

## **Submission to the Joint Standing Committee on Treaties Inquiry into the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions done at Paris on 20 October 2005**

27 February 2009

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### Summary:

1. I support the proposal that Australia accede to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
2. I have a number of concerns about the interpretive declaration to Article 16 and the proposed reservation to Article 20 outlined in the National Interest Analysis.
3. I am concerned that the general debate on this issue such as it is, as reflected in submissions reported in the National Interest Analysis, is overly concerned with the ways in which the Convention may assist in the promotion and protection of cultural diversity within Australia. This is of course important, but it is only one part of the Convention's intent. The international, collaborative aspect of the Convention seems to be secondary, and indeed has been represented in some submissions to the government as a problem rather than an opportunity. That is to say, I believe more emphasis and thought should be put to the Convention's focus on cultural exchange and on ways in which assistance can be rendered by countries like Australia to artists, cultural practitioners and policymakers in other countries to protect and promote their cultural diversity and to build the sustainability of their arts and cultural industries.
4. I urge the Australian government to go beyond the step of acceding to the Convention, and to take an active leading role on implementing the Convention by making a significant contribution to the International Fund for Cultural Diversity and committing to allocating a concrete percentage of development assistance to cultural projects in developing countries which are parties to the convention, including projects to strengthen civil society organizations.
5. I propose that the Australian government provides material and other support to civil society organisations to permit them to continue to represent the interests of artists, cultural practitioners and audiences whose voices may not otherwise be heard in debates at UNESCO and other international forums when decisions which affect their interests are made.

#### About the Author:

I am an academic working in the areas of film, media studies and cultural policy. I work for the Australian Film, Television and Radio School, and the University of Queensland, although I do not make this submission in my capacity as an employee of those institutions. This submission represents my own views, and nothing in it should be taken to be representative of the views of either the Australian Film, Television and Radio School, or the University of Queensland.

I am also a member of the Steering Committee of the International Network for Cultural Diversity (<http://www.incd.net>), an organisation representing cultural organisations, artists, cultural producers from every media, heritage institutions, academics and others from over 70 countries in international forums such as UNESCO. I have been involved with the INCD since its founding meeting in Santorini, Greece, in 2000, at which the proposed convention on cultural diversity was first discussed and endorsed.

## **1. Support for Australia's Ratification of the Convention**

I strongly support the proposal that Australia accede to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Further, I would argue that Australia should play a leading role in the implementation of the Convention's objectives, and in any future activities that arise from it.

As noted above, I have been involved in the efforts of civil society organisations to develop an international instrument like the Convention since 2000. My interest stemmed, like that of many of my colleagues around the world, from concern about the ways in which trade liberalization through instruments like the failed Multilateral Agreement on Investment and the World Trade Organization agreements was impacting, and would continue to impact on cultural policy, cultural production and cultural diversity around the world. I would like briefly to remind the Committee of the origins of the Convention. This background detail also serves to underscore my concerns about the proposed reservation to Article 20, which are detailed in the following section.

The dispute over audiovisual services which threatened to unravel the General Agreement on Trade in Services (GATS) at the eleventh hour in 1991 is now well-documented. In short, the United States pressed for the listing of audiovisual services in the GATS and for members to make commitments which would allegedly open up media markets by removing, for example, program content quotas (such as those deployed in the European Union [EU], Canada and Australia among many other countries), and prohibiting preferential treatment given to "official" audiovisual co-productions made under co-production treaties (very common around the world). At first, the EU pursued special treatment for the audiovisual sector although certain countries, most notably France, demanded a cultural exemption in order to protect states' capacity to implement and maintain specific national regulation and avoid the ultimate liberalisation of the entire sector. A compromise strategy – the cultural exception – was adopted. The EU sought to revise one of the basic articles of the GATS in order to build in to the structure of the agreement an acknowledgement that governments are able to intervene in media systems to regulate the production and supply of audiovisual services by measures designed to create "shelf-space" (to use the term favoured in Canada) or provide a "safety net" for local media products which, because audiovisual media are held to be crucial to cultural expression and diversity, have the cultural objectives of preserving and promoting (particularly national) cultural identities. At almost the last moment, and with the entire agreement on the line, the US on one side and the Europeans and a growing coalition of countries on the other, reached an uneasy truce by suspending negotiations on audiovisual services until the next round of trade talks which were scheduled to begin in Seattle in 1999. In a joint press conference with his European counterpart, Sir Leon Brittan, the US Trade Representative Mickey Kantor stated "We have agreed to disagree but our differences remain".

