

Cultural industries policy in regional trade agreements: The cases of
NAFTA, the European Union and MERCOSUR

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Abstract

This paper compares cultural industries policy in three regional trade agreements: the NAFTA, the EU and the MERCOSUR. Each of these trade agreements has uniquely combined liberalisation, cooperation and exemption, resulting in different policy outcomes. Three factors are explored to account for these differences: industry profile, domestic communication policies and cultural distance. While in the NAFTA cultural products are treated as commodities, the EU has established a pro-active policy for the sector, setting both economic and cultural goals. In the case of MERCOSUR, cultural industries policy is still in blueprint. However, political and economic factors greatly constrain the available policy options. The conclusion offers a comparative perspective on audiovisual policies in the three trade blocs.

The issue of cultural industries has proven one of the most controversial in regional integration agreements. Annexes, exemptions and side-agreements abound in references to broadcasting, film and publishing, limiting trade liberalisation and investment across borders. No other final-goods sector has received so many safeguards in these treaties, or has aroused so much debate about the scope and legitimacy of integration processes.

Underlying these controversies are some of the long-standing questions in the politics of international communication. Should free-trade principles be extended to film, publishing or broadcasting? Or should cultural industries be granted special treatment in trade liberalization agreements? Is it possible to draw a line between legitimate and illegitimate cultural trade? Should national governments or regional bodies be allowed to protect or subsidize these industries? If so, on which grounds, to what extent, and with what policy instruments? The purpose of this paper is to compare how these questions have been answered, and the policies implemented accordingly, in three different regional integration agreements: the North American Free Trade Agreement (hereafter NAFTA), the European Union (hereafter EU) and the Mercado Común del Sur (hereafter MERCOSUR).

The main argument of this paper is that the NAFTA, the EU and the MERCOSUR represent three distinct ways to reconcile the tension between economics and culture intrinsic to cross-borders trade in audiovisual products, and that their different policy outcomes reflect variations in three factors: industrial profile, domestic communication policies and 'cultural distance'. The first refers to the distribution of economic and political resources among the trading partners' audiovisual industries. The second concerns the domestic regulatory framework for communication industries within each country, which comprises audiovisual,

telecommunications and cultural policies. The third - 'cultural distance' - refers to barriers in language, viewing habits and genre preferences that hamper cultural products flow between two given nations. It is based on the idea that

'a particular program rooted in one culture, and thus attractive in that environment, will have diminished appeal elsewhere, as viewers find it difficult to identify with the styles, values, beliefs, institutions, and behavioural patterns of the material in question' (Hoskins et al., 1996: 68).

It should be noted, first, that cultural distances do not coincide with national borders, or as Collins puts it, audiences 'are constituted as often horizontally, across national boundaries, as they are constituted vertically, within national boundaries' (1991: 231). Second, these barriers are not given once and for all. Rather, they are historically dependent on a variety of socio-economic factors (i.e., industry structure, demographic changes) bearing on viewers' day-to-day choices (Straubhaar, 1991). In other words, cultural distance refers not to essential traits separating peoples but to a set of cultural consumption practices relating to the constitution of audiences within as well as across borders.

Two qualifications need to be made about this study. First, though occasional references will be made to other cultural industries, this paper focuses on the audiovisual sector (and particularly on the TV industry), which is not only the largest in economic terms but has also raised the most controversy. Second, although the three regional agreements investigated here share the goal of creating a free-trade zone, they are also utterly different in their institutions, historical development and scope of the integration process. But the idea is, precisely, to

incorporate these differences into the analysis and examine how they help understand the different policy outcome in each bloc.

The double character of audiovisual products

A discussion of the economic and cultural particularities of audiovisual industries is a required first step to this analysis. On the one hand, for better or worse, cultural products have become an integral part of the globalized economy. The public-good character of audiovisual goods (minimal reproduction costs and non-depletability in consumption) renders foreign sales particularly attractive, and at the same time exacerbates the advantages of producers from countries with large domestic markets (Wildman, 1995; Hoskins et al., 1996).¹ International trade in film and TV programs has been growing exponentially since the 1980's, facilitated, as discussed below, by developments in telecommunication technologies and a new regulatory environment. Foreign sales of U.S.-based media companies, the leading audiovisual exporters, doubled in only four years, from U.S. \$3.5 billion in 1987 to U.S. \$7 billion in 1991, accounting at present for roughly half of these companies' total revenues (Sinclair, 1996).

On the other hand, audiovisual industries carry manifold socio-political implications. Following Habermas (1987), it is possible to apprehend them in two dimensions. At the lifeworld level, cultural products reproduce cultural identity and forge social bond. At the system level, communication industries have lofty political consequences because it is through them that public discourse circulates in modern societies. Questions of media access, diversity, ownership and content regulation define the type and quality of public sphere at work within a nation or region, because the media have become the key scarce resource in the struggle over 'publicness' in contemporary political systems (Dahlgren, 1995).

In sum, while the economic characteristics of audiovisual products drive producers toward audience maximization strategies, of which foreign sales are an integral part, their socio-cultural implications raise manifold controversies to the inclusion of audiovisual industries in trade liberalisation agreements. In addition, recent technological, economic and regulatory changes have radically altered the landscape for cross-border trade and investment in cultural industries, creating a new scenario for both media companies and regulatory bodies, national and regional. It is to these changes that we now turn.

A changing environment

The international market in cultural products has undergone dramatic transformations since the early 1980's. While a full account of those is beyond the scope of this study, I will here discuss three interrelated changes in technology, regulatory policies and industrial organization that are shaping the new arena for cross-border trade and investment flows in audiovisual industries.

