

Multinational corporations and transnational networks : Meeting the regulatory challenges ahead

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ABSTRACT.

The crisis and its aftermath are revealing major economic shifts that are related to the digital revolution. The Internet and digital technologies are potential powerful vectors of development but they are disruptive. The world is changing and we are trying to keep up with it. Until 2008, this was not so evident. Now, the digital age is no longer futuristic, it is transforming the world economy and societies. Looking at cultural industries, opportunities linked to the digital revolution, and the deployment of broadband Internet networks, are numerous. Yet, regulation must play a major role for these opportunities to lead to significant real gains. Threats are real, significant and numerous. Obvious threats are identified with regards to the financing and monetization of online cultural content, the legal and economic uncertainties arising from technological convergence, or trade agreements that are proliferating and affecting cultural industries. Today's world is no longer about regulating national markets and industries nor managing international interdependencies, it is rather about making rules and building institutions that are compatible with the transnational networks and the globalization of markets. This is a challenging policy paradigmatic leap ahead. The theoretical implications of our approach are significant. First, while comparing various regimes is still highly relevant, our findings indicate that a transnational regulatory landscape is emerging through private initiatives, trade agreements, transnational governmental networks. Transnational regulation through webs of regulatory networks or regime complexes is emerging.

Keywords: MNCs, globalization, transformations, regulation, digital age, cultural industries.

A. INTRODUCTION

The main conclusions of our study are:

- 1) The crisis is revealing major economic shifts that are related to the digital revolution. The Internet and digital technologies are potential powerful vectors of development but they are disruptive.
- 2) Looking at cultural industries, opportunities linked to the digital revolution, and the deployment of broadband Internet networks, are numerous. Yet, regulation, for instance through public policies and international cooperation, must play a major role for these opportunities to lead to significant real gains. The potential is enormous but strategies must be implemented to unleash it.
- 3) Threats are real, significant and numerous. Obvious threats are identified with regards to the financing and monetization of online cultural content, the legal and economic uncertainties arising from technological convergence (fiscal, regulatory, emerging business models...), the impacts of trade agreements on industries, the emergence of economic concentration and the risk related to new digital/economic fractures.
- 4) It is timely and urgent to develop a global digital strategy and policies that can create a regulatory mode appropriate to new transnational and digital industries in order to be able to address the threats posed by digital technologies but also capitalizing on the opportunities they offer. Today's world is no longer about regulating national markets and industries nor managing international interdependencies, it is rather about making rules and building institutions that are compatible with the transnational networks and the globalization of markets. This is a challenging policy paradigmatic leap ahead.
- 5) The theoretical implications of our approach are significant. First, while comparing various regimes is still highly relevant, our findings indicate that a transnational regulatory landscape is emerging through private initiatives, trade agreements, transnational governmental networks. Interconnected and interoperable policy and regulatory networking is a growing phenomenon. Transnational regulation through webs of regulatory networks or regime complexes is emerging. Research should pay more attention to this phenomenon and at the regulatory roles played by private actors and institutions.

This draft paper first discusses the transformations linked to globalization and the technological revolution and addresses the question of the role of institutions old and new. It then discusses the digital age and we call the new boundary decisions problems in global cultural industries. The last section deals with some more precise regulatory challenges in a transnational and digital capitalism taking the case of global cultural industries.

B. CONFIGURATIONS AND TRANSFORMATIONS

Globalisation and the technological revolution have considerably changed the instruments and strategies traditionally used by States and international organisations (IO) to govern their activities. New problems call for new forms of governance that increasingly tend towards transnational or global regulatory models to replace the old international regimes, generally centered or typically represented by United Nations-style systems. There is a wide set of organizations, at different levels and of different DNAs, collaborating and competing in a very challenging and fast changing digital capitalist world with fast structural changes occurring. We suggest that the new global regulatory architecture emerging from both public and private sources is testimony to the inability of the old forms of governance to answer today's international regulatory challenges and new power relations in the world economy. The upshot is

a new way of thinking about institutional trajectories (Krahmann, 2003), unfinished and « in the making » that represents different outcomes ultimately (Picciotto, 2011). We call this a global governance which is characterized by the coexistence of a state-centered system with a system of powerful « multi-centered » transnational actors that are « free of sovereignty ». Table below distinguishes this new configuration of institutional trajectories with two previous ones that we have discussed in an earlier publication (Rioux, 2014)