The key point about the "cultural exception", as it moved from "undeclared war" to tacit agreement which enabled most members to avoid making commitments

in this area, is that it does not have any formal legal status. It has been argued that the “agreement to disagree” over the treatment of audiovisual services at the end of the negotiating stage of the Uruguay Round of world trade negotiations in late 1993 actually “created de facto a temporary specific status for cultural services”, but Catherine Trautmann, French Minister of Culture and Communication (1997-2000) put the official European view in a press conference to explain the EU’s position on audiovisual services and the GATS in October 1999 when she stated that “If there are no commitments, then by definition there is nothing to measure or sanction. The cultural exception has thus never, in my view, signaled a legal exclusion – and if it had, it would no doubt have proved vulnerable to opposition”. The cultural exception was a result and manifestation of “systems friction” or tensions between fundamental bases and understandings of cultural policy in different territories. But because the logic of the General Agreement on Trade in Services is to revisit areas in which no agreement has been reached, this issue will not go away.

In the years since 1994 the issues have broadened from the treatment and classification of cultural goods and services in trade agreements to the ways in which cultural identity and diversity are affected by global cultural, financial, population and trade flows. There is a much wider awareness since the “cultural exception” episode of the role of domestic assistance measures – what hard core free traders or Americans might call “trade barriers” or what Canadians might call “affirmative measures” – in developing and disseminating cultural work by building capacity particularly in audiovisual industries, and of assisting cultural export and exchange. These measures, supporters claim, have enabled the production and circulation of films, television programs and other cultural products from a wider range of people and places, than would have occurred without the assistance.

Imbalances in cultural flows and trade in cultural products remain extreme, refuelling smouldering concerns about media and cultural imperialism. Many developing and small countries have considerable cultural assets, but cultural sectors or industries exhibit uneven development and have survived often in spite of rather than due to cultural policies in which the promotion and protection of culture has at times been encouraged at the expense of cultural diversity. UNESCO studies in 2000 showed that trade in cultural goods grew five-fold over the previous two decades. Trade in cultural services including television programs has also burgeoned in this period. The ‘copyright industries’, as they are termed in the United States, became that country’s largest export sector in the late 1990s. But the majority of the global trade in cultural goods and services takes place between a small group of countries. And most countries have a deficit in cultural trade, importing far more goods and services than they export. One of the intentions of the movement towards what has now become the Convention was to ensure that governments could maintain, develop or create policies that might redress these imbalances by growing domestic cultural production capacities. Such measures however ran contrary to the principles of trade liberalization and contrary to the commitments that a number of countries have made under WTO treaties. As a result, discussion turned to the development of a new international instrument that would establish clear rules

on cultural policy-making and, some proponents hoped, lead ultimately to the exclusion of cultural goods and services from free trade agreements.

The recommendation to develop an international instrument on cultural diversity as a means to establish clear rules on cultural policy-making in preference to the practice of exempting or excepting culture from trade rules was first made in response to a request from the UNESCO World Commission on Culture and Development Secretariat in 1994 when a proposal for a general agreement on culture and development was prepared by academics Sam Cole and Victoria Razak. The reconstitution of the secretariat later in 1994 resulted in the proposal being buried until it was resurrected in a Canadian report which appeared in February 1999.

In response to a request from the Canadian Minister for International Trade, a Cultural Industries Sectoral Advisory Group on International Trade (SAGIT), comprising academics, representatives of media companies, cultural organisations, professional associations, law and accounting firms, prepared the report *New Strategies for Culture and Trade: Canadian Culture in a Global World*. With the Canadian defeat in the dispute with the United States of America over periodicals still fresh in the minds of the cultural policy community, the report began by noting that: “The tools and approaches used in the past to keep cultural goods and services from being subject to the same treatment as other goods and services may no longer be enough”. The SAGIT report recommended that Canada continue its leading role internationally in the development of cultural policies by actively developing a new international instrument on cultural diversity and building a coalition of countries to support its implementation. The report envisaged five objectives for the instrument:

- recognise the importance of cultural diversity;
- acknowledge that cultural goods and services are significantly different from other products;
- acknowledge that domestic measures and policies intended to ensure access to a variety of indigenous cultural products are significantly different from other policies;
- set out rules on the kind of domestic regulatory and other measures that countries can and cannot use to enhance cultural and linguistic diversity; and
- establish how trade disciplines would apply or not apply to cultural measures that meet the agreed upon rules.