The first and most fundamental is that innovations in distribution and digital compression technologies have multiplied the number of outlets available for audiovisual products, thus exponentially increasing the demand for content to fill in these new distribution channels. This mushrooming of channels through cable-TV, DBS or MMDS technologies has shifted the market from a situation of spectrum scarcity to one of content scarcity (Hoskins et al., 1996). At the same time, resources for new productions have become relatively more scarce due to fragmentation of revenues into multiple competitors. This shift has by and large worked in favour of U.S.-based companies because these firms not only are better positioned to undertake new content productions (due to the economies of scale in their own domestic market) but also own vast libraries of readily available products marketable at relatively low costs.

Partly cause, partly consequence of these technological innovations, the second change is a general process of de-regulation and diminishing public intervention in cultural markets. This trend has taken various forms and has been implemented through different policy instruments across countries, reflecting differences in the existing regulatory environment and structure of audiovisual markets. In the case of the U.S., where a market-regulated system was already in place, recent changes have eased ownership restrictions and performance requirements, fostering the trend toward industry concentration and convergence of the media, computer and telecommunications sectors. In Europe, deregulatory policies have broken-up public monopolies, both through privatisation of public networks and the entrance of new competitors, particularly in the new distribution outlets such as cable-TV and DBS. In Latin America, deregulation has progressed at different paces across countries, combining privatization of public networks (for example, telecommunications and TV networks in Argentina and Mexico), the opening of new media markets (pay-TV in Brazil), and fewer ownership and performance regulations (for example, the easing of restrictions on TV stations ownership in Argentina).

Finally, industrial realignments have created a new organizational structure in audiovisual markets, characterized by three interrelated phenomena: internationalisation, concentration and convergence of sectors. The most obvious result of these realignments has been the consolidation of multimedia conglomerates with interests in multiple countries and industries, through both vertical and horizontal integration. These corporations and their lobbying associations are now powerful players in communication policy decisions, often working hand-in-hand with governments to either curb or enforce regulations on international audiovisual trade (Ferguson, 1995). As the case studies below reveal, conflicts over cultural industries in free-trade agreements, whether in regional or

international forums, often amount to little more than corporate wars via other means, namely, intergovernmental arbitration. The new industrial organization has also bolstered the bargaining power of media corporations within national borders, with governments finding increasingly difficult to enforce regulations on them (Hoffmann-Riem, 1996).

As a whole, these changes have resulted in new competitive scenarios in audiovisual markets. Technological developments have multiplied the outlets for audiovisual products, rendering cross-border flows faster, easier and cheaper. The new regulatory environment has also lowered barriers for trade and investment flows, fostering the regionalisation of markets, a trend aggressively spearheaded by the ever-expanding multimedia conglomerates. It is upon this background of rapid transformations that audiovisual policies in regional agreements should be analysed.

David and Goliath?: The case of the NAFTA

Debates over cultural industries and free trade in North America date back to the 1989 Free Trade Agreement (FTA) between Canada and the U.S.. After months of intricate negotiations and mutual threats, Canada succeeded in excluding cultural industries from the agreement. The controversial Article 2005 of the FTA simply states, in paragraph 1, that 'cultural industries are exempt from the provisions of this agreement,' though the following paragraph of the same article allows a party to take retaliatory measures 'of equivalent commercial effect' in response to cultural protectionism policies.²

The cultural exemption and the retaliation provisions were the subject of much debate among academics, politicians and industry representatives on both sides. As expected, the U.S. condemned Canada's cultural protectionism, threatening that any attempt on Canada's part to hamper the production,

distribution, sale or exhibition of films, TV programs or video recordings would provoke U.S. trade retaliation. In contrast, critics on the Canadian side focused on the retaliation paragraph, arguing that Canada has yielded because 'if you agree to permit commercial retaliation against cultural subsidies, then you have agreed to define culture as a commodity' (Mosco, 1990: 49).

By the time negotiations to incorporate Mexico in the FTA began, it was clear that Canada was unwilling to make concessions in this terrain. In contrast, the issue of cultural industries only ruffled some feathers among Mexican negotiators. When asked whether his country feared that the inclusion of cultural industries in the agreement would affect Mexico's national identity, Mexico's chief NAFTA negotiator replied rather arrogantly that the issue 'has little relevance for Mexico' and that, given Mexico's cultural heritage, 'there is no cause for concern.'³ The U.S., as the world's leading audiovisual producer and exporter, pushed for its usual trade agenda: to eliminate all barriers to the flow of trade and investments in cultural industries. As a report by the U.S. Department of Commerce elegantly phrases it,

'By implementing policies that either foreclose competitive entry or raise its costs, governments can, under certain conditions, skew the globalization [of the media] process in favour of firms to which they play host. The United States should work with the governments of other countries to eliminate such policies for the long-term benefit of all countries' (U.S. Department of Commerce, 1993: 10).

As a result of these different agendas, a double-standard was set within the NAFTA. Annex 2106 establishes that, between the U.S. and Canada, cultural

industries are exempted from the agreement. Canada also kept the right to review any investment (regardless of its amount) 'relating to Canada's cultural heritage or national identity' (Chapter 11, Annex I). In the case of Mexico, cultural industries are regulated by NAFTA provisions, though this country took minor exemptions such as a 49% limit to foreign investments in audiovisual industries (which required a change in Article 28 of the Mexican constitution) and a 30% content quota in theatres for Mexican films (which not only was never enforced but, as established by the new film legislation passed in 1992, gradually decreased to 10% in 1997).

