Assessing the impact of digitisation on access to culture and creation, aggregation and curation of content

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The current expansion of information and communication technologies (ICTs) has a radical impact on culture, insofar as they create, modify and intensify relationships among users and between users and the world. In order to explore the policy-relevant consequences of the changes brought about by ICT-mediated culture, it is important to consider first, however tentatively, the fast evolving trends in ICT-driven media in order to assess the implications for culture at large, its online definition and the values that may underpin its governance. Considering culture from the perspective of cultural industries (including publishing, films, music and video games) provides a magnifying glass that can be extended to other "legacy" art forms such as painting or dance.

The main thrust of this analysis will be to weigh the various forces involved and consider how the previous pre-digital era status quo between the cultural industries, cultural producers and cultural infomediaries such as libraries, archives and museums (even universities) is being rearranged online, with an unavoidable shake-up for those that have underestimated, neglected or missed their transition to the digital era. It will also spell out their more or less planned obsolescence and mutation as many of the broadband phenomena that affect culture show the same double-edged trend: on the micro-level, they ruin pre-digital era jobs, businesses and institutions, while on the macro-level they have the potential to reconnect people with their actual needs and place them at the beginning of the design process, be it of business or of social engineering. These changes permanently and inexorably question the value chain of culture, the public interest and human rights.

I.1 Towards an ambient "mediated culture"

In the digital world, media have multiplied, combining broadcast modes of data entry and output (so-called "analogue" or "legacy" media) with broadband modes (so-called "digital" or "new" media), adding interactivity among users to the mass distribution of content. Broadcast media generally remain a key instrument to disseminate information, entertainment and culture at large. Broadband media are deepening the potential for conversation and for participation from the netroots, with the voices of amateurs and amateur professionals.[2] There is the shared feeling that they establish some kind of continuity between offline and online worlds through forms of communication that create a "mediated culture", where access to original content and art forms (music, etc.) is provided via media both as platforms for their own content production and for the distribution of legacy art forms. The negotiation of the boundaries of media therefore has implications for the boundaries of culture, as media are intervening more and more in the ways people are empowered or inhibited in their creativity, their social learning and their cultural participation.

I.1.1. The shuttle screen situation

This mediated culture shows a "shuttle screen situation" in which what happens on the top surface screen of broadcast media sources for fiction (film, games, etc.) is discussed

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[2] P. Flichy, *Le sacre de l'amateur : Sociologie des passions ordinaires à l'ère numérique*, Paris, Seuil, 2010; D. Cardon, "typologie de l'amateur" available at http://www.internetactu.net/2011/03/31/le-role-des-amateurs-22-le-numerique-transforme-t-il-lamateur/

within the deeper netroots screen of broadband media with feedback to the top surface screen (with fan-fiction, for example).[3] The two subsystems of the "information society" era - TV-based developments (connected TV) and internet-based developments (Web TV) - are competing against each other, with a multitude of formats such as tablets, smartphones, laptops and other forthcoming e-devices. Legacy arts and media (painting as well as film and music) are being displaced as the preferred mode of creative output: long and short narrative forms (books and series) as well as images and sounds are fast migrating to the digital screen and its underlying IP infrastructure. This dominant trend can contribute to the cultural divide between media-rich and media-poor countries and communities, especially in terms of access to high-speed broadband, still rarely available to artists and creators.[4]

From the users' perspective, this mediated culture produces a seamless experience as both broadband and broadcast media are screen-based rather than script-based (even when they use text) with implications in terms of diversity of forms of cultural expression, as these are impacted by mobility, ubiquity and shareability. Still from the users' perspective , as shown by the resilient expansion of books and publishing during the dominance of the audiovisual era, the digital equivalents of cinema, television, opera, painting or sculpture will persist – albeit displaced in importance – because they fulfil cognitive needs and sensory differentiations (the internal reading voice or hearing attention when listening to music) that will, hopefully, remain reflected in the heterogeneous and generative media modes and formats of the digital era.[5]

Broadcast media continue to be major providers of shared narrative content (novels, films, games, etc.) that is recycled and remixed on the digital networks of broadband media to produce new content and comments because shared narratives, either online or offline, constitute a key element of culture as social learning and human interaction. These engaging narratives have great collective value as they contribute to social interactions and provide distributed intelligence of how to live together in culture as a "cognitive network".[6] As vehicles of representation and means of distribution, media are part and parcel of this networked culture that transmits and modifies values and institutions. However, this narrative content also increasingly comes from institutions other than "the media" and from individuals other than "artists", with different perceptions of formats, genres, production values and quality. Such participants have emancipated themselves from the dominant figures of the author as creator or the user as consumer, often by producing collaborative pieces for which no authorship is claimed. The volume of videos on YouTube, for instance, shows a very heterogeneous mix of broadcast television and

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[3] In this report, the term "broadcast media" is henceforth used instead of "traditional" or "legacy" mass media (from one to many); the term "broadband media" is used to incorporate Internet platforms, websites and social networks keeping their characteristic of interactivity (one to a few or one/few to many).

[4] See, for instance, the MARCEL network (Multimedia Art Research Centres and Electronic Laboratories), dedicated to high-speed broadband musical experimentation across borders http://www.mmmarcel.org.

[5] L.E. Harrison and S.P. Huntington, *Culture Matters: How Values Shape Human Progress*, New York, Basic Books, 2000; see also M. Tomasello, *The Cultural Origins of Human Cognition*, Cambridge, Harvard UP, 1999.

[6] M. Donald, *Origins of the Modern Mind: Three Stages in the Evolution of Culture and Cognition*, Cambridge, Harvard UP, 1991.

user-generated homebrewed productions, with the juxtaposition of parodies, copies and remixes together with original content whose value and durability are difficult to evaluate.[7]

I.1.2 The driving force of users' needs: self-actualisation, play, life longings and civic agency

The social model that explains the shuttle screen situation and the rise of amateurs and amateur professionals points to the central importance of meeting users' social and cognitive needs. These needs are complex and can be summed up in terms of socialisation theory by reference to several important trends that impact on cultural production and participation.

The first trend relates to "self-actualisation"[8], which is defined as the desire for self-fulfilment and the use of media affordances to that end. It can be seen in the display of reputation sites, in the intense use of micro-blogging for updating profiles and interpersonal relationships, and in the exhibition of one's tastes and aesthetic preferences on websites that act like galleries or publishing outlets for fanfiction.

The second trend is "play"[9] as related to problem-solving and to testing dynamic models of real-world processes without risk. It can be seen in the creation of personalised or monetised avatars in online role-playing video games or simulated environments where artists and amateurs can design virtual realities of their own.

The third trend is based on the satisfaction of "life longings"[10], which are defined as intense remote or unattainable desires, and the use of compensatory strategies, as adaptive self-regulation to cope with blocked goals or the incompleteness of real life. It relates to older users (in the original theory) but can also be applied to newcomers (young people) since they evaluate their options and weigh their costs and benefits when engaging in online interactions, focusing on the past, present and the future in search of a means of symbolically making sense of their practices.

I.1.3 Cultural practices as creation, curation and aggregation

This engaging of needs can be seen in online activities that tend to build on symbolic or social capital, such as the curation of personal interests to be seen on the multitude of websites on cooking, interior decorating, etc. Broadband media, even more than broadcast media, afford such compensations or alternative strategies, especially with the curatorial trends evident on content sharing services, such as Pinterest and Stylepin, or visual bookmarking options, such as Zootool.

This affordance is also known as "curated consumption", a term coined by trendwatching.com in 2004 to describe the growing role of users as trend-setters, reputation-builders and (self)curators thriving on social networks such as Flickr or

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[7] D. Frau-Meigs, *Penser la société de l'écran. Dispositifs et usages*. Paris, Presses de la Sorbonne nouvelle, 2011.

[8] A. Maslow, *Motivation and personality (2nd ed.)*, New York, Harper & Row, 1970.

[9] D.W. Winnicott, *Playing and Reality*, London, Routledge, 1971; see also D. Frau-Meigs, "Child and Adolescent Well-Being From the Perspective of Media and Communication Studies" Ben-Arieh, A., Frones, I., Casas, F. and Korbin, J.E. (Eds.), *Handbook of Child Well-Being. Theory, Indicators, Measures and Policies,* Heidelberg, Springer, 2013 (forthcoming).

[10] S. Scheibe, A.M. Freund and P.B. Baltes, "Toward a Developmental Psychology of *Sehnsucht* (life ongings): the optimal (Utopian) life" *Developmental Psychology*, 2007, pp. 778-795.

Facebook.[11] This new form of curation is not necessarily built on collection, hierarchy and professionalism and it impacts on the traditional curatorial practices of museums and libraries as it places amateurs in this new role, with different selection criteria with regard to what is quality in art, what will stay and what will disappear in the future, with attendant heritage issues (what to preserve, what to discard). Such curation is no longer about the scarcity of art and isolation in a high-culture environment but about managing abundance and shareability, with items that make a new pattern in a new context put together by third parties that are not all artists (far from it) although they can claim a certain level of (self-)taught expertise.