The instrument proposal came in part from a recognition that agreements in areas other than audiovisual services can impact on the cultural sector and on the capacity of governments – at local and regional as well as national levels – to make cultural policy. These areas and sectors include: education services; recreational, cultural and sporting services (which includes theatre and live performance), news agency services, libraries, museums and archives; and negotiations on e-commerce, on investment, on subsidies and on services

provided in the exercise of governmental authority which are presently excepted, but which are imprecisely defined.

The proposal was taken up and endorsed by a range of professional organisations including the European Federation of Film Directors (FERA) and subsequently the Coalition for Cultural Diversity, a network of professional associations based in Canada. More significantly perhaps, the UNESCO Universal Declaration on Cultural Diversity made at the end of 2001 mentions the Instrument in the first point of its Action Plan for implementing the Declaration which has the objective of:

“Deepening the international debate on questions relating to cultural diversity, particularly in respect of its links with development and its impact on policy-making, at both national and international level; taking forward notably consideration of the opportunity of an international legal instrument on cultural diversity.”

Why was there considered to be a need for a binding international instrument on cultural diversity? Ivan Bernier, a Canadian academic and key figure in recent deliberations, identified three basic reasons. First, existing international cultural diversity instruments were too “fragmented” or narrowly focused, and the adoption of a “comprehensive vision of how globalization affects cultural diversity” would be of particular benefit in addressing questions relating to cultural products and trade liberalisation. This perspective is informed by the Canadian experience in their dispute with the USA over split-run magazines, in which the WTO dispute resolution body found against Canada because, the Canadians argue, the panel was unable to comprehend the full complexity of the issue of preserving and promoting cultural diversity. Second, the structural imbalance in cultural trade – usually evidenced by the proportion of a given country’s cinema box office taken by Hollywood films – is reason in itself for governments to be able to take a variety of measures to intervene in the operation of the audiovisual market. Third, the force of trade liberalisation threatens “pluralistic public space”. That is it endangers the public’s rights of access to their own cultural forms and traditions; it tests their democratic right to participate in the cultural life of their community; and it may hamper the achievement of social objectives including social cohesion and economic development. The diminution of public space for cultural and creative expression is argued here to be extremely detrimental because it is through cultural expression that communities imagine, articulate and confront the changes wrought by globalisation. States, in this view, have a duty to act in their citizens’ interests by providing the conditions not only for participation but also for choices about participation and consumption. This might encompass a wide range of measures, tailored to particular circumstances, so the issue here becomes maintaining the space for the state to act in appropriate ways to preserve the pluralistic public space for the promotion of cultural expression.

In the early 2000s, various industrialised countries embraced the convention proposal. The French government became an important proponent, seeing in the proposal a means to protect their own cultural industries by taking cultural goods and services out of the negotiation of trade and investment agreements.

This was the same reason that had been put forward in Canada. This move was based on a desire to maintain the right of countries to use trade distorting mechanisms in the cultural sector and to subsidise cultural producers.

Other countries without well-developed cultural industries also took notice of the proposal. These countries recognized the challenge they faced in developing and maintaining their own cultural life and cultural industries in the face of economic globalization and the obligations placed on them in trade agreements. In these countries, artists and cultural producers operate in an environment in which national and sub-national cultural policies are often not well-developed, and in which limited public resources are devoted to supporting cultural activities.

For representatives from the developing world and least developed countries the convention appeared as an opportunity. Rather than being a defensive instrument intended to protect established industries these representatives viewed the convention as a tool to promote cultural policies and encourage cultural development. Non- governmental organisations recognized that the convention could be a means to share knowledge and best practice in cultural policy, and to catalogue measures that states can utilize to promote local artists and cultural producers with a view to protecting, promoting and making more widely available the rich cultural traditions, stories and music of the world.

At the International Network for Cultural Diversity's founding meeting in Santorini, Greece, in 2000, the proposed convention on cultural diversity was discussed and endorsed by a range of people and organizations involved in the arts and cultural production around the world. At its 2001 meeting in Lucerne, Switzerland, the INCD put forward basic principles and objectives for the convention and in early 2002 it published the first text of a possible convention to demonstrate its potential. I attended all of these meetings, and have been involved with INCD's advocacy in the years since then.