Differences in the three factors mentioned above (industry profile, domestic cultural policies and cultural distance) help understand each country's agenda as well as NAFTA's provisions regarding cultural industries. In terms of industry profile, a marked disparity exists in the production capacity and market strength of American, Canadian and Mexican audiovisual producers. As mentioned, the U.S. is host to the world's largest multimedia conglomerates (Table 1), controlling approximately 75% of international trade in cultural products (Sinclair, 1996). Several scholars have investigated the reasons for this dominance (e.g., Wildman, 1995; Hoskins and McFadyen, 1991), citing among other factors: economies of scale (the U.S. has the largest domestic audiovisual market), first-mover advantages, a competitive environment that favors production for audience maximisation, and the fact that English-speaking audiences are, by far, the world's wealthiest (Collins, 1994). In addition, the share of imported films and TV programs in the U.S. is rather minimal, and, in fact, has been declining steadily in recent years.⁴ As a result, the U.S.' trade balance in audiovisual products is largely positive, and elimination of trade barriers in the sector (whether in the form of content quotas, subsidies, piracy or limits to

repatriation of earnings) has always been a priority in the American foreign trade agenda.

In contrast, Canada's audiovisual producers hold a relatively weak position in their own domestic market. Table 2 shows that, when not regulated by content quotas, the percentage of imported products in Canada is above 80% in most sectors, with the notable exception of Quebec, where language and cultural barriers, coupled with strong provincial policies, keep imports lower. With 80% of the population living within 100 miles of the American border, no language barriers (again, excepting Quebec) and minimal cultural distances, U.S. products travel well to the northern neighbour. Although heavily subsidised by a pro-active cultural policy, and in some cases protected by content quotas, local productions have only a small share in most Canadian content markets (Tremblay, 1997).⁵

In sum, the unrelenting flow of U.S. products into its cultural markets (fueled by similarities in language, genre preferences and viewing habits among audiences), coupled with a long-standing cultural defense policy, explains Canada's protectionist agenda in trade negotiations. Nonetheless, the long-term viability of Canada's position is unclear. Recent cases of cultural protectionism affecting U.S. interests have created increased pressure on the American government to retaliate.⁶ And given that the U.S. absorbs over 80% of Canada's overall exports, retaliation threats are not taken lightly within the Canadian front. There is also legitimate concern that Canada's protectionist rhetoric predominantly serves the economic well-being of domestic media companies rather than its citizens (Raboy et al., 1994), a point I will resume in the conclusion.

Mexico contrasts with Canada in a variety of ways. To begin with, this country is, in comparison, less inundated by foreign cultural products, particularly in the broadcasting sector (Table 2). A few Mexican companies have consolidated

into large multimedia conglomerates, controlling a large share of the domestic audiovisual market, and are well-positioned as content exporters as well. The obvious example is the Televisa group, which through its close ties with Mexico's ruling-party has developed into the second-largest media conglomerate in Latin America. Integrated both vertically and horizontally, with interests in TV broadcasting (its four national networks combined regularly draw 90% of the audience), radio, DBS, cable-TV, film, video, magazine publishing, and investments in the U.S., Chile, Spain and Peru, Televisa exports to more than 55 countries and is the world leader in telenovelas production, the staple genre of Latin-American television.⁷

Issues of cultural distance also relate to Mexico's trade agenda in audiovisual industries. As argued above, audiences are many times constituted horizontally, across national boundaries. In this sense the U.S.-Mexico relation is a case in point. On the one hand, American audiovisual products face not only language but also content and genre barriers in Mexico, where audience prefer telenovelas and other local productions (Lozano, 1996; Alva de la Selva, 1996). On the other hand, there are over 30 million Hispanics in the U.S., who maintain strong cultural ties to their countries of origin and are far wealthier than Mexican audiences. Televisa was a pioneer in this market, both as direct investor and content provider. The company controlled the U.S. Spanish-speaking broadcasting business through a subsidiary (Spanish International Network) until 1986, when the FCC found it in violation of foreign ownership rules and Televisa was forced to divest. Today, the company is a minority share-holder in the leading Spanish-language network, Univisión, providing 51% of the programs broadcast (Variety, 12 August 1997), and offers its pay-TV channel Galavisión in most U.S. markets.

Despite the developments in Mexico's audiovisual industries, it is important to note, as Sanchez-Ruiz (1997) reminds us, that large trade disparities

remain between Mexico and the U.S. While Hollywood distributors control 80% of the Mexican film and video markets (Table 2), the less than successful attempts by Televisa at tapping into the English-speaking American market demonstrate the difficulties foreign content producers face to profit from the wealthy but hermetic American mainstream audience.⁸

As Crovi-Druetta (1997) argues, the NAFTA is not a starting but an endpoint in the new communication policies adopted by the ruling Mexican party (the PRI), which are based on three pillars: privatization of national networks, deregulation of audiovisual markets and diminished public intervention in the production and distribution of audiovisual products. Before the signing of the NAFTA, new film legislation was passed greatly reducing public intervention and regulations over the industry (1992), while the national telephone company and two public TV networks were privatized (in 1990 and 1993 respectively). In addition, a year after the NAFTA went into effect, Article 28 of the constitution was modified allowing foreign investments in Mexican companies up to 49%, and in 1997 the federal law on intellectual property was modified, aligning the legislation with that of the US and Canada.⁹

In short, a combination of relatively strong domestic industries, the limited appeal of American products in some sectors due to cultural distance factors, and the neoliberal turn in domestic communication policies explains Mexico's agenda regarding cultural industries in the NAFTA. Canada's overall cultural exemption did not make sense to Mexican negotiators, who thought not only that the country was rather resistant to the inflow of American products, but that, provided the opportunities offered by the U.S. Spanish-speaking market, it could even benefit from trade and investment liberalization.