The resulting rules and systems form a working whole to be analyzed in terms of conflicting, converging, overlapping relationships, even if not completely consistent or homogeneous. This densely constituted whole reflects also a field of contested system of rules that allows for an understanding of the different interests and projects aiming at creating trajectories (dominant or alternative, as well and mediated). In this global governance configuration, we see two "worlds" interacting and competing and sometime converging. In this situation three questions arise: Can old forms of regulation adjust (the reform way)? Will new regulatory models replace old ones (the creative destruction way)? Can networks bridge the gap between regulatory sites and the new challenges they face (the interconnection way)? It is perhaps early to answer these questions but traditional regulatory and governance sites (national and international organizations) face a new challenge, that of surviving and adjusting to a world transformed by globalization and technological changes.

MERCANTILISM, LIBERAL INTERNATIONALISM AND GLOBAL GOVERNANCE

MERCANTILISM (NATIONALISM)	LIBERAL (INTERNATIONALISM)	GLOBAL GOVERNANCE (TRANSNATIONALISM?)
<p>Monarch, divine authority</p> <p>Secret diplomacy, alliances, balance of power</p> <p>Control of politics over economics</p> <p>Nationalism, Imperialist strategy, empires and preferential systems</p>	<p>Democratic principles, sovereignty of peoples - Centrality of State actors</p> <p>International organizations, rules of law, multilateralism, International regimes</p> <p>Separation of economic and political spheres Trade between national firms Public prevails over private, Consensus for orderly markets</p> <p>Internationalism and interdependence</p> <p>- Hierarchical decisions; Quest for coherence between institutions and regulation</p>	<p>- Plurality of actors</p> <p>- Many sites of governance</p> <p>Multiplication and decentralization of sources of authority, networks</p> <p>- Private prevails over public</p> <p>Consensus for globalized competition; Trade and investments across global value chain</p> <p>Transnationalism/globalism; integration and globalization</p> <p>- Competition between institutions and regulations</p> <p>- <i>Soft power / soft rules</i></p> <p>- A la carte: Multilateralism, regionalism and bilateralism</p> <p>- Partnership template</p>

No rules	<ul style="list-style-type: none"> - « Hard » law, binding rules - Multilateralism - Contractual template 	
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We situate role of traditional regulatory agencies in a fordist type of micro/macro economic organization. Now, we are in the transnational networking era of Apple and other digital giants and face a complex world of institutional trajectories of global governance and in a context where nations and markets are difficult to regulate. Organizations today must respond to a significant change and an important challenge: managing processes of globalization and integration on a large scale in a context of institutional crisis that has developed since the 1980s (from Senarcens, 1988). They must go beyond interdependencies and internationalization and create global rules and engage many diverse actors (beyond Tripartism). The concepts of interdependence and internationalization refer to two distinct types of process (mutual influence between two or more national economies and increasing openness of one or more national economies to the outside) but, in both cases, the world is divided along national frontiers. The concepts of integration and globalization have stronger meaning because they now refer to the deepening of global economic space due to new industrial revolutions (Murphy, 1994).

We are entering a global configuration of transnational networks and actors must competitively and securely integrate transnational networks. Multinational corporations (MNCs) have become the most powerful drivers of integration and structural changes in today's global economy as they now dominate the market and economic flows. In a sense, they can be considered one of the greatest innovations of the 20th century in terms of organizational and institutional pillars of economic life. MNCs have not completely subordinated States and markets in shaping the global economy, but they have transformed the world and given rise to a new set of economic, political, social, cultural and legal problems. Yet, quite ironically, MNCs are now facing a *recombination* that tends to subordinate them to transnational networks of corporate economic power. The thorny issue of regulating the global economy is, in this context, even more complex as regulatory systems of global governance must be built to fit those transnational networks superseding States and firms. Globalization has, during the last decades, transformed international political economy in ways that now require new theoretical paradigms and new models of global regulation that are adapted to a global economy made of networks superseding States and MNCs. The end of the 19th century brought the industrial revolution and the emergence of large economic units and new business models. Thereafter, following concentration waves and economic crises, regulatory frameworks appeared nationally and internationally. Nowadays, with a new industrial revolution underway, global regulatory capacity is required but it is too early to tell what form it will take generally speaking. We consider this time, a time of institutional transformation inherent to an emerging but fast developing global digital capitalism.

