

COTE 2010

Strengthening the Creative Economy:
The role of ICTs and IPRs

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Starting Point: Stating the Context

The Problem:

- The reality of Caribbean Economy's dependence on primary production (subject to price volatility, rentier behavior, inequalities in income distribution, erosion of socio-cultural institutions)
- A historically entrenched dependence on foreign knowledge, culture and commodities

The Goal:

- Economic Diversification in a move towards Sustainable Development strategies.
- Articulating strategies for diversification and development through evidence-based policy-formulation.

The Approach:

- A holistic approach which embraces the cultural and social aspects of the concept of 'Development'
- Considering the microeconomic effects of technology and cultural trends and the associated changing consumer behavior. Exploring the macroeconomic potential of these trends.
- A redefinition of what constitutes an 'economic resource' and a reevaluation of areas of regional 'Comparative Advantage'

Our Discussion:

- An overview of the Creative Industries as an economic sector, and their potential as a strategy for Economic Diversification. In particular, analyzing the role of Intellectual Property Rights (IPRs) and Information Communication Technologies (ICTs) in strengthening the Creative Industries

Specific focus will be placed on the possibilities of digital content

The Creative Industries as an Economic Sector

There are different views and definitions on the scope of the Creative Industries

(UNCTAD, 2004) provides an important point of reference:

- The creative industries sector lies at the crossroads between the arts, business and technology.
- A strong, mutually reinforcing relationship exists between and among the different artistic and economically distinct activities that make up the cluster of creative industries,
- Ranging from upstream activities, such as the traditional arts, performing arts, literature and visual arts, to “downstream” activities such as advertising, design, publishing and media-related activities.
- The latter “applied arts” are much closer to the market than the commercial application of traditional cultural activities.
- Downstream activities derive their commercial value from low reproduction costs and easy transfer to other economic domains.
- From this perspective, cultural industries make up a subset of the creative industries, while the even broader cluster copyright industries consist of both creative industries and distribution-based industries.

‘Creative industries’ is a relatively new analytic definition of the industrial components of the economy in which creativity is an input and content or intellectual property is the output... The creative industries have thus come to be newly represented as a significant and rapidly growing set of industries; an important sector, in other words, for policy attention.”

- Cunningham (2007)

The Creative Industries as an Economic Sector

<u>1. UK DCMS Model</u>	<u>2. Symbolic Texts Model</u>	<u>3. Concentric Circles Model</u>	<u>4. WIPO Copyright Model</u>
Advertising Architecture Art and antiques market Crafts Design Fashion Film and video Music Performing arts Publishing Software Television and radio Video and computer games	<u>Core Cultural Industries</u> Advertising Film Internet Music Publishing Television and radio Video and computer games	<u>Core Creative Arts</u> Literature Music Performing arts Visual arts	<u>Core Copyright Industries</u> Advertising Collecting societies Film and video Music Performing arts Publishing Software Television and radio Visual and graphic art
	<u>Peripheral cultural industries</u> Creative arts	<u>Other Core Cultural Industries</u> Film Museums and libraries Wider cultural industries	
	<u>Borderline cultural industries</u> Consumer electronics Fashion Software Sport	Wider cultural industries Heritage services Publishing Sound recording Television and radio Video and computer games	<u>Interdependent Copyright Industries</u> Blank recording material Consumer electronics Musical instruments Paper Photocopiers, photographic equipment

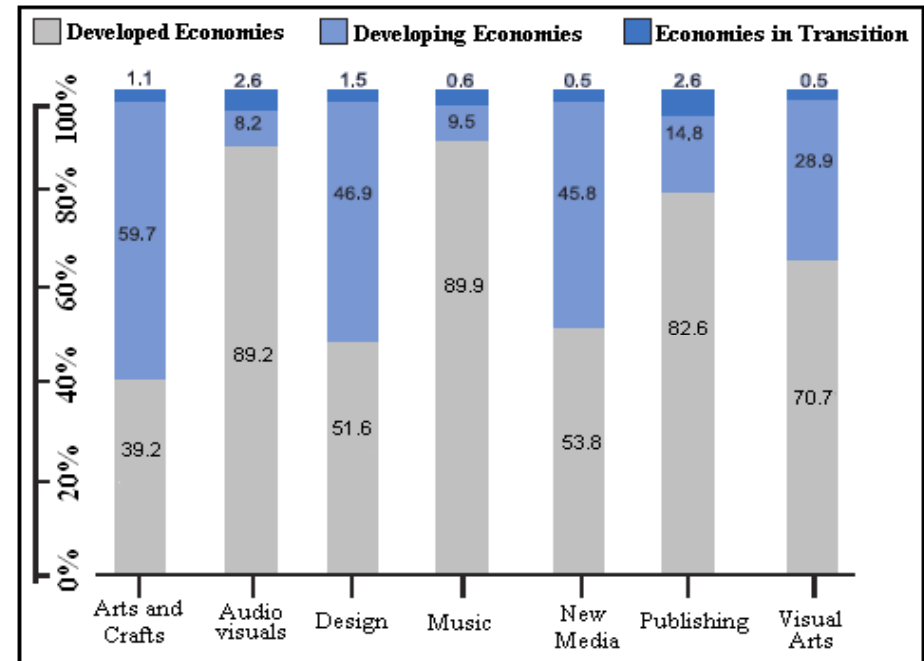
The Creative Industries as an Economic Sector

Based on a comparison of these models of classification, we may generalize the creative industries as having certain characteristics, based on the UNCTAD framework. In particular, we may conclude the following:

- The Creative Industries are the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs.
- These industries constitute a set of knowledge-based activities, focused on but not limited to arts, potentially generating revenues from trade and intellectual property rights;
- These industries comprise tangible products and intangible intellectual or artistic services with creative content, economic value and market objectives
- The Creative Industries are at the cross-road among the artisan, services and industrial sectors; and
- The Creative Industries constitute a new dynamic sector in world trade.

International Trade Context: Trade Flows

- The role of the creative economy within the globalised system of international trade is complex
- Trade data shows a clear trend in which creative goods and services are among the quickest growing clusters of international trade
- Historical trends are reminiscent of the '**Resource Curse**': Developing countries with high endowments of creative capital, and are yet net importers of creative goods and services
- Lack of export penetration seems to intuitively contradict the notion of high endowments of cultural resources, and a comparative advantage in creative outputs



Source: UNCTAD, 2008

International Trade Context: Trade Policy

The treatment of cultural products in the system of international trade, and the relationship between international trade policy and the cultural industries are issues with contentious and antagonistic histories.