Such curation can be seen as a regulatory complement to aggregation that corresponds to a search for alternative quality criteria in a chaotic digital world of abundance where interesting and unexpected (some would say serendipitous) connections are made that provide new statements for the shared meaning of culture. "Para-curatorial" practices appear as complementary to professional curation, with comments, additional links and performances of various kinds and with user-aggregated comments on non-official websites. However, these uses and practices are not without interest for all media stakeholders as they fuel e-presence, attention, engagement, participation and interaction to an unprecedented extent, although quality is not ascertainable and ever more subjective.

This individual hierarchy of needs also fits in with more collective needs for participation in culture, with media as affordances for collective innovation and the dissemination of information. These collective needs can be further connected to "civic agency"[12], which is defined as the capacity of human groups to act co-operatively on common issues in spite of diverging views. Civic agency requires a set of norms, symbols and practices that support and enhance the group's capacities for collective action. Socialisation theory describes all these individual and collective needs as a cognitive process of internalisation that includes performance, co-construction and the revision of values. In this process, information and communication content are recycled, remixed and re-used and put together into a dynamic repertoire of strategies for appropriate participation in a given society because the "cognitive networks" of culture rest on recycling as a preferred mode of transmission.[13] These change consumption patterns of as they tip the balance towards participatory forms of culture that do not necessarily pertain to ownership.

I.1.4 Competing economic models: cultural industries vs. relational goods

From the users' perspective , the shuttle screen situation seems to involve the search for cultural goods whose logic does not correspond to the pre-digital logic of cultural industries. These goods do not respond to consumers' rational choices but, rather, are tuned to "non-linear adaptive networks"[14] where the logic of use is stronger than the logic of supply-and-demand. The decision-making mechanisms are related to non-rational

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[11] S. Rosenbaum *Curation Nation: How to Win in a World Where Consumers are Creators*, New York, McGraw-Hill, 2011.

[12] P. Dahlgren, "Doing Citizenship. The Cultural Origins of Civic Agency in the Public Sphere", *European Journal of Cultural Studies* 9 3, 2006, pp. 267-286.

[13] D. Frau-Meigs, *Socialisation des jeunes et éducation aux médias,* Toulouse, Eres, 2011.

[14] J. Holland, "Studying Complex Adaptive Systems" *Journal of Systems Science and Complexity* 19,1, 2006, pp. 1-8.

choices based on socialisation motivations (such as belonging, peering, playing, wellbeing, etc.).

Hence, in this new hyper-connected context, we see the emergence of two complementary (though traditionally opposed) types of goods: relational goods and experiential goods. Relational goods foster enduring interpersonal relationships and are local public goods (in the tradition of the "commons") not necessarily related to market exchanges, maintained through non-contractual, co-ordinated actions and in line with "civic agency".[15] Their value is based on interaction between people, especially reciprocity in the pursuit of intimacy and mutual perceptions of understanding and caring, as evidenced in social networks where time spent "friending", playing and curating about relationships and emotional involvement seems unlimited. Experiential goods must be experienced and tested before purchase is considered; they presuppose use prior to ownership (contrary to consumer goods, which must be bought before they are tried).[16] They rest on social learning that creates habits of use, and media content such as music, video games or software applications lend themselves to such tailored needs.

Experiential goods have integrated the socio-cognitive needs of online users. They have provided a number of intermediary services before sales (trials and tests) and after sales (satisfaction surveys) and have shifted their platform access from graphical user interface (GUI) to user-centred design (UCD) in order to be user-friendly, reinforcing in the process their proximity with relational goods. To many users, iTunes or YouTube feel like a relational good even though they rely on advertising and information brokerage models, producing the general myth that the internet is open and free (or low-cost), even when using proprietary tools and platforms. This perception has implications for culture and art in particular as users have been in the habit of not paying for online content because it feels like relational goods, thus making it very difficult to find a sustainable model for pre-digital media outlets and for legacy arts. It also has implications for public service goods and public domain commons as their defence seems less necessary due to the ambiguous blurring of the distinction between experiential goods and goods.

The co-existence of such goods with other cultural goods is not without tensions in the business world as the logic of entertainment felt to be free of charge meets the logic of pay-per-view services. The economic models of the pre-digital era still exist, like the flow model of mass media or the editorial model of news as well as the information brokerage model, where infomediaries collect advertising revenue.[17] They are visible in the audiovisual sector, which sells "premium" content on niche cable networks or satellite film channels; they can be seen in the struggle of the cultural industries to protect their digital rights managements behind paywalls accessible via credit cards that exclude the poor; and they appear in the increase in licence and copyright restrictions for lending to public libraries, making their curatorial tasks of collection and dissemination difficult.

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[15] C. J. Uhlaner, "Relational goods and participation: incorporating sociability in a theory of rational action", *Public Choice* 62, 1989, pp. 253-285; C. Anderson, *The Long Tail. Why the Future of Business is Selling Less of More*, New York, Hyperion 2006.

[16] R. E. Caves *Creative Industries: Contracts Between Art and Commerce*, Cambridge, Harvard UP, 2000.

[17] D.S Evans and R. Schmalensee, *The Digital Revolution in Buying and Borrowing*, Cambridge, MIT Press, 2005; X. Greffe and N. Sonnac, *Culture Web. Création, contenus, économie numérique*. Paris, Dalloz, 2008; see also P. Bouquillion and Y. Combès, *Les industries de la culture et de la communication en mutation*, Paris, L'Harmattan, 2007.

These models are facing challenges both from online piracy and the illegal dissemination of copyrighted content on sites like Megaupload or Torrent and from digital "pure player" models based on information provision and data-mining by third parties that exploit users' individual and collective needs in terms of self-actualisation, play, life longings and civic agency. They feature the intervention of non-audiovisual players from the hardware and software industries that become content aggregators or by ISPs that push for information brokerage, as in the example of Google and its Adsense system for collecting advertising revenues. New means of mining and exploiting content around aggregation and curation thus take into account not only consumption habits but also socialisation processes and practices that permit the more and more direct development of services with added value available to individuals and businesses, as exemplified by Facebook's announcement in 2013 of the launch of its Social Graph Search and its increased browsing capacity with the addition of the Bing search engine on its platform, as a result of an agreement with Microsoft.

As they reconfigure the mediascape, such sea changes offer not only unexpected opportunities for all stakeholders but also unprecedented risks. Far from signalling the demise of culture, these evolving issues and values usher in a new age of media amplification and diversification that holds promises for democratisation, participation, empowerment and the creation of cultural capital. But they also bring serious risks to access to public interest content and challenges for analogue and legacy arts intermediaries with physical infrastructures for the provision of public access to cultural goods, such as libraries, universities and museums.

I.2 The case for mediated culture in development

Within this context of "non-linear adaptive cognitive networks" (to recombine the concepts of Donald and Holland), the case needs to be made for an enlarged connection between culture and media as a tool for development, even in developed European countries since they have their own "Souths" to attend to.

I.2.1 Culture as a leverage tool

Traditionally, researchers consider four relations of culture to development, including media development, according to different stakeholders (state, private sector, civil society):

– culture as compensation, by which it provides identity and wellbeing and therefore requires financial support and provision by the state. This view tends to be a technophobic approach to culture, which is problematic with current IT development;

– culture as competition, by which it is considered as one industry among others. This view incorporates the reduction of uncertainty and the non-rivalry of goods, including media goods;

– culture as an intermediary mode of consumption mobilised for other activities, valued per se, on an economic basis. This view incorporates media as creative industries having the role of improving the quality of products over networks;

– culture as a transversal leverage tool across all creative sectors of media and ICTs. It facilitates the functioning of the economy thanks to knowledge and skills. This view values the creativity of users and includes amateur and amateur professional practices.[18]

The last construct, culture as a transversal leverage tool, is the one that stands most to benefit from the shuttle screen situation and the hybridised forms of intricate broadcast and broadband media. Broadcast and broadband media offer outlets and platforms that empower users as they encourage collaboration and participation, in local and virtual spaces that constitute meeting-areas for sharing and exchanging in commercial and non-commercial settings. They also relate to relational and experiential goods with a set of increasingly interoperable and shareable tools (software applications and services, tablets of all sorts, etc.). The success and sustainability of these media in culture can be based on their ability to structure users into communities and integrate their experiences into coherent systems of symbols and meanings.[19] Cultural leverage is about soliciting internalised norms and reflecting tacit and implicit values in order to elicit emotional responses of identification and promote the cross-generation of new ideas, so that the new significance of culture is made apparent and explicit to all.