We are entering an era of deep integration that goes beyond increasing the flow between national spaces. Trade routes have become « transnational », and increasingly « electronic ». The best illustrations of the new MNCs are Google, Apple, Facebook and all the new MNCs that are linked to a transnational networked economy and a networked society. This trajectory of

capitalism is based on an organizational model that emphasizes the networking of economic units, each possessing a degree of independent decision-making. Knowledge is a core determinant of this reconfiguration. Information and communications technology (ICT) plays a significant role in the emergence of these new forms of economic integration and a new trajectory of digital capitalism characterized by the increased importance of cooperation between companies.

Thus appears the *networked firm* or *virtual firm*, which significantly broadens the horizons of research as it is no longer enough to consider the MNC as a space defined by the boundaries of a firm; one has to go beyond – to capture the wide variety of horizontal and vertical linkages forging such transnational corporate networks, and to identify their value chains. Focusing on changes in the organization of production and on the financialization of the global economy, authors speak of de-territorialization (Andreff, 1996). The links between companies and their home markets do not disappear completely but are modified by the creation of global systems of production and global value chains. Gereffi & al. (2005) analyze global value chains and argue that technological innovations have enabled the creation of transnational networks, which combine, paradoxically, concentration and decentralization.

Some refer to global production networks combining the dispersion of the value chain throughout the enterprise and across national borders, with a parallel process of integration of levels of participants in the network. Networks now surpass MNCs, and appear as the dominant form of emerging industrial re-organization, arising from the combined effects of FDI policies for promotion and attraction, generalization of the principle of competition, and, foremost, ICT developments. Corporate power now lies in the relative ability of MNCs to control/influence networks and their components. It is expressed less in terms of domination, and more in the creation of sustainable relationships throughout the transnational network involving the MNCs and its partners. Conversely, small and medium enterprises may also have strategic influence in transnational production networks.

To some extent, one can apply the same analysis to States. In global production networks or value chains, firms and states are positioning themselves and their relative power, or performance, is increasingly determined by their capacity to adjust to new emerging structures of transnational networks. Finally, these new transnational corporate networks overlap different MNCs, small firms, national territorial spaces, thereby redefining economic « borders » and policy issues/frameworks. States also become « competitive », but with a view to fostering a competitive integration of the national economic space (as an attractive area or an incubator for competitive firms) in transnational economic networks (Cerny, 1990, 1997; Stopford and Strange, 1991)). There are risks of a neo-mercantilist rivalry where States and MNCs can play on two levels, sometimes on that of rivalry-competition, sometimes on that of collusion-cooperation, and often both at the same time with hybrid strategies of *coopetition* (Nalebuff & Brandenburger, 1996).

The historical transformations of capitalism, and the concentration process that accompanies it, imply that the firm is understood as an “organization of private planning” and as an actor whose strategies have a structural power over economic trajectories and regulatory activities (Moran, 2009). Institutions aiming to regulate the global economic system are currently inadequate to the realities of globalization. In general, they are also biased, favoring the interests of the most powerful actors. New ideas may sometimes provide answers, and may lead to new trajectories. Managing networks linking MNCs to national economies, markets and people might be the greatest challenge while providing the greatest pillar for the future governance of complex systems. What needs to be stressed is that globalization and technological change have

highlighted the weaknesses in national and international regulatory frameworks while it is causing the emergence of new institutional and normative frameworks, much more elaborate than the previous ones since they deal with investment, competition, services, public procurement and intellectual property; all areas that played very little part in international negotiations in the past (Pitelis, 2005).

This is one important dimension of deep integration since it is not simply a matter of eliminating barriers and obstacles, but rather of creating rules and standards – even policies – that, while supporting economic globalization, will oversee the new relationships and seek new balances, which, in times of crisis, are becoming harder to achieve. Firms, States and civil society will have to compose new types of cooperation and governance regulatory schemes in this world of transnational networks. Globalization implies new institutional paths. If we are still far from a stable and clearly defined system, one thing is certain: regulation is no longer national or international! The transformations are underway, though it is still too early to foresee the institutional paths that will be required. The literature devoted to these transformations is very diverse, but we will present three branches of it, concerned with: 1) the displacement of authority to the private sector or the blurring of the separation between public and private spheres², 2) the impact of globalization on the roles of national and international organizations (Levi-Faur, 2002, Rioux 2004), and, 3) the competition between organizations and diverging institutional trajectories, since, as Marie-Laure Djelic and Kerstin Sahlin-Anderson (2006), noted in a transnational world, there is not an an the ORDER but a proliferationa nd intensification of regulation activities and governance sites.

c. BOUNDARY DECISION PROBLEMS IN THE DIGITAL AGE -THE TELECOMMUNICATIONS–TRADE–CULTURE NEXUS

For some, the digital era marks the end of protectionism and the victory of globalization. For others, it is an opportunity to rethink policies and regulations to adapt as things have changed dramatically. We have identified five Ds as main challenges inherent to the digital migration. Each of these challenges requires responses from actors and organizations are still ambivalent.

1. *Dematerialization* - It is no longer easy to distinguish cultural goods from cultural services in the digital era, and that creates uncertainty on the political and legal regulatory fronts in all countries and international organizations where the classification of goods and services plays an important role. Consumers want to pay less for owning the physical cultural “product”, rather preferring to access content via the Internet. It is the culture of “free online content”. Another challenge is also how to deal with online piracy.
2. *Disintermediation* - Consumers have the ability to share online content, which is sometimes good but it also breaks the link between the creator and the value of his creation. This leads to the weakening of traditional intermediaries between producers and consumers in favor of a direct relationship between them, as in the case of merchants, financial exchanges or non-market exchanges of peer to peer. This has advantages of course but the challenge is to deal with regulatory asymmetries between traditional businesses and new intermediaries, opening a new front in concentration by a process of re-intermediation.

² Some authors, in particular Cutler, Haufler and Porter (1999), analyze the « privatization » of governance related to the rise of private enterprises, their ability to exercise market power and the forms of cooperation they adopt between them.

3. *Decomartmentalization* refers to the process of convergence. With broadband Internet, technological convergence destroys old sectoral boundaries (media, telecommunications and computer). The challenge is to respond to regulatory asymmetry problems. Some players rally around the importance of a free/open/neutral Internet and seek interventions in favor of Net Neutrality. Yet, others think that new Internet content providers should contribute to the financing of networks since they generate a high bandwidth utilization of these networks.
4. *Delinearisation* is characterized by the ability to access content without having to follow a schedule of source media. The challenge is to find ways to adapt to a world dictated by the preferences of users. This is difficult in a world of consumer mobility and increased foreign supply. The threat is related to the difficulty to find new ways of funding the creation of content-rich television and media services and to ensure the visibility of local content.
5. *Deterritorialization* is the most important challenge. The advantages of large transnational companies lay in their ability to invest in platforms and services of quality, in their experience and global branding strategies, as well as in their ability to avoid most of the constraints and legal obligations of “territorialized” national firms. Thus, national policies lack effectiveness in many areas such as regulation, taxation, management of copyright, etc.

The threat resulting from the 5D is obvious: the loss, for national States, of regulatory benchmarks and instruments of public policy for the cultural industries. The world in which businesses operate is no longer the same as the national regulatory space, and this calls for the “rethinking” of national policies and regulations. Re-articulation of the links between the two (old and new) must be made if states and IO want to adopt effective instruments of public policy in the digital era. But how to adjust policy instruments on national territories in order to create room for maneuver without favoring fragmentation of the Internet? The threat becomes twofold: to cut ourselves from the world by erecting barriers that turn against us, and be open to cross-border flows without taking adequate measures to ensure the presence and visibility of diverse cultural products.

Can we measure the impact of digital technologies and of the Internet on the economy? In a recent study we on global cultural industries (still to be published) we have realized that we know little on the cross-border flows of cultural content related to the emergence of networks that form new trade routes based on electronic means. It is not yet possible to understand the nature of the linkages between trade, Internet/digital technologies and the diversity of cultural expressions. This would require to measure: 1) cross-border flows, in other words, what crosses borders (what comes in, but also what goes out); 2) the local/foreign content share ratio; and 3) the local presence on world markets. We also note that even if we were able to know more on these three elements, we must also recognize the difficulty to define local content in an evolutionary and increasingly transnational context. Moreover, internationally, there is no consensus on product classification and the digital age has made it increasingly difficult to negotiate. These classifications are very important for managing the information flow and to draw the lines between different types of markets, which are at the basis of traditional modes of regulation. Thus we concluded that new conceptual, statistical and measuring approaches were necessary to be able to assess explore the reproduction of the economic organization of global cultural industries.

Although the impact of digital technologies is not precisely measurable, the digital transformations are sufficiently clear. Changes brought about by digital technologies, especially the Internet, coincide with a process of creative destruction that affects all sectors of the cultural industries by bringing competition through innovation, implying that the new combinations are replacing old ones. All sectors of the economy are undergoing a digital migration, including the cultural industries. Overall, according to PwC (Global Data Insights, Global Entertainment Media Outlook, 2014), the media industry in 2018 will still be dominated by non-digital formats, and by the United States as leader. However, China, as well as revenues from the digital sectors, will have made an important leap forward. Revenue from advertising and Internet service providers are progressing, and there is an underlying problem of monetization of cultural products. Consumers want more content, but they increasingly expect to access content for free or by subscription, as revenues are rapidly increasing in securing content access 24/7. Artists and producers are adversely affected by the digital migration as traditional funding mechanisms are challenged.

Hence, in such a dramatically transformed context, regulatory tools developed by the cultural industries in the 20th century will not be those that creators and producers will use in the 21st century. We observe a devaluation of cultural products that causes a significant decline in revenues for traditional actors in the creative and cultural industries (creators, producers, distributors). New consumption patterns transfer the monetization of cultural products to companies or individuals who have little or no part in their production.

Measures, for example those adopted by States to fight against piracy, have not yielded the expected results and consumer practices seem to ignore enforcement provisions. The regime of intellectual property (IP) protection must adapt to new patterns of consumption and a redefinition of right-holders. The fragmentation of IP rights management along national frontiers does not fit the need for innovation in an increasingly transnational market. Recognizing the problems associated with this situation, the European Union adopted, in 2014, a Guideline on the collective management of copyrights which aims to facilitate the granting of multi-territorial licensing. New digital music services are developing worldwide and getting a promising success for legal online offer. The Pro-Music website (www.pro-music.org) identified over 450 distinct services operating in more than 100 territories. Deezer.com, a music-on-demand online service, is probably the most global platform so far.

Most states are indeed cautious in the regulation of the digital universe. Yet, they need to ensure the respect for IP rights in the digital world and establish a level playing field between traditional and new players. Modes of collecting IP rights must adapt but our study finds that the transnational nature of the online distribution of cultural contents complicates policy-making. States are very active signing in trade agreements integrating intellectual property rights dispositions and new chapters on electronic commerce. In this context, it will be difficult to ensure that public policies and cultural measures are not considered barriers in trade agreements but rather constituent and affirmative elements of a context richer in trade flows and in cultural diversity? This question is at the heart of current policy debates in many countries.

The digital age also feeds the legal uncertainty concerning the articulation of trade and cultural issues. Even the innovative approach adopted by Canada and the EU in CETA is perhaps not so effective because of the different approaches adopted and the controversial classification of products, goods and services. The new services are, in most trade agreements that include such provisions, considered communications services or digital products. Furthermore, several countries are opting for the liberalization of cultural goods and services.

Because of the uncertainties arising from the lack of clarity and consensus at the international level, this important question may in the end be decided in trade tribunals in which trade experts do not give proper weight to cultural and new digital and more complex trade issues. More fundamentally, our study suggests the pertinence of adopting new approaches to legitimize cultural public policies in trade agreements. It is possible to distinguish between regulatory measures, which have intrinsic protectionist aims, and those designed to address legitimate concerns such as the promotion of cultural diversity, for example.

On the other hand, governance debates and negotiations ignore links with cultural issues, and vice versa. Important debates on Internet governance may be structural and discursively determinant for the diversity of cultural expressions. Internet has become a vehicle for re-territorialization and re-regulation and these new modes of governance must align and articulate with national policies. International regimes based on international cooperation between sovereign states are now forced to either compete or collaborate with a diverse set of private actors and civil society organizations that are very engaged in the emerging Internet governance and regulatory schemes.

Old or new, institutions face what we called two main types of boundary problems (Cox and Jacobson 1973): the first one relates to the transnationalization process that makes it difficult to separate national from international issues, thus creating pressures on states and international organizations; the second one is related to the convergence of sectors and domains as traditionally separate issue-areas are increasingly interacting, as illustrated by the case of the trade–culture–telecommunications nexus. FRONTIERS between national regulation schemes (which undermines the sovereignty principle and interdependence relationships) and functional regulation schemes (which undermines the separation between issue domains such as trade, telecommunication regulation, and culture as the Internet brings about new boundary problems). In the digital age, boundary decision problems are increasing in number and significance, and they involve not only the blurring of national frontiers but also the ones separating the governance and regulation of issue-areas and sectors.

Table 2: Constellations of Regulatory Instruments in Global ICT/IS Governance			
	<i>M-S Constellation (Market-sovereignty)</i>	<i>G-S Constellation (Global-sovereignty)</i>	<i>G-M Constellation (Global-market)</i>
Instruments Examples	ITU (the new), WTO and bilateral, regional trade agreements, WIPO...	ITU (the old) EU Telecommunications regulations	ICANN, etc...
Objectives	Market autonomy, sovereignty of states <i>Loss: Difficult to set rules or institutions at the global level above markets or states</i>	Global rules or institutions above markets or states, sovereignty of states <i>Loss: Autonomy of markets and liberty of private actors</i>	Autonomy of markets, Global rules or institutions above markets or states, <i>Loss: Sovereignty of states</i>
Enforcement	Based on the hypothesis of efficiency of national laws and international cooperation Surveillance and monitoring of practices and conduct Requires cooperation of private actors	Hierarchical system based on the enforcement of supranational law by supranational institutions	Self-regulation, private systems of rules, Cooperation or negotiation involving private actors and multiple stakeholders
Limits	Alliance of interests of states and firms driving the system towards more market autonomy (M)	States must have a common approach towards market regulation	Variations of codes of conduct, problems of monitoring and enforcement, contestable legitimacy and efficiency

The cultural and telecommunications sectors were traditionally kept separate, in part because culture was considered as a product and telecommunications as services. New information and communication technologies, however, blur the distinction between what is considered a product or a service in the digital era through processes of de-territorialization (content is not territorially based) and dematerialization (content is virtual). This has a tremendous impact on cultural industries on a technological basis. A 2012 OECD report reveals that “the switch to digital technologies has forced businesses in a growing list of sectors to rethink their business models and adapt to survive” (OECD 2012, 15). This is especially true for cultural industries since digital content is the most important driver of Internet adoption. Markets are, as a result, becoming more integrated. The repercussions of such a shift on the new regulatory trajectories emerging in the cultural and telecommunications industries are still not fully understood. We do, however, observe that this interconnection leads to boundary problems at the regulatory level: integrated markets bring in new players to the table, which calls for a governance structure based on coordinated networks of multistakeholders that include both private and public actors.

At the regulatory level, the convergence operating between telecommunication and cultural services, especially and mostly in the audiovisual sectors, leads to potential conflicts between regulatory regimes traditionally kept separate. The conceptual shift from “culture” being considered a product to “culture” as a service, first introduced at the WTO under the General Agreement on Trade in Services (GATS), is now increasingly found in regional trade agreements (RTA), which tend toward a deeper integration than what was negotiated two decades ago under the GATS. This means that countries are acquiescing to deeper liberalization commitments for both their cultural and telecommunication sectors than what they had agreed to back in the 1990s with the GATS. What’s more, the existing multilateral agreements on telecommunications—the GATS’ Annex on Telecommunication and the Agreements on Basic Telecommunication Services—do not cover important aspects of today’s telecommunication realities such as the convergence in communications services or broadband networks. Their reliance on outdated classification schemes also contributes to maintaining a conceptual blur between what is considered a telecommunication versus audiovisual service (Luff 2004). Picking up these conceptual loose ends left behind by the “old” multilateral regulatory models are the “new”

regional trade agreements, from which different regulatory models in the telecommunication and audiovisual sectors are taking shape.

A service, in GATS 1993, is defined loosely as “any service in any sector except services supplied in the exercise of governmental authority” (Article 1, paragraph 3b), an imprecise definition mirroring the lack of consensus among members on what exactly constitutes a service. When we think of a service, we think of something “intangible,” “invisible,” and normally the distinction between a product and a service is quite clear. In the digital era, this distinction is eroding. Digital products are increasingly replacing physical products. Cultural content such as sound recordings or movies, which we purchased as products in a physical format (CDs or DVDs), can now be accessed via the Internet by downloading or streaming the content onto a device without having to purchase a physical product. As a result, ICTs are rapidly changing the film and television business models; paid cable and suppliers are now giving way to video-on-demand services offered by a multitude of access providers, with the consequence that the lines between telecommunication and audiovisual services are increasingly blurred. New technologies therefore lead to a fuzzy distinction between what is considered “content” and what is the “medium” on which the content is supported, increasingly leading to a classification of digital products as communication services (Weber and Burri 2012, 4).

The implications are important. Trading in products in the past aimed at reducing cross-border tariffs on imported goods and cutting subsidies on exported merchandise. Trade in the digital era now involves the supply of cross-border services, a sector that today produces 70% of world’s GDP, generates 80% of private-sector jobs in the United-States, and grows faster than merchandