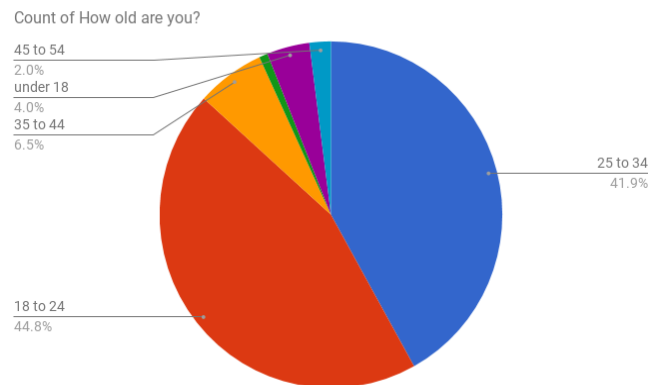Figure 4.4: Number of survey respondents (per country)

Figure 4.5: Age of survey respondents



The survey posed questions divided in three categories: the first category looks at people's habits related to watching films: how often and where do they watch them, the second category is related to openness to films from other EU countries - what films are the most watched and what is their opinion regarding the language diversity that European cinema entails, and the third category is related to the respondents' personal opinions on their home film industry and European cinema popularity.

In the first set of questions, the respondents were asked how often they watch movies at home and at the cinema. The comparison shown in figure 4.6 demonstrates that there is no preference between the two options. However, consumers watch more films at home. This could be explained with the fact, that watching film at home does not cost much.

Figure 4.6: Data on the respondents' cinema attendance habits
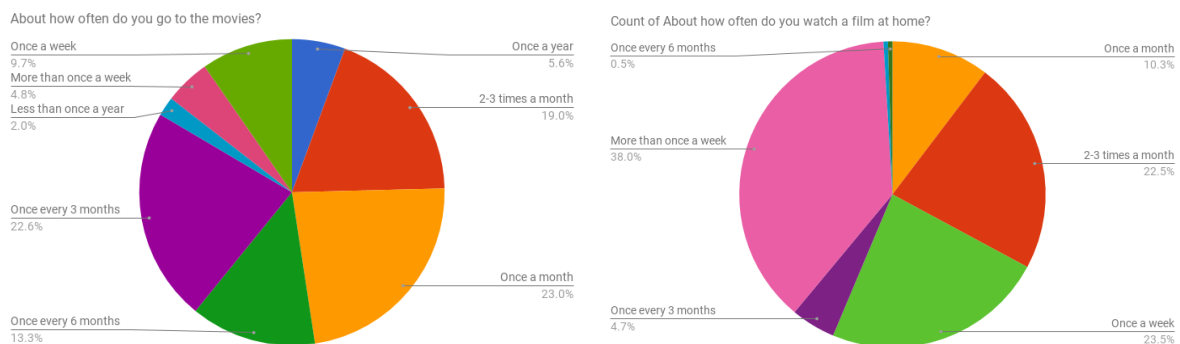


When asked if they use illegal ways of watching films, overwhelming majority of 73,8% has confirmed it (see figure 4.7). However, it is important to stress that this does not mean that the respondents using torrents have not subscribed to a service. The survey data shows that about

38% of the respondents that have said that they access content illegally online have also subscribed to a paid service. However, the most used online tool to access content is the free accessed YouTube (59.3%), followed by the SVOD service Netflix (42.3%), while 18% of the respondents have said that they don't use any of them, while other answers point at 20 other different providers of content. Number of users have also point out that they do not download illegally, but instead are 'streaming' from various platforms that operate internationally. The answers provided in this set of question are a clear expression of the 'convergence culture', whereas even if users are ready to pay for content, when the latter is not provided they are ready to use illegal methods to access it. When included both 'streaming' and 'downloading' options for accessing illegally creative content online, the percentage becomes higher, namely 76.6%.

Figure 4.7: Survey data on illegal downloading via torrents
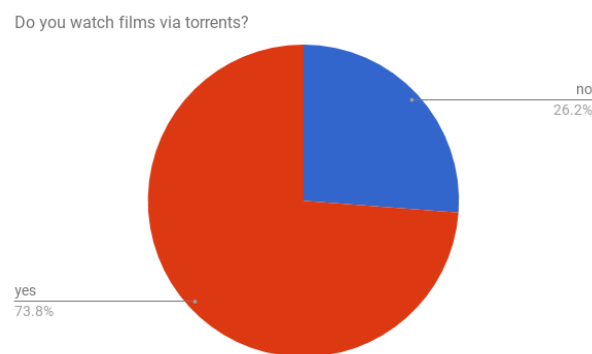


In the language-related questions, respondents have expressed an overwhelming preference to watch a film in its original version - 92,3%. The remaining 7,7% coming from Bulgaria, France, Slovakia, Italy and Luxembourg. Therefore, countries where there is a tradition of dubbing (except for Bulgaria) and half of them being in the age range 35-54.

Another question posed to the participants in the survey was if they would watch film online if subtitles are being available only in English. While having into consideration that the participants are familiar with the language, the results show an overwhelming majority, namely 94,8% who would watch a film this way. The data shows, that participants are willing to access a non-English film even if there are no available subtitles in their own language, as illustrated in figure 4.8.

Figure 4.8: Survey data on film preference (subtitles in English vs. dubbing)
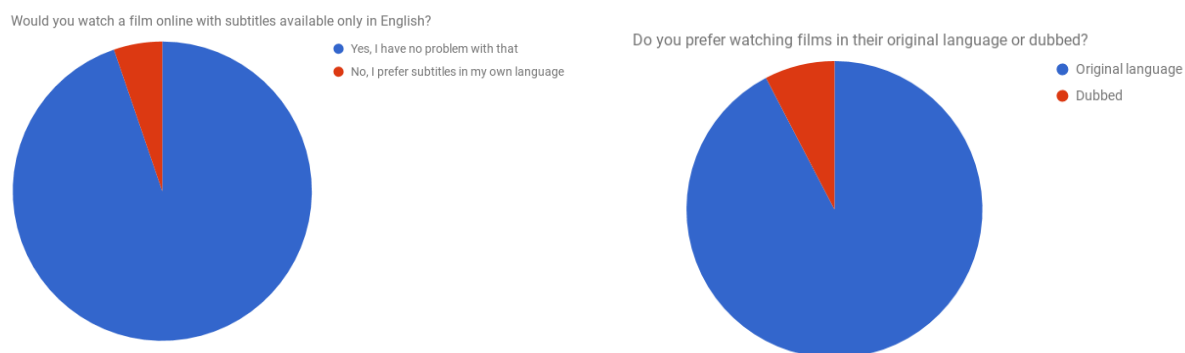


This finding corresponds with the results

presented by a research group appointed by the European Commission. The research group found out a correlation between knowledge of languages and preference for subtitling, which is also confirmed for people in high education, as once they have begun university, most young Europeans change their audiovisual habits and prefer subtitling to dubbing (Media Consulting Group, 2011, pg. 4). Most importantly, this research shows that not only young people, but overall nearly 72% have expressed willingness to view films in their original version, with subtitles if this choice is to be made available by television channels (ibid.).

This shows two important trends: as most young people today know English (and in addition other languages) they are preferring content in its original form and as the numbers of highly educated people is constantly on the rise[42] (European Commission, 2017), the demand for original, creative content coming from different countries is about to increase.

In regard to distribution and promotion of European cinema, respondents have been critical and show the same division that occurs on EU level. On the one side, there is a group of respondents that insists that Europe produces great films, however not enough investment in marketing is the reason why the industry suffers and there is lack of resources. "Educate people, so they will be able to understand something other than Hollywood production" (Croatia, age 25-34); "The need to be distributed and showcased more and shown more at the cinema (for example in Cyprus the local cinema only plays Hollywood movies" (Cyprus, age 18–24); "Brand them as

---

[42] According to Eurostat survey between 2002 and 2016, the share of 30 to 34-year olds having completed tertiary education grew continuously from 23.6 % to 39.1 %. Achieving tertiary education being also part of EU's policy agenda, where there is a set goal to increase the share of the population aged 30 to 34 having completed tertiary or equivalent education to at least 40 %' by 2020.

European films; grant more funds; stay in the "cinéma d'art et d'essai" segment that is where we can bring something (France, age 25-34). These group of respondents have also emphasized the role of education in schools in order to present cinema as art and not only as a pastime experience. In fact, from the respondents in the survey 62,9% have answered that they have not participated in any kind of film related education.

On the other hand, there are the respondents that demand more 'diversity' in European production, where there are films, which 'entertain' and is not only an 'artistic endeavour' as this will create the needed flow of investment: "They should spend more on marketing. Alternatively, instead of exporting the films that are aimed at a certain demographic (see Dogtooth) they should try to produce and promote films that are more mainstream and/or enjoyable to watch like Amelie" (Cyprus, age 25-34); "People need to know more languages! Because watching with subtitles is ALWAYS inferior. Also, we should maybe churn out some light comedies like the American's do but in our (way nicer) European locations. I'll be honest, I like watching a light silly romantic comedy from times to times. Why can't we have some more of those set in Paris instead of New York? Better, yet let's take less cliché cities and make them more lovable (Vienna, for example!) and thereby maybe people will learn something about our cultures? Wiener schmäh!" (Germany, age 25-34). An interesting comment is from one of the respondents who answered that in order European films to become more popular they should be available as torrents, which points at the fact that majority of the illegal content that consumers in Europe access online is a production that does not come from the EU.

The two groups of respondents illustrate clearly the conflict between the 'cultural democracy' and the 'democratization of culture' paradigm and while some are willing to compromise and have it both ways, others are convinced that having a 'popular' European film is the wrong way to develop the film industry in Europe.

It is interesting also to observe that respondents that are film professionals also experience issues accessing films. For example, a film professional from Lithuania has stated that "It's very easy to say that we as a nation must go to the cinema more often, but the sad truth is not even I go to the cinema as often as I should for there is nothing I want to see there". The issue of distribution in cinemas is connected with the issue of not having an access later on online as well due to geo-blocking. Therefore, if a consumer has missed the cinema window or is not in

a country where the film is released online as well, it does not have an opportunity to (legally) access European (or any) film content.

The respondents were also asked to select if they have seen any of the most awarded and supported by EU distribution schemes films, which included Oscar winners and nominees, European Academy winners and LUX Prize winners and Cannes award winners (in total 24 titles). 30.2% have answered they haven't seen any of them, the top three is consisted of two English speaking films with well-known actors: The Lobster, directed by Giorgos Lanthimos, starring Colin Farrell and Rachel Weisz (40.3%), Oscar winner La Grande Bellezza by Paolo Sorrentino (35,5%), and Melancholia by Lars Von Trier starring Kirsten Dunst (33,5%). Therefore, in all three cases there are traces of popularity due to American film industry (Hollywood actors or Academy Award). On fourth place is the Academy Award nominated film by Sorrentino, which was in English "Youth" (29%). And on fifth place is the LUX Prize winner and Oscar nominated film "Mustang" by Deniz Gamze Erguven, a Turkish language French production.

## 4.4 Policies tackling the issues in the film industry

EU's funding programme for culture Creative Europe[43] for 2014–2020 has few aims, one of which is to "improve access to European cultural and creative works and extend their reach to new and larger audiences". However, the budget dedicated to the programme, namely €1.46bn, is not enough match its ambition. From this amount, €900m has been allocated for MEDIA and nearly €500m for Culture (Crusafon, 2015, pg. 97). As the EU's total budget is €145bn (2015 prices) the amount spent on culture is therefore 1%. While the EU organizes a number of initiative aimed to increase the awareness of European works across borders, among which are EU Architecture Prize, European Heritage Days, the LUX Prize, the EU Literature Prize, European Border Breakers Awards for popular music and the European Heritage Prize, their impact is for now very limited.

The LUX Prize is the award of the European Parliament aimed to support the circulation of European film works and is given to the best European film, the agenda behind it being crucial: to facilitate the circulation of European films by giving them access to all 28 countries' markets and translating them into all 24 official languages of the EU. While not very well-known, the

---

[43] Established with Regulation (EU) No 1295/2013

award has successfully given the spotlight to a number of European films, where the top three nominees receive help with distribution. It is also to be noted, that many of the films have been subsequently nominated and even won prestigious awards such at the Oscars and the European Film Awards (Mustang, Son of Saul, Ida, Toni Erdmann). Many of the films have also received the chance to be screened at film festivals across Europe, that otherwise would not be possible. Another positive side of the initiative is that in numerous occasion the LUX screenings across Europe are accompanied by events and panels that start discussions on important topics, which are relevant for Europeans.

Prizes such as LUX Prizes and panels at European Film Forums organized by the European Commission in number of film festivals across Europe show that the main issues have been identified. For example, the titles of panel discussions at the Cannes Film Festival in 2016 were: 'Distributing EU works across borders'; 'Developing films for a global market: from Ida to The Lobster'; 'Can VOD and cinemas work hand in hand'; 'Connecting to young audiences'. In addition, at the European Film Forum held in Brussels in December 2016, the EU works circulation issue was recognised and addressed at the panel called "It's all about access, fostering the exploitation of EU works" in the context of the Commission ambitious agenda to both modernise the EU copyright framework and to support enhanced availability and visibility of European content, including across borders. While putting the spotlight of the important issues regarding the visibility of European works online, solutions have always fell short.

## 4.5 Recommendations

The dilemma, as shown above is how to preserve the characteristics of European cinema and at the same time make the sector sustainable, as relying solely on state support is making whole film industries in smaller markets collapse. As scholar Smith (2007) points out, in such market, also subsidies may not be sufficient to shore up a failing industry due to the discrepancies between states in their ability to provide financial assistance for their cultural industries. Smith goes further, stating that public subsidies can also slow down innovation and lead to poor quality products (2007, pg. 41). The current situation of the industry is that film production within Europe remains fragmented and fragile, there are non pan-European distributors and therefore very few European films are distributed outside their country of production (Regis, 2009, pg. 64).