When UNESCO decided to take on the task of developing the terms of a legally-binding treaty, INCD offered specific proposals and language to the expert panel that had been asked by the Director General to draft an initial version for UNESCO's consideration. INCD was an active participant throughout the 2004-2005 negotiating process, both at the intergovernmental meetings and in written communications to member States and delegates.

A key element of INCD's submissions concerned the basic objectives the convention should achieve, which responded to the full range of issues being raised by its widely disbursed membership. These were expressed in the following way in a submission the INCD put forward to the UNESCO intergovernmental meeting in 2005:

1. The status of the convention must be equivalent to the trade and investment agreements and must prevail where the Parties are considering cultural policies and cultural diversity. This was an essential objective since the core challenge to which the convention was meant to respond was the erosion of cultural sovereignty by commitments made in the context of trade and investment negotiations.

2. The convention must be an effective tool for countries of the South to develop their creative capacity and cultural industries. The proponents of the convention in countries of the global south supported the convention primarily because they saw it as an instrument to promote cultural development. This position was widely endorsed because others believe that cultural diversity will not be achieved until there is more balanced exchange between all cultures and this requires a development strategy.

3. The convention must confirm the right of States to implement the policies to promote culture and cultural diversity that they deem appropriate. It must also acknowledge the broad scope of policy tools that are used to promote cultural diversity, and preserve the right of governments to adapt and adopt new ones in the coming years as circumstances require. The primary purpose of the convention is to confirm the sovereign right of states to take action. Since GATS commitments that states make in distribution, telecommunications, e-commerce and other services can have an impact on policies that promote local artists and cultural producers, particularly as technology changes the way that cultural products are created, produced, distributed, exhibited and preserved, the scope of the convention must be broad.

4. The convention must confirm the vital role of the creative sector, in particular artists, and enable players in the sector to counter the homogenising effects of globalisation on culture. The role of artists and other creative participants in the production cycle is central to promoting cultural diversity. Proponents believe that the convention must acknowledge this and also provide a formal role for civil society in its administrative mechanisms.

As members of the Committee will be aware, the Convention was approved by 148 countries at the UNESCO General Conference in October 2005. Australia abstained from the vote, one of only four countries to do so (the others were Nicaragua, Honduras and Liberia). The US and Israel were the only countries to oppose the Convention. Both in the lead-up to the vote and since there has been very little public discussion of the Convention in Australia. The previous federal government was actively disinterested in the Convention and the debates around it. The present government committed to ratification in a policy document released before the November 2007 federal election. And yet still the issue has not been widely discussed. Your committee's consideration of the Convention's merits is then most welcome. I wholeheartedly endorse the Overview and National Interest Summary detailed on page 1 of the National Impact Assessment which reads:

The proposed treaty action accords with the Australian Government's support for the promotion of respect and dialogue between cultures and its recognition of the importance of protecting the diversity of cultural expressions that exist in Australia. The Convention provides an opportunity to expand and develop the measures already in place to protect and promote Australia's rich cultural diversity and to promote international cooperation in this regard. It would also continue Australia's good standing as a member of UNESCO.



I urge you to recommend that Australian accede to and ratify this Convention at the earliest opportunity.

## **2. Concerns about the interpretive declaration to Article 16 and the proposed reservation to Article 20 outlined in the National Interest Analysis**

### **2.1 Article 16**

While it was encouraging to read in the National Interest Assessment that accompanies this inquiry that all submissions by arts and cultural organizations to the Assessment were supportive of the Government's accession to the Convention, I was concerned by the NSW government's submission that reported concern that "Article 16 (Preferential treatment for developing countries) could impede the artistic and commercial decision making of their organisations by requiring that developed countries facilitate cultural exchanges that give preferential treatment to artists and practitioners from developing countries".

It should be noted here that the UNESCO Intergovernmental Committee on the Convention has engaged experts including Professor David Throsby of Macquarie University to look at how to give meaning to the commitment in Article 16 to provide preferential treatment for developing countries.

Perhaps in response to the concerns outlined in the NSW government submission, the National Impact Assessment proposes an "interpretative declaration" on Article 16 as follows:

"Australia declares that it considers that the obligation in Article 16 on developed countries to "facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners as well as cultural goods and services from developing countries" is not intended to affect the content or interpretation of domestic legislation, regulations, rules or criteria relating to eligibility for immigration visas or permits, or the exercise of discretion under legislation or regulations or in respect of rules or criteria."

In its comments and recommendations to the Intergovernmental Committee at its meeting in June 2008, the INCD proposed the following substantive initiatives that may go some way to addressing the concerns that appear to be behind the interpretative declaration quoted above:

- Cultural Passport. A cultural passport, granted to artists and other cultural professionals and practitioners from developing countries, would facilitate access to developed countries and guarantee identical legal rights to local citizens when the holder is undertaking artistic work in that territory.
- Fair Trade Certification for Cultural Goods and Services. This would, for example, ensure that music CDs and films imported into other countries

are produced under appropriate conditions, including that the artists have been properly contracted and paid, and have appropriate protection of their intellectual property rights.

I would also like to quote at length a submission made to the UNESCO Intergovernmental Committee on the Convention by Garry Neil, Executive Director of the INCD, on behalf of the INCD, the International Theatre Institute, the International Federation of Musicians, the International Federation of University Women, the European Broadcasting Union, and the International Music Council, at the Committee's last meeting in December 2008:

“Article 16 is differentiated from most others in the Convention by its use of the mandatory language “shall facilitate”. This is significant because it creates a positive obligation on developed country parties to the Convention, in favour of the developing country parties. As someone who witnessed all of the negotiating sessions, I know that parties carefully selected these words. This was the key trade-off between developed and developing countries. Developed countries would get what they needed in Articles 5, 6, 7, 20, 21, etc., and in other Articles dealing with international cooperation, they would be under only a modest obligation to endeavour to” do the various things. In other words, for these international cooperation Articles, developed countries just have to make best efforts.

“In return, parties agreed to mandatory language in Article 16 which obligates developed countries to provide preferential treatment, in concrete and measurable ways.

“The experts’ reports capture some important elements, such as the need to give preferential treatment for individuals providing cultural services, in the form of temporary visas, and we agree these measures are essential. But few would seem to share our position that the more significant concept is that developed countries are:

- Committed to providing preferential access to their markets for goods, as well as services, from developing countries. By goods, we mean the books, films, sound recordings, paintings, etc.; and
- They have considerable scope to implement measures and programs which do precisely that.

“If one looks at the full range of cultural policy mechanisms used by developed countries – direct and indirect funding; structural measures like content quotas and mandatory purchase or pricing systems; rules on ownership of cultural industry firms; preferential treatment provided to national artists and cultural producers – it is possible to contemplate many practical and effective measures that would give real meaning to this commitment. Some ideas for the preferential treatment toolkit include:

“1. Developed countries should provide funding support. For example, to translate published works, to sub-title movies or television programs, or to mount a visual arts exhibit or live performing arts presentation. In this way,

these works from developing country parties can be distributed in markets of the developed countries. We also need direct funding to support cultural production activities in the developing country parties as contemplated by Article 14.

“2. Developed countries could provide targeted National Treatment. For example, it could extend a benefit which is currently available only to residents, or provided only on a reciprocal basis. An example is audiovisual co-production treaties where a movie or television program produced collaboratively in the two countries enjoys full status as a domestic work. More robust measures are also possible if you look at how TV-5, the French-language network, already provides access for some works from developing countries, and many commercial radio stations in developed countries currently program “world music,” including productions originating from developing countries. This leads to the possibility of qualifying a sound recording or audiovisual production from a developing country party as domestic for purposes of content rules, even if it is not co-produced.

“3. A key element in this equation is the importance of developing Fair Trade principles for imported works. It is essential that the rights of the artists and the producers of those works be treated fairly, including receiving compensation. Fair Trade principles are well understood and supported and the Convention parties should initiate and support their development for cultural goods and services.

We submit that these measures can be implemented in a manner that is not prejudicial to cultural industries in developed countries. As the “world music” phenomenon has shown, there is a commercial potential and with Fair Trade principles in place, there would be a more equitable sharing of revenues than there has been in the past.

“Mr. Chairman, we understand that implementing some of these measures may raise interesting issues, particularly with respect to Most Favoured Nation (MFN) provisions of trade and investment agreements, since some may argue that MFN would obligate states to provide equivalent measures to all other of their trading partners. We are pleased today’s discussion highlights these challenges and provides some possible avenues for addressing them. We also note that the genesis of our Convention lies precisely in the issue of how to protect cultural policies against erosion by the trade and investment agreements. (Canada Periodicals Case) That’s why parties reached agreement on Articles 20 and 21, which establish a mechanism to tackle these complex issues. As the two coordinators reviewed this morning, there may be ways within the existing trade regimes to sustain some of the preferential measures and when parties work together under Article 21 to promote the objectives of the Convention in other international fora, including in Geneva, they should be able to sustain the rest.”