In retrospect, the NAFTA has not significantly altered the structure or functioning of audiovisual markets in the region. While Canada succeeded in

carrying over the cultural exemption negotiated with the U.S. in 1988, Mexico evolved into the agreement as part of a larger restructuring of its media and telecommunications industries. What should be noted is that, given that its goals were limited to the creation of a free-trade zone, neither regional bodies nor cooperation projects to stimulate audiovisual industries are found in the NAFTA agenda. It is in this sense, and mostly by omission, that the NAFTA legitimises the commodification of culture, largely ignoring its socio-cultural implications.

The European puzzle

EU's cultural industries policy is grounded on two in many ways irreconcilable goals, one cultural, the other economic. The cultural goal, problematic in itself, is clearly expressed in Article 128 of the Maastricht Treaty (1992): 'The community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore'. The economic goal is to protect and develop European audiovisual industries through the 'Fortress Europe' formula: liberalisation within and protectionism from outside. The initial idea, articulated in the Television Without Frontiers Green Paper (CEC, 1984), was that balancing economic integration and cultural diversity was not problematic because liberalization of audiovisual services within the EU would bring the 'common European heritage' to the fore, and thus create a single European Audiovisual Space. This unified market would in turn provide the economies of scale needed by audiovisual producers to compete with the U.S.-based media conglomerates, both within and abroad.

This rationale is imbedded in the 1989 Directive on Broadcasting (CEC, 1989), one of the key document in EU's audiovisual policy. This Directive sets forth two main goals: 1) to abolish restrictions to the free-flow of broadcasting

services within the EU, and 2) to harmonise national regulatory frameworks. It basically liberalises broadcasting services, encouraging the commercialization of national broadcasting systems and the formation of large multimedia conglomerates within the Community, without imposing public-service obligations on broadcasters - obligations that have historically characterised media policy in Western Europe.

Among the few obligations laid down by the Directive are the controversial content quotas for European works stipulated in Article 4, which were the subject of substantial controversy among European policymakers. It was finally established in the Directive that 'Member States shall ensure, where practicable and by appropriate means, that broadcasters reserve for European works (...) a majority proportion of their transmission time.' This feeble wording infuriated the more protectionist front led by France and the European Parliament, which, since then, has been fighting to modify the provision without success. Other obligations include a 10% quota for independent productions (the definition of which was introduced by the 1997 amendment to the Directive), and a number of provisions regulating time and content in TV advertising. Although in a recent document the European Commission acknowledges that industry concentration might negatively impact diversity in the audiovisual offer, it asserts that 'safeguarding pluralism of the media is neither a Community objective nor is it in the Community's jurisdiction as laid down by the Treaty of Rome and the Treaty of the European Union' (EC, 1992: 59). Thus, European legislation, to date, contemplates no specific restrictions to media ownership, nor does it lay down regulations to ensure diversity of content at the regional level, at a time when industry realignments render national regulations on both issues increasingly obsolete (Kaitatzi-Whitlock, 1996).¹⁰

The MEDIA plan is the other face in EU's audiovisual policies. Established by the European Commission in 1987, this program has three main goals: 1) to create transnational synergies to strengthen European audiovisual producers; 2) to sustain small and medium-size producers through financial and technical support; and 3) to promote linguistic and cultural pluralism in the regional audiovisual offer. With a modest U.S. \$29 million budget for its pilot stage (1987-1990), the program increased spending to U.S. \$270 million for its second period (1991-1995). By 1995, the MEDIA had launched more than 15 projects such as the EFDO (European Film Distribution Office) and the European Script Fund, supported over 1,500 productions (up to 50% in financial assistance per production) and trained over 3,200 people. For the current period (1996-2000), the budget has almost doubled to U.S. \$510 million.

The 1989 Directive and the MEDIA program bear witness to the difficulties involved in balancing economic integration and cultural diversity in regional audiovisual policies. While the former attempts to consolidate the global competitiveness of European producers, the latter is aimed at fostering diversity within the media landscape. A review of the three factors guiding this analysis (industry profile, domestic cultural policies and cultural distance) helps understand the Janus-faced character of EU's audiovisual policy and its achievements so far.

The break-up of public monopolies and the new distribution outlets made available by telecommunication developments have produced a sharp increase in broadcast volume in Western Europe - from 205,000 hours in 1985 to 720,000 in 1993 - as well as in the number of national stations (up from 40 in 1981 to 1205 in 1995). In contrast, available European program supply increased by a mere 60% in the same period.¹¹ The content scarcity created by these changes has increased the incentives to buy inexpensive entertainment material from U.S.-based

companies, particularly for the new, privately-owned ventures because of their need to offset high start-up costs (Dupagne & Waterman, 1997). As shown in Table 3, despite the much debated content quotas, EU's trade deficit with the US in audiovisual industries grew exponentially in the 1988-1995 period.

By increasing competition within national markets, the 1989 Directive has substantially changed the competitive environment within national borders. However, it has been ineffective in overcoming the fragmentation of audiovisual markets in Western Europe. As a recent report by the European Commission acknowledges,

'the impact of the Single Market has not caused major changes in the television industry. Even though there has been a boost in demand for TV programs, supply of truly European products has been puny due to national markets' fragmentation: the main focus has been placed on satisfying national audiences rather than increasing circulation of European films' (EC, 1996: 27-17).

In other words, EU's audiovisual policy has failed to forge an unified market with economies of scale comparable to those available to U.S.-based media companies. It is important to note that, in theory, a single European market would be almost as large as the American in terms of volume. Yet, the idea that the free-flow of audiovisual products would bring to the fore the 'common European identity', thus creating a pan-European audience, has proven overly simplistic. Collins notes that there is a naive technological determinism in thinking that 'social and cultural relationships are necessarily shaped by technological change and, specifically, that satellite television will create transnational publics and cultures' (1995: 488). As discussed in the case of the

U.S. and Mexico, audiences do not necessarily coincide with national -and least with regional - borders.

