

Cultural Diversity and the 'Information Society': new configurations and emerging trends in transnational issues

DIVINA FRAU-MEIGS

Professor at the Université Sorbonne Nouvelle - Paris 3

Divina.Frau-Meigs@univ-paris3.fr

Abstract

The article discusses the challenges regarding cultural diversity in a global transnational and digital society, whose main characteristics are the non-linearity of output and outcomes, the trans-border overspill of sovereignty and the participation of multiple non-state actors, including civil society. The text points out, after a status of the issue, possible courses of action to face the adaptation of cultural diversity to the new digital environment.

Keywords

Cultural diversity, public service, net neutrality, digital commons, information society.

Resum

L'article planteja quins són els reptes en relació amb la diversitat cultural dins una societat de la informació global, transnacional i digital, en la qual destaca la no-linealitat de la producció i dels resultats, el desbordament transfronterer de la sobirania i la participació de múltiples actors no estatals, inclosa la societat civil. El text apunta, després de fer un estat de la qüestió, possibles línies d'actuació futures per afrontar l'adaptació de la diversitat cultural al nou entorn digital.

Paraules clau

Diversitat cultural, servei públic, neutralitat de la xarxa, béns comuns digitals, societat de la informació.

Cultural diversity is a new human right, coming out of series of debates on the position of media in culture, in a globalized world. The debates began during the 1993 crisis over the "cultural exception" policy as France, Canada and Europe resisted the inclusion of audiovisual content in the 'cultural services' as the Uruguay round struggled to liberalize markets via the General Agreement on Trade in Services (GATS). The discussions continued at UNESCO that took on a key role in transforming "cultural exception" from a slogan of resistance into an innovative legal principle: "cultural diversity". These efforts led to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, ratified as a treaty in March 2007.

The treaty recognizes the specific status of cultural goods and services, the sovereignty of states to apply mechanisms to favour cultural diversity (including intervention and taxation), the emergence of new actors (civil society and indigenous people) and the international solidarity with developing countries (against bilateral agreements). It also places cultural diversity on a par with other instruments with which it might potentially collide, like intellectual property and digital management rights defended within WIPO and WTO. It found an echo during the World Summit on the Information Society, as a cultural diversity group was created to defend indigenous cultures as well as open access to the global public domain. Cultural diversity was also declared one of the priority action lines (C8) in the post-WSIS phase, to be monitored by UNESCO. It was also one of the transversal themes identified by the Internet Governance

Forum, in close association with openness of the networks and sustainable development.

Currently, on a global scale, the *cultural diversity* model is the only one that fully incorporates media, as cultural goods, spectacles and services into an international framework. It is akin to a renewed *public service* model, in which the state is the intermediary link that fosters community-building, social justice, economic equity and minority voices and maintains cultural pluralism within its borders, with the monitoring of other actors, including civil society's diverse constituencies (artists, activists, researchers, NGOs...). It runs against the *information provider* model that has been de facto put in place by the United States in its 1996 Telecommunications Act, itself a renewed version of the classic *common carrier* model, that calls for a hands-off approach to the market.

But the classical pillars of broadcast regulation within "mass media", —such as spectrum scarcity, licensing and programming as cement of national identity—, are no longer so prominent in the broadband environment of "niche media" characterized by abundance and non-linear services provided by multiple non-state actors. The customary tools for protection and promotion of diversity are being challenged by the online production of more or less regulated user-aggregated content, provided by individuals and communities whose multiple private identities seem to override national identity concerns. National sovereignty itself is being challenged by trans-border issues of compatibility, conflicts of jurisdiction and gaps in enforceability

at a moment when the regulation of the internet, especially by instances like ICANN, risks re-creating the situation that triggered the whole cultural diversity debate: the fact that, in the face of such trans-border fragmentation of sovereignty, the US law extends to other countries as the *de facto* corporate law for cultural goods. The situation is all the more preoccupying as the USA are among the very few countries that have vowed not to ratify the treaty on the Protection and Promotion of the Diversity of Cultural Expressions.

What is at stake is the ability of cultural diversity to adapt to the new digital environment, as the issues around the treaty and the treaty itself were discussed in a pre-network era, when issues of trans-border non-linear flows were not prominent: if cultural industries go digital, can cultural policies do the same? How and with which actors, in a context where the debate on the public interest of the digital media is not opened? What digital cultures are emerging that can increase the range and scope of cultural diversity and therefore question current regulatory practices? What reinvented cultural policies can accommodate the new challenges to diversity created by the online trans-border context? What new theoretical constructs and mechanisms are emerging to address issues such as "voice," economic equity, and underserved minorities in a pluralistic way?