- Debates culminated during the Uruguay Round which led to the formation of the WTO, and an expansion of the multilateral trade framework to cover services (GATS) and IPRs (TRIPS)

“In the closing days of Uruguay Round negotiations of GATT talks, France led the European Union (EU) in a bitter exchange over the regulation of trade in audio-visual industries against the United States. However, these issues would re-arise in the GATS...The US Congress has imposed a deadline of December 15th 1993 for the end of GATT negotiations. As the deadline neared, disagreement between the EU and the US over agricultural and audio-visual policy were major sticking points. The parties were able to reach agreements on agricultural policy but negotiators were unable to reconcile their respective interests with regard to audio-visuals. In order to avoid the collapse of negotiations, the US conceded the European demands that audio-visual industries remained unregulated by GATT. The treaty did provide for the audio-visual sector to be incorporated into the evolving GATS; however, this would give governments much greater flexibility to implement individual policies”

- Goff, 2007

- The prevailing arguments put forth by France were premised on the idea of ‘**cultural exception**’ (cultural goods and services should be fundamentally treated differently in international trade, as they are vectors of identity and instruments of national heritage)

International Trade Context: Trade Policy

There clearly appears to be two diametrically opposed perspectives on the role of the cultural industries in international trade.

- One side, it is argued that cultural goods and services serve key functions beyond economic value, and must hence be treated differently from other types of goods and services,
- On the other side, it is argued that there is no such distinction, and that cultural production should be subject to liberalized trade.

Van Grastek (2005) notes that these academic disputes are roughly mirrored by the positions that countries take in international negotiations, and states that:

“The most active and persistent participants in this debate are the United States on the one side, with France and Canada on the other. The U.S. position is principally commercial in orientation, based on the view that cultural trade — or entertainment — is an economically significant business. The French and Canadian view, which has thus far been supported by the European Union as a whole (though not embraced with equal fervour by all of its members), stresses the point that cultural trade is more consequential than exchanges of ordinary commodities, and that the rules in this area need to reflect that fact. They prefer that cultural industries be exempt altogether from the rules that apply to other, more prosaic articles of commerce”

Note that the Canadian perspective predates the GATS:

In the 1988 Canada - US Free Trade Agreement (CUSFTA) that preceded NAFTA, Canadian negotiators were apparently willing jeopardized the entire agreement, by refusing to sign unless the cultural industries were excluded. Canada was successful in negotiating for such cultural exception, and these provisions were subsequently retained in NAFTA.

International Trade Context: Trade Policy

Unlike developing countries, Canada and the EU already had strong institutional frameworks for the creative industries. Since the cultural industries did not provide a disproportionately high contribution to GDP or employment, the Canadian and European perspectives on cultural exemption can be seen as being based on deeper socio-cultural concerns about identity formation, and the ongoing challenge of protecting and promoting cultural diversity.

Implication:

In understanding the relationship between trade and culture, it may be conceived that a trade-off exists such that there are certain cultural costs of economic liberalization. **Cultural exemption from international trade agreements is hence aimed at promoting a balanced approach in the multilateral trade system, allowing countries to minimize the cultural costs of liberalization.**

Neuwirth (2002) notes that three principal approaches to the issue of trade policy and culture which emerge from the Uruguay Round that are viable options for moving into the Doha Round

1. Cultural exception, or
2. A cultural specificity clause.
3. An International Agreement on Cultural Diversity (outside of WTO)

The UNESCO Convention – A Bold Step Forward

The UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is a particularly significant development in the global framework for the creative and cultural industries.

- An expansion of the Declaration on Cultural Diversity which (adopted in November 2001). Complimentary to UNESCO's other six Conventions address various other aspects of the Cultural Diversity issue.
- May reasonable seen as a response by the international community to the debate over how cultural goods and services should be treated in the international trade system

According to UNESCO (2007), the Convention's primary objective is to *“strengthen the five inseparable links of the same chain; namely, **creation, production, distribution/dissemination, access and enjoyment of cultural expressions conveyed by cultural activities, goods and services – particularly in developing countries”***.

The Convention's Preamble refers to *“...the need to incorporate culture as a strategic element in national and international development policies, as well as in international development cooperation, taking into account also the United Nations Millennium Declaration (2000) with its special emphasis on poverty eradication..”*

Most importantly, the Convention reinforces **policy flexibility of Members**:

“States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.”

- Article 2: Principle of Sovereignty¹⁰

The UNESCO Convention – A Bold Step Forward

- Article 20 explicitly addresses the relationship of the Convention with other international treaties; however, a key issue on the horizon for the cultural industries is likely to be the **interface between policy options pursuant to the Convention and existing WTO rules.**
- Comparison of WTO Commitment Schedules and UNESCO Membership suggest that, **being party to the Convention is compatible with liberalization of key creative sectors.**

Benghozi (2003) notes that the shift from ‘cultural exemption’ arguments towards the concept of ‘cultural diversity’ is not merely semantic. It reflects the emergence of a broadened concept of cultural stakes in the context of globalization, which are no longer strictly reduced to the need to maintain an international balance in the production and exchange of cultural goods. The shift reflects a growing concern to defend national, geographic, religious, and historical identities in a globalized world, where culture quite naturally has its place.

The UNESCO Convention – A Bold Step Forward

<u>State</u>	<u>Date of UNESCO Membership</u>	<u>Type of Instrument (Cultural Diversity Convention)</u>	<u>Date of Deposit of Instrument</u>
Antigua and Barbuda	15-Jul-82	-	-
Bahamas	23-Apr-81	-	-
Barbados	24-Oct-68	Accession	10-Feb-08
Belize	10-May-82	-	-
Dominica	9-Jan-79	-	-
Grenada	17-Feb-75	Ratification	15-Jan-09
Guyana	21-Mar-67	Accession	14-Dec-09
Haiti	18-Nov-46	Ratification	08-Feb-10
Jamaica	7-Nov-62	Ratification	5-Apr-07
Montserrat	-	-	-
St. Kitts and Nevis	26-Oct-83	-	-
Saint Lucia	6-Mar-80	Ratification	2-Jan-07
St. Vincent and the Grenadines	14-Jan-83	-	-
Suriname	16-Jul-76	-	-
Trinidad and Tobago	2-Nov-62	Ratification	26-Jul-10

On July 26th 2010, Trinidad and Tobago deposited its instruments of ratification of the Convention; In accordance with Article 29, the Convention will enter into force on October 26th 2010.