'Europe' is in fact a patchwork of publics with different languages, viewing habits and genre tastes. The diversity of languages is a good example. Moeglin (1992) reports that in 1991 there were more than 13 national or regional broadcast languages in the EU, although two languages, French and English, prevailed. Viewing habits also vary widely, as well as audiences' genre preferences. Films lead the ratings in France, dramas do so in the UK, while Italians prefer sports and variety shows. As a German industry-executive puts it, 'European audiences tend to tune in to either homemade or U.S. programs, not to other European shows.¹² Small intra-EU trade figures in audiovisual products also speak to the cultural distances separating European audiences. A report by the European Commission (EC, 1996) estimated intra-EU trade in film and video at ECU 150 million in 1992, a tiny fraction of the US \$5 billion that the EU imported from the U.S. in the same year (Table 3). The share of market of European films varies from 22% in France and Spain to as little as 3% in the United Kingdom, while an estimated 80% of the films produced every year in the EU never leave their country of origin (EU, 1997a).

In summary, it is apparent that EU's audiovisual policy has been more preoccupied with strengthening audiovisual producers in the face of rapid structural changes in media markets than with promoting a culturally diverse audiovisual offer for European citizens. This policy, which rested on the idea of a single European audiovisual market, has ironically been hampered by the diversity of cultural consumption patterns within the region. EU legislation has been ineffective to overcome fragmentation into national markets, while support programs such as the MEDIA have fallen short in attracting investments and strengthening the circulation of European works within the continent. Yet, despite

this failure, the consequences of EU's audiovisual policies should not be minimised. By increasing competition within national markets, these policies have further eroded the dominant position of public-service broadcasters, at the same time strengthening a handful of European media conglomerates, which today compete simultaneously in various local markets with essentially similar products. They have also brought in a new regional regulatory framework, which many governments find hard to harmonize with their domestic communication policies.¹³ Economic goals notwithstanding, and despite suffering from an 'absolute lack of resources to make a difference in the audiovisual sector' as Bustamante (1994: 240) describes them, regional initiatives such as the MEDIA program set apart EU's cultural industries policy from NAFTA's purely economic logic.

Currently, a new communication policy is taking shape within the EU, grounded on the premise that, with the coming of age of the 'information highway' and interactive audiovisual services, Europe's 'linguistic and cultural diversity, which has long been seen as a handicap, may turn out to be an advantage in tomorrow's audiovisual environment', as a recent Commission memo puts it (EC, 1997b: 4). Technological innovations are expected to shift the industry from massive broadcasting to narrowcasting or customised TV. In this new market structure, goes the reasoning, audience diversity turns into a competitive advantage comparable to economies of scale through audience maximization in the old broadcasting era. However, it is yet unclear whether this new orientation will be able to strike a better balance between economic integration and cultural diversity. The struggle between these two contradictory objectives is likely to become a major issue in the integration process, for it bears on economic interests, the shaping of collective identities and the distribution of cultural capital within the region.

Policy vacuum: The case of MERCOSUR

In economic terms, the MERCOSUR represents the most successful regional agreement in the long and winding history of less than successful integration projects in South America.¹⁴ Begun in 1986, when long-time rivals Argentina and Brazil signed the Economic Cooperation and Integration Program (PICE), the project later expanded to include Uruguay and Paraguay, and finally consolidated when these four countries signed the Asunción Treaty in 1991.¹⁵ According to the text of the treaty, the main goals of the MERCOSUR are: 1) to create a free-trade zone by eliminating tariffs and non-tariff barriers; 2) to establish a common external tariff; 3) to coordinate macro-economic and sector-specific policies; and 4) to harmonize national regulatory legislations. In pursuit of these objectives, an institutional structure was established (and later expanded by the Ouro Preto Protocol in 1994) consisting of two main organs: the Consejo del Mercado Común (CMC) - the ruling, legislative organ - and the Grupo del Mercado Común (GMC) - the executive organ. Decisions of both the CMC and the GMC are binding to member-states.

Few references to cultural industries exist in MERCOSUR legislation. One of them appears in the agreement to liberalize cross-border investment, the Colonia Protocol (1994). In this Protocol, partners agree to give national treatment and open markets to other member-states' investments and investors. Yet, as in the case of NAFTA, cultural industries were largely excluded from investment liberalization. Article 2 of the Annex specifies each country's exemptions to the protocol: Brazil excluded its radio, TV and telecommunications industries;

Paraguay and Uruguay both exempted their radio, TV, publishing and telecommunications sectors; interestingly, Argentina, whose government has embraced a more open policy toward foreign investors, did not take exemptions in the communication sector.

Coordination of cultural policies, on the contrary, has been the subject of considerable debate within the MERCOSUR. The Cultural Integration Protocol, approved by the CMC at the end of 1996 (CMC, 11/96), seeks to provide the legal framework for cultural integration within the bloc. Like EU legislation, this document recognizes that ‘culture constitutes a fundamental element of integration processes’, and establishes that ‘member-states will seek to promote cooperation and trade between their cultural institutions and agents’ (Article 1), with priority given to those ventures that ‘express the historical traditions, the common values and the diversity of member-states’ (Article 2).¹⁶ The main initiatives carried out in the context of the Cultural Integration Protocol were: a) a special customs treatment for cultural goods (the so-called ‘MERCOSUR Cultural seal’), which allows the free circulation of goods destined to exhibition at cultural events (basically favoring exhibition and performing arts); b) a fellowships program; c) an exchange program for young writers; d) itinerant art exhibitions; e) co-financed editions of writers from the four partners; f) the ‘MERCOSUR Cultural House’ in Colonia, Uruguay; and g) other initiatives relating to the preservation of the ‘common cultural patrimony.’