1. The diversity value of the digital networks: new models of audiovisual consumption

To date, there is no country in the world that has engaged its citizens to express their views about the shared online public sphere that they can or could have. The World Summit on Information Society could have been such an arena, worldwide, but the media sector was under-represented and civil society, though participating in many more ways than usual in this UN debate, was not able to raise awareness and to stir local and national public opinions about the matter. The private sector and governments had no interest in bringing up the issue and allowing it to escape their sphere of influence and power. This is still the case in the post-WSIS phase, where the action lines and the governance of the Internet remain within the fold of a small number of self-selected representatives of the three sectors, private, public and civic (Frau-Meigs 2007, 2011).

1. 1 Assessing the current threats to the online public interest

This threat to public service is magnified by the situation of the private media sector, in a deregulated economic environment. The pressure to compete and to globalize together with cyclical crises undermines the openness of the networks. The need to finance and expand the info-structure pushes corporations to maximise their means of generating revenue, advertising revenue being the most sought-after. The business model of the Internet is still to be found, but the shift of revenues from over-the-air linear media to digital non-linear media is creating

a lot of turmoil and uncertainty. This process impacts directly on policy-making, at both national and supranational levels, because the states are under pressure to relax their oversight of the private sector and to reduce publicly funded media, especially those that incorporate advertising. This process in turn has a chilling effect on the public sector media, as they see their sources of revenue diminish at a moment when they are required to expand their activities to the online world. Besides, the corporate sector tends to bring up arguments that equate popular broadcasting with commercial media and public service with unpopular broadcasting. It posits that publics built by commercial media are less coerced and more participatory than those built by public broadcasting.

The major controversies with the private sector are related to the trans-nationalisation of new media and the new opportunities for broadcasting content differently, taking into account the fragmentation and segmentation of publics, which makes it difficult to convey mass messages to mass audiences. Three categories of audiovisual services are under siege by both private sector and public service:

- The use of all new platforms for broadcasting, in simulcast or online with mobile phones, most of them coming from American platforms like YouTube;
- The services that are yet to be defined as "purely" commercial: electronic commerce, paid games and related downloads, forums and chats over the net, sponsoring and advertising, links to commercial sites;
- The broadcasting of programmes that are no longer dependent on time constraints and linear programming grids under new formulas and packages like video-on-demand and pay-per-view, as well as the development and production of services and spectacles that are specific to the web (Ridinger 2009).

These categories raise issues of competition for sources of funding; they also raise issues of diversity both in the sense of content and format pluralism and in the sense of service to under-represented categories of population (young people, poor communities...). The case the BBC archives in the UK or the Ina archives in France illustrates the problem of the future of audiovisual content when transferred on the web: can the public operator charge for consultation? Can the public operator add material and links to the original document and make it available for free, or for a charge? And what happens for special users like schools or researchers that require access to such intellectual property at special rates, as part of the patrimony of their country and claim that they use it in a non-commercial setting? There are also issues about diversity and quotas (programmes in a given language or of a national origin that are required) when they migrate to foreign platforms or, conversely, when they are submitted to a national platform.

The claim of public service broadcasters is constrained by the fact that ICT-driven media have been classified as paid-services by the Audiovisual Media Services Directive (2007).

Consequently, the threats to the public interest and to cultural diversity, particularly visible in the European public service media, but also in places like Korea, India or the USA, fall largely under three categories: relaxation of regulatory regimes; pressure on existing public service broadcasters about their regimes of public funding; consolidation and ownership with attendant threats to pluralism.

The relaxation of regulatory regimes is tilted in favour of the private sector media. It is a means to alleviate pressures on them, by allowing more competition, fostering partnership deals, compelling public funding to be shared by other sectors, etc. This relaxation finds its counterpart in the pressures put on the public service broadcasters. Limits are put to their expansion and to their public broadcaster remits online, funding is constantly circumscribed, as competition laws apply to public service broadcasters and as they are seen as receiving undue support that thwart the laws of the market. Access to advertising revenue is questioned and restrictions are set on other sources of income. This is particularly visible in policies that establish a "public value test" like the one the BBC is subjected to in the UK or others that try to curtail advertising options for public media as in France. Conversely, policies that increasingly privatize public spectacles such as football matches by enclosing them in premium broadcast packages are expanding.

These changes are accompanied by a whole flurry of deregulatory measures that relax existing restrictions on concentration of ownership. In the USA and many European countries, cross-ownership regimes are modified or relaxed so as to allow more corporate penetration in local and regional markets. The same trend exists at the international level, with pressures to open up the media markets within the World Trade Organization. The argument of transnational pressure is also used not to apply the public service obligations usually required of commercial media: they are not present on the new online media, such as Google or Facebook, that generate content without any regulation. These transnational corporations —well entrenched within national US law— are intent on barring 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. A case in point is Ofcom, the new UK national regulating body, which has removed public service obligations under new digital licenses granted for commercial broadcasting, thus dwindling the pressure put on broadcasters to serve isolated and poor communities and regions.