The country should now be on its way to articulate a coherence strategy to leverage the provisions of the UNESCO Convention, to strengthen the domestic creative economy.

Caribbean Trade Framework: Culture and the EPA

The CARIFORUM-EC EPA provides an additional layer to the trade framework for the regional creative industries

EPA Protocol III on Cultural Cooperation:

1. easier border entry for artists,
2. technical assistance for cultural industry policy implementation,
3. cooperation for the protection of historic sites and monuments,
4. common standards in the performing arts, and
5. Special provisions for audiovisual productions.

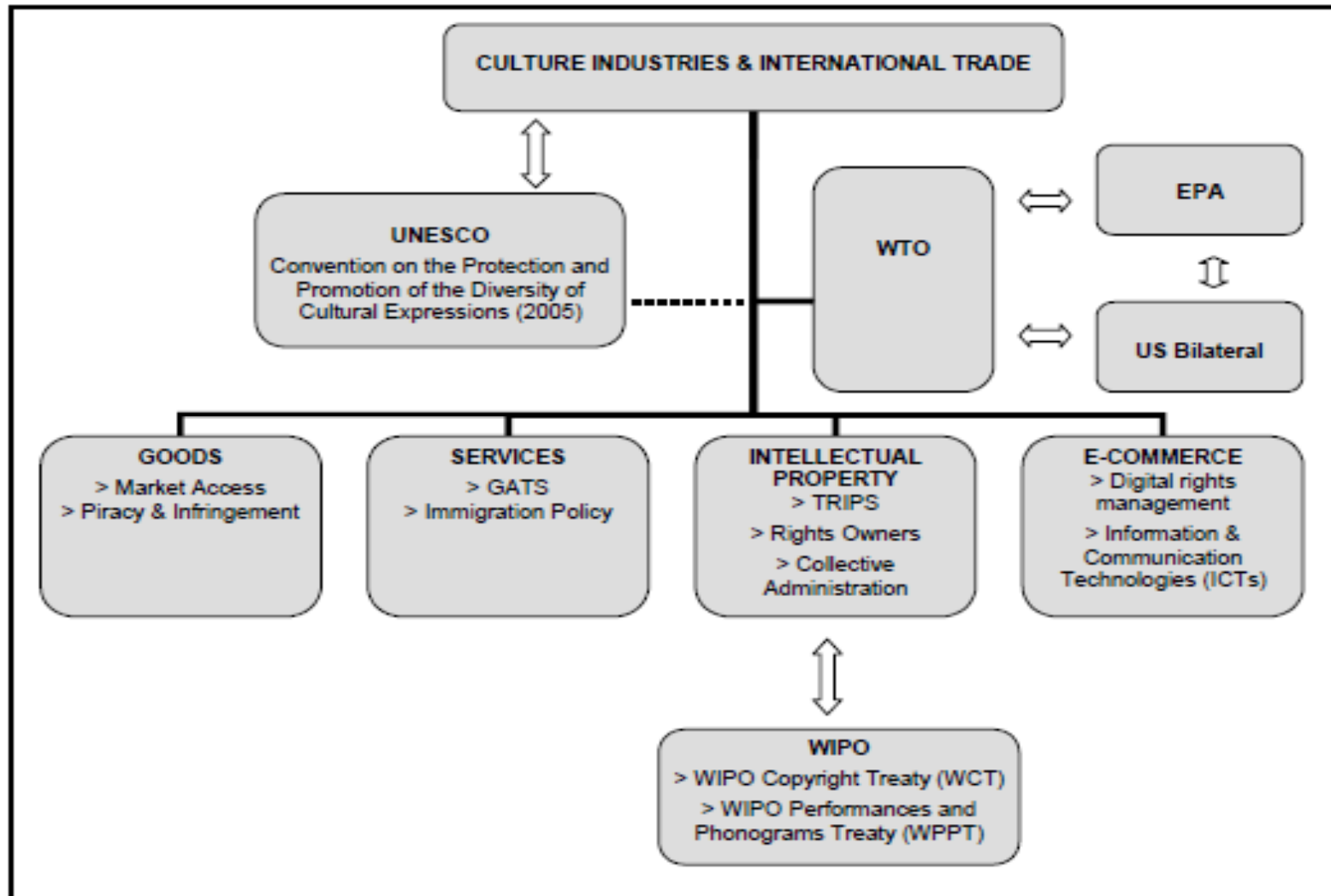
Not only does the EPA ease importation of film equipment and encourage co-production agreements for audiovisual productions, but such productions qualify as European works and will meet cultural content rules in EU States.

The annexing of Protocol III to the EPA:

- marks the first time that the UNESCO Convention has been cited to justify according cultural goods and services special treatment in the context of a trade agreement
- can be viewed as the first concrete response in a trade policy setting to Article 16 of the UNESCO Convention, dealing with preferential treatment for developing countries
- *The Protocol also expresses the intention to the Parties to the EPA to implement the UNESCO Convention, specifically citing Articles 14, 15 and 16 as the basis for cultural cooperation.*

Although the Caribbean faces many challenges in due to the removal of non-reciprocal preferential treatment in its traditional export sectors, the EPA through Protocol III provides many key opportunities and developmental prospects in the Cultural Industries, which Caribbean States must capitalize on.

Caribbean Trade Framework



Source: Nurse, 2006

GDP Contribution of Creative Industries



There have been several attempts by researchers and analysis to estimate the GDP contribution on the Creative Industries in the Caribbean.

The majority of these estimates are based on assumptions and limited data, and are likely to be underestimates in many cases

- Lack of institutional capacity in the collection and documentation of statistical information in the creative sectors
- Lack on consensus on coherent definition of activities which constitutive the creative industries
- Seasonal nature of many primary markets, and transient nature of creative activities
- Informal nature of many forms of activities, where creative production is outside of an explicit commercial context

This lack of robust empirical data is creates a fundamental problems in:

- 1. Justifying the creative industries as a viable option for diversification**
- 2. Developing evidence-based policy strategies**

...Addressing these deficiencies must be part of the strategy

Public Administration in Trinidad and Tobago

- In TT, the Division of Culture has historically been shuffled between various ministerial portfolios including 'Min. of Culture and Tourism', and more recently the 'Min. of Community Development, Culture and gender Affairs'.
- The recent establishment of a dedicated portfolio (Min. of Arts and Multi-culturalism), and the semantic move from 'culture' to 'multi-culturalism' can be seen as symbolic at the least.
- Unlike many other economic sectors, there is currently no completed and coherent National Cultural Policy in Trinidad and Tobago. The development of a National Cultural policy is an area in which TT can capitalize on the opportunities provided by Protocol III of the EPA.
- The Previous Government established the Standing Committee on Business Development (SCBD) in 2003, which identified seven strategic sectors for economic diversification, :
 - (i) Yachting,
 - (ii) Fish and Fish Processing,
 - (iii) Merchant Marine,
 - (iv) Music and Entertainment,
 - (v) Film,
 - (vi) Printing and Packaging, and
 - (vii) Food and Beverage
- The strategic plans for the these industries resulted in the establishment of TTEnt, and the TTFC respectively (*MTI is line Ministry, possibly creating a further disconnection with overarching cultural policy*)

Basic Value Chain

In order to understand the dynamics of the creative industries, we must consider that:

- Creative/cultural capital is a non-exhaustible natural resource (factor input)
- Creative activity results in the production of intangible assets (IPR as outputs)
- Creative capital does not depreciate as a factor input, and is generally characterized by increasing returns (in contrast with traditional conceptions of capital)
- Creation should be viewed as a process which precedes 'production' in the value chain (*akin to the process of innovation preceding production of new tangible commodities*)
- Markets for creative outputs tend to compliment and build on each other so that value added of creative activity is cumulative (*in contrast with Schumpeterian view of innovation and 'creative destruction'*)
- This may help explain the historically observed 'Resource curse' of the cultural industries in developing countries (*high resource endowment vs trade imbalance*)

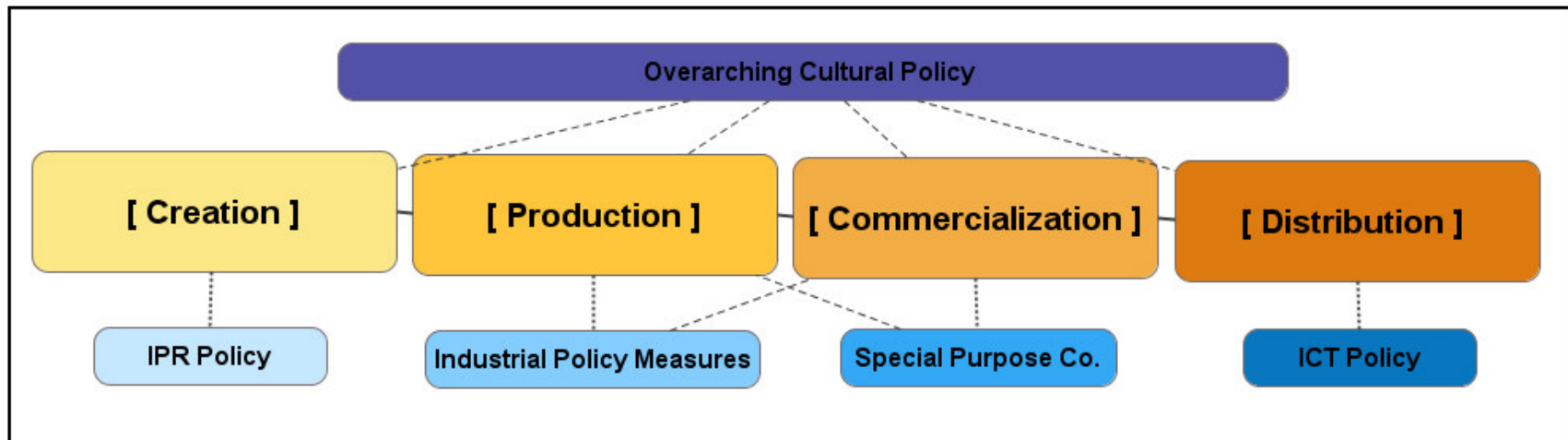
While the Region has:

1. A comparative advantage in **creation**,

It suffers from

1. Limited capacity in **production**
2. An inability to reach critical mass and overcome inertia in **commercialization**
3. Structural deficiencies in **distribution**

Content Value Chain: Technology and Policy



Global shifts towards consumption of digital content has brought about new market opportunities.

The technological change of the Digital Era has also had major impacts on all segments of the value chain

- Creation: New platforms and tools for artistic activity
- Production: Significant reductions in fixation (recording) and manufacturing costs
- Commercialization: New business models for publishing and advertising
- Distribution: New means of dissemination with deeper geographical penetration, and fragmentation of consumer base into niche markets

Embracing the new opportunities brought about from technological progress is the key to the success of the Creative Industries as a diversification/development strategy.

To understand these opportunities as the microeconomic level, it is necessary to recall the characteristics of the class of commodities into which digital content falls: information goods

Core properties of information goods

Excludability
Scarcity
Uncertainty

Excludability

Ease of reproduction and distribution (particularly through **ICTs**) means that information goods tend to exhibit the characteristics of public goods (non-rivalry and non-excludability)

Implication:

- Copyright protection addresses this characteristic through allocating time-limited propriety rights over intangible assets (as opposed to the physical carrier) - IPRs essentially introduce the property of excludability.
- Strengthening the framework for IPR protection and copyright administration ensures:
 - maximum revenue capture through licensing and collective management
 - disincentives to piracy and anti-competitive exploitation through enforcement

Core properties of information goods

Excludability
Scarcity
Uncertainty

Scarcity

Beyond the initial fixed cost of fixation (investment in production first unit), information goods can be reproduced and redistributed at minimal cost.

Implication:

- IPRs are intangible ideas which by definition have zero marginal cost
- ICTs have resulted in distribution at zero marginal cost
- Technological advancements in capital inputs (materials, hardware and software) result in significant reductions in fixation costs and productive efficiency
- Digital markets provide opportunities to by-pass the deficiencies in productive capacity and simplify the process of advancing from creation to distribution.
- Market penetration is quickly achieved, and revenues support growth upstream by developing capacity in production and the ability to penetrate more traditional markets.

This is the reversal of the misconception that physical market penetration is a pre-requisite for digital market penetration. Exploiting new market opportunities builds a foundation for a better competitive position in traditional markets 20

Core properties of information goods

Excludability
Scarcity
Uncertainty

Uncertainty

Lack of information on the characteristics of information goods undermines the consumers' ability to make rational utility maximizing decision based on preferences. In essence this is an information asymmetry inherent in the process of consumption itself (the 'information good problem').

Implication:

*Perceived current lack of demand for local cultural content should not be seen as indicative of a lack of revenue-generation capacity!
Consumers cannot demand a product that they do not know exists!*

Specific Policy Objective:

- Investment in advertising and promotion of the cultural industries will solve this information asymmetry in the short run.

This increase market access will stimulate demand, and encourage investment as creation and production becomes more profitable and competitive in the medium term.

As the industry develops, the value chain widens, stimulating the demand for various support services. This strengthens the industry in the long run, given that value chains in the creative industry are very interrelated – many creative services provide productive support for creative goods – *e.g (film and music; photography and fashion/costume design)*

IPR Policy: Strengthening Creation

A critical point is that the economic outputs produced are intangible assets – IPRs therefore provide the foundation on which creative capital can be converted into economic resources

Furthermore, there is an ideological context in which creative activity exists:

- *A copyright consists of both a 'moral right' and an 'economic right' component*
- *UN Declaration on Human Rights Article 27 – (i) right to participate in cultural life; (ii) right to protection of moral and material interests derived through authorship*

(1) A shift in perceptions

Demonstrating to policy-makers that the roots of IPRs are in their functions as market based incentives for creation and innovation (economic view), rather than strictly proprietary rights issues (legal view)

On this basis, the IPO (or other relevant state body) should provide support services which reduce the transaction costs in commercial exploitation of IPRs.

- The IPO can assist in providing services for licensing negotiations and ADR services.
- Litigation is a deadweight loss, and should only be reserved as a last resort where commercial stakes justify the legal and judicial costs
- IPO should also provide guidelines to employers (both private and public sector) for the inclusion of fair IPR clauses in employment contracts, for the protection of both creative workers and firms.

IPR Policy: Strengthening Creation

(2) Strengthening the institutions for administration of Copyright matters

- IPO(TT) currently administers matters in both branches of IPR – (i) Industrial Property and Copyright and Related Rights. Many countries have a Copyright Office (often under Ministry of Culture) which is administratively separated from the PTO
- There is a need to ensure that IPR administration and cultural sector management as complimentary. IP Policy and Cultural Policy must be interrelated. At the least, the Copyright Division of the IPO should be strengthened and be well equipped with the relevant resources;

Possible Idea: Amend Patent Act 1996, to allow the IPO's excess revenues (patent and trademark application/filing fees) to finance an 'Innovation and Creativity Fund', instead of being remitted into GoRTT's Consolidated Fund.

- Most importance, there is an urgent need for an effective public education campaign on the nature and importance of IPRs.

IPR Policy: Strengthening Creation

(3) Regulation of Collective Societies

- The small market size of Trinidad and Tobago, and the density of works/high rate of creation, provides for a difficult environment for effective copyright administration.
- Copyright Act 1997, should be further amended to give IPO regulatory oversight over collective societies. Possible provisions include:
 - Requirements for authorization to operate as a collective society; ensuring that market needs are satisfied, and inefficient competition does not undermine viability of industry
 - Strict requirements for administration of financial matters of societies
 - Promoting transparency through requirements to publicly publish by-laws, distribution methodologies, repertoire and membership listings, and tariff schedules.
 - Establishing schedule of statutorily defined royalty rates (to prevent price discrimination, and manage types of licenses for various types of usage)
 - Provisions for the protection of the public domain and the prevention of abuse of monopoly power
- Additionally, support should be given to the industry for the formation of a Related Rights Society (if deemed as viable), which can proportionately increase revenue capture.

IPR Policy: Strengthening Creation

(4) The introduction of compulsory licensing provisions

IPR Administration must be two ways:

- Ensuring equal protections for foreign content in accordance with the Principle of National Treatment).
- Balancing the interest of private entities (rights-holders) and the public (users and consumers).

In the broadcasting market, there is a very strong case for (re)introducing a compulsory licensing scheme *(requires legislative amendment to Copyright Act | Provisions used to exist in Repealed 1985 Act)*.

In this context the Copyright Division can serve as the designated body to **administer compulsory licensing for foreign content which is not legitimately available in the region despite high consumer demand**. As an independent state body, the IPO is sufficiently insulated from commercial interest and can objectively administer compulsory licensing in a non discriminatory manner in accordance with the **principle of equitable remuneration**.

Industrial Policy Measures: Strengthening Production

- Removal of import duties on capital goods for creative production (recording equipment, musical instruments, cameras, etc.)
- Possible introduction of accreditation systems for creative economy workers
- Facilitating workshops for training and skills development; strengthen creative education in public school system
- Establishing public cultural centers in local communities
- Classification of royalty revenues as tax-exempt forms of income
- Facilitating access to financial funding – provision of state funds (grants); encouraging partnerships with private sector (sponsorships), financial institutions (loans),

Industrial Policy Measures: Strengthening Commercialization

Re-evaluate the mandates of TEnt and TTFC, to ensure that operations achieve maximum returns – current mandates are very broad, and limited budgets make effective financing of developmental initiatives very difficult.

Special Purpose Companies should focus on strengthening capacity in commercialization, while more centralized and specific industrial policies aim to strengthen capacity in production.

- Developing network between value chains to maximize value added – (e.g. publishing artist directories which cut across creative markets).
 - *Freelancers can build regional networks, and reduce costs of intra-regional cross-border production (can be linked to suggestion of accreditation)*
- Introducing an online platform/forum for events promotion and artist bookings (e.g. a Pan-regional ‘SonicBids’ model)
- Providing online platform space for advertising, and strengthening local media presence online
- Subsidies for advertising, merchandising and brand development

Industrial Policy Measures: Strengthening Commercialization

Special Purpose Companies can assist by providing **legal and administrative support services** traditionally supplied by private entertainment lawyers and managers:

- publishing and review of standard performance contracts and licensing agreements to protect rights and economic interests of artists
- publishing benchmark statistics of standard performance fees to reduce information asymmetries between artists/authors and promoters/users of works
- assistance in developing marketing strategies, business plans, and production plans (will strengthen viability of accessing funding from private and commercial sources)
- **Administering various tracking codes traditionally assigned by publishers** (ISRC, GRid, ISBN, ISWC). This ensures that outputs are **export ready**, and distribution can be effectively tracked in foreign markets.

In the case of Film, establish the *proposed Cinema and Video Exhibition Regulator*, to ensure that audiovisual products are classified in accordance to rating systems consistent with key export markets.

- *Proposed AV regulator can also introduce incentives for licensed exhibition venues to exhibit local film and video products (eg. bundling short local films with foreign feature films)*

ICT Policy Measures: Strengthening Distribution (Export Markets)

- Regional broadcasting regulators should incentivize traditional broadcasters to expand into digital distribution platforms.

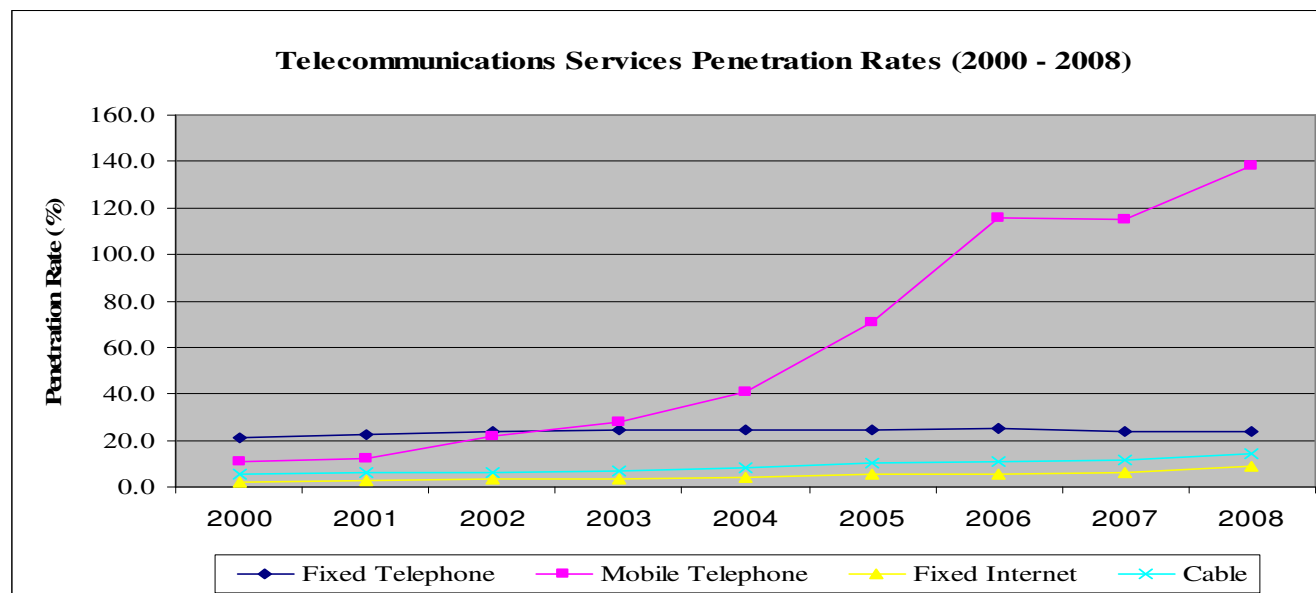
State special purpose companies should assist and encourage artists in establishing a strong online presence, and also encourage the pursuit of co-production arrangements (*leverage EPA Protocol III provision on AV works*)

- In terms of exports, strategies should target international markets which rank highest in digital content consumption.
 - Statistics from the IFPI suggest that global music sales are contracting at an average annual rate of 15% in physical markets, but are expanding at a rate of 24% in digital markets, and 16% in performance rights royalty markets.
 - IFPI Statistics show that five countries (France, Germany, Japan, UK, US) account for approximately 95% of consumption in digital music markets.
 - Anecdotal evidence suggest that these top markets are also the markets in which cultural preference barriers are the lowest
 - For works with high language content (literature, music, film) there is an inherent Anglophonic advantage for ease of market penetration.
- To counter balance the uncertainty of these markets the traditional diasporic markets should also be targeted where there is entrenched demand for indigenous content.
- Strengthening local online distributors and establishing agreements with major international digital distributors (*eg. iTunes and Trinidadtunes*)
- In order to maximize the export potential of digital content, it is critical that they are robust reciprocal agreements between local copyright collectives and their foreign counterparts.

ICT Policy Measures: Strengthening Distribution (Domestic Markets)

Prospects of digital distribution over new technological platforms which are rapidly expanding in user penetration following the drive for telecommunications liberalization under GATs commitments. Analysis of ICT penetration rates in Trinidad and Tobago shows that the Mobile Telecommunications Market has significant potential.

- The anticipated entry of a third mobile service provider and remarkable high subscription rates suggests that future competition will be based on **value added services** and applications such as **digital content delivery**.
- Copyright collectives and other industry associations should be encouraged to pursue blanket licensing arrangements with these services providers while the competitive environment has the ideal conditions.
(likely to require regulatory oversight)



Source: TATT '09 Market Report.

Data for 2009 is not yet in the public domain. However, it is expected that the Cable market in particular has significantly increased due to new entry, and heightened competition in 2009.

ICT Policy Measures: Strengthening Distribution (Domestic Markets)

- State agencies (regulators as well as SPCs) should work with ISPs, broadcasters and telecoms companies in the tracking and sharing of information on media consumptions trends

Regulation of domestic broadcasting markets is key in maximizing value added:

- Facilitating public consultation for renewal of broadcasting licenses (2016)
- Encouraging cable providers to rollout digital networks and increase content carriage capacity
- Strict oversight over compliance with IPR provisions and punitive measures as an enforcement method (*also promotes fair competition in the broadcasting market*)
- Using content distribution strategy, programming format, and proof of retransmission permission as prerequisites for considering market entry
- In markets which are already saturated and highly competitive, preference should be given for market entry of broadcasters serving niche, new, or currently underserved market segments.
- Specify 'must carry obligations' for cable providers as mandatory at a zero royalty rates and zero carriage fees
- Implementation of a PBS sufficiently insulated from vested political and commercial interests
- Regulation of ownership to prevent market consolidation which creates monopolies and undermines content diversity
- Harmonization of regional broadcasting regulatory frameworks ('must carry' can apply to regional PBS; regional content management standards)
- **Implementation of local content rules for domestic broadcasters**

E-Commerce: A requisite Building-block

E-Commerce is a requisite building block for the development of a domestic digital content market

Domestic Framework for E-Commerce

- Greater push for establishing a robust framework for E-Commerce in the Region
- In Trinidad and Tobago: *Data Protection Bill, 2009 & Electronic Transactions Bill, 2009* not passed (both lapsed in Parliament on January 8th 2010)

Issue of e-commerce regulation as a trade issue

- No consensus on categorization of digital commodities – CARICOM should align itself with the view that digital distribution be categorized as services (allow for greater flexibility under expanded GATS schedules)
- No consensus at multi-lateral level, yet bilateral pressures to maintain zero-rate tariffs for digitally distributed goods

No transaction costs in digital space allows for perfect arbitrage for digital commodities. Any domestic tax on digital goods will not work in theory– competition and consumer arbitrage drive prices of content down until foreign non-taxed price = local post-tariff rate. This would be a purely redistributive policy, rather than a revenue generating policy.

ICTs and Preservation of Heritage

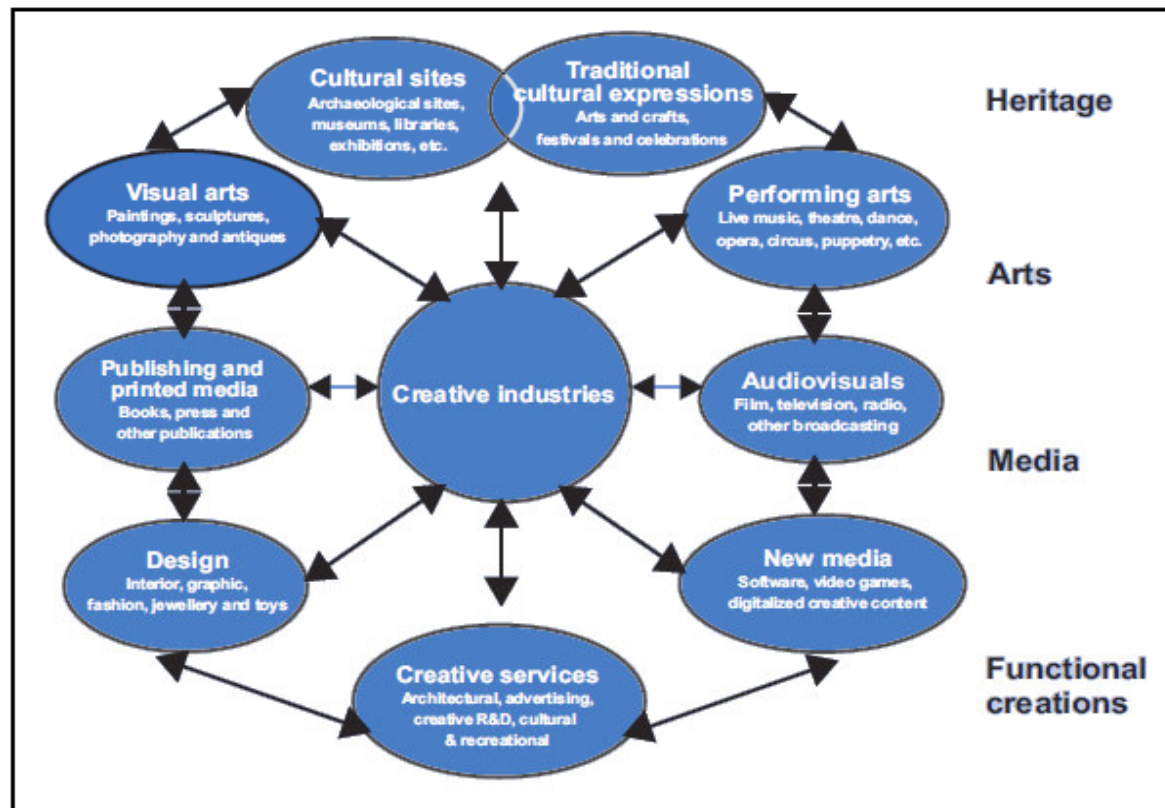
In addition to promoting economic diversification (a market based context), ICTs can also be used to facilitate other aspects of cultural policy and the documentation and preservation of national history and heritage

- Developing a digital database for regional content
- Periodically using database to identify works as they enter into the public domain
- Documenting the institutional knowledge of the Golden Generation of citizens, which would be otherwise be lost if not immediately captured
- A massive initiative to digitize the contents of the National Archives (unlike physical documentation, digital files do not have a limited lifespan, and long run maintenance costs are substantially lower

These are also economic issues, as literature on Caribbean Economic Development places great focus on the role of key institutions!

Commercial Broadcasting and Local Content

The perfect example of the economic interface between IPRs and ICTs



Commercial Broadcasting lies at the intersection of the Creative Industries and ICT industries.

Commercial Broadcasting and Local Content

Justification for Local Content Rules:

- Free market model does not work in traditional broadcasting market
- Typical business model – Free-To-Air transmission and advertising based funding

<u>In Theory</u>	<u>In Reality</u>
Consumer = Audience Member Product = Content Supplier = Broadcaster	Consumer = Advertiser Product = Consumers' Attention Supplier = Aggregated Audience

- The separation of the individual consumer and the aggregated audience creates a huge imbalance between the market power of the supplier (audience) and the actual consumer (advertiser)
- There is **an erosion of market mechanisms** as agents and their roles are misidentified
- The advertiser acts as a market intermediary and creates an **information asymmetry** in the content distribution market.