One solution, proposed by scholars Fontaine and Simone (2017) is related to the fact that part of the aggregators' added-value lies in their capacity to guarantee audiovisual work a distribution that is as wide as possible, beyond the theatrical-driven, country per country, VOD release. They point out at the production context, where the global resources available for film financing are under pressure and VOD is seen as a new intermediary, which may contribute to the increase revenues. However, these aggregators lead to a low-margin business and consequently to the disintermediation of traditional players (e.g. distributors, professional dubbing sectors). Therefore, changing the market means as well changing the players, where there is a strong lobby against such changes.

The European Film Forums discussing the current and most vital issues in the industry are an important step towards finding solutions and the presence of the Commissioner for Digital Economy and Society Günther H. Oettinger at Cannes in 2016, has shown the will of policy makers for dialogue with European film professionals. However, as TTIP negotiations and legislation reforms show, progress has been very slow.

However, nowadays films can be watched in any location with internet access and indeed more cheaply than with physical videos, DVDs or Blu-rays. Even more attractive is the SVOD, which has already been proved a success in North America. Therefore, the trend for online distribution has already been set as claimed by authors such as Josef Wutz and Valentin Perez, who proposed the development of high-quality online products, like EuroVoD, with competitive prices and good picture quality which will also be an effective way of fighting illegal downloads, encourage a different understanding of European cinema and generate profits for the video industry. Also, according to them online distribution will give a second chance to films that had little success in the cinema (Wutz and Perez, 2014, pg. 114). One of the approaches to achieve this goal is to establish a cross-European, bundled online offer from platforms that already exist at national level, while another proposal is the creation of a satellite to produce the kind of pan-European cultural programming, which requires political support across MS that is currently missing (Boyer and Sükösd, 2011, pg. 238–239).

Due to the domination of the North American production in the EU, English is the language with which viewers from subtitling countries are likely to be most familiar, at least in informal learning contexts (Media Consulting Group, 2011, pg. 3). This shows, that circulation of EU

films can overcome the language barriers if there are subtitles in local language and at least, in English.

The CEPS Task Force (2013) has set a number of specific recommendations, which are to overcome barriers in front of the DSM. One of them being the unification through an EU regulation granting uniform copyright to titles throughout the EU, emphasizing the long-term approach to solve the copyright issue; Fostering the growth of cross-border online exploitation of creative content in sectors in which rights ownership is centralised and one single entity can freely decide the territorial reach of licenses for online uses (e.g. films, software, video games) as fragmentation leads to territory agreements and lack of circulation. In addition, one the most important proposals provided by CEPS is to establish the concept of 'online rights' as a clearly defined category (ibid.).

Chapter 4 has provided an in-depth exploration of the barriers and and potential for CCIs in the DSM. The following figure 4.5 sums up these findings in a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis of the film distribution liberalisation in the EU:

Table 4.1: SWOT Analysis: Film Distribution Liberalisation in the EU

| Strengths | Weaknesses |
|---|---|
| Equal rights - content distribution, regardless market's "profitability" | European cinema is branded as difficult to understand |
| Fighting piracy through legal offers being available to all EU citizens | Increased costs due to operational difficulties |
| Increased content distribution & visibility (avoiding "forgetting" productions) | Needed regulation on EU level - opposition from MS |
| Increased exposure for smaller markets | Lack of cross-border online video platforms |
| **Opportunities** | **Threats** |
| Increased cultural diversity awareness | Liberalisation without regulation could marginalise films from smaller countries |
| Increased demand for diverse content | Economic losses for "intermediate" players (such as distribution companies) |
| Setting the framework for EU streaming services - competitiveness on world level | Expansion of foreign companies in the EU, since there is no European video streaming service |
| Securing return of investment already in the home, EU market | |

# 5 Conclusion

The DSM is seen both as an opportunity and as a threat. On the one hand, cultural exemption is very important aspect, as it secures content from diverse cultures to flourish and be preserved. On the other hand, concerns regarding predominance of mainstream cultures also falls short, when certain cultural protectionist measures are applied (e.g. quotas), but lack of demand for local cultural expressions and copyright infringements do not lead to sustainable cultural sector development.

The highly differentiating use of the concept 'cultural diversity' leads to battling points of view regarding the dual 'cultural' and 'economic' nature of the culture and creative industries. However, while ensuring promotion of cultural diversity, circulation of creative works has been highly neglected. On other occasions, when content does travel, practices such as dubbing are seen as protectionist measures that work against the concept of cultural diversity, viewed as distortion of the original art form on the one hand, but as a protection of the local language on the other. Such dilemmas make it difficult for national governments to reach a decision on what role culture has to play in international relations and especially in European integration.

Providing availability of creative content online is not only a business opportunity but is essential for the sustainable development of cultural diversity. While, the concept of cultural exception (in relation to the audiovisual sector) may be protecting European countries from US domination on a nominal level, in the absence of strong local production the EU film market is led by US productions and platforms.

Initiatives like LUX Prize and the current debated proposals by the Commission are steps into the right direction, as all main issues are recognised. However, resistance from the film industry, where certain sectors will be highly affected still brings the discussion back to the 'culture as a value' vs. 'culture as a commodity' debate. Clearly, as the concept of democratization of culture and cultural democracy has demonstrated, in times of advanced technology, this debate needs to move forward. In fact, this discourse shows that there are serious gaps in the way creative content is funded and sponsored in the EU.

At the same time, market rules seem to be underestimated by policy makers, where the demand for EU films (which are predominantly arthouse films) is not recognised as a separate niche

market, but is viewed as a common denominator, which defines European cinema, therefore the answer is to educate the audience in order to increase the visibility of EU films.

The fierce competition coming from the US due to strong online advertising strategies questions the DSM and brings forward its potential to strengthen the EU audiovisual market. Not only in terms of stronger regional production, but also in terms of negotiating power for content coming from abroad, as the current system (individual country-per-country agreements) discriminate among consumers based on their home address. It is claimed therefore, that access to culturally diverse content is not only beneficial business opportunity, but is a right to EU citizens, as part of a Single Market. The circulation of cultural goods and services nurtures awareness of the other and the creation of links between cultures should be one of the major tasks for the EU to achieve. Even more so when the existence of the longest peace project in European history is being questioned.