The situation of the European Union is very revealing of the challenges posed to public service media, in the context of deregulated transnational markets, entering in conflict with each country's long established rules for funding public service media. Some heavy trends show that the public service requirements have increased to take into account digital media and the opportunities offered by live streaming of existing over the air programmes or webcasting of new Internet-produced contents. Additional requirements have been added to their classic missions (inform, educate and entertain): promote cultural diver-

sity, foster social cohesion and integrate linguistic and regional communities. In some cases, there is the added responsibility for impelling and supporting creation and creativity. This was done without the attendant growth in human resources or financial resources. As a result, the financial situation of the public service broadcasters became much degraded from 1990ies on, with the growth of public corporations much slowed in comparison to that of private channels: less than 5% compared to more than 15%, before the 2009 crisis. Public authorities, in Spain and Portugal for instance, have been called to bail out their public service broadcasters, the result being less financial autonomy (Nikolchev 2007; Ridinger 2009).

1.2 Patterns of resistance

The different public service cultures argue that they participate in culture and if they are services, they are services of general economic interest, so as to put themselves within the framework of legitimacy for receiving public funding and not being accused of distorting the market. They denounce the private sector's strategy of containment and consider that the end-user is allowed to use the same content in different media, without having to pay twice for such a provision (as he/she has paid a public tax). Some trends are appearing on public service media on the Internet that hold promises of renewal and increased citizen participation.

Examples of services that create or express a public value tend to accumulate, such as e-democracy tests that show more people-oriented government services, enhanced access to libraries and archives, community access points that offer more information to all generations of people. Many of these services are provided by public authorities or at least funded by public authorities, but some can be partly financed and supported by civil society entities or by the local private sector. They show a trend to shift the modes of funding the public service, which could have higher public value as it is more decentralized, less top-down and therefore engages people in their daily activities.

Three major trends can be detected: the blurring of the lines between linear broadcast media and non-linear broadband media; the complementarities between broadcasting and archiving; and user-sensitive timing that can advantageously replace programming, as results show that, over time, public service spectacles rank among the most downloaded by the general public. Public service media still tend to function on a grid and a schedule as they encourage family consumption but they have moved out of this gridlock on digital broadband, by resorting to discreet units of production, available at any time. With this move, traditional public service media have extended their archival and patrimonial capacities, as they have been able to draw from a rich fund of past and timeless programming that new generations can discover and enjoy. So Internet has become a platform for access to past broadcast, making a lot of publicly-funded material available on the web.

This role of digital publisher can generate additional revenue while offering the additional advantage of potentially function-

ing like a digital archive, which has been explored by a series of public entities, like NHK in Japan, CBC in Canada, Ina in France. The BBC has gone one step further, to make its material available to the English public. Through its Creative Archive project, from 2004 to 2006, it tested the possibility of letting license-paying Britons download radio and television materials, with software controls to stop downloads outside national borders. Such trends point to public service broadcasting capacities in the future: publishing and educational capabilities can be developed on-line, with materials produced off-line that can be given more visibility and availability, for teachers and for children on the look-out for special materials free of rights. This can be a public service answer to commercial services that try to create total entertainment universes to keep the public in a state of net immersion.

Re-engaging the end-user is also a possibility that allows to fight the "cursor effect" of public broadcasting: the more a channel elevates the educational or cultural level, the more it elevates the age of the viewer. User-generated content has been a way of bringing back the interest of young people, whose audience has increased in the last few years. Replacing commercial seduction by curiosity and proximity, public service broadcasters have developed a two-pronged strategy, as exemplified by the France 5: Internet has been conceived as an extension of over-the-air programs, with sites like "Les Zouzous" (for children) and "Côté Profs" (for teachers); Internet has also been conceived as a channel per se, with its own programming via webtv, for teenagers, a problematic audience that needs to be enticed away from appealing commercial broadcasting or gaming <www.france5.org>.

New participatory modes, more in synch with young people's listening and viewing situation, allow them to determine the timing and format as boundaries between static and interactive content become porous. Public service broadcasters with online extensions like RaiNet or BBC.org have established real communication tools to dialogue with their publics, receive their opinions and tailor their content. As a result, the erosion or loss of audience has been stabilized over the past years, from 30% to 47% according to the countries, and there is always a public service channel among the top ten of national audience ratings (Lange 2009).