Such cultural leverage is connected to development and human rights as it favours an under-estimated dimension of freedom of expression that is its added value to creativity and innovation through the combined production of relational and experiential goods. It contributes to the changing status of culture as it becomes a tool for identity construction (self-actualisation, play and life longings) and sustainability (civic agency, innovation and the ability to generate local cultural goods with local means). This mediated culture can be encased within the human rights framework, especially as it promotes dignity of the person (self-respect) and freedom of expression as extended to freedom of creation and innovation, but also education and participation. The diversity of cultural forms of expression (as set out in the Treaty on the Protection and Promotion of the Diversity of Cultural Expressions) can also be added to this cognitive framework of culture.

I.2.2. The changing status of original content: windowing, versioning and merchandising

The added value of broadband media to the equation comes from speedy information, speedy sales and unlimited storage, which permits niche production and consumption, not to mention the internationalisation of markets.[20] Evans and Schmalensee describe the new means in which original content can be distributed:

– windowing: organising the dissemination of one product on several types of vehicles (a film in a cinema, on DVD or on premium commercial channels). The same consumer is targeted but at different moments. The chronology of media distribution on various vehicles becomes important and it is often regulated;

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[18] X. Greffe and N. Sonnac, Introduction to *Culture Web. Création, contenus, économie numérique*, 2008, as adapted in Frau-Meigs, *Media Matters in the Cultural Contradictions of the 'Information Society'*, Council of Europe Publishing, Strasbourg, chap. 1.

[19] D.S. Evans and R. Schmalensee, *The Digital Revolution in Buying and Borrowing*, Cambridge, MIT Press, 2005.

[20] C. Anderson, *The Long Trail. Why the Future of Business is Selling Less of More*, New York, Hyperion.

– versioning: changing the format and price of a product, so that it is possible to reach different consumers who would not have been interested in the first version (hardback, paperback, electronic version, etc). Reputation helps and will always benefit the first sector to produce the product, even if it is later sold to other sectors.

– merchandising: adding products to the original product, with several formats and shapes, like creating figurines from Disney characters or using a novel to make a film. IP rights are important but less and less credible (and enforceable) as the derived products move away from the original.[21]

Such variations on original content are likely to affect arts and arts outlets considerably, with new ways of creating content but also a new status with regard to copyright issues. Windowing can be seen in the use and re-use of the same news items over several vehicles (television and internet websites for instance); versioning can be seen with online extensions of original analogue creations, often free of charge; merchandising is at work with the addition of collector's items, yearly print versions of select material ("best of") or the repurposing of content (with added expression, a different context, etc.). This very system is at the core of content aggregators that recombine windowing and versioning while submitting the new product to advertising and merchandising.

These variations point to two different types of implication for media and creation: the importance of building an online public domain to disseminate the collective wealth of content and culture, and the need to motivate creation by the recognition and appropriation of the economic value that results from it (with the disputed attendant need to prevent copies being made without remuneration for the creator).

I.2.3 The "portal effect" and IP rights

Such circumstances raise the question of copyright exceptions or copyright limitations. In these different procedures, copyrightable material and its reproduction can be set against fair use and abuse, the purpose and character of use in a commercial context, the transformative or added value by the process. As advertising and sponsorship of different kinds (state, private) form part of their financing modes, art works and original content can come under the control of private sponsors or donors, with the risk that they are removed from the market or from the commons.

Companies like Google, Apple, Facebook or Amazon are establishing vertically integrated business models that connect provider to provider, thus producing a "portal effect" whereby they capture consumers with proprietary formats that feel like relational goods in the seamless navigation they offer on their platforms. As well-recognised brands, they have the ubiquity and financial clout to oblige other infomediaries to deal with them in accordance with their terms and conditions, as evidenced in the trial of strength in 2012 between the news publishers' associations of France (IPG), Italy (FIEG) and Germany (BDZV and VDZ) and Google: they seek regulation in order to create a tax on search engines and aggregators that index and reference news materials, arguing that the

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[21] Evans and Schmalensee, *The Digital Revolution in Buying and Borrowing.*

capture of their original content saps their economic gains and undermines their curation in the general public interest necessary for the democratic process.[22]

The crisis of equity of access and fair remuneration is also experienced by libraries that are challenged by online vendors, retailers and publishers as well as e-reader services and rights holding organisations.[23] The International Federation of Library Associations (IFLA) together with the International Council on Archives (ICA), Electronic Information for Libraries (EIFL) and Corporación Innovarte is engaged in negotiations with WIPO member states, urging them to provide an internationally binding instrument on copyright limitations surrounding the licensing of online content.[24] IFLA argues that current restrictions undermine the principle of equity of access to content of public interest and prevent libraries from serving their local community while also curtailing their traditional missions of lending to users and creating repositories of original content for future generations.

An emerging trend in broadband media is self-publishing, i.e. publications generated by users themselves as they take advantage of the low entry costs afforded to them to fulfil their needs for self-actualisation and satisfying their life longings. Self-publishing bypasses traditional broadcast and paper publishers, as authors distribute their works themselves using the relevant software, such as Smashwords, or platforms such as OverDrive or Amazon's CreateSpace.[25] In 2012, Apple created iBooks Author as well as iBooks 2 for interactive teaching for its iPad, with an End User Licence Agreement (EULA) for content generators that gives it exclusive and unlimited distribution rights.[26] This trend may be mitigated by other strategies, as some companies have developed cost-per-click (CPC) systems such as Microsoft AdCenter or Google AdSense to test ways to monetise user-generated content by sharing the advertising revenue with creators, driving video posting online in particular.

Such initiatives reveal a lack of information on how supply and demand sides interact to determine the online value of content creation and appropriation. This can lead to a situation where high premium prices, strict licence restrictions and stringent advertising schemes may make it difficult for broadcast media outlets and cultural institutions such as libraries and archives to be viable and sustainable. Various scenarios concerning IP rights need to be considered, although considerable legal uncertainty surrounds cultural activities. Claims of abuse and misappropriation or even downright theft are made by various competitors as they see curation and aggregation lead to yet more forms of versioning and merchandising that seem to be putting art and original content at risk. States and policy regulators will need to ensure legal rules are put in place that promote flexibility and free access to such forms of art appreciation as library lending or visiting museums. Member states may have to engage with WIPO to gather support for an internationally binding instrument on copyright use online. Terms and conditions for purchasing, licensing and the overall pricing of online content will need to be carefully weighed. Exceptions and limitations (for fair use, archiving, education, etc.) will need to be

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[22] http://lexpansion.lexpress.fr/high-tech/les-medias-francais-italiens-et-allemands-unis-contre-google_352922.html

[23] http://www.thedigitalshift.com/2012/03/ebooks/librarians-feel-sticker-shock-as-price-for-random-house-ebooks-rise-as-much-as-300-percent

[24] See IFLA's Treaty proposal on Limitations and Exceptions for Libraries and Archives, 2012, http://www.ifla.org/copyright-tlib

[25] http://www.smashwords.com/; http://www.overdrive.com/; http://www.createspace.com/

[26] http://www.apple.com/legal/itunes/appstore/dev/stdeula/

protected from stringent contracts to ensure public access to information and knowledge in the globalised cultural networks.

I.3 Policy-relevant consequences and governance in relation to culture

The policy-relevant consequences of such a situation imply the need for multi-stakeholder consultation and negotiations characteristic of soft-governance guidelines (in contrast to hard government regulation). Governance is a complex notion that tends to show a strong bias in favour of co-regulation understood as consensus-building among a variety of players (governments, the private sector, CSOs, IGOs, etc.) via multi-stakeholder negotiations.

In the context of mediated culture, some of the basic principles of governance could relate to curation (heritage, stewardship, collection, para-curatorial practices), equity of access, openness, participation and accountability, in order to address issues of cultural and societal reach, as well as fundamental freedoms and human rights. These major points of negotiation deal with inter-connected fields, where those freedoms and values are tested against issues of content pricing, data protection and privacy, intellectual property rights and the creative and civic agency of users (including amateur professional and "piracy" practices). In relation to mediated culture, it means governments and IGOs like the Council of Europe have to ensure access to cultural infrastructures, provide information about cultural resources, promote the participation of citizens in cultural life and be accountable for inequalities, cases of discrimination, etc. They have to enlarge the notion of access beyond connectivity to include real appropriation and opportunities for sustainable development (individual and collective); they need to broaden the notion of participation not just to include the consumption of cultural goods but also the co-creation of such goods and the notion of accountability in order to address affirmative policies and redress wrongs and damage.

Such governance needs to take into account shifting European trends whose pre-digital era status quo is being challenged:
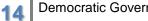
1/ highbrow culture vs. lowbrow culture components: painting, dance and opera used to be contrasted positively to films, pop music and video games. However, museum visits and attendances at live classical events are dropping and public financing is being reduced, while at the same time video games are becoming the biggest cultural industry in Hollywood and elsewhere, although they have not reached the full status of the 8th art to which they could lay claim (considering the creativity they unleash). This trend increases with the generational divide, with highbrow culture being connected to older people and lowbrow culture to the young.

2/ institutional loci of culture vs. non-official sites: museums, libraries, archives and other cultural centres used to be contrasted positively to street art, game arcades and websites, yet for most people non-official sites have become the first place they go to in order to have their first encounter with culture, be it by browsing or more participatory activities.

3/ high-context cultures vs. Low-context cultures: implicit exchanges of information and participation through social activities used to be the norm in many European countries while explicit exchanges of information and participation to be transmitted via media performances and events were considered less desirable. However, broadband media with their social needs for self-actualisation and the satisfaction of life longings generate

many explicit exchanges of all kinds, displacing the accept limits of what is implicit and private.

4/ homogeneous cultures vs. heterogeneous cultures: some European nations with low immigration levels and little mix of indigenous people are becoming heterogeneous cultures with high immigration levels and various indigenous groups, whose cultural needs are not easily taken into account. Such groups can make up for lack of cultural content by relying on transborder media content and diasporic communication, which can be a challenge to their integration and to their contribution to the national identity.

To ensure the largest possible access and participation, governance policies in general will need to promote circulation between lowbrow low-context cultures and highbrow high-context cultures. Each should incorporate a minimum of media (for instance, have media in museums and conversely show museums in media and as media). However, there is still no consensus on the major pillars of this potential governance and its implementation. Fears that it might be a means of controlling the content of transnational communications have not abated since the World Summit on Information Society (WSIS) and governments and corporate powers are reluctant to consider its multi-stakeholder implications, as exemplified in debates at the ITU, IGF or CSTD.

II. Challenges and opportunities for mediated culture in the digital era

Policy-oriented plans should aim at guaranteeing pluralism, avoid dominance by corporations and straighten the imbalance between regions in terms of information and communication provision. In the current context, the tenor of the debate cuts across an array of interests promoting openness and participation and others that seek restrictions and centralised control.[27]

II. 1 The mixed promise of creative industries within cultural industries

Within the cultural industries, the rise of creative industries has sparked considerable interest as it has coincided with the rise of the internet and broadband media, thus creating an unprecedented synergy between the offline and online environments.

II.1.1. Contested definitions between art and business

As early as 1997, the private sector set out the characteristics of creative industries:

1) The nature of the product, which consists of experiential goods, whose value cannot be evaluated like that of a commercial product since they must be tried before purchase;

2) The nature of the production process: production requires significant up-front work to obtain a prototype that ensures the product's uniqueness. On the other hand, however, reproduction and distribution costs are very low. The return on investment depends on the number of copies sold;

3) The way it is consumed: the prototype is never consumed, and the consumer values the lived experience, not the physical form of the product;

4) Unpredictability: the product's market value is very hard to predict, which creates uncertainty and makes it necessary to take considerable risks;

5) The relationship to the consumer: since each product is unique and irreplaceable, it does not compete with other products in the way traditional consumer goods do. It is primarily concerned with filling individuals' leisure time and competes with other products for time/consumers as they feel like relational goods.[28]

Such creative industries require a highly qualified workforce with very specialised skills, often with an artistic focus, with the necessary use of ICTs. The economic model is very chaotic at the moment but follows the film-production model in its 'project-based' focus: a team is brought together for this one project and is dissolved once the product is finished. The workers do piecework, often on a freelance basis.

However, taking a more people-centred and cultural perspective, UNESCO proposed a different definition in 2006: "Creative industries are distinguished from cultural industries…by their emphasis on expression and identity, rather than on marketing, with a particular interest in handicrafts and popular arts, as well as design, with derivative works

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[27]D. Frau-Meigs et al, *From NWICO to WSIS: 30 years of Communication Geopolitics. Actors and Flows, Structures and Divides,* Bristol, Intellect, 2012.
[28] Caves, op. cit (fn. 16)*.*

and applications in publishing, music and film."[29] This includes a whole series of sectors, mainly in the communication and information fields, such as design, fashion, and more intangible cultural goods related to curatorial activities (museums, archives and libraries) and to self-actualisation and the satisfaction of life longings, such as cooking, design, folklore, handicrafts, etc.

II.1.2 Social entrepreneurship and crowd-sourcing

Although the UNESCO definition does not specifically encompass the agency of users, the emphasis on expression and identity make creative industries close to self-actualisation and the satisfaction of life longings via relational and experiential goods. In the case of broadband media, this agency can take participatory and civic forms that have led to the rise of new kinds of social entrepreneurship – business ventures for which profit-seeking is not the first priority, as exemplified by the internet stories of Silicon Valley pioneers, who are presented as reformers and even revolutionaries.[30] For such entrepreneurs, wealth creation is less important than the success of the social mission they have given themselves. Their reward is more in the form of self-actualisation and service to meet the needs of an identified community than building capital. As a result, they are able to mobilise the resources of others and seize unexpected opportunities and affordances, often with a combination of public aid, private donations and voluntary or freelance work. This can be seen in such collective cultural productions as the Wikipedia, a creative industry that aims at making highbrow and lowbrow culture accessible to all with the help of volunteers and donors.

The capacity of social entrepreneurs to mobilise and monetise the resources of others is further magnified by online crowd-sourcing, as made possible by broadband media. It is defined as "a new web-based business model that harnesses the creative solutions of a distributed network of individuals through what amounts to an open call for proposals."[31] It appeals to a global network of potential workers and turns innovation and problem-solving into the added contributions of amateurs and amateur professionals, putting an end to the pre-digital era definition of the artist as a lonely sui generis "genius". This erodes the boundaries of professionalism as it brings creativity into the more muddled territories of curation and aggregation, as exemplified by the use of "modders" in the world of commercial video game developers to tap the creative practices of fans willing to modify or add content to their favourite game. Knowledge and content production are taken away from specialists while individuals' skills and abilities, not always validated by degrees, diplomas and careers, are recognised as a source of wealth. This range of literary, musical and artistic cultures relates less to ICTs than to new modes of production and navigation with knowledge and content creation, together with the new social relations that they bring about.[32] New ways of creating, disseminating, recording, playing and simulating content are thus emerging, although they are hardly recognised or even rewarded by mainstream culture.

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[29] www.portal.unesco.org.

[30] J.G. Dees, "The *Meaning of Social Entrepreneurship*", 2001 (1998), available at www.caseatduke.org/documents/dees_sedef.pdf

[31] D. Brabham, "Crowdsourcing as a Model for Problem Solving", *Convergence: The International Journal of Research into New Media Technologies*, vol. 14 1, 2008, pp. 75–90, available at http://con.sagepub.com/content/14/1/75

[32] P. Lévy, *Qu'est-ce que le virtuel ?* Paris, La Découverte,1995.

Creative crowd-sourcing services are actually on the rise, as can be seen in the example of CrowdSPRING, launched in 2008, with more than 100,000 designers and writers from over 200 countries responding to open bids.[33] Pioneering successes such as Threadless (open calls for the production of T-shirt designs) or iStockphoto (open calls for royalty-free stock photography, animations and video clips), exhibit alternative ways of producing cultural content, away from mainstream fashion and top-down design values. Some artists have been tapping this trend for crowd-sourced art, such as Sam Brown's *Exploding Dog* (with finished pictures printed on canvas and sold to collectors) or Lorie Novak's *Collected Visions* (with randomly collected family snapshots that people place together to form a picture). Ambitious projects like **SwarmSketch** (one random topic a week) or **The One Million Masterpiece** *project (online canvas of one million squares) openly invite artists to contribute to a work in progress.*[34]

The motivation for such participatory practices comes from self-actualisation since crowd-sourcers like to update their skills and experiences while also hoping to be noticed in the marketplace of ideas and compensated for the value of their work. Combined with crowd-sourcing, social entrepreneurship can both serve communities and allow some creative individuals to make contributions. Such creative industries are affecting the future of culture as some individuals can create their own news business or become social entrepreneurs providing local content. Such creative industries currently show a two-fold trend: via micro-credit, micro-payments and micro-donations they can foster innovation and enable professional artists or amateurs to make an alternative living by being paid online; individual practices can be brought into the fold of institutionalised public or market practices (as in the case of music labels signing young artists who post their music online).

The advantages for such creative industries are not lost on the corporate sectors as they deploy all their might to consolidate privileged access to Digital Rights Management (DRM) and other IP tools, as exclusive proprietary instruments. WIPO has actually created a section on creative industries within its Small and Medium-Sized Enterprises (SMEs) Division and has incorporated them in its "Development Agenda". At the other end of the spectrum, the netroots sector is vying for new legal systems like the "Creative Commons"[35] that allow them several thresholds of shareability without ownership. Creative industries are thus both an opportunity for new entrants in the world of production and a threat to traditional players that are trying to move online.

However, the issues of pricing principles and the problem of labour costsand reward for creativity remain totally unaddressed at the moment. As a result, in spite of all the positive libertarian hype surrounding them, creative industries look like exploited labour (not to mention the fact that some use children) as the pricing rules are disproportionately low compared to the quality of the work produced and to the net worth for the operators of crowd-sourcing platforms and businesses. However, they point to the models of the future for mediated culture, with a massive loss of jobs in the obsolescent cultural industries of the past, as the distribution of technologies calls for less highbrow knowhow, enlarges the spread of expertise and blurs the distinctions between professional artists and amateurs.