# 6 Povzetek

Kulturne politike so v zadnjih letih vedno bolj v ospredju v odločevalskih procesov znotraj institucij Evropske unije. V zvezi z ohranjanjem kulturne raznolikosti se je strategija enotnega digitalnega trga (DSM) obravnavala kot priložnost in obenem grožnja za podjetja in kulturo. Po eni strani je regulacija kulturnega sektorja znotraj trgovinskih sporazumov zelo pomembna, saj zagotavlja zaščito raznolikosti vsebin iz različnih kultur ter jih tako pomaga ohranjati. Po drugi strani pa zaskrbljenost glede prevlade t.i. 'mainstream' kultur in uvedba ukrepov kulturne zaščite (npr. kvot) in t.i. 'kulturne izjeme' (izvzetost kulture iz liberalizacije mednarodne trgovine) ne dosega svojega namena. Zaščita trga pred tujimi vsebinami namreč ne reši težave pomanjkanja povpraševanja po lokalnih kulturnih vsebinah in hkrati vodi v kršitve avtorskih pravic z ilegalnim dostopanjem do tujih vsebin (ki so na legalen način težko dostopne ali sploh niso na voljo), kar nikakor ne vodi k trajnostnemu razvoju evropskega kulturnega sektorja.

Naloga analizira spletno kroženje ustvarjalnih vsebin v luči Evropske digitalne agende ter način, kako protekcionistični ukrepi vplivajo na ohranjanje kulturne raznolikosti. Analizira tudi prednosti in slabosti enotnega digitalnega trga na področju kulturne raznolikosti z uporabo evropske filmske industrije kot študije primera ter služi za preizkus hipoteze, da trenutne kulturne politike v državah članicah EU, omejujejo kroženje evropskih ustvarjalnih del, ki je ključnega pomena za spodbujanje kulturne raznolikosti. Empirična analiza v 4. poglavju odgovarja na vprašanje, kako se kulturna industrija in kulturne politike medsebojno povezujejo in kakšen je vpliv tehnološkega napredka na kulturno industrijo v državah EU. Rezultati analize kažejo, da je EU prepoznala pomembnost čezmejnega kroženja kulturnih in ustvarjalnih del tudi na spletu, a je trenutna zakonodaja preveč omejena, da bi naslovila protekcionizem nacionalnih politik, ki omejujejo kroženje kulturno raznolikih del znotraj EU.

Kljub doseženi krepitvi kulturne raznolikosti, je bilo dejansko kroženje ustvarjalnih del zelo zanemarjeno. Celo v primerih, ko kulturna vsebina potuje v drugo državo, je pri tem prisotna sinhronizacija video vsebin, ki velja za protekcionistični ukrep in deluje proti konceptu kulturne raznolikosti ter kot izkrivljanje izvirne umetniške oblike na eni strani, ter zaščita lokalnega jezika na drugi. Takšne dileme otežijo nacionalnim vladam, da sprejmejo odločitev o tem, kakšno vlogo ima kultura v mednarodnih odnosih in zlasti v evropskem povezovanju. Zagotavljanje razpoložljivosti ustvarjalnih vsebin na spletu ni le poslovna priložnost, temveč je

bistvenega pomena za trajnostni razvoj kulturne raznolikosti. Čeprav je koncept t.i. kulturne izjeme (v zvezi z avdiovizualnim sektorjem) morda zaščitil evropske države pred dominacijo ZDA na nominalni ravni, v odsotnosti močne lokalne produkcije filmski trg EU vodijo ameriške produkcijske hiše in platforme.

Potrebo po reviziji nacionalnih kulturnih politik tako poudarjajo različne interesne skupine. Pobude, kot je evropska filmska nagrada LUX, in trenutni predlogi Komisije so koraki v pravo smer, saj so prepoznana vsa glavna vprašanja. Vendar pa odpor filmske industrije, kjer bodo nekateri sektorji zelo prizadeti, še vedno vodi v razprave o "kulturi kot vrednoti" in "kulturi kot potrošnem blagu". Ta diskurz kaže, da obstajajo resne vrzeli v tem, kako se ustvarjalna vsebina financira v EU. Hkrati se zdi, da tržna pravila podcenjujejo oblikovalci politik, saj povpraševanje po filmih EU (ki so pretežno 'arthouse', tj. umetniški filmi) ni priznano kot ločen nišni trg, temveč se obravnava kot skupni imenovalec, ki opredeljuje evropsko kinematografijo. Odgovor na to je izobraževanje občinstva, z namenom povečanja prepoznavnosti evropskih filmov.

Močna konkurenca iz ZDA zaradi močnih strategij spletnega oglaševanja, izziva DSM in prinaša potencial za krepitev avdiovizualnega trga EU. Ne le na področju izboljšanja regionalne produkcije, temveč tudi v smislu pogajalske moči za vsebine iz tujine, saj sedanji sistem (unilateralni sporazumi med državami) diskriminirajo potrošnike na podlagi njihovega domačega naslova (t.i. 'geoblocking'). Dostop do kulturno raznolikih vsebin torej ni le koristna poslovna priložnost, temveč je pravica državljanov EU kot del enotnega trga. Kroženje kulturnih vsebin in storitev neguje ozaveščenost o različnosti, torej bi povezovanje kultur morala biti ena glavnih nalog EU. Še posebej ko se postavlja pod vprašaj obstoj najdaljšega mirovnega projekta v evropski zgodovini.

# References

Allan, T. (2015). *"We need to ensure the digital revolution benefits all of society" say S&D Euro MPs Press Release*. Socialist and Democrats Group at the European Parliament Newsroom. Available from http://www.socialistsanddemocrats.eu/newsroom/we-need-ensure-digital-revolution-benefits-all-society-say-sd-euro-mps

Almeida, P. S. and P. Costa. (2014). Foreign language acquisition: the role of subtitling. *Procedia - Social and Behavioral Sciences 141,* 1234–1238.

Tanaka, A. and N. Jinji. (2015). How Does UNESCO's Convention on Cultural Diversity Affect Trade in Cultural Goods? RIETI Discussion Paper Series 15-E-126. Available from http://www.rieti.go.jp/jp/publications/dp/15e126.pdf

Armstrong, K. (2010). *Governing Social Inclusion: Europeanization through Policy Coordination*. Oxford: Oxford University

Baeker, G. (2002). *Beyond Garrets and Silos: Concepts, Trends and Developments in Cultural Planning: Report prepared for the Municipal Cultural Planning Partnership*. Ontario: Municipal Cultural Planning Project.

Barnett, C. (2001). Culture, policy, and subsidiarity in the European Union: from symbolic identity to the governmentalisation of culture. *Political Geography* 20, 405–426.

Bartsch, M. (2014). Essay: The Return of the Cultural Exception and its Impact on International Agreements. *Global Media Journal 4*(1). Available from https://www.db-thueringen.de/servlets/MCRFileNodeServlet/dbt_derivate_00029860/GMJ7_Bartsch_final.pdf

Benhabib, S. (2002). *The Claims of Culture: Equality and Diversity in the Global Era*. Princeton: Princeton University Press.

BIPE. (2012). *Final evaluation of the MEDIA II Programme Final Report for the European Commission*. Available from http://ec.europa.eu/smart-regulation/evaluation/ search/download.do;jsessionid=pMpcTTWS5TVXxDJJ2GyctZ1GdBqKyNXNtr26QhnLT4d378Sk8Q10!1601440011?documentId=1997

Blackburn, R. (2011). Capital and Social Europe. *New Left Review 79*(4), 87–113.

