

EUROPÄISCHES PARLAMENT



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## **Cultural Diversity - an Obstacle to the EU Single Market?**

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At the same time, cultural and creative content are both cultural and economic goods. Therefore legislation on creative content online needs to strike a careful balance between cultural and economic requirements. Up to now, culture fell within the competences of the Member States and was firmly separated from EU single market law and international trade law. Although, especially, the U.S. has put pressure on Europe to include audiovisual services in the WTO regime since the beginning of the GATS negotiations in 1994, audiovisual services have been excluded from this pure economic international legal framework until today.

The recent technological developments give a new turn to this debate. With digital and online technologies, cultural and audiovisual content can be transferred easily across borders and thereby this content gains in importance also as an economic good. However, let it not be forgotten that these creative and cultural goods can only flourish and maintain their high and diverse quality if cultural diversity is expressively respected by law including different forms of public and private support. **If cultural diversity were to fall more and more under commercial law, the legal framework for the protection of cultural diversity will be regarded more and more as an obstacle to the single market.** This process is already underway in the EU, as shown by the Commission's recommendation on "collective cross-border management of copyright online music<sup>1</sup>". The decision in the case against the International Confederation of Societies of Authors and Composers (CISAC) now lies with competition commissioner Neelie Kroes.

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Anticipating this development, the "UNESCO-Convention on the Cultural Diversity"<sup>3</sup> has been negotiated in 2005 and has entered into force in March 2007. Its objective is to strengthen culture policy to promote diversity in the face of the threat from commercial law at the national and international level.

**But if cultural diversity is not protected and promoted in an adequate legal framework within EU-community law it will be reduced step by step in the struggle with EU competition law and single market law. When this development reducing cultural diversity takes place in Europe, there will be obviously no chance to promote and protect Europe's cultural diversity by implementing the UNESCO-convention in relation to third countries and the world-wide regime of the WTO.**

Therefore, it is not acceptable that the UNESCO-Convention has been poorly implemented in EU legislation up to now, especially since the Commission participated at its negotiations.

In the Communication of the Commission a "**European agenda for culture in a globalizing world**"<sup>4</sup> the application of the UNESCO-Convention is only mentioned for the relations with third countries. This is very important, but does neglect that this Convention shall be applied also to EU law. In the Culture Committee of the European Parliament this narrow application has been criticised. However, it seems that the Council has not even noticed the meaning of this exemption by the Commission in its resolution of 30 October 2007 and does not mention the dramatic changes that are under way for the cultural sector.

In order to obtain more clarification, I tabled a written question<sup>5</sup> (P-5554/07) on the legal status of the UNESCO-Convention to Commissioner for Culture Ján Figel', and received the following answer on 3 December 2007:

*".....The Community is duty-bound to implement the UNESCO Convention when exercising the competences it enjoys in policy areas which are covered by the Convention. According to Annex I(b) to the Council Decision, these areas are: ..... free movement of goods, persons, services and capital, competition, and the internal market, including intellectual property....."*

Despite this position of Commissioner Figel', the Commission presented on 3 January 2008 a communication on "**Creative Content Online in the Single Market**"<sup>6</sup>, where the scope reads:

*"creative content distributed online": content and services such as audiovisual media online (film, television, music and radio), games online, online publishing, educational content as well as user-generated content."*

This communication deals with important copyright issues such as DRM and piracy, but it is unacceptable that it does not take into account the measures which are necessary to respect cultural diversity as such. Cultural diversity and the UNESCO Convention are not even mentioned!

**This communication includes a consultation on how to proceed with a strategy on cultural content online. The creative sector is invited to answer the questions up to 29 February 2008 and thus has an excellent opportunity - which they should seize - to request the incorporation of aspects of cultural diversity in the context of content online. I would heartily welcome every effort of the cultural sector to emphasise its importance.**

(More information on this consultation is available on

[http://ec.europa.eu/avpolicy/other\\_actions/content\\_online/index\\_en.htm](http://ec.europa.eu/avpolicy/other_actions/content_online/index_en.htm))

The committee on Culture and Education of the European Parliament is following the implementation of the UNESCO-Convention closely. In order to clarify the status of the UNESCO-Convention and to obtain an overview of the needs of the sector, we are organising a hearing on the implementation of the Convention on 27th February 2008. We welcome all interested persons from the creative and cultural sector.