## **2.2 Article 20**

Paragraph 13 of the National Interest Analysis states:

Article 20 sets out the relationship of the Convention to other instruments by stating that it shall neither be subordinate to other agreements (Article 20.1), nor shall it 'be interpreted as modifying rights and obligations of the Parties under any other treaties to which they are parties' (Article 20.2). The Convention states that parties 'shall foster mutual supportiveness between this Convention and the other treaties to which they are parties...' (Article 20.1(a)). Due to this ambiguity in Article 20, Australia proposes to accede to the Convention with a reservation to Article 20 which clarifies that Australia will interpret and apply the Convention in a manner that does not affect its rights and obligations under other treaties and further, that accession to the Convention does not restrict Australia's ability to negotiate future treaty rights and obligations.

The reservation drafted by DFAT and ADG and quoted in paragraph 27 of the NIA states:

"This Convention shall be interpreted and applied in a manner that is consistent with the rights and obligations of Australia under any other treaties to which it is a party, including the Marrakesh Agreement Establishing the World Trade Organization. This Convention shall not prejudice the ability of Australia to freely negotiate rights and obligations in other current or future treaty negotiations."

With respect to the drafters, and with reference to the background to the convention provided above in part 1 of this submission, this reservation effectively negates the carefully balanced and nuanced rights and obligations that were negotiated by other parties to the Convention. The Convention language is already weak and introducing such a declaratory statement essentially says that Australia will do whatever we want in trade talks, including retaining the prospect of trading away our capacity to make our own cultural policies. Article 20 commits parties to the Convention to work together in the WTO and other forums to ensure that the objectives of the Convention are respected. This reservation imposes a hierarchy of agreements in which the rights and obligations of countries under trade agreements will always trump this Convention. In the process the commitments to foster domestic and international cultural diversity through policy which are at the heart of the Convention are eroded to the point of meaninglessness. If the Government cannot agree to work together with other countries to ensure the objectives of the Convention are respected, what is the point of acceding to the Convention at all?

### **3. The International Aspect of the Convention**

While the Convention does reinforce the position of those keen to shore up local cultural industries by explicitly recognising the right of governments to make cultural policies that give protection to their own cultural producers and shield them from the baser effects of market forces, for me the critical parts of the Convention are those which emphasise dialogue, exchange, and collaborative relations between cultural producers, industries and audiences in different

countries. The Convention has the potential not only to protect cultural diversity *within* nations by supporting cultural policy development and information exchange, but also to strengthen and nurture *global* cultural diversity by, to quote the preamble, supporting "the free flow of ideas", and by "constant exchanges and interaction between cultures".

We are fortunate in that our cultural policy mechanisms are already well-developed, and while there remains much work to do domestically particularly in relation to Indigenous peoples and cultural diversity, it seems to me that Australia's focus should be on those aspects and Articles of the Convention that foster international dialogue, "interculturality", cooperation, solidarity, equitable access, openness and balance in cultural exchange. The submissions to the National Interest Analysis in the main concentrate on the ways in which the Convention might assist Australian artists and cultural practitioners to work in Australia and gain international exposure. This is important, but I am (more) interested in the ways in which the Convention can enhance the general Australian population's access to the diversity of cultural expressions from around the world, and particularly from developing countries. Such contact, dialogue and cultural exchange will not only benefit the work of Australian artists and cultural practitioners, they are also important means by which the entire Australian population can learn about and learn from other cultures.

In my view, now more than ever we need to advocate for the positive cultural potential of an international outlook, and to champion the role that cultural production can play not only in telling our own stories, but in connecting with and relating to and thinking about our place in the world. The limited terms in which cultural diversity and cultural production are currently discussed in Australia do not allow for serious consideration of the multiple and complex ways that international cultural interaction can enable new connections with artists and audiences around the world. The narrowness of the debate also prevents us from considering fully what the Convention might mean for Australian cultural diversity, who cultural production speaks to, and how it could spark new conversations about the possibilities of cultural production and consumption in this country.

Many of the Convention's Articles discuss the *international* aspect and intention of cultural diversity, including Article 1 which lists the objectives of the Convention. These include:

- (c) "to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace".
- (d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples
- (e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national *and international* levels
- (i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

I have summarized the other Articles which make reference to the international aspect

of the Convention in an Appendix which follows this submission.