Blaney, M. (2015). Germany calls for cultural diversity guarantee in TTIP talks. Screendaily. Available from https://www.screendaily.com/news/germany-calls-for- cultural -diversity-guarantee-in-ttip-talks/5095304.article

Bornschier, V. (2005). *Culture and Politics in Economic Development*. Oxon: Routledge.

Boyer, D. and M. Sükösd. (2011). European Media and the Culture of Europeanness. In *Media, Nationalism and European Identities*, ed. Miklos Sükösd and Karol Jakubowicz, 223–246. Budapest: Central University Press.

Bräutigam, T. (2017). How Germany Became a Dubbing Nation. Goethe-Institut. Available from https://www.goethe.de/en/kul/flm/20894148.html

Brooks, T. (2016). *Becoming British: UK Citizenship Examined*. London: Biteback Publishing

Burri, M. (2010). Cultural Diversity as a Concept of Global Law: Origins, Evolution and Prospects. *Ethnic Diversity and Cultural Pluralism* 2(8), 1059–1084. doi:10.3390/d2081059

Burri, M. (2012). Cultural Protectionism 2.0: Updating Cultural Policy Tools for the Digital Age. In *Transnational Culture in the Internet Age*, (ed.). Sean A. Pager and Adam Candeub, 182–202. Cheltenham: Edward Elgar Publishing.

Burri-Nenova, M. (2007). The New Concept of Universal Service in a Digital Networked Communications Environment. A Journal of Law & Policy for the Information Society 3 (1), 117–246. Available from https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1120282

Buchsbaum, J. (2016). *Exception Taken: How France Has Defied Hollywood's New World Order*. New York: Columbia University Press

Caglar, A. (1997). Hyphenated Identities and the Limits of Culture. In *The Politics of Multiculturalism in the New Europe: Racism, Identity and Community,* eds. Tariq Modood and Pnina Webner, 169–185. London: Zed Books.

Cancilini, N. G. (1998). *Cultural Policy Options in the Context of Globalization UNESCO World Culture Report*. Paris: UNESCO Publishing. Available from http://unesdoc.unesco.org/images/0011/001120/112074eb.pdf

Carrera, S. and A. Turmann. (2004). *Towards the Free Movement of Workers in an Enlarged EU?*. Brussels: Centre for European Policy Studies.

Castells, M. (2010). *The Rise of the Network Society*. West Sussex: Blackwell Publishing.

Centre National du Cinema et de l'Image Animee. (2016). *Key Film Figures in 2015*. Paris. Available from http://www.cnc.fr/web/en/publications

Chan-Tibergien, J. (2006). Cultural Diversity as Resistance to Neoliberal Globalization: the Emergence of a Global Movement and Convention. *Review of Education* (52). 89–105. Available from https://link.springer.com/content/pdf/10.1007%_2Fs11159-005-5606-2.pdf

Clough, W. (2013). *Best of Both Worlds*. Smithsonian Institution. Available from http://www.si.edu/content/gwc/BestofBothWorldsSmithsonian.pdf

Collins, R. (1999). *Broadcasting and Audio-visual Policy in the European Single Market*. London: John Libbey.

Commission of the European Communities. (1988). Bulletin of EC, Supplement 2/88.

Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed on 20 October 2005 in Paris, entered into force on 18 March 2007. Available from http://portal.unesco.org/en/ev.php-URL_ID=31038&URL_DO=DO_TOPIC&URL_SECTION=201.html

Crusafon, C. (2015). The European audiovisual space: how European media policy has set the pace of its development. In *European Cinema and Television*, eds Bondebjerg I., Redvall E.N., Higson A. London: Palgrave Macmillan. https://doi.org/10.1057/9781137356888_5

Dainotto, R. (2011). Europe (in Practice): Which Culture for the Union? *Nanovic Institute for European Studies*. Available from http://nanovic.nd.edu/assets/60890/

Des Beauvais, S. (2014). France: Ending the Cultural Exception. World Policy Journal. http://www.worldpolicy.org/blog/2014/11/03/france-ending-cultural-exception

De Smaele, H. (2007). More Europe: More Unity, More Diversity? The Enlargement of the European Audiovisual Space. In *Media and Cultural Policy in the European Union*, Katharine Sarikakis (ed.), 113–134. Amsterdam: Rodopi.

Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States

concerning the provision of audiovisual media services. 2010. Available from http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32010L0013

Dossi, S. (2016). The Creative Europe Programme European Implementation Assessment. Brussels: European Parliamentary Research Service. Available from http://www.europarl.europa.eu/RegData/etudes/IDAN/2016/581413/EPRS_IDA(2016)581413_EN.pdf

Egan, M. (2011). *Constructing a European Market: Standards: Regulation, and Governance.* Oxford: Oxford University Press.

Elteren, M. (2016). Globalization. In *A Companion to Popular Culture*, Gary Burns (ed.), 461–483. West Sussex: Wiley Blackwell.

Enhuber, M. (2015). Art, space and technology: how the digitisation and digitalisation of art space affect the consumption of art—a critical approach. *Digital Creativity. 26*(2), 121–137.

European Audiovisual Observatory. (2015). *Box office hit record high in the European Union in 2015 Press Release.* Available from http://www.obs.coe.int/documents/205595/3477362/MIF2016-CinemaMarketTrends-EN.pdf/88c2aecf-525f-48fc-a805-0d8ed243bc1e

European Audiovisual Observatory. (2015). *Press release - Luc Besson's Lucy the most successful European film export in recent years*. Available from http://www.obs.coe.int/en/-/short-pr-film-export;jsessionid=65C3C0A81E3463347D96383B78DC9D5C

European Broadcasting Union. (2016). Market Insights: SVoD in Europe. Available from https://www.ebu.ch/news/2016/06/european-svod-reach-50-mil-2020

European Commission. (1998). *Report from the High Level Group on Audiovisual Policy: The Digital Age: European Audiovisual Policy*. Available from http://aei.pitt.edu/1592/

European Commission. (2007). *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a European agenda for culture in a globalizing world* 570. Available from http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52007DC0242

European Commission. (2010). *Digital Agenda for Europe: key initiatives Press Release*.