The other challenge public service broadcasters have dealt with is the trans-border dimension of the digital media, to comply with their obligation to provide local and regional content. By allowing for more participation and transmission windows for local production in their on-line offer, they have seen new opportunities to fulfil their mandate of inclusiveness, pluralism, creativity, service to minorities and children and education in informal settings while giving community broadcasters some visibility at the national public level, at relatively low cost. By so doing, they are running the risk of spreading themselves too thin, as their budget is thinning as well.

What is at stake, for national and local communities, is the status of the public interest in its relation to dominant private

interest media whose role is not the cultural development of diversity. The market has no mission to guarantee such a right in its commercial use of the Internet. In the global, transnational context, the corporate market has even less interest in respecting the national interpretations and evolutions of such a right. Self-regulatory governance bodies for the digital networks, such as ICANN, are not accountable to Internet users worldwide. Many Internet users do not participate in the debates over the governance process, and the existing forums, like IGF, are not accountable to the international community, which makes it difficult to bridge the digital divide.

2. Emerging concepts and mechanisms: the transnational challenges of creative industries, digital commons and net neutrality

The emergence of private transnational corporations in the media sector is thus far from being balanced by a similar growth of transnational public services —to the exception, arguably, of the BBC. As American-based new conglomerates such as Google, YouTube, Apple/iTunes, Facebook... become media, in that they not only provide access but also propose spectacles and services (just like old Disney or Time Warner corporations), the risk of privatization of user-aggregated content is increasing. The online challenge for cultural diversity is not only the protection and promotion of audiovisual spectacles; it is also the fostering of user-generated content and services that moves the public from consumption to participation, with increased agency.

2.1 Concentration and "voice"

Concentration is a two-faceted issue, as it relates to ownership and to content. The amount of media and voices has augmented overall in the "Information Society", but the dominant traffic goes to a much smaller amount of actors, that have managed to offer a desirable service, like Google for navigation or Facebook for social networking. The range of entry points tends to decrease as they are being bought up by larger corporations that add them to their assets, as in the case of YouTube, bought up by Google. The result is that some corporations become even more powerful and are in a situation of quasi monopoly in the digital Hollyweb. The offline and online media sector are coalescing together, not just because of digital convergence, but also because many governments, especially the United States, have been tampering with anti-trust laws to allow their companies to dominate international competition. As a result, traditional media companies and online services merge into vertical corporations that offer services as well as spectacles, preferably on a paid-for basis. Public outcry in the face of such a level of unacceptable concentration has been of little avail against the lobbying power of the corporate world.

In terms of content, the emphasis on expressivity and reflexivity so characteristic of identity in cyberspace means that the

users tend to speak more about themselves than they tend to listen to others. In spite of all the hype about participation, research trends tend to show that Internet is less a many-to-many media than a one-to-the-happy-few media (<pewinternet.org/media> 2009). Also, by a snowballing phenomenon of imitation characteristic of reputation building, formulas that work will be taken up and repeated across the same platform and other platforms. This is particularly the case with blogs on popular platforms like Skyblog. The users are very little aware of the format constraints that compel them to include a picture of themselves or to add a link to yet one more person. The homogenization of content and of related practices is a risk, especially if the platform is dominant in the market. This platform can therefore exert editorial control on content, in ways that can actually create bias and lack of pluralism in the information accessed (Frau-Meigs 2011b).

A final assault on content as voice is related to the blurring of the borders between service and slogan, spectacle and spot. This consequently also blurs the frontiers between search and advertising and, as a consequence, between information and misinformation. Advertising, fuelled by neuro-marketing techniques, has moved from recognizable forms like displays and pop-ups to "search-specific" sophisticated forms like paid placement (an ad is attached a priori to a search term) and paid inclusion, in which the sponsor pays the gatekeeper to attach its ad to specific search terms or sites. Both forms of hidden advertisement tend to boost the position of a given site, blog or portal in the index ranking system and therefore make it appear as very popular, sometimes unduly as in the case of spam-indexing or page-jacking (Van Couvering 2004). So the very tool for access is advertisement-driven, which has an impact on its agenda, as its commercial interest is vested in keeping the client happy about its global positioning. The hidden business plan meets the hidden agenda: the gate-keeping platform sells users to advertisers, not to mention providing access to third parties for data-mining, within an *information provider* model of online exchanges.

This points to the issue of transparency, as secret business models may conflict with the public interest. The BBC is relatively transparent about its search model, whereas Google is not, and is proud of announcing that it modifies its algorithm regularly. Non-commercial and public "gatekeepers" are expected or required to reveal the principles guiding their management of content. Such is the case also of a number of search engines working under the GPL licence, like the global YaCY free distributed search engine, built on principles of peer-to-peer networks, within the *open source* model of online exchanges. This model, quite akin to the *cultural diversity* model, is trying to foster the management of meaning, not with ranking and popularity but with scientific and educational knowledge indexing, especially with specialized semantic search tools like Sciencenet (for educational repositories) or iSearch (for library catalogues).

2. 2 The contested field of "creative industries"

However, some media relationships and contents are being established outside these distribution channels, without access through of a licence fee, subscription, or advertisement support. Outside these commercial relationship and contractual rights and obligations, a growing number of people are building media relationships without caring to know if these practices are legal or illegal (though the industry tends to denounce them under the terms of "piracy"). Internet practices have allowed both the circulation of "forgotten" books and movies, of no interest to the industrial sector and the revisiting and the creation of new art productions, digitally produced as in the case of MARCEL (Multimedia Art Research Centres and Electronic Laboratories), a high bandwidth interactive network dedicated to artistic and educational experimentation <mmmarcel.org>. Amateurs and fan cultures have been expressing themselves by re-appropriating fictions such as *Lord of the Ring* (inventing, for instance, the life of the son of Aragorn). Strategies such as sampling, mixing, poaching and pooling have allowed participants to find their locus of control and expression, emancipating 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.

These creative industries can be seen as the new horizon for cultural diversity as acknowledged by UNESCO, 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 and applications in publishing, music and film." <portal.unesco.org>. This includes a whole series of sectors, mainly in the communication and information fields, such as film, the audiovisual sector, music, publishing, and video games, but also handicrafts, architecture, design, fashion, and more intangible cultural goods, related to antiquities (museums and libraries) and tourism activities (food, folklore, etc.). UNESCO associates the creative industries with the identity-based interpretation of cultural diversity, and adds a local aspect related to the idea of sustainable development.

The recent move to designate "creative cities" is important since these territorial and political entities can protect the individual within the community by offering localized forms of collective expression. UNESCO, through the Global Alliance for Cultural Diversity, established a "Creative Cities Network" to exchange best practices and facilitate the transfer of skills. This initiative seeks to promote local industries by putting them online, and it improves alternative prospects for the diversity-based view of creative industries, reflecting the interests of civil society, that is concerned with shared digital assets and sustainable development.

These processes pave the way for cultural diversity, as they combine various resources and their decentralized propagation to other nodes in the network. Certain web services are already starting to connect intelligent autonomous agents, capable of interacting among themselves, to other web sites and other in-

dividuals. These enormous hybrid intelligence systems—combining people and intelligent software, which may include machine translation systems (necessary for true diversity)—can empower territorial and virtual communities to self-organize, optimize their transaction costs, and manage collaborative creative teams and diversified knowledge networks.

However, there is a double tendency that threatens such construction of creative industries: they tend to expand on proprietary platforms when conducted by individuals; they tend to be recuperated into the fold of newly institutionalized market practices, with changing legal clauses. Hollyweb, via social networking platforms like Myspace or Second Life is providing any user with “ready to mediatize” spaces, where what is sold is not the content but the use of the production tools. The Web 2.0 seems to distribute the means of production to the masses, but the economic gains are for the few. Some analysts wonder about the means of paying for creative work of that kind, and notice the emergence of a class of “infomediaries”, or information brokers who are among the few to live off this system (Moe-glin 2007). Other analysts refer to “sharecropping” as each participant gets just enough to keep on producing, whereas the general growth and benefits go to some large web corporations, that can intervene in the management of the digital crop, as in the case of Google that, through AdSense, is able to capture a lot of the advertising revenue that circulates on such digital spaces. The benefits actually seem to arise from advertising and connexion costs, supported by the netcroppers and their customers, rather than from the digital content itself. Additionally, the quality of such netcroppers’ work is not always recognized and they tend to see their leisure time confused with their working time (Husson 2007; Frau-Meigs 2011b).

Hollyweb also deploys its possible means to consolidate privileged access by Digital Management Rights and other IP tools, as exclusive proprietary tools. The passing of laws that prevent works from falling into the public domain before at least 70 years is such a measure. The DADVSI law in France against “illegal downloading” illustrates how governments can be held hostage to international lobbies and refuse any innovation in the legal field that could take into account the fact that non-exclusive and non-rival goods circulate online. This aims at nipping in the bud the direct connection between artists and amateurs that can bypass producers and providers, as well as other economic models such as gift and non-profit, via peer-to-peer (P2P) systems of pooling and sharing.

Creative industries thus run the risk of being captured by the private sector that sees them as an extension of media content and services. The international corporations have lobbied WIPO to ensure it puts in place a number of tools for monitoring them, including a Creative Industries division. Situated in the small and medium-sized business sector, this division seeks to quantify statistically the creative industries, in order to measure their economic potential and their value as commercial products and services. Its goal is to ensure that these industries remain within the realm of intellectual property and do not experiment with

other approaches to managing competition or creativity.