While this Protocol explicitly mentions the audiovisual sector as one of its focus areas, the above review of the projects undertaken to date suggests that mass-produced audiovisual products - the real locus of cultural integration in the

region - have been, by and large, left unattended. This is symptomatic of the cultural policies that have characterized Latin America for decades, which focus either on the so-called 'high-arts' (painting, literature, art-cinema or performance arts) - for the most part consumed exclusively by a small 'educated' minority - or on preservation of the 'cultural patrimony', hence neglecting the bulk of mass media production carried out by the private sector (García-Canclini, 1987; Miceli, 1987). Interestingly, it was precisely this disregard for private cultural producers that led to the failure of a number of previous regional integration initiatives in the audiovisual sector.

In the late 1970's, fueled by the UNESCO-sponsored debates on the so-called New World Information and Communication Order, a plethora of cooperation projects such as the ASIN (a pool of national news agencies), the ALASEI (a pan-Latin news agency created with the support of UNESCO) and the ULCRA (an entity grouping Latin-American non-commercial broadcasters) were started in the region. As Roncagliolo asserts, 'the majority of these efforts have had little relevance in the long-term, or have failed altogether, because they privileged the role of the states and supranational entities' (1996: 48, my translation). In other words, in a region where, for better or worse, the American model of commercial broadcasting has by and large prevailed from the outset, audiovisual projects hinging on the financial and political support of governments, and which fail to include the private sector, are doomed to have limited impact on the region's media landscape.

Despite the lack of attention to audiovisual industries in MERCOSUR legislation so far, a review of the three explanatory factors used in this study

(industry profile, domestic cultural policies and cultural distance) reveals the obstacles and challenges that an agenda for audiovisual policy in the MERCOSUR is likely to face. With regards to industry profile, what first strikes the observer is a broad disparity between Brazil and Argentina, on the one side, and Paraguay and Uruguay, on the other. Brazil and Argentina have developed complex cultural industries, particularly in the TV sector. Both countries have shifted from net importers of TV content in the 1970's and early 1980's to net exporters, locally producing most of their prime-time programming (Marques de Melo, 1995; Roncagliolo, 1995; Straubhaar, 1991). Brazil had an earlier start, illustrated by the case of TV Globo. This network was founded in 1964 by newspaper-magnate Roberto Marinho and developed under the benevolence of Brazil's military regime (1964-1985), which paid for much of the communication infrastructure needed to create a national audience. TV Globo is today part of the largest media conglomerate in Latin America, with interests ranging from newspapers to radio, magazine and book publishing, music, cable-TV and DBS.

In comparison, Argentina's audiovisual producers evolved more recently. It was only in 1989, with the sweeping changes brought by President Menem's neoliberal policies, that modern media conglomerates started developing in the country. Among these changes were the privatization of two national TV networks and the elimination of the prohibition of publishing company entry into broadcasting. The beneficiaries of these privatizations were Grupo Clarín - publisher of Clarín, the world's largest-circulation Spanish-language newspaper and, at present, the third largest media conglomerate in Latin America after Globo and Televisa - and Telefé, a consortium that includes, among others partners,

Editorial Atlántida, a leading magazine publisher.¹⁷ With renewed capital availability, these networks have since grown rapidly, expanding their production and distribution facilities. Currently, local productions have almost completely displaced imported programs from prime-time slots and both networks are successfully exporting their telenovelas, comedies and variety shows, particularly to neighboring countries such as Chile, Paraguay, and Uruguay, with which cultural barriers are minimal.¹⁸

However, as in the case of Mexico, the strength of the TV sector is not representative of all audiovisual industries in Brazil or Argentina. Film production remains particularly weak in both countries, with imported productions accounting for more than 85% of the films shown in theaters and over 90% on TV.¹⁹ Yet, the local industry seems to be regaining momentum in both countries, revitalized by new film legislations, tax incentives favoring domestic productions, and a new relationship between the film and TV sectors.

Audiovisual production in Paraguay and Uruguay is, by contrast, highly limited. This is hardly surprising: economic analyses of cultural production has consistently demonstrated that the capacity of domestic cultural industries is directly related to audience size, GDP and overall resources allocated to the audiovisual sector (Waterman & Rogers, 1994). What is interesting to note is that in these two markets the inflow of American products has been decreasing steadily since the early 1980's, gradually replaced by Latin-American imports, while the share of domestic products remained small. With limited domestic markets, relatively few protectionist barriers and scarce public subsidies, Paraguay's and Uruguay's cultural industries are of an artisanal character when

compared to those of Argentina or Brazil - particularly in the TV industry where imported programming accounts for 70% of the total broadcast volume.²⁰

The flow of Argentinean and Brazilian audiovisual products into Paraguay and Uruguay is also nourished by negligible cultural distances between the four MERCOSUR countries. Of the three trade blocs analyzed here, this is the region where national audiences are most similar in terms of viewing habits and genre preferences. In the case of Argentina, Uruguay and Paraguay, there are negligible language barriers. A shared cultural ethos and regular immigration flows have also played a role in bringing their popular cultures closer together. The language barrier certainly imposes a competitive handicap on Brazilian audiovisual producers. Yet, first-mover advantages, the high-quality of its products and an aggressive pricing policy have secured demand for Brazilian productions throughout Latin America, particularly in markets most dependent on imports such as Paraguay and Uruguay. As Waterman et al. (1994) note, TV program flows within Latin America are intense, particularly when compared to Western Europe or other Third World regions such as Southeast Asia. The mushrooming of pan-Latin pay-TV channels (74 in 1996), most of them originating within the region, also speak to the burgeoning constitution of transnational publics on this continent.²¹ To summarize, in contrast with the EU, audiovisual markets in the MERCOSUR region have become increasingly integrated over the last decade - even in the absence of national or regional public policies in this direction. As Waisbord (1996) notes, in terms of cultural industries, the MERCOSUR agreement follows rather than leads an integration process steered by the private sector.