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[33] See CrowdSPRING.com; see also threadless.com and iStockphoto.com as analysed in Brabham, "Crowdsourcing as a model for Problem Solving".

[34] www.swarmsketch.com/; http://www.millionmasterpiece.com/

[35] L. Lessig, *The Future of Ideas: The Fate of the Commons in a Connected World,* New York, Random House, 2001.

Another unaddressed issue is the diversity of cultures or the lack thereof in such crowd-sourcing and social entrepreneurship practices. At the current level of appropriation and access to ICTs, most of these activities are possible n highly equipped countries and are generally used profitably by young white highly-educated English-speaking males. In a 2012 Pew Research Center report about the USA, experts concluded that "As of 2011, internet use remains strongly correlated with age, education, and household income, which are the strongest positive predictors of internet use among any of the demographic differences studied (…). Ultimately, neither race nor gender are themselves part of the story of digital differences in its current form. Instead, age (being 65 or older), a lack of a high school education, and having a low household income (less than $20,000 per year) are the strongest negative predictors for internet use".[36] A similar situation can be described in the European Union, as the gender gap is much less important than the income and generation gap, perpetuating with it the highbrow/ lowbrow cultural divide.

The digital divide is thus a cultural divide and questions of access remain to be answered, with an impact on the diversity of the producers of content, since women, the poor, minorities and older people are less likely to contribute to crowd-sourcing activities and content aggregation, thus producing a real lack of representation of their perspectives, under the surface flow of democratic horizontal creativity. The apparent heterogeneity and subversion of mainstream models, styles and fashions do in fact mostly extend the capacities for dissent of a rather narrow segment of the population. Pre-digital era hegemonic mechanisms remain under the flow and differences in power relations might actually be more exaggerated than in the offline world of affirmative action and voluntary policies in favour of women, the poor and minorities.

II.2   Broadband risks for European cultural diversity: "Hollyweb" and "net neutrality"

Besides this white, young, male, English-speaking, middle-class hegemonic environment (all the social entrepreneur heroes of Silicon Valley fit this pattern), mediated culture risks the loss of its expressive diversity because of current developments in the corporate world leading to a system of digital enclosures.

II.2.1 Hollyweb and the strength of acquired positions

One of the most obvious risks to mediated culture is the new and unprecedented concentration of media ownership that is undermining both public service media and pluralism of voices. Practices such as commercial bundling and locked-in systems try to fence in users behind digital pay-walls of unprecedented impenetrability in the European Union as much as in the United States. Stringent intellectual property rights are adapting to the digital era and trying to quell or subvert content creation, curation and aggregation. Many European countries have modified or relaxed cross-ownership regimes so as to allow more corporate penetration in local and regional markets.[37] The need to finance and expand the info-structure pushes corporations to maximise their means of generating revenue, which in turn makes them call for deregulation.

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[36] K. Zickuhr and A. Smith "Digital Differences", Pew Internet and American Life Report, 2012, available at http://www.pewinternet.org/Reports/2012/Digital-differences.aspx; see also Eurostat databases, available at http://epp.eurostat.ec.europa.eu/
[37] D. Frau-Meigs, op. cit (fn. 18), chap. 7.

This process impacts directly on policy-making at both national and supranational levels because states are under pressure to relax their oversight of the private sector and reduce publicly funded media, especially those that incorporate advertising. This process in turn has a chilling effect on the public media sector, as companies see their sources of revenue diminish at a moment when they need to expand their online activities. Moreover, broadband media buzz tends to equate popular and horizontal creation and the curation of cultural goods with the private sector to the detriment of public service media, which seem unpopular because they retain an elitist aura of a vertical top-down relationship to culture. Commercial platforms feel more like relational goods and seem less coercive and more participatory than those public service outlets. At the same time, "public" media are more and more related to community or citizen media and social networks (rather than state-owned institutions).

The lack of online regulation in this matter has opened the way for much more pluralism in the sense that it has allowed public-interest content to be published in Eastern European countries where the media are still under state control or are co-opted by the state. However, in other states with a strong public-service tradition, especially in some parts of Western Europe, the relaxation of regulatory regimes has led to threats to pluralism, at a time when their cultural industries are resorting to extensive retrenchments. Access to advertising revenue is put in doubt and restrictions are imposed on other sources of income. This is particularly visible in policies that establish a "public value test" like the one to which the BBC is subjected in the UK or others that try to curtail advertising options for public media, as in France. However, this "shake-up" may help clarify the missions of public service media that have been neglected or not updated to digital expectations: they are not in the business of competing for advertising but, rather, have been created to serve audiences in ways that the market does not, be it online or offline.

Some European trends show that public-service requirements have increased to take into account the digital context and the opportunities offered by the live streaming of existing over-the-air programmes or the webcasting of new internet-produced content. Additional requirements have thus been added to their traditional missions (to inform, educate and entertain): the promotion of cultural diversity, fostering social cohesion and integrating linguistic and regional communities. In some cases, there is the added responsibility of supporting the creation of original artistic content. Such additions, however, have been carried out without an accompanying increase in human or financial resources, thus leading to an endemic financial crisis.[38]

The problem is increased by the fact that the public-service obligations usually required of commercial media do not apply in the present online environment. American multinational corporations such as Google, Microsoft, Apple or Facebook – well entrenched within national US law – are intent on preventing public services from entering the field of digital media so as to establish their own rules and have a *de facto* dominant position, from which it will be difficult for any new entrant to dislodge them. They hope to reduce public pressures to serve isolated and poor communities and regions. If services are to be provided to these areas, subsidy mechanisms rather than licensing compulsion may need to be explored as effective incentives.

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[38] M. Ridinger, "The Public Service Remit and the New Media", *Iris Plus*, 6, 2009, pp. 2-12.

Furthermore, American multinational corporations have organised themselves into the "Hollyweb"[39], that is to say the domination of broadcast and broadband media by about twelve American private sector entities protected by US law, with potential damage to an independent European cultural industry. As big American companies like Google, YouTube, Apple, Microsoft, Yahoo! and Facebook have become media, they have joined the dominant six broadcasting organisations (GE, Time Warner, Viacom, News Corp, CBS and Disney), which reinforce the shuttle screen situation through competing and complementary strategies between Hollywood studios and Web platforms. Their purpose is to strengthen the "portal effect" so as to concentrate traffic flow and keep users within the confines of their platforms by offering them a continuous and seamless flow of related services and entertainment. This leads to concentration and the standardisation of formats (increased by windowing, versioning and merchandising), the main purpose being to capture advertising revenue by selling clearly identified and traceable audiences to businesses, as in the 2013 Facebook announcement of its Social Graph Search and its agreement to offer Microsoft's Bing search engine on its platform.

The online challenge for cultural diversity and pluralism is not only the protection and promotion of legacy arts and broadcast content but also the fostering of user-generated content and comments, which moves the public from consumption to participation, with increased agency – away from pre-formatted portals and from a stronger connection between content, advertising and e-commerce. Another risk is that some cultures and languages considered as not generating enough traffic or revenue may be marginalised and lose visibility on the digital networks.

II.2.2 Not so neutral "net neutrality"

To modify this trend towards concentration and the capture of users that threatens equity of access and quality content, the "net neutrality" principle has emerged as a potential mobilising tool for policy-making. Coined by Tim Wu in 2003, it was defined in terms of neutrality between applications and between different types of data and traffic, at the level of network infrastructure.[40] Since then, net neutrality has been broadly defined as non discriminatory access to internet-critical resources and services, underlining the importance of open networks, encouraging access to services and protecting consumers from current anti-competitive practices employed by providers as they threaten to reap disproportionate advantages by overexploiting the resource. Net neutrality has emerged as a critical issue for access, diversity and pluralism as some corporations have drawn on their protocols and other devices to discriminate against peer to peer (P2P) traffic, discriminate among services and make it difficult for new entrants and independent creators to access the digital networks.

In December 2010, the Federal Communications Commission (FCC) adopted a text on net neutrality, extolling the preservation of an "open internet" and proposing explicit rules, such as transparency, a level playing field, no blocking and no unreasonable discrimination, to be applied to cable and telecoms operators but not to mobile telephony.[41] The United

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[39] D. Frau-Meigs, "Hollyweb : le gang des douze", *Les collections de L'Histoire*, n° 56, 2012, available at http://www.histoire.presse.fr/les-collections-de-lhistoire/56/hollyweb-le-gang-des-douze-12-07-2012-46975

[40] T. Wu, "Network Neutrality, Broadband Discrimination" *Journal of Telecommunications and High Technology Law*, 2, 2003, p. 141; see also T. Wu, *The Master Switch: The Rise and Fall of Information Empires*, New York, Knopf, 2010.