Two visions are therefore in head-on opposition: one built around policing and restricting, the other around negotiation and differentiation. In a paradoxical reversal, the free-trade proponents are proving to be hard-line protectionists, clinging to strict IP rights, while the diversity proponents are much more willing to promote alternative solutions. The diversity proponents do not advocate a free, anything-goes situation, but suggest that authors could be compensated in differentiated ways, and that payment for rights could be less centralized and less dependent on corporate infomediaries. They support alternative mechanisms such as the “global license” that proposes to make peer-to-peer exchanges legal, in exchange for a fee on broadband Internet subscriptions, which would go directly to fund the creators and authors (Aigrain 2005).

2.3 Digital Commons and Open Educational Resources (OER)

Creative industries, as defined by UNESCO, can also be considered as part of the digital commons. Commons are relational spaces, with derogatory rules that do not assimilate them to markets, where tangible and intangible assets are shared by a community, such as the broadcast airwaves or the digital broadband. In fact, the creative works of people not under copyright law and a number of public domain digital resources have produced such digital commons. They are often related to knowledge diffusion, especially with scientific and academic research, supported by the public through government funding, in the garb of Open Educational Resources (OER), available online via the open source model, which harks back to the public interest of providing education, not just entertainment or services.

In the digital world, the commons have emerged around the “gift” economy, with people as willing participants and contributors to the community at large, the intangible benefits being related to relational goods that are non-exclusive and non-rival. The global contributors to wikimedia, especially the Wikipedia, are such a group that provides a common good; the GNU/Linux software programmers that allow for the free software community to expand are another example. There is no way to assess the actual price of these assets, as their actual value to the community at large is unfathomable and timeless (Ostrom 1990; Stallman 1999; Aigrain 2005). The economic benefits and fallouts of not enclosing some of the public goods can be various, including creating new business models and ensuring local sustainability. But their open access has to be clearly identified, managed by a clear authority, with allocated resources only to be used by members of the community in a clear non-commercial dimension, so as to give it social value in an integrated infrastructure where individuals can share a common goal, as proposed by “creative commons” licences (Lessig 2001).

Yet, media consolidation has impacted the digital commons by establishing a monopoly over cable broadband services and by capturing services via proprietary standards on key hard-

ware and software protocols and applications. The governance structure of the Internet itself is privatized de facto by ICANN, the company that controls strategic domain names, including those that refer to state sovereignty like .fr or .eu. Though it presents itself as a technical entity, there is no hiding the fact that such control is political and affects national but also civic sovereignty. "With no clear legal limits to its authority, dubious democratic safeguards, and a board skewed to represent e-commerce interests, ICANN is a perfect governance vehicle for transforming the Internet commons into a privatized commercial infrastructure" (Bollier and Watts 2005).

Protecting the digital commons can become possible if cultural diversity as a right incorporates them as a way of recovering control over community assets for public purposes. It implies going beyond existing regulatory regimes to meet the challenge of retaining the generative value added by the digital commons. Legal strategies and institutional mechanisms need to be explored and trans-nationalized for such purposes, with multi-stakeholder strategies, using models such as "creative commons" to bypass the stringent DRM and maintaining a lively public domain, or by giving citizens a stake in public assets, in "stakeholder trusts" to maintain open digital spaces as public assets, in "general public licenses" (GPL), to preserve programming code as part of the digital commons. These contractual and ethical strategies try to ensure that there is no privatization and inadequate appropriation of the Internet resources or reckless mismanagement by states and corporations.

As with public service broadcasting online, it is important to define the missions of the digital commons, so as to defend them. At the moment, the Internet as a digital commons is not equipped to detect over-use of the resource and doesn't have a governance mechanism that mediates between competing demands regarding access and applications. It doesn't monitor fair use and it doesn't have real means of sanctioning abuse. Artists, amateurs and content-aggregators have to be sensitized to the fact that abusing the commons or letting them be enclosed leads to less efficiency of the collaborative system and alienation of the value of Internet services and public sphere. They can be protected by the creation and promotion of public Internet service providers, to increase trust, contain fraud and limit costs to consumers and citizens, as well as plan for infrastructure and future development over the long term (Frau-Meigs 2011a).

2.4 "Net Neutrality" as a guiding principle for cultural diversity online?

On the commercial side, the emerging "net neutrality" principle is also appearing as a means to ensure stability over the long term and limit corporate threats of reaping disproportionate advantages by over-exploitation of the resource over a short period of time. Net neutrality emerged as a critical issue for access and diversity as some corporations have drawn on their protocols and other devices to discriminate against P2P, imposing a cell-phone style billing system that discriminates among

services and leads to anti-competitive bundling, as exemplified in the "Brand X" ruling of 2005 in the United States. It showed that broadband providers can become de facto gatekeepers, controlling both the content providers and the customers, making it difficult for new entrants and independent creators to access the digital networks. Since then, net neutrality has been broadly defined as non discriminatory access to Internet critical resources and services, to underline the importance of open networks to encourage access to services, as well as to protect consumers from the current anti-competitive practices used by providers (Mueller 2007).