Fundamental issues in efficiency of information mechanism (acting in the role of a price mechanism. Advertisers are assumed to base adspend on audience measurement (subject to significant methodological problems)

Commercial Broadcasting and Local Content

Overall market efficiency

Since consumer does not directly 'pay' for content in pecuniary terms, primary goal of liberalization should be to ensure that competition maximizes content variety and quality, rather than drive down prices for services

However, competition causes firms to:

- Create unique format and monopolize a niche market (associated with a particular demographic and advertising portfolio) – increases variety
- Compete within the most profitable market segment creating programming duplication – decreases variety
- Recent trends suggest the latter is happening and is compounded by increased market consolidation
- This creates a barrier to entry for local content, via entrenched preferences and business practices and 'cannibalizes' the market's long run commercial viability

Erosion of demand dynamic

- Listeners have little mechanism to relate preferences. Those who do so, tend to be existing audience which entrenches format further
- Fundamental Information Good Problem

Suggestion: Regulator can work with other state agencies to provide audience management services and create regulatory certainty (a role normally done by private third part research firms). This creates more transparency for all agents (investors, advertisers, artists, consumers, and broadcasters). Audience measurement is expensive, and costs create a barrier to competition for smaller broadcasters and potential entrants. as well as reinforces monopolies in advertising sector

Commercial Broadcasting and Local Content

Erosion of supply dynamic

- A broadcaster's value is in its brand (trademark as an intangible asset) based on its format and reputation, with advertising clients and general audience. For a firm to adjust format (in response to changing demand patterns) it must undermine its existing brand value which is connected to its current format. In this market, new formats and content are more likely from new entrant rather than existing players. An existing firm will rebrand and re-launch in such cases

Recent Example: Exit of Radio Trinibago (in traditional local content niche) and entry of new station in already saturated Pop/Urban market. Result: Less local content and less content diversity

- Entry of new firms is not possible due to technical and regulatory barriers (*current moratorium on new entry*)

Spectrum is a limited public resource – technical limitations on capacity of market (in case of radio market is essentially fully saturated)

As a public good, firms using spectrum as a factor input should be subject to regulatory parameters as part of public policy goals - *cultural policy interfacing with ICT policy*

Results of Local Content Regulation

- **Internalization of copyright revenues**, reduced remittances, increased revenue capture and value added (*assuming effective collective management – justification for copyright regulation*)
- This creates a primary revenue stream for artists which is reinvested in development and production
- This can **solve the information good problem**, raise awareness of local content and **stimulate demand** which promotes growth in other markets and distribution channels

Applying Creative Resources to Other Developmental Objectives

A holistic development strategy should aim to leverage resources in the creative economy to meet other developmental objectives.

The example of Education Reform

Case:

The Government of Trinidad and Tobago has recently launched an initiative to provide laptop computers to new secondary school students.

Issue:

To maximize the educational benefits of this initiative, there should be an accompanying drive to develop learning systems which use digital platforms.

Possible Initiative:

Establish working groups to:

- Author digital texts specifically tailored to CXC and CAPE syllabi
- Develop simple software applications and digital learning tools tailored to student needs
- Working groups can license texts and applications to Government
- Government can supply applications to students (*digital means zero marginal cost*)
- Royalty payments to authors can be based on distribution
- Decreased reliance on physical materials makes access to quality public education more equitable

Developing a Strategy for the Creative Industries

A key problem in the administration of cultural policy is that various initiatives are done in silos in various state organs.

Policy-makers must understand that budgetary allocations are not the only concern.

T&T must develop a coherent Cultural Industries Policy which:

- Provides an overarching framework to streamline various initiatives
- Outline specific policies targeted at key points on value chain
- Prioritize inter-linkages between sub-sectors (eg film, music, fashion, costume design)
- A critical element is the strengthening of data collection systems for the creative industries, which will further facilitate better policy implementation and impact assessment.

It is important to create policy environment that allows for flexible value chains

- New business models will emerge.
- The goal is to build an industry from the core product of content – around which, the secondary services will become profitable at market level

Developing a Strategy for the Creative Industries

The following policies need to be revisited/developed and streamlined pursuant to T&T overall strategy for diversification and sustainable development:

Cultural Policy | Intellectual Property Policy | Innovation Strategy | National ICT plan | Training and education initiatives | Broadcasting Policy/ Code | Strategic plan(s) for key sectors targeted for diversification efforts

These plans must be streamlined and **specifically articulate the country's trade positions** (bi-lateral and multi-lateral negotiations). There is need for regional coordination in this regard especially in instances where trade negotiations are conducted through CARICOM (CRNM/OTN).

Urgent considerations are:

- Immediately outlining a strategy for leverage the provisions of the UNESCO Convention
- Encouraging CARICOM partners to accede/ratify Convention, and develop regional strategy.
- Provide input and support for development of systems for the protection and preservation of cultural heritage institutions (*such as the regional Framework for Traditional Knowledge, Genetic Resources and Folklore*)
- Leveraging support from key trade partners – and utilizing the opportunities for technical assistance in the EPA Protocol III
- Maintenance of non commitments in key sectors under GATS – specifically audiovisual services; A moratorium on trade negotiations in respect of IPRs or any other provisions which are likely to affect the cultural industries both in terms of production and distribution.
- Utilizing assistance from various international organizations, specifically in developing policies for capacity building, establishing benchmarks, ascertaining best practice guidelines, legislative drafting services, and interpretation of international treaties and their intersection (*specifically UNESCO for culture and WIPO for IPRs*)

Conclusion

- As with any process of strategic planning and public policy development, participation of all stakeholders a key. Creative industry stakeholders have demonstrated much initiative and engagement, but their ideas and proposals must be converted into policy terms, and evaluated in accordance with the underlying economic theory.
- The globalised information economy has dissolved boundaries between sectors, value chains and the roles of agents, and has dismantled traditional geographical and cultural borders. While the evolving landscape of culture and technology poses many challenges for developing countries, the Caribbean region should embrace the new opportunities that emerge. **Culture and Commerce are not incompatible!**
- Creative Industry Policy is dualistic: it can serve as an instrument for economic diversification, but it also has an ideological component – linked to issues of national heritage and cultural diversity. Both of these components are important for economic and socio-cultural development in the Caribbean Region.

“I do not want my house to be walled in on all sides and my windows to be stuffed. I want the cultures of all the lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any.”

- Mahatma Gandhi

Thank You! – Questions and Comments are welcome!

Please feel free to keep in contact!

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