Available from http://europa.eu/rapid/press-release_MEMO-10-200_en.htm?locale=en

European Commission. (2013). *European Citizenship Standard Eurobarometer 80*. Available from http://ec.europa.eu/commfrontoffice/publicopinion/archives/eb/eb80/eb80_en.htm

European Commission. (2015a). *A Digital Single Market for Europe: Commission sets out 16 initiatives to make it happen*. Press Release. Available from http://europa.eu/rapid/ press-release_IP-15-4919_en.htm

European Commission. (2015b). Flash Eurobarometer 411 on Cross-border access to online content. Available from https://data.europa.eu/euodp/data/dataset/S2059_411_ENG

European Commission. (2016a). Geo-blocking practices in e-commerce. Available from http://ec.europa.eu/competition/antitrust/ecommerce_swd_en.pdf

European Commission. (2016b). Modernisation of the EU Copyright Rules. Available from https://ec.europa.eu/digital-single-market/en/modernisation-eu-copyright-rules

European Commission. (2017). Europe 2020 Indicators - Education. Available from http://ec. europa.eu/eurostat/statistics-explained/index.php/Europe_2020_indicators_-_education

European Union Intellectual Property Office. (2006). Intellectual Property and Youth. Available from http://www.sacg.org/wp-content/uploads/2014/05/EUIPO-Report.pdf

Evers, K. (2013). Hollywood's Obsession with Blockbusters. Harvard Business Review. Available from https://hbr.org/2013/06/hollywoods-obsession-with-blockbusters

Evrard, Y. (1997). Democratizing Culture or Cultural Democracy? *The Journal of Arts Management, Law, and Society*. 27 (3), 67–175. Available from http://www.tandf online.com/doi/abs/10.1080/10632929709596961?src=recsys

Footer, M. and C. Graber. (2000). Trade Liberalisation and Cultural Policy. *Journal of International Economic Law* 3(1), 115–144. https://doi.org/10.1093/jiel/3.1.115

Flew, T. (2012). *Creative Industries Culture and Policy*. London: SAGE Publications.

Flew, T. and S. Cunningham. (2012). Creative Industries after the First Decade of Debate. In *Creative Industries and Urban Development*, Terry Flew (ed.), 66–76. New York: Routledge.

Fontaine G. and P. Simone. (2017). *The access to film works in the collections of Film Heritage*

*Institutions in the context of education and research.* European Audiovisual Observatory: Strasbourg. Available from http://www.obs.coe.int/documents/205595/ 264623/The+Access+to+Film+Works+in+the+Collections+of+Film+Heritage+Institutions+- +Final.pdf/c62dec10-417c-4ed9-b32c-772191e44425

Forum d'Avignon. (2014). *The economic contribution of the creative industries to EU GDP and employment Evolution 2008–2011.* TERA Consultants. Available from http://www.teraconsultants.fr/en/issues/The-Economic-Contribution-of-the-Creative- Industries-to-EU-in-GDP-and-Employment

Frow, J. (1996). Information as a Gift Commodity. *New Left Review* 219. Available from https://newleftreview.org/I/219/john-frow-information-as-gift-and-commodity

Garnham, N. (1987). Concepts of Culture: Public Policy and the Cultural Industries. In *Studies in Culture: An Introductory Reader*, Ann Gray and Jim McGuigan (ed.), 54–61. London: Arnold.

Gattinger, M. (2011). *Democratization of Culture, Cultural Democracy and Governance.* Canadian Public Arts Funders (CPAF) Annual General Meeting, Future Directions in Public Arts Funding: What Are The Shifts Required? Available from http://www.cpaf- opsac.org/en/themes/documents/CPAF_2011_AGM_Democratization_of_Culture_Cultural_ Democracy_Governance_Mar082012_000.pdf

Gordon, C. (2010). Great expectations – the European Union and cultural policy: fact or fiction? *International Journal of Cultural Policy Vol. 16*(2), 101–120. Available from http://dx.doi.org/10.1080/10286630903124970

Gordon, C. and S. Mundy. (2001). *European perspectives on cultural policy: cultural policy reviews and requirements for a sustainable cultural policy.* Paris: UNESCO Publishing.

Gottlieb, H. (2004). Language-political implications of subtitling. Pilar Orero (ed.), *Topics in Audiovisual Translation*, (pg. 83–102). Amsterdam: John Benjamins Publishing.

Grece, C. (2016). *The online advertising market in the EU – Update 2015 and Focus on programmatic advertising.* Strasbourg: European Audiovisual Observatory. Available from http://ec.europa.eu/newsroom/document.cfm?doc_id=43866

Haas, E. (1958). *The Uniting of Europe: Political, Social, and Economic Forces, 1950-1957.*

Stanford: Stanford University Press.

Hahn, M. and P. Sauvé. (2016). Research for CULT Committee - Culture and Education in CETA. Available from http://www.europarl.europa.eu/RegData/etudes/STUD /2016/585902 /IPOL_STU(2016)585902_EN.pdf

Hall, S. (1992). The Question of Cultural Identity. In *Modernity, An Introduction to Modern Societies*. Oxford: Blackwell Publishers. Available from https://faculty. georgetown.edu/ irvinem/theory/ Hall-Identity- Modernity-1.pdf

Hemerijck, A. and Berghman, J. (2004). The European Social Patrimony: Deepening Social Europe through Legitimate Diversity, in Sakellaropoulos, T., Berghmah, J. and A. Hemerijck (eds.) in *Connecting Welfare Diversity within the European Social Model*. Antwerp: Intersentia, 9–54.

Henry, I. (2001). *The Politics of Leisure Policy*. Palgrave: Hampshire.

Henze, R. (2014). In Exporting Culture: Which role for Europe in a Global World?, eds. Raphaela Henze and Gernot Wolfram, 39–52. Wiesbaden: Springer Science & Business Media.

Héritier, A. (2001). *New modes of governance in Europe: policy-making without legislating?* Bonn: Max Planck Project Group.

Higson, A. (2015). British Cinema, Europe and the Global Reach for Audiences. Bondebjerg, Ib, Novrup Redvall, Eva, Higson, Andrew (eds.), *European Cinema and Television Cultural Policy and Everyday Life* (pg. 127–150). London: Palgrave Macmillan.

Humphreys, P. (2007). The EU, Communications Liberalisation and the Future of Public Service Broadcasting. Katharine Sarikakis (ed.), *Media and Cultural Policy in the European Union* (pg. 91–112). Amsterdam: Rodopi.

Irion, K. and P. Valcke. (2015). Cultural Diversity in the Digital Age: EU Competences, Policies and Regulations for Diverse Audiovisual and Online Content. Evangelia Psychogiopoulou (ed.), *Cultural Governance and the European Union*. London: Palgrave Macmillan.

Jakubowicz, K. and M. Sükösd. (2011). Six Communicative Deficits in the European Union. Jakubowicz Karol and Sükösd Miklós (eds.), *Media, Nationalism and European Identities*. NED - New edition, 1 (pg. 1–18).

Jenkins, H. (2006). *Convergence Culture Where Old and New Media Collide*. New York: New York University Press. Available from https://www.hse.ru/data/2016/03/15/1127638366/Henry%20Jenkins%20Convergence%20culture%20where%20old%20and%20new%20media%20collide%20%202006.pdf

Kaiser, M. (2011). New Approaches to Exploiting Film in the Foreign Language Classroom. *L2 Journal 3*(2). Available from http://escholarship.org/uc/item/6568p4f4#page-1.