(More information on the hearing will soon be available on the Parliament's website:

<http://www.europarl.europa.eu/activities/committees/hearings.do?body=CULT&language=E>

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## Footnotes

1. Commission's recommendation of 18 May 2005 on "collective cross-border management of copyright and related rights for legitimate online music services" (2005/737/EC)  
Document: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32005H0737](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32005H0737)
2. More information on the CISAC-case by the EU-Commission:  
[http://ec.europa.eu/comm/competition/antitrust/cases/index/by\\_nr\\_77.html#i38\\_698](http://ec.europa.eu/comm/competition/antitrust/cases/index/by_nr_77.html#i38_698)
3. UNESCO-Convention on the "**Protection and Promotion of the Diversity of Cultural Expressions**" (2006/515/EG) of 18 May 2006  
[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32006D0515](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32006D0515)
4. Communication of the Commission a "**European agenda for culture in a globalizing world**" (COM(2007) 242) of 10 May 2007  
[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!DocNumber&lg=EN&type\\_doc=COMfinal&an\\_doc=2007&nu\\_doc=0242&model=guicheti](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!DocNumber&lg=EN&type_doc=COMfinal&an_doc=2007&nu_doc=0242&model=guicheti)
5. You find the written question and the answer in the annex (page 5)
6. Commission's communication on "Creative Content Online in the Single Market" of 3 January 2008 ((COM 2007) 836)  
[http://ec.europa.eu/avpolicy/other\\_actions/content\\_online/index\\_en.htm#filmonline](http://ec.europa.eu/avpolicy/other_actions/content_online/index_en.htm#filmonline)

## Annex:

1. Written Question on the legal status of the UNESCO-Convention by Ruth Hieronymi
2. Answer to the written question by Commissioner Figel' of 3 December 2008-02-08

WRITTEN QUESTION P-5554/07  
by Ruth Hieronymi (PPE-DE)  
to the Commission

Subject: UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

With Decision 2006/515/EC<sup>1</sup> of 18 May 2006, the Council adopted the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

This convention establishes the parties' right to adopt 'measures aimed at providing domestic independent cultural industries and activities in the informal sector effective access to the means of production, dissemination and distribution of cultural activities, goods and services' (Article 6(2)(c)).

1. Has this convention become part of Community law through the Council decision?
2. If so, is this legislation applicable only with regard to third countries, or is it also applicable with regard to Member States and in bilateral relations between Member States?
3. If the Council decision has not become Community law or is not binding among the Member States, what legal status do the national ratifications of the UNESCO Convention have in relation to Community law and in relation to the other EU Member States that have ratified the UNESCO Convention?
4. If this convention has become Community law through the Council decision, what specific form does this legal tie take in decisions within the Community, with particular regard to Article 151 of the EC Treaty?

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<sup>1</sup> OJ L 201, 25.7.2006, p. 15.

P-5554/07EN

Answer given by Mr Figel'  
on behalf of the Commission  
(3.12.2007)

The UNESCO<sup>2</sup> Convention was approved by the Council on behalf of the Community by means of Decision 2006/515/EC<sup>3</sup>. The Council Decision is based on the procedural legal basis of Article 300(2) and (3) EC. According to paragraph 7 of Article 300 of the EC Treaty, agreements concluded under the conditions set out in Article 300 of the EC Treaty 'shall be binding on the institutions of the Community and on the Member States'. The UNESCO Convention is thus binding on the Community, and forms part of EC law.

The Community is duty-bound to implement the UNESCO Convention when exercising the competences it enjoys in policy areas which are covered by the Convention. According to Annex 1(b) to the Council Decision, these areas are: the common commercial policy, development cooperation policy, economic, financial and technical cooperation with third countries, free movement of goods, persons, services and capital, competition, and the internal market, including intellectual property. Pursuant to Article 151(4) of the EC Treaty, the Community also needs to take cultural aspects into account in its action under other provisions of the EC Treaty, in particular in order to respect and promote the diversity of its cultures.

The implementation of the Convention in the above mentioned areas entails that Community measures need to conform to the Convention. Accordingly, the Convention is pertinent for any Community activity launched with a view to implementing Article 151(4) of the EC Treaty. The text of Council Decision 2006/515/EC actually stipulates that 'the UNESCO Convention constitutes a relevant and effective pillar for promoting cultural diversity and cultural exchanges, to which both the Community, as reflected in Article 151(4) of the EC Treaty, and its Member States attach the greatest importance'.

The UNESCO Convention is a mixed agreement. Both the Community and its Member States have competence in the fields covered by it. Through ratification of the Convention, Member States undertake the obligation to implement the Convention in areas of national competence. These are the policy areas covered by the UNESCO Convention which are not contained in Annex 1(b) of the Council Decision.

The unilateral declaration on behalf of the Community, contained in Annex 2 to the Council Decision, stipulates: 'As regards the Community competences described in the Declaration pursuant to Article 27(3)(c) of the Convention, the Community is bound by the Convention and will ensure its due implementation. It follows that the Member States of the Community which are party to the Convention in their mutual relations apply the provisions of the Convention in accordance with the Community's internal rules and without prejudice to appropriate amendments being made to these rules'.

Hence, with respect to the policy areas which are covered by the Convention and for which competence belongs to the Community, Member States' mutual relations are governed by EC law. EC law must be in conformity with the Convention. As to the policy areas which are covered by the Convention and for which competence belongs to the Member States, the Convention applies in Member States' mutual relations.

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<sup>2</sup> United Nations Educational, Scientific and Cultural Organisation.

<sup>3</sup> Council Decision 2006/515/EC of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, OJ L 201, 25.7.2006.