#### **4. Beyond the Convention**

I urge the Australian government to go beyond the step of acceding to the Convention, and to take an active leading role on implementing the Convention by making a significant contribution to the International Fund for Cultural Diversity and committing to allocating a concrete percentage of development assistance to cultural projects in developing countries which are parties to the convention, including projects to strengthen civil society organizations.

While the Intergovernmental Committee has developed some guidelines for the implementation of the International Fund for Cultural Diversity at its meeting in December 2008, challenges remain. The leading one is that, despite the large number of parties to the Convention, few have contributed to the Fund. To date, only eight parties plus the Canadian province of Québec have made contributions and, of the slightly less than USD \$ 1 million contributed, 60% has come from Canada and Québec. Finding significantly more resources for the Fund will be a litmus test for how seriously developed countries take the Convention.

#### **5. Role of Civil Society Organisations**

Unique in UNESCO instruments, Article 11 is as strong a commitment encouraging partnership with civil society as can be found in any international instrument. Article 11 states:

Parties acknowledge the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.

In relation to this Article, on behalf of the INCD I would urge the Government to support civil society organisations having a role in the implementation of the International Fund for Cultural Diversity, including the right to receive funds for civil society projects.

I also propose that the Australian government provides material and other support to civil society organisations like the INCD to permit them to continue to represent the interests of artists, cultural practitioners and audiences whose voices may not otherwise be heard in debates at UNESCO and other international forums when decisions which affect their interests are made.

The development of the Convention was the result of a collaborative campaign, involving governments and civil society organisations, which built understanding and support around the world. This work continues and civil society representatives should be given appropriate opportunities to participate actively in the implementation of the Convention, including the right to attend and make representations to the Intergovernmental Committee. The civil society organisations in the cultural diversity movement can bring to the table the

perspective of artists, cultural producers, publishers, academics, broadcasters, heritage institutions and others who have, in words of Article 11, “a fundamental role ... in protecting and promoting the diversity of cultural expressions.”

Active engagement of civil society representatives is essential for the Articles dealing with education and public awareness (Article 10), building partnerships to promote international cooperation (Article 12.c), cooperating for sustainable development and poverty reduction (Article 14), collaborative arrangements (Article 15) and others. Civil society representatives should have a role in the administration of the International Fund for Cultural Diversity (Article 18) to ensure its effectiveness.

In addition, civil society representatives can provide information and insight to assist parties with respect to the Convention’s principles and to implement the rights and obligations of parties at the national level. This includes measures to protect cultural expressions at risk of extinction (Article 8 and 23.6.d), measures to promote cultural expressions (Article 7), and obligations to share information (Articles 9 and 19). Civil society representatives also have an important role to play in working with Parties to achieve the consultation and coordination anticipated by Article 20.

I thank you for the opportunity to make this submission.

## Appendix A:

Articles of the Convention emphasizing the international aspect of the promotion and protection of the diversity of cultural expressions.

Article 1 lists the objectives of the Convention. These include:

- (c) “to encourage dialogue among cultures with a view to ensuring wider and balanced cultural exchanges in the world in favour of intercultural respect and a culture of peace”.
- (d) to foster interculturality in order to develop cultural interaction in the spirit of building bridges among peoples
- (e) to promote respect for the diversity of cultural expressions and raise awareness of its value at the local, national *and international* levels
- (i) to strengthen international cooperation and solidarity in a spirit of partnership with a view, in particular, to enhancing the capacities of developing countries in order to protect and promote the diversity of cultural expressions.

Article 2, Guiding Principles states:

(4) Principle of international solidarity and cooperation

International cooperation and solidarity should be aimed at enabling countries, especially developing countries, to create and strengthen their means of cultural expression, including their cultural industries, whether nascent or established, at the local, national and international levels.

(7) Principle of equitable access

Equitable access to a rich and diversified range of cultural expressions from all over the world and access of cultures to the means of expressions and dissemination constitute important elements for enhancing cultural diversity and encouraging mutual understanding.

(8) Principle of openness and balance

When States adopt measures to support the diversity of cultural expressions, they should seek to promote, in an appropriate manner, openness to other cultures of the world and to ensure that these measures are geared to the objectives pursued under the present Convention.

Article 7, 1

Parties shall endeavour to create in their territory an environment which encourages individuals and social groups

- (b) to have access to diverse cultural expressions from within their territory as well as from other countries of the world.