Karaganis, J. (2011). *A Contribution to 'Assessing State Aid for Films and other Audiovisual Works'*. The American Assembly Columbia University. Available from http://ec.europa.eu/competition/consultations/2011_state_aid_films/american_assembly_en.pdf

Katsarova, I. (2014). An overview of Europe's film industry [Briefing]. European Parliamentary Research Service. Available from http://www.europarl.europa.eu/RegData/etudes/BRIE/2014/545705/EPRS_BRI(2014)545705_REV1_EN.pdf

Katzenstein, P. (2005). *A World of Regions Asia and Europe in the American Imperium*. Ithaca: Cornell University Press.

Keynes, J. M. (1936). *The General Theory of Employment, Interest and Money*. London: Macmillan.

Koolstra, C. and J. Beentjes. (1999). Children's vocabulary acquisition in a foreign language through watching subtitled television programmes at home. *Educational Technology Research & Development* (47), 51–60. Available from https://link.springer.com/article/10.1007/BF02299476

Kymlicka, W. (1989). *Liberalism, Community and Culture*. Oxford: Oxford University Press.

Kymlicka, W. (1995). *Multicultural Citizenship*. Oxford: Clarendon Press.

Kymlicka, W. (2005). The Moral Foundations and Geopolitical Functions of International

Norms of Minority Rights. *Anales de la Cátedra Francisco Suárez* 39, 209–241.

Lasan, N. (2014). Article 128 in the Treaty of Maastricht: Harbinger of a New European Cultural Policy? *The Public Administration and Social Policies Review* VI, 2(13). Available from http://revad.uvvg.ro/files/nr13/1.pdf

Iapadre, L. (2005). Cultural Diversity and International Economic Integration. Edited by Paolo Guerrieri, P. L. Iapadre and Georg Koopmann. Available from http://www.e-elgar.com/shop/cultural-diversity-and-international-economic-integration

Iapadre, L. (2014). Cultural Products in the International Trading System. Victor Ginsburgh and David Throsby (eds.), *Handbook of the Economics of Art and Culture 2*, 381–410. Kidlington: Elsevier.

Lelieveldt, H. and S. Princen. (2011). *The Politics of the European Union*. Cambridge: Cambridge University Press.

Levy, D. (1999). *Europe's Digital Revolution. Broadcasting Regulation, the EU and the Nation State.* London: Routledge.

Maletic, I. (2013). *The Law and Policy of Harmonisation in Europe's Internal Market.* Cheltenham: Edward Elgar Publishing.

Martiniello, M. (2014). Artistic separation versus artistic mixing in European multicultural cities. *Identities: Global Studies in Culture and Power*, *21*(1), 1–9.

Matarasso, F. and C. Landry. (1999). *Balancing Act: Twenty-One Strategic Dilemmas in Cultural Policy*. Strasbourg: Council of Europe Publishing. Available from https://is.jamu.cz/el/5453/leto2015/DDML404/um/Matarasso_21dilemat_anglicky.pdf

Media Consulting Group. (2007). *Study on Dubbing and Subtitling Needs and Practices in the European Audiovisual Industry Final Report*. Available from http://edz.bib.uni-mannheim.de/daten/edz-b/gdbk/07/ksj/study_dub_subtitle_en.pdf

Media Consulting Group. (2011). *Study on the use of subtitles*. Available from http://eacea.ec.europa.eu/llp/studies/documents/study_on_the_use_of_subtitling/rapport_final-en.pdf

Melissen, J. (2005). *Wielding Soft Power The New Public Diplomacy*. The Hague: The

Netherlands Institute for International Relations. Available from https://www.peacepalace library.nl/ebooks/files/Clingendael_20050500_cdsp_paper_diplomacy_2_melissen.pdf

Meyer, T. 2017. *The Politics of Online Copyright Enforcement in the EU*. Brussels: Palgrave MacMillan.

Meza, E. (2017). Amazon's First German-Language TV Series to Launch Globally. *Variety*. http://variety.com/2017/tv/global/you-are-wanted-matthias-schweighoefer-amazon-prime-1201983995/

Modood, T. and P. Webner. (1997). *Politics of Multiculturalism in the New Europe: Racism, Identity and Community*. London: Zed Books.

Mokre, M. (2006). *European Cultural Policies and European Democracy*. Available from http://eipcp.net/policies/dpie/mokre/en

Moore, I. (2014). Cultural and Creative Industries Concept – an historical Perspective. *Procedia - Social and Behavioral Sciences* (11), 738–746. Available from https://www.sciencedirect.com/science/article/pii/S1877042813055584

Moravcsik, A. (2005). The European Constitutional Compromise and the neofunctionalist legacy. *Journal of European Public Policy 12*(2), 349–386. Available from https://www.princeton.edu/~amoravcs/library/Moravcsik%20on%20Haas.pdf

Moravcsik, A. (1998). *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. New York: Cornell University Press.

Mumford, G. (2017). Blockbusters assemble: can the mega movie survive the digital era? *The Guardian*. Available from https://www.theguardian.com/film/2017/apr/07/blockbusters-assemble-can-the-mega-movie-survive-the-digital-era

Nicholas, G. and D. Brown. (2012). Protecting indigenous cultural property in the age of digital democracy: Institutional and communal responses to Canadian First Nations and Māori heritage concerns. *Journal of Material Culture* 17 (3), 307–324.

Nordic Council of Artists. (2014). *TTIP in relation to culture and the audiovisual sector* [Position Paper]. Available from https://www.forumartis.fi/wp-content/uploads/2017/09/Nordic-Artist-Councils-resolution-on-TTIP-1.pdf

Nye, J. (2002). *The Paradox of American Power: Why the World's Only Superpower Can't Go It Alone*. New York: Oxford University Press

Obuljen, N. (2005). *Why we need European cultural policies: the impact of EU enlargement on cultural policies in transition countries*. Amsterdam: European Cultural Foundation. Available from http://www.culturenet.cz/res/data/004/000564.pdf

Olufunmilayo, A. (2017). Nollywood, Pirates and Nigerian Cinema. Aaron Perzanowski (ed.), *Creativity Without Law Challenging the Assumptions of Intellectual Property*, (pg. 228–248. New York: New York University Press.

Orgad, L. (2015). *The Cultural Defense of Nations, A Liberal Theory of Majority Rights*. Oxford: Oxford University Press.

Parekh, B. (2000). *Rethinking Multiculturalism*. Cambridge: Harvard University Press.

Parfitt, O. (2017). Netflix reveals $1.75bn European production investment. *Screen International*. Availble at: https://www.screendaily.com/news/netflix-reveals-175bn-european-production-investment/5115451.article

Pauwels, V. and V. Rompuy. (2007) Can State Aid in the film sector stand the proof of EU and WTO liberalisation efforts? Katharine Sarikakis (ed.), *Media and Cultural Policy in the European Union*, (pg 23–43).

Pew Research Centre. (2014). Most Support Limiting Immigration. *A Fragile Rebound for EU Image on Eve of European Parliament Elections*. Available fhttp://www.pewglobal.org/files/2014/05/EU_14_summary_of_findings_EN.pdf

Rawls, J. (1999). *The Law of Peoples with The Idea of Public Reason Revisited*. Cambridge, London: Harvard University Press.