It should be recognized that MERCOSUR's cultural industries policy is still in blueprint inasmuch as, first, it was only in 1995, upon the creation of the Ministries of Culture Meeting (CMC, 2/95), that cultural policies gained a higher status in the MERCOSUR institutional structure. Furthermore, key legislation - such as the agreement on trade liberalization in services and a regional regime for intellectual property rights - is still under negotiation. Draft versions suggest that, if approved, the agreement on trade in services would significantly liberalize the audiovisual and telecommunication sectors within the bloc. For example, it would require member-states to open their markets and grant national treatment to service providers of other members, with the gradual inclusion of all service sectors within a 10-year period. Similarly to the GATS, the agreement would also limit the ability of governments to establish monopolies, provide subsidies or enforce performance requirements on service providers (MERCOSUR Services Working Group, 3/96).

To summarize, while audiovisual policy in the MERCOSUR region is still in the making, the above presented analysis allows for a few conclusions about its viable - and desirable - content. Ironically, the foremost challenge in this bloc seems to be designing an integral policy for audiovisual industries, thus avoiding characteristic Latin-American cultural policies that by and large overlook this sector. And yet, these must not be state-centered policies, which are unlikely to prosper in the MERCOSUR region for two main reasons. First, after the failure of the statist media policies during the 1970's and early 1980's, little political legitimacy remains for direct government intervention in communication industries (Fox, 1988). Public control of the media in Latin America is - many

times legitimately - perceived as either politically suspect or simply economically inefficient. Second, the financial crisis of the public sector in all four MERCOSUR countries greatly constrains their ability to pursue cultural goals through publicly funded projects such as EU's MEDIA program. If a lesson is to be drawn from past experiences, the challenge for MERCOSUR policymakers is to coordinate audiovisual policies with the private sector. And by private sector I refer not only to the emerging or established media conglomerates but also to the plethora of small, community-based initiatives that constitute the richness of Latin-America's media environment. If policy goals are to be established with regards to cultural industries, steering the private sector, currently the engine of audiovisual integration, towards the realization of such goals appears to be the more realistic policy option.

Closing remarks: A comparative look

There is little doubt that regional integration agreements are changing the face of global economic relations. Yet, it is unclear how these agreements will impact audiovisual markets or producers, which to a large extent were already playing the globalization game long before these agreements came into being. A comparative analysis centered on the three explanatory factors used along this paper (industry profile, cultural distance and domestic cultural policies) reveals a number of shared issues for audiovisual policies in regional integration agreements.

First, obvious disparities exist in the strength of audiovisual industries within the three trade blocs. Given the increasing technical means and decreasing regulatory barriers for the cross-border flow of audiovisual products, a pressing

issue is what would the impact of trade agreements be on the less developed industries, and whether regional policies will be put in place to lessen the effects of market forces and compensate for these structural disparities. The example of the EU clearly demonstrates that striking a balance between economic integration and promotion of cultural and linguistic diversity in audiovisual markets is a challenging policy conundrum.

Second, it is apparent that, to date, regional integration agreements have had a greater impact on the structure of ownership than on the contents of cultural markets. The Mexican TV industry is a case in point: whereas foreign ownership of distribution channels is ever-increasing, telenovelas, local variety shows and soccer games still top the ratings, a situation unlikely to change in the foreseeable future. This is not unlike Western Europe where, EU policies notwithstanding, audiovisual markets are still fragmented into local consumption patterns. Both examples speak to the inertia of cultural patterns in comparison to the swift internationalization of capitals promoted, among other factors, by integration agreements.

Domestic cultural policies are also consequential to the inclusion of cultural industries in regional trade accords. When contending policies found no grounds for agreement, such as in the U.S.-Canada (or the GATT) case, an exemption for cultural industries was established, whereas in the case of the EU and the MERCOSUR, where domestic communication policies were not incompatible, cultural industries were recognized in their specificity, and regional initiatives to develop the sector were established. As the case of Canada suggests, given the ever-increasing trend towards regional economic integration, the long-

term viability of the cultural exemption formula is unclear. Granting cultural products a special treatment within the agreements, while more conflictive in the short-term (as the internal cleavages over EU's audiovisual policies demonstrate), seems to provide a more enduring solution, by establishing a legal framework in which member-states agree to negotiate policies and cooperate in developing a regional cultural sphere.

Sinclair et al. (1996) suggest that the prevailing trend in audiovisual industries is toward the consolidation of regional markets, based not exclusively on language but also on cultural similarities. Along these lines, I have argued that cultural distance is a central variable in the articulation of regional audiovisual policies, for it not only bears on each country's trade agenda (as illustrated by Canada's and Mexico's opposing stands in NAFTA negotiations) but also on the outcome of policy initiatives, best exemplified by EU's failed attempts at building a single audiovisual market. Of all three blocs, the MERCOSUR, given the minimal cultural distances between national audiences and the already existing trade flows, would seem to have the best opportunity to develop a truly regional audiovisual policy. What seems to be lacking, to date, is the political will to do so.

This paper has investigated how liberalization, cooperation and exemption have been combined differently in the NAFTA, the EU and the MERCOSUR, resulting in unique policy outcomes regarding cultural industries. I argued that these different policies reflected variations in three factors within the regions: industry profile, domestic communication policies and cultural distances. However, the analysis has also revealed a common preoccupation underlying cultural industries policy in the three blocs. Essentially, concerns about the

protection and development of markets for audiovisual producers have prevailed, while issues of industry concentration, content diversity, and the growing social stratification in the access to cultural goods are being largely overlooked. In other words, mainly guided by economic goals, integration agreements seem to be doing little to promote the functioning of diverse cultural spheres on a regional scale.