Article 12 – Promotion of international cooperation is entirely about dialogue and cultural exchange:

Parties shall endeavour to strengthen their bilateral, regional and international cooperation for the creation of conditions conducive to the promotion of the diversity of cultural expressions, taking particular account of the situations referred to in Articles 8 and 17, notably in order to:

- (a) facilitate dialogue among Parties on cultural policy;



- (b) enhance public sector strategic and management capacities in cultural public sector institutions, through professional and international cultural exchanges and sharing of best practices;
- (c) reinforce partnerships with and among civil society, non-governmental organizations and the private sector in fostering and promoting the diversity of cultural expressions;
- (d) promote the use of new technologies, encourage partnerships to enhance information sharing and cultural understanding, and foster the diversity of cultural expressions;
- (e) encourage the conclusion of co-production and co-distribution agreements.

Article 14 – Cooperation for development similarly places emphasis on the international, promotional aspect of the Convention

Parties shall endeavour to support cooperation for sustainable development and poverty reduction, especially in relation to the specific needs of developing countries, in order to foster the emergence of a dynamic cultural sector by, inter alia, the following means:

- (a) the strengthening of the cultural industries in developing countries through:
  - (i) creating and strengthening cultural production and distribution capacities in developing countries;
  - (ii) facilitating wider access to the global market and international distribution networks for their cultural activities, goods and services;
  - (iii) enabling the emergence of viable local and regional markets;
  - (iv) adopting, where possible, appropriate measures in developed countries with a view to facilitating access to their territory for the cultural activities, goods and services of developing countries;
  - (v) providing support for creative work and facilitating the mobility, to the extent possible, of artists from the developing world;
  - (vi) encouraging appropriate collaboration between developed and developing countries in the areas, inter alia, of music and film;
- (b) capacity-building through the exchange of information, experience and expertise, as well as the training of human resources in developing countries, in the public and private sector relating to, inter alia, strategic and management capacities, policy development and implementation, promotion and distribution of cultural expressions, small-, medium- and micro-enterprise development, the use of technology, and skills development and transfer;
- (c) technology transfer through the introduction of appropriate incentive measures for the transfer of technology and know-how, especially in the areas of cultural industries and enterprises;
- (d) financial support through:
  - (i) the establishment of an International Fund for Cultural Diversity as provided in Article 18;
  - (ii) the provision of official development assistance, as appropriate, including technical assistance, to stimulate and support creativity;
  - (iii) other forms of financial assistance such as low interest loans, grants and other funding mechanisms.

Article 16 – Preferential treatment for developing countries

Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks,

preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.

Article 17 – International cooperation in situations of serious threat to cultural expressions

Parties shall cooperate in providing assistance to each other, and, in particular to developing countries, in situations referred to under Article 8.

Article 18 – International Fund for Cultural Diversity

1. An International Fund for Cultural Diversity, hereinafter referred to as “the Fund”, is hereby established.
2. The Fund shall consist of funds-in-trust established in accordance with the Financial Regulations of UNESCO.
3. The resources of the Fund shall consist of:
  - (a) voluntary contributions made by Parties;
  - (b) funds appropriated for this purpose by the General Conference of UNESCO;
  - (c) contributions, gifts or bequests by other States; organizations and programmes of the United Nations system, other regional or international organizations; and public or private bodies or individuals;
  - (d) any interest due on resources of the Fund;
  - (e) funds raised through collections and receipts from events organized for the benefit of the Fund;
  - (f) any other resources authorized by the Fund’s regulations.
4. The use of resources of the Fund shall be decided by the Intergovernmental Committee on the basis of guidelines determined by the Conference of Parties referred to in Article 22.
5. The Intergovernmental Committee may accept contributions and other forms of assistance for general and specific purposes relating to specific projects, provided that those projects have been approved by it.
6. No political, economic or other conditions that are incompatible with the objectives of this Convention may be attached to contributions made to the Fund.
7. Parties shall endeavour to provide voluntary contributions on a regular basis towards the implementation of this Convention.

Article 19 – Exchange, analysis and dissemination of information

1. Parties agree to exchange information and share expertise concerning data collection and statistics on the diversity of cultural expressions as well as on best practices for its protection and promotion.
2. UNESCO shall facilitate, through the use of existing mechanisms within the Secretariat, the collection, analysis and dissemination of all relevant information, statistics and best practices.