Regis, T. (2009). *Recent Italian Cinema: Spaces, Contexts and Experiences.* Troubador Leicester: Publishing Ltd.

Rompuy, B. V. (2014, 6 May). Premier League fans in Europe worse off after Murphy judgment [Blog]. Available from http://competitionlawblog.kluwercompetitionlaw.com/2014/05/06/premier-league-fans-in-europe-worse-off-after-murphy-judgment/

Samuelson, P. (1999). Implications of the Agreement on Trade Related Aspects of Intellectual Property Rights for Cultural Dimensions of National Copyright Laws. J*ournal of Cultural Economics* *23*(95–107). Available from https://link.springer.com/article/10.1023/A:1007501702581

Sarikakis, K. (2007). The Place of Media and Cultural Policy in the EU. Katharine Sarikakis (ed.), *Media and Cultural Policy in the European Union* (pg. 13–22). Amsterdam: Rodopi.

Scharpf, F. (2010). The asymmetry of European integration, or why the EU cannot be a 'social market Economy'. *Socio-Economic Review 8* (pg. 211–250). Available from http://www.mpifg.de/pu/mpifg_ja/SER_8_2010_Scharpf.pdf

Schlesinger, P. (2015). Some reflections on "Creative Europe". *CulturalBase, Social Platform on Cultural Heritage and European Identities.* Available from http://culturalbase.eu/documents/6.%20SCHLESINGER.%20Creative%20Europe.pdf

Schmitter, P. (2002). Neo-neo-functionalism. In *European Integration Theory*, ed. Wiener, Antje and Thomas Diez. Oxford: Oxford University Press.

Scholte, J. A. (2002). What is Globalisation? The Definitional issue - Again, Working Paper *109*(02), 1–34. Coventry: University of Warwick. Centre for the Study of Globalisation and Regionalisation.

Scott, Allen. (2002). Hollywood in the Era of Globalization. *Yale Center for the Study of Globalization.* Available from http://yaleglobal.yale.edu/content/hollywood-era-globalization

Shore, C. (2001). The Cultural Policies of the European Union and cultural diversity. Tony Bennet (ed.), *Differing Diversities* (pg. 107–122). Strasbourg: Council of Europe Publishing.

Smith, R. (2007). The UNESCO Convention on the Protection and Promotion of Cultural Expressions: Building a New World Information and Communication Order? *International Journal of Communication 1,* 24–55.

Smokotin, V. Alekseyenkob A. and G.Petrovac. (2014). The Phenomenon of Linguistic Globalization: English as the Global Lingua Franca. *Procedia - Social and Behavioral Sciences 154,* 509–513. Available from http://www.sciencedirect.com/science/article/pii/S1877042814056274

Stone Sweet, A. (1998). *European Integration and Supranational Governance*. Oxford: Oxford University Press.

How to make a hit Hollywood film. (2016). *The Economist*. Available from https://www.economist.com/blogs/graphicdetail/2016/02/daily-chart-19

It is easier than ever to fund an indie film, but harder than ever to get people to see it. (2017). *The Economist*. Available from https://www.economist.com/news/business/21717422-median-box-office-return-low-budget-films-america-measly-45-cents

The European Consumer Organisation. (2017). G*eo-blocking in the European Union, Recommendations for the trilogue negotiations*. Brussels: Bureau Européen des Unions de Consommateurs. Available from http://www.beuc.eu/publications/beuc-x-2017-072_are_geo-blocking_-_beuc_recommendations_for_trilogue.pdf

The European Consumer Organisation. (2017). *Proposal for regulation of online broadcasting*. Brussels: Bureau Européen des Unions de Consommateurs. Available from http://www.beuc.eu/publications/beuc-x-2017-032_are_beuc_position_paper_regulation_on_online_broadcasting.pdf

The Gallup Organisation. (2007). *Intercultural dialogue in Europe. Flash Eurobarometer 217*. Brussels: European Commission. Available from http://ec.europa.eu/commfrontoffice/publicopinion/flash/fl_217_en.pdf

The General Agreement on Tariffs and Trade. (1947). Article IV: Special Provisions relating to Cinematograph Films. Available from https://www.wto.org/english/res_e/booksp_e/gatt_ai_e/art4_e.pdf

The International Union of Cinemas. (2017). *UNIC Annual Report 2017 Key Trends in European Cinema*. Available from https://www.unic-cinemas.org/wp-content/uploads/2017/06/UNIC_AR2017_EN_online.pdf

Trupel, H. (2015). Ttip's "Cultural Exception" May not be Enough to Safeguard Culture & Education [Blog]. The Greens European Free Alliance in the European Parliament. Available from http://ttip2016.eu/blog/culture%20education%20TTIP.html

Tzanelli, R. (2010). The Da Vinci Node: Networks of Neo-pilgrimage in the European Cosmopolis. *International Journal of Humanities 8*(3), 113–128.

United Nations. (2015). *World Population Prospects, The 2015 Revision*. Available from https://esa.un.org/unpd/wpp/Publications/Files/Key_Findings_WPP_2015.pdf

United Nations. (2016). *International Migration Report 2015, Highlights.* New York: United Nations. Available from http://www.un.org/en/development/desa/population/migration/publications/migrationreport/docs/MigrationReport2015_Highlights.pdf

Van Parijs, P. (2004). Europe's Linguistic Challenge. *European Journal of Sociology 45*(1), 113–154. Available from www.jstor.org/stable/23998916

Venturelli, S. (1998). *Liberalizing the European Media: Politics, Regulation, and the Public Sphere*. Oxford: Oxford University Press.

Vlassis, A. and L. Hanania. (2014). Emphasizing the specificity of cultural goods and service in international law. Lilian Richieri Hanania (ed.), *Cultural Diversity in International Law: The Effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 25–39. Oxon: Routledge.

Walton, D. (2008). *Introducing Cultural Studies, Learning Through Practice*. London: SAGE Publications.

Warleigh-Lack, A., Robinson N. and B. Rosamond (eds.). (2011). *New Regionalism and the European Union*. London: Routledge. Available from http://www.ics.ul.pt/rdonweb-docs/ICS_AMalamud_Experience_CLI.pdf

Weinstock, D. (1994). The Political Theory of Strong Evaluation. James Tully (ed.), *Philosophy in an Age of Pluralism,* 171–193. Cambridge: Cambridge University.

Wutz, J. and V. Perez. (2014). *Dissemination of European Cinema in the European Union and International Market*. Available from http://www.notre-europe.eu/media/disseminationeuropeanfilm-wutzperez-ne-jdi-ifa-unifr-nov14.pdf?pdf=ok

Zeitlin, J. (2005). Conclusion: the Open Method of Co-ordination in Action: Theoretical Promise, Empirical Realities, Reform Strategy. J. Zeitlin and P. Pochet (eds.), *The Open Method of Co-ordination in Action. The European Employment and Social Inclusion Strategies,* 447–504. Brussels: P.I.E. Peter Lang.