Notes

- 1 In economic jargon, audiovisual products yield increasing returns to scale, a positive feedback mechanism that reinforces the position of the already dominant competitors (Arthur, 1996).
- 2 Canada also conceded four minor exceptions to the overall cultural exemption. For details, see Acheson and Maule (1996).
- 3 Cited in García-Canclini, 1996: 143.
- 4 For example, the share of market for foreign films in the U.S. dropped from 10% in the 1960's to 7% in 1986, and down to less than 1% in 1996 (The Economist, 1 February 1997).
- 5 However, two qualifications must supplement this large-brushstroke portrait of Canada's audiovisual markets. First, the share of local productions is very uneven across genres. As the case in most countries, domestic producers dominate TV news, public affairs and sports programming. Second, as Attallah (1996) reports, exports are on the rise for Canadian TV programs, particularly to the pay-TV U.S. market. Because of cost advantages due to tax-incentives, lower labor costs and the exchange rate, many American companies now produce in Canada, suggesting that this country may be playing host to maquiladora-type industries for the American audiovisual market.
- 6 These include: banning Border's, a leading U.S. book retailer, from opening superstores in Canada; an 80% tax on revenues from advertisements in so-called 'split-run' editions of foreign magazines (particularly affecting Time-Warner's Sport Illustrated magazine); and the removal of a Westinghouse Electric-owned cable channel (Country Music Channel) from Canadian cable services.
- 7 Source: Variety, 7 October 1996.
- 8 Among these attempts were the purchase of The National, a sports newspaper, which ended up in a U.S. \$100 million loss to Televisa, and the production of telenovelas in English. Although the latter are making little impact in the U.S., Variety (7 October 1996) reports that they are selling well in other markets such as Africa.
- 9 For details on the differences between the Mexican and the U.S. intellectual property legislations, see Nivón (1992) and Acheson and Maule (1994).
- 10 Nonetheless, provisions limiting media ownership are currently under debate within the EU. For details, see Schlesinger, 1997.
- 11 Sources: EC (1996) and EC (1997a).
- 12 Variety, 25 July 1996.
- 13 A good example is the recent battle over pay-TV in Spain, in which the EU contested legislation introduced by the government on the grounds that it violated safeguards to the free movement of services as laid down in the 1989 Directive (New York Times, 30 June 97).
- 14 MERCOSUR trade results to date are impressive. Intra-MERCOSUR trade has grown six-fold between 1985 and 1994, at a 22% annual growth rate, increasing the share of regional trade in the partners' overall trade from 5% to 20% (Ferrer, 1996).

- 15 Currently, negotiations to incorporate Bolivia and Chile to the agreement all well under way.
- 16 All quotes from MERCOSUR documents are my translation.
- 17 Telef  is, in turn, part of CEI, an investment consortium with interests in telecommunications (50% of Telef nica de Argentina, one of the two companies in which Entel, the former state telephony monopoly, was split after privatization), radio, cable-TV (33% of Cablevisi n, the second-largest MSO) and publishing (Source: Clar n, 12 May 1998).
- 18 Though exports are on the rise for Argentinean networks, they still pale when compared to those of TV Globo or Televisa. For example, foreign sales for Grupo Clar n's network in 1995 amounted to U.S. \$5 million, whereas Televisa exported U.S. \$84 million in the same period (Variety, 12 August 1997).
- 19 Source: Bolet n IC, September, 1996.
- 20 Source: Bolet n IC, September, 1996.
- 21 Source: Variety, 25 March 1996.

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Table 1
Top 10 Private Audiovisual Companies (1996)

| | 1995-1996 Revenue (U.S. \$ millions) |
|-----------------------------------|---|
| 1. Walt Disney Co. (U.S.) | 18,949 |
| 2. Time-Warner (U.S.) | 17,696 |
| 3. Bertelsmann AG (Germany) | 13,700 |
| 4. Viacom Inc. (U.S.) | 11,688 |
| 5. News Corp. (U.S./Australia) | 9,882 |
| 6. Havas (France) | 8,800 |
| 7. Sony Entertainment (Japan) | 7,696 |
| 8. TCI (U.S.) | 6,851 |
| 9. Polygram NV (Netherlands) | 5,530 |
| 10. EMI Group (UK) | 5,453 |

Source: Variety, 8/26/96.

Table 2
Percentage of Imported Content in Cultural Markets

| | US | Mexico | Canada | Quebec |
|-------------|----|--------|--------|--------|
| TV Networks | 2 | 30 | 50 * | 27 * |
| Film | 1 | 80 * | 95 | 95 |
| Books | 14 | na | 80 | 60 |
| Records | na | na | 89 | 75 |
| Video | na | 80 | 95 | na |

* Content regulated by quotas.

Sources: McAnany and Wilkinson (1996); Anuario Estadístico Mexico, 1995.

Table 3
EU trade in audiovisual industries with the US (US \$
millions)

| | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 |
|---------|--------|--------|--------|--------|--------|--------|--------|--------|
| Imports | 2,337 | 3,028 | 3,719 | 4,200 | 5,000 | 5,776 | 6,036 | 6,795 |
| Exports | 359 | 404 | 464 | 279 | 300 | 429 | 585 | 532 |
| Balance | -1,978 | -2,624 | -3,255 | -3,921 | -4,700 | -5,347 | -5,451 | -6,263 |

Source: European Audiovisual Observatory