[41] V. Schafer, H. Le Crosnier and F. Musiani, *La neutralité de l'Internet, un enjeu de communication,* Paris, CNRS Editions/Les Essentiels d'Hermès, 2011.

States Congress drafted a bill in 2012 with the same general policy approach. By contrast, the European Union has embraced a more laissez-faire approach. The issue is bound to assume even more importance as mobile telephony expands the volume of data transfer and traffic and as Web TV (such as GoogleTV or MyTV) requires more and more bandwidth sufficient to provide high quality. Public-interest concerns are being raised regarding the creation of a two-speed service model that would also create a two-tier citizenship, with some users being offered all types of services and others only basic services.[42]

These changes have created asymmetries in traffic and revenue flows, with telecommunications companies paying high costs for infrastructure and sustainability while broadband "over-thetop players" (OTT), such as Netflix, Hulu or MyTV, are reaping high returns while contributing less to network investment and maintenance. This new development (as exemplified by the arrival of Google "channels") shows the intricacies of the shuttle screen situation, with broadband media trying to deliver broadcast content (audio and video formats) as third parties without the ISPs being involved in its distribution – in contrast to delivery through the purchase or rental of audiovisual content over IP networks from the internet provider, such as video on demand services. A dispute is brewing between the OTTs (perceived as "free riders" of IP content) and telecommunications companies only responsible for IP packets, which results in calls for a diversity of pricing relationships, away from the simpler relationships of the earlier internet generation. The pressure is in fact less on the end user than on the peering prices for interconnections between the OTTs and the backbone infrastructure, as the telecommunications companies currently carry incoming traffic without financial compensation while the billing is carried out at the arriving traffic end of the network. As a result, revisions of telecoms package policies and regulation are underway at the highest international level, such as the new International Telecommunication Regulations (ITRs) Treaty at the ITU.[43]

Nation states also have an interest in challenging this strong imbalance as they provide infrastructure and various incentives without reaping the revenues that would allow them either to expand or finance public-interest outlets and services. European governments are just realising that traffic volume should not be the basis for commercial pricing and that they should call for pricing on the basis of the value of the entire IP infrastructure, data transfer and content delivery. The current dispute between Google and some newspaper associations in Europe (France, Germany and Belgium) and Brazil over GoogleNews or the blocking of Google ads by the French ISP Free in early 2013 illustrates the economic interests involved in the debate, which concerns the viability and sustainability of media as they move to IP traffic. Even though Google has stayed ahead, more and more cases of this kind are bound to arise and lead to a push for industry self-regulation, with the credible threat of government regulation looming large. Below the surface debate on net neutrality, conflicting business interests are deeply involved in the issues at stake, which are essentially about who has access, who pays, who benefits from the converging IP structure and, finally, who has the power to regulate the internet.

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[42] Berkman Center for Internet and Society Report, *Next Generation Connectivity. A Review of Broadband Internet Transitions and Policy from Around the World,* 2010. Available at http://cyber.law.harvard.edu/pubrelease/broadband/; see also T. Berners-Lee, "Long Live the Web: A Call for Continued Open Standards and Neutrality" *Scientific American*, November 22, 2010.
[43] See the 2012 Doha debates at the International Telecommunications Union, available at http://www.itu.int/ITU-T/itr/

The issue of net neutrality, which is both technical and economic in nature, has strong implications for fundamental freedoms and democracy, especially freedom of expression and equity of access. The net neutrality principle could be advantageously embraced by the Council of Europe as a means of re-engaging states to fulfil their responsibilities, via the pressure of civil society, to enforce the rule of law and make the case for protecting the public interest on the networks, even maintaining the transnational public value of the internet, and striking a balance between the risk of entrenched national interests and disfranchised private interests. Such a multi-stakeholder approach can ensure participation and protection against the misuse of the public interest by both the state and the private sector, keeping the interests of civil society users in mind by ensuring non-discrimination at entry points and end-to-end interoperability while promoting connectedness over connectivity.

Net neutrality can thus exemplify one of the ways in which the regulation of cultural diversity can work at a transnational level. It permits better governance of the networks, ensuring that compatibility and interoperability exist, that conflicts of jurisdiction are addressed and that problems of enforceability are taken into account within a multi-stakeholder framework. The 2012 discussions around the (aborted) adoption of the SOPA and PIPA laws in the USA and the global debate on the ACTA Agreement are examples of a growing awareness of the political, social and cultural implications that surround the technical layers of the internet. They have the benefit of forcing the various players to state their positions more and more clearly, whether they be states (via courts, parliaments, regulatory entities such as FCC or ARCEP, etc.), the private sector (operators, service providers, content delivery providers, etc.) or civil society (foundations, consumer associations, NGOs etc.). However, it is still necessary to discuss the implications for mediated culture as a whole.

II.3 The global digital commons

However, there are other mechanisms for democratising culture, empowering neglected players (women, minorities) and changing the power and authority relationships between professional artists, amateurs, curators and rights owners. They open up the possibility of a more balanced vision of the proprietary and non-proprietary options available to states, industry and civil society.

II.3.1 OpenWeb vs Hollyweb

The notion of the OpenWeb is becoming a reality in the shape of a global digital commons and in contrast to the Hollyweb. It can help to bring about participatory development in the formal and informal economy and in the area of creative industries, with indirect benefits and enabling environments for freedom of innovation and for creation, curation and aggregation to be established.

Commons are relational spaces, with special rules that do not treat them as equivalent to markets, where tangible and intangible assets are shared by a community, such as the broadcast airwaves or the digital broadband backbone (publicly owned and leased for commercial use in many countries). In fact, the creative works of people not subject to copyright law and a number of public domain digital resources have produced such digital commons. In the digital world, the information commons have emerged around product

development via Open Source production, with people as willing participants and contributors to the community at large. Open source productions feed on intangible benefits connected to relational goods that are non-exclusive and non-rival and involve a conception of culture as being non-commercial and non-proprietary.[44]

The definition of Open Source involves not only access to the source code for software but also free redistribution and derivation as well as no discrimination against persons, groups or fields of endeavour.[45] Collaborative improvement to the existing product is highly encouraged, with full transparency and availability to everyone who wishes to participate, with the continued transparency and free distribution of the product so as to enrich the commons. The principle of access to the design stage of a product and freedom from constrictive IP rights feeds into a vision of culture as a "cognitive network" and "leverage tool" for sustainable development.

Openness and interoperability are key for bringing creative input into the design process and for benefiting from the "network effects" [46] of collaborative contributions, as the more a product is used, the more it can be modified and improved. Network effects emphasise the importance of the demand side and the agency of users since the value of a product is dependent on the critical mass of people using it, thus ensuring a good subscriber base. Products like the Mozilla Firefox web browser, and the GNU/Linux software programmers, who enable the free software community to expand, are good examples of how Open Source models can impact positively on access to culture. There can be many different economic advantages and benefits of not preventing access to some public goods, including creating new business models and ensuring local sustainability, thus reinforcing the notion of culture as a leverage tool for development. However, their open access has to be clearly identified and managed by a defined authority, with allocated resources only to be used by members of the community in a transparent non-commercial manner so as to give it social value in an integrated infrastructure where individuals can share a common goal, as provided for by "creative commons" licences.[47]

Broadcast and broadband media have not yet fully embraced the relevance of such global commons for their own expansion. Very few commercial platforms are interoperable with open platforms and there is very little definition of the complementarity between them as a result. The energy and expertise available in the information commons is not yet being fully tapped by professional artists and amateurs, in spite of the budding expansion of fab labs, which capitalise on open sourcing both in physical and virtual spaces.

Defining the missions of the digital information commons is essential in order to defend them and contrast them to paid services and individualised, incremental billing. At the moment, the internet as a digital commons is not well equipped to detect the improper use of the resource and does not have a governance mechanism that mediates between

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[44] Y. Benkler, *The Wealth of Networks. How Social Production Transforms Markets and Freedom*, New Haven, Yale UP, 2006.

[45] For a full definition of Open Source, see the Open Source Initiative website www. http://opensource.org/osd.

[46] See M. L. Katz and C. Shapiro, "Network externalities, competition, and compatibility", *American Economic Revue*, Vol. 75 no. 3, 1985, pp. 424–440; see also G. G. Parker and M. W. Van Alstyne, "Two-Sided Network Effects: A Theory of Information Product Design" *Management Science,* Vol. 51 no. 10, 2005, pp. 1494–1504.

[47] Lessig, op. cit (fn 35)*.*

competing demands regarding access and applications. It does not monitor fair use, does not have real means of penalising abuse and remains at the mercy of the fragility of social capital. Artists, amateurs, amateur professionals and content aggregators have to be made more aware of the fact that abusing the commons or letting them be enclosed makes the collaborative system less efficient and reduces the public value of digital networks. They can be protected by the creation and promotion of public internet service providers, in order to increase trust, contain fraud and limit costs to consumers and citizens, as well as plan infrastructure and future development over the long term.[48]

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[48] Frau-Meigs, op. cit (fn. 18), chapter 6.