The advocates of net neutrality have voiced their concern about the ability of broadband providers to use their infrastructure to block Internet content and services and implement data discrimination, creating inequality via their dominant position. They claim that this would create a two-speed service model that would also create a two-tiered citizenship, some users being offered all types of services, others being offered only basic services. The opponents of net neutrality claim that the market has no interest in blocking content or slowing performance. They worry that if states implement regulation to impose net neutrality, this might fragment the Internet and prevent further technological innovation (Mueller 2007; Frau-Meigs 2011).

The possibility of national policies designed to mandate the neutrality of the Internet is thus under consideration in many countries like the European Union and the USA. Among researchers, the debate on the best way to ensure that the public interest is served on the Internet is fuelled by the more or less large level of trust in states and governments to maintain net neutrality, interoperability and end-to-end user choices. This would require empowering democratic states to impose a minimum quality of services in order to address access and dominant positions. It would also require an obligation of transparency and accountability to limit the operators' ability to set up restrictions on the user's choice of content and services.

Some researchers argue for maintaining the role of governments in transnational regulation, as there is a need of structured and elected institutions that can balance the dynamics of profit making against the public interest. The case of Google Books shows that when governments are mobilized and call on their institutions, enclosure of public domain goods, like orphan books, can be stopped and monopoly practices can be limited. Civil society actors, especially librarians, were able to appeal against such a privatization, and had laws enforced by the court system. Thus, transforming governmental structures to allow for transnational policy-making, on a multi-stakeholder basis, could prove a viable option (Hofmann 2005).

Other researchers express scepticism as to the role of governments in transnational regulation and advocate the de-nationalization of Internet governance, to re-invent other rules via new entities and new processes. The procedural achievements of the nation states are perceived as too heavy and as inhibiting further expansion of the Internet, and they add that such procedural checks should also be applied to the states themselves, as

they don't all operate under democratic rules and don't all abide to the public interest, when not giving way altogether to dominant private interests, some of them foreign and detrimental to their own people (Mueller 2007).

The net neutrality principle could be advantageously integrated to the cultural diversity model, as a means of re-engaging the states in their responsibilities, via the pressure of civil society, to enforce the rule of law and to make the case of the public interest of the networks, even in maintaining the transnational public value of the Internet, striking the balance between the risk of entrenched national interests and disenfranchised private interests. Such a multi-stakeholder approach can provide protection and participation, against misuse of the public interest by both state and the private sector, keeping the interest of civil society users in mind by ensuring non-discrimination of entry points and end-to-end interoperability (Frau-Meigs 2011a).

Net neutrality can thus exemplify one of the ways the regulation of cultural diversity can work at a transnational level: it takes into account the existing regulatory tools that the states can put in place with their own sovereignty while at the same time providing extensions that don't close but expand the potential of the networks when limitations are encountered in the trans-border realm. It allows for the amplification of the 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 approach where the information provider model and the open source model are treated on a par.

3. Future perspectives...

So in the near future, the main issues around cultural diversity are likely to be around the emerging trends of the digital networks in the trans-border context which, at the moment, serves the interest of the United States best. Among some key challenges, the most important are to keep promoting both the online extensions of audiovisual media and the online creations of broadband media as they converge on the digital networks.

On the audiovisual media side, the focus should remain on:

- Legitimizing the public service value of the networks for broadcasting audiovisual content, by protecting online extensions of public service broadcasters and by promoting the emergence of transnational public service broadcasters;
- Ensuring programming rights and viewer access to audiovisual and digital content, by monitoring a number of events considered as being of "major importance for society" (sports, festivals...), and extending such protections to the whole range of community events and of creative industries based on collective performance and user-aggregated knowledge;
- Monitoring programming tools like the Electronic Programme Guides that purport to help viewers deal with linear and non-linear programme flows on multi-channel HDTV,

as they can potentially create discrimination of premium content vs. non-premium content and therefore damage the diversity and pluralism of content;

- Not forgetting the "digital dividend" that liberates a lot of high quality radio spectrum for the deployment of new services and holds the potential of providing a lot of social and cultural benefits, by enlarging the possibilities for small scale actors, like communities or municipalities, to enter the broadcasting sector and the wireless industry.