II.3.2 Open sourcing is not crowd-sourcing

As with the distinction between relational and experiential goods, open sourcing needs to be distinguished from crowd-sourcing, although both seem to obey the same logic of demand-side users. Material demands of production may have to be taken into account in mediated culture. Although software can be produced with few overhead costs, little shelf-space and virtually no store front, that is not the case with all cultural industries, especially those that transform code into designed products that require production, distribution and sales, such as digital paintings reproduced on canvas for collectors to buy in galleries or topical T-shirts generated from crowd-sourcing platforms such as Threadless.[49]

The boundaries between crowd-sourcing and open sourcing need to be made clearer in order to eliminate the confusion between art and business and enable users to know where they stand in their decision-making and problem-solving as many solutions are afforded to them. They should know, among other things, if the solutions work and if expertise is provided free of charge (the provider gaining only in terms of social and symbolic capital and self-actualisation) or for a fee (the provider earning legitimate compensation for added value within a commercial setting if the product is to be sold). The provision of clear terms and conditions of service, use and remuneration for contributions is important for trust and transparency as well as for the sustainable development of culture.

The two models illustrate tensions in culture, creative industries and the changing status of art, information and knowledge. The crowd-sourcing model remains attached to the pre-digital values of IP rights, commodity fetishism and exclusive ownership where cultural value is dependent on brand recognition, trend-setting and the material aura of objects in which people are still very much interested. The open-sourcing model, by contrast, focuses on the digital vision of liberating code, design and information and doing away with brands, stars and blockbusters. It may work in non-linear dematerialised environments where the goods are and remain digital from the outset or in settings where the material production of goods is supported by public aid or peer-to-peer donations. Mediated culture will probably produce a series of ecosystems in which crowd-sourcing and open-sourcing hybridise and intermingle in creative ways, but states and other players will need to be vigilant to preserve the public interest and users' rights of access and expression.

II.4 Transliteracy and pro-poor empowerment

II.4.1 Fighting "illectronism" for sustainable access

Access is a complex term, defined in terms of degrees by international bodies, with a growing consensus that universal access (or threshold access) is not enough, especially as universal access does not require the private sector to cover all areas and districts of a country (contrary to universal service), leaving poor people and communities at risk of falling through the net. To reach connectedness beyond connectivity, effective access (or real access) is needed, that is to say people with enough training, skills and competences to use the ICT-driven media. The highest degree possible has to do with sustainable access (or access for opportunity), where users actually take advantage of all the

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[49] Brabham, op. cit. (fn. 31).

opportunities afforded by the mediated culture and can effect change, from the demand side rather than just the supply side, with the ability to create and innovate for themselves.

In order to become screen-smart in the shuttle screen situation, users have to fight "illectronism", that is to say the kind of illiteracy that results not only from the inability to read, write and count using digital screens but also from a lack of mastery of the news skills required (searching, navigating, networking, coding, etc.). Becoming screen-smart means that new literacies are required (visual literacy, information literacy, digital numeracy, etc.) in addition to the indispensable old skills. Illectronism thwarts effective access and sustainable access as it prevents a critical understanding of and full engagement with creation, curation, aggregation and civic participation.

The broadcast and broadband media enable play, simulation and augmented reality to foster a cultural remix and multimodal circulation, as people can navigate across many sources of information looking for help or additional resources. They tend to do so in a tacit, intuitive manner that does not necessarily ensure full appropriation of the media and effective knowledge construction, and they need to attach their practices to a repertoire of e-strategies and e-competences that incorporates such skills as computing and programming, so as not to depend exclusively on the platforms designed by the corporate sector to increase their "portal effect".

The importance of broadband media as an educational tool needs to be properly recognised in order to promote democracy, participation and pro-poor empowerment because open access initiatives can provide access to otherwise expensive and rare resources. The growing presence of virtual environments as means of communication and education also needs to be taken into account in the teaching process, especially as the transborder capacities of broadband media are also affecting universities in developed and developing countries, with models such as Massive Open Online Courses (MOOCS) or the Khan Academy making top-quality education available to under-equipped locations and under-served populations.[50] The global project "One Laptop per Child"[51] has been developed as a means to lower the barriers of access by providing a connected laptop to children, not only for use in schools but also at home, thus reaching the whole family, especially women.

However, research shows that to be fully effective such plans need to add online resources and courses to technical access to computers. They need to provide support for the training of teachers and students in ICT skills and to master code for innovative and participatory purposes (being able to upload content, etc.). In order to cover the more or less fixed set of uses and practices in relation to computers and digital tools and platforms and to understand their design, functioning and their purposes, media education has to move towards "bundled literacies" (which involve visual literacy, news literacy, computer literacy, etc.) or "transliteracy".[52] Transliteracy takes into account the double meaning of today's convergence:

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[50] See www.khan.academy. org
[51] See http://wiki.laptop.org/go/Core_principles/lang-en.
[52] See conference http://www.stef.ens-cachan.fr/manifs/translit/colloque_translit.html

1)   the multi-media dimensions of current literacy – being able to read, write, count and compute with print and digital tools and via all kinds of formats from book to blog;

2)   the trans-domain requirements for digitally sustainable literacy – being able to code and to search, test, validate and modify information as understood in computation (code), in communications (news) and in library science (documents and data).[53]

Being fully transliterate can help future generations to understand and master the real basis of the information culture of the digital age. If not, they will become only users and consumers of information technologies instead of active emancipated participants and well-informed citizens. Transliteracy goes beyond the rather functional approaches currently proposed by the European Union or the United States and is based on competences that will encourage a more integrated system of editorialising content for mediated cultures, with engaging narratives and projects and sense-making activities, such as collaborative crowd-sourcing or co-construction of knowledge. It focuses on such aims as connecting people better to the development, governance and human rights that will shape the digital era.

II.4.2 Connecting with human rights

Such an approach can empower marginalised people and help them protect their culture (language and heritage) and assert their rights while contributing to cultural diversity online. It can promote a "media education commons" with learning content, tools and management software, and it can employ the same logic as the Open Source Software community and the global digital commons. It can generate huge long-term savings for nation states and enable them to explore solutions to bridge the digital divide at minimal cost. Such a comprehensive approach may foster participatory cultures, induce bottom-up development and foster creative industries.

Transliterate users need to be made more aware of human rights, especially freedom of expression, in practical tasks that illustrate the benefits and responsibilities of such rights. They can learn to weigh the respective values of freedom of expression and privacy according to their best interests and the appropriate contexts of use.[54] These issues relate to others closely connected to the tenets of transliteracy associated with critical thinking, creativity and citizenship. Such tenets also tend to have a strong connection to human rights since they can refer to such issues as intolerance, hate speech, human dignity, freedom of expression, etc. The Council of Europe has been offering a number of human rights and media literacy modules via its Pestalozzi teacher training programme, but more concerted efforts are needed to bring together transliteracy and human rights education programmes in a manner that reflects the depth of the European heritage.

If effectively practised, transliteracy can also contribute to the good governance of media, especially in terms of accountability and transparency. Users' attention can be brought to the main values of governance (openness, democracy, equity of access, etc.). Transliteracy can empower citizens to participate in public deliberations and to fulfil their rights and obligations, calling on civic agency and individual voice- and e-presence.

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[53] D. Frau-Meigs "Transliteracy as the new research horizon for media and information literacy", *Media Studies*, vol 3 no. 6, 2012, pp. 14-27.
[54] Frau-Meigs, op. cit (fn. 18)*,* chap. 10.

III. Recommendations

All recommendations should bear human rights principles in mind and also defend the dual dimension of diversity of forms of access to culture (offline and online) and diversity of cultural expressions in a heterogeneous European Union.

> **III.1 sub-theme 1:** *new challenge for governments and, specifically, Ministries of Culture, in promoting access to and participation in culture/s, also at a time of social, economic and financial change, taking into account the opportunities of the digital era and in interaction with civil society, and in view of promoting social justice and freedom of expression*

➢ **The Council of Europe needs independent research to report on key issues**, especially to have a clearer view of the blurred differences between experiential goods and relational goods, as well as between open sourcing and crowd-sourcing. This report could be commissioned to evaluate their implications for mediated culture and the creation, aggregation and curation of online original content, as well as the information commons. It could provide a matrix of the different models and systems currently competing with one another, with their various attributes, advantages and drawbacks, as a diagnostic tool for policy-makers.

➢ **The Council of Europe could draft guidelines for the governance of mediated culture**. Among the basic principles for such governance, there could be suggestions for the desirable characteristics of creation (originality, shareability, etc.), curation (heritage, stewardship, collection, etc.) and aggregation (windowing, versioning, merchandising, etc.). Other issues should also be included, such as equity of access (universal, effective and sustainable), openness, participation and accountability. They should be addressed in terms of cultural content and around fundamental freedoms and human rights.

➢ **The Council of Europe could propose its own definition of net neutrality,** with democracy, freedom of expression and equity of access as basic principles, not laissez-faire policies. Such principles would ensure non-discrimination of entry points and end-to-end interoperability while fostering connectedness over connectivity. This strategy could re-engage states that have relinquished their responsibilities on the broadband networks as far as the public interest is concerned. It could be presented as a kind of new social contract for networked cultures in Europe and be discussed in a multi-stakeholder manner, with public, private and civic representatives.

➢ **The Council of Europe could address the issue of concentration of ownership and the implications of the "portal effect"** in terms of pricing, licensing and independent forms of content creation, curation and aggregation. More transparency and accountability should be required. Currently unaddressed issues, such as prohibitive pay-walls, damaging IP rights, the cost of digital labour and means of rewarding online creativity, should be tackled with a view to protecting and promoting cultural diversity as well as minorities and poor communities, who stand to lose most and risk digital exclusion.

➢ **The Council of Europe should identify strategies for promoting and enhancing democratic access to culture** and participation in cultural life, as well as free artistic expression, including via digital means. Inter alia.

On the broadcast media side (press and audiovisual outlets):

– legitimise the public service value of networks for broadcasting audiovisual content by protecting online extensions of public service broadcasters and promoting the emergence of transnational public service broadcasters;

– ensure programming rights and viewer access to audiovisual and digital content by extending such protections to the whole range of creative industries based on collective collaboration and user-aggregated knowledge;

– monitor programming tools that purport to help viewers deal with linear and non-linear programme flows on multi-channel HDTV, as they can potentially create discrimination in favour premium content vs. non-premium content and highbrow culture vs. lowbrow culture and therefore damage the diversi**t**y and pluralism of content;

– ensure fair distribution of the "digital dividend", which frees up considerable high-quality radio spectrum for the deployment of new services and has the potential of providing many social and cultural benefits by increasing the possibilities available to small players, such as communities or municipalities, to enter the broadcasting sector and the wireless industry.

On the broadband media side (internet and social networks):

– establish credible remuneration for creativity via alternative compensation mechanisms, where traditional IP rights do not apply;

– focus on creative industries and user-aggregated content and labour, so that amateurs and net artists benefit from the protection of the financial conditions of such creative work and the promotion of free spaces for free artistic expression;

– pay attention to "playbour" issues, as young people are being exploited in some online industries, such as gaming;

– re-engage states via digital cultural policies to democratise culture, especially by developing support mechanisms for the production and distribution of user- and community-generated content;

– maintain the value of pluralism in media diversity, against commercial "bundling" practices that lock together a navigation tool and specific software, all belonging to the same operator or the same software company;

– promote open source and non-proprietary software to foster the cultural commons, via a robust open source backbone;

On the other cultural legacy outlets side:

– reconsider the role of museums, archives and libraries in the digital era and propose solutions to ensure that the values they defend (heritage, equity of access, stewardship, etc.) are transposed to networked cultures;

– identify new repositories of culture emerging on line (websites, platforms, etc.), preserve them and protect them by means of heritage policies;

– promote all kinds of curation, from the traditional heritage and legacy preservation of cultural content for future generations to new curatorial practices fuelled by the netroots.

➤ **The Council of Europe should provide templates for national policy frameworks for mediated culture**

– Help should be provided for diagnosis issues and strategies by identifying key parameters for cultural creation, preservation, access, curation and aggregation. The preferred way should not be prescriptive but respectful of deliberative processes so that development and ICTs are chosen because of a felt experience and a felt need. Citizen-driven changes need to be fostered via media uses.

– It is necessary to shift the major European emphasis on protection to more provision and promotion. For some countries, the definition of culture seems to revolve essentially around matters of protection: protecting the nation's history and heritage, native and indigenous cultures, and ethnic and linguistic diversity. Other countries may add other elements that reflect the classical audiovisual model: pluralism of voices and opinions, diversity of programme genres and content and pluralistic forms of ownership. However, it may be essential to go beyond mere protection and institute proactive measures for the promotion of cultural diversity. Given the transformative nature of usage, it is important to consider some of the goals of cultural policies. Non-profit and commercial use should complement each other, and mutual recognition of their effects is needed, especially since they each offer different benefits.

– Cultural policies, especially those that could affect the creative industries, can democratise culture and combat cultural inequalities by overcoming the monopolistic distribution of content that always seeks a market's lowest common denominator (via hits and blockbusters). Such policies also hold a promise of legitimate cultural diversity for the poorer Southern countries, which exist in Europe as elsewhere and tend to be rich in relational goods, via the performing arts and other dimensions of participatory culture. Democratic participation can thrive if public authorities make repositories of culture available to the public via cheap or free internet access.

– A culture of participation can benefit from the creation, modification and remixing of interactive content and the transformation of consumers into active communicators and content creators, so it is important to support mechanisms for the production and distribution of user- and community-generated content. This could be done by promoting both public service media and community media, as well as by fostering the production of local and indigenous content on platforms to ensure representation and pluralism. Such actions may include incentives to industry by making tools available (tax relief and deductions, etc.), through the creation of dedicated local infrastructures for the cultural industries and the development of funding mechanisms to help empower regions and individuals. Other incentives should be put in place to bolster investment obligations by broadcasters and support independent production as well as independent online distribution channels.

– Other policy elements (that could take the shape of recommendations or the revision of existing recommendations) include:

– the devolution to municipalities of sub-national responsibilities for cultural development, through Creative Cities and European Capitals of Culture, in order to decentralise the notion of culture;

– the gradual involvement of the public and civil society (organisations and small businesses) in the new modes of governance, in order to increase their participation in the implementation process (see the role of the Rainbow Platform on Intercultural Dialogue, which was initiated by Culture Action Europe and the European Cultural Foundation);

– intercultural dialogue by encouraging mobility among artists and the circulation of all forms of artistic expression as well as strengthening intercultural skills and intercultural dialogue.

> **The Council of Europe should promote transliteracy training**

Key skills for lifelong learning and education include cultural sensitivity, cultural expression, and communication in foreign languages. Promoting education strengthens organisational capabilities in the cultural sector (with the emphasis on entrepreneurship and management training for the cultural sector) and develops partnerships between the cultural sector and other sectors (ICTs, research, tourism, social partnerships, etc.).

Media and information literacy should be extended to transliteracy, adding computation skills so as to create users that can be independent in the design of their digital tools.

Transliteracy should be seen as a long-term strategy to socialise young people into developing and maintaining a sustainable culture, realising that culture has a cost and that there are several ways of distributing that cost, across sectors and players (instead of operating by means of theft or illegal practices).

III.2 sub-theme 2: *Perspectives for the Council of Europe as the only pan-European intergovernmental forum on culture and laboratory of democratic governance, also in view of enhancing co-operation with other international organisations (e.g. the European Union and UNESCO) on cultural policy.*

> **Co-operation with other international organisations (e.g. the European Union and UNESCO)**
>
Agree on shared policies and templates for national policies

> **Advocate international measures on political dialogue on cultural matters,** promoting cultural exchanges and equitable access to world markets for cultural goods and services; seek this through agreements that grant preferential treatment to some developing countries or through trade related assistance measures and the provision of financial and technical support (preserving cultural heritage, promoting cultural activities worldwide)

> **Emphasise multi-stakeholderism**

In addition to intergovernmental organisations like the Council of Europe, add transnational representatives of public service broadcasters, private sector operators, etc. and young people. Also call upon the private sector to exercise social responsibility as this will promote the cultural agenda at all levels of governance (individual, local, state).

> **Raise awareness and mobilise public opinion through CoE public hearings**

The internet provides many ways of raising awareness of issues of public interest and there should be calls for public hearings on rule changes regarding ownership, diversity, licensing and pricing, etc. Creative solutions may come from the netroots but they need a space that listens to these proposals and brings them to the

attention of states or of international organisations responsible for dealing with them, such as the European Union, WIPO, ITU or UNESCO.

Conclusion

The years to come are still going to see an explosion of innovations in ICTs with an impact on mediated culture, with crucial consequences for defining the balance between commercial and public interests. All parties involved will need to be ready to make changes to their range of options for negotiation while not losing sight of the main achievement brought by the digital era: the democratisation of access to and the use of information, communication, knowledge and cultural content.

A general call to act and become aware of the urgency of the situation is needed to ensure that the hard-won freedoms of the pre-digital era are carried forward to the digital world and that human beings worldwide are entitled to their rights and dignity. Legacy arts and infomediaries such as publishers, libraries and museums are at risk if they are not given legal and regulatory support by states and civil society. Their legitimacy in terms of public goods, which are of interest to all citizens, with opportunities for self-actualisation, life longings and civic agency, needs to be retooled and reasserted for the digital age. They may find themselves in need of creating their own version of frictionless user experiences. Transliteracy may help to socialise young public and ensure they appreciate and promote the public value of digital networks. It remains essential to maintain international human rights principles and standards both online and offline.