On the broadband media side, the focus should be on:

- Building a credible remuneration of creativity via the "global license" and other alternative compensation mechanisms;
- Focusing on audiovisual production in relation to Creative industries, so that the "netcroppers" benefit from a protection on financial conditions of such creative work and a promotion of free spaces for free time;
- Re-engaging states via digital cultural policies to democratize culture, especially by developing support mechanisms for the production and distribution of user- and community-generated content;
- Maintaining 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;
- Promoting transnational open source and non-proprietary software to foster the information commons, via a robust open source backbone, be it for national security and sovereignty to local small businesses and forms of collective expression.

Such an Inter-Governmental Organisation as UNESCO may need to enlarge its own mandate over the Treaty on the diversity of cultural expressions to incorporate the diversity of online cultures and their emerging trends. The options open to UNESCO—and the states that compose it—, are related to a cosmopolitical economy of culture whose main characteristics are the non-linearity of output and outcomes, the trans-border overspill of sovereignty and the participation of multiple non-state actors, including civil society. UNESCO can help encourage a rethinking of public cultural activity and re-legitimize national cultural policies by providing supra-national decision-making tools within an arena that is among the most multipartite at the international level, considering the consultative status of NGOs and private sector entities that it can engage in dialogue. It must still prove its ability to raise these questions in other international forums, such as the WTO and WIPO, which are busily incorporating creative industries and user-aggregated content in their agenda and their own mandate. Such an enlargement would provide for the development of transnational regulation to ensure a balance within the global public interest between corporations and commons.

References

- AIGRAIN, P. *Cause commune, l'information entre bien commun et propriété*. Paris: Fayard, 2005.
- BOLLIER, D.; WATTS, T. *Saving the Information Commons: A New Public Interest Agenda in Digital Media*. Washington, D.C.: New America Foundation and Public Knowledge, 2002.
- CAVES, R. *Creative Industries: Contracts between Art and Commerce*. Cambridge, MA.: Harvard University Press, 2000.
- FRAU-MEIGS, D. *Media Matters in the Cultural Contradictions of the 'Information Society': Towards a Human Rights-Based Governance*. Strasbourg: Press of the Council of Europe, 2011.
- FRAU-MEIGS, D. *Penser la société de l'écran. Dispositifs et Usages*. Paris: Presses de la Sorbonne nouvelle, 2011.
- FRAU-MEIGS, D. "Convergence, Internet governance and cultural diversity". In: STORSUL, T.; STUEDAHL, D. (eds.): *Internet. The Ambivalence of Convergence*. Oslo: Nordicom, 2007a.
- FRAU-MEIGS, D. "La convention sur la diversité culturelle: un instrument obsolète pour une réalité en expansion?". *Annuaire Français de Relations Internationales*, 8 (2007b): 895-909.
- FRAU-MEIGS, D. "Public Service on Digital Media: Letting Young People's Situation Determine the Timing and Format?". In: CARLSSON, U.; VON FELITZEN, C. (eds.). *In the Service of Young People. Studies and Reflections on Media in the Digital Age*. Goteborg: Unesco Clearinghouse, 2006, pp. 13-26.
- HOFMANN, J. "Internet Governance: A Regulative Idea in Flux". Social Science Research Centre Berlin, 2005.
<<http://regulation.upf.edu/ecpr-05-papers/jhofmann.pdf>>
- HUSSON, M. "Quelques critiques aux thèses du capitalisme cognitif", 2007.
<hussonet.free.fr/solmulti.pdf>
- LESSIG, L. *The Future of Ideas: The Fate of the Commons in a Connected World*. New York: Random House, 2001.
- MOEGLIN, P. "Des modèles socio-économiques en mutation". In: BOUQUILLON, P.; COMBÈS, Y. (eds). *Les industries de la culture et de la communication en mutation*. Paris: L'Harmattan, 2007
- MUELLER, M. "Net Neutrality as Global Principle for Internet Governance". Internet Governance Project, Syracuse University, NetNeutralityGobaIP#1854B6.pdf, 2007.
<<http://internetgovernance.org/pdf/NetNeutralityGlobalPrinciple.pdf>>
- NIKOLTCHEV, S. (ed). IRIS Spécial. *La culture de service public de radiodiffusion*. Strasbourg: Observatoire Européen de l'Audiovisuel, 2007.
- OSTROM, E. *Governing the Commons: The Evolution of Institutions for Collective Action*. Cambridge: Cambridge UP, 1990.
- RIDINGER, M. "La mission de service public et les nouveaux médias". *Iris Plus*, 6 (2009): 2-12.
- STALLMAN, R. "The GNU Operating System and the Free Software Movement". *Open Sources: Voices from the Open Source Revolution*. Cambridge, Ma: O'Reilly Media, 1999.
- VAN COUVERING, E. "New Media? The Political Economy of Internet Search Engines". Annual Conference of the IAMCR, Porto Alegre, Brazil, 2004.
<<http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.129.1900&rep=rep1&type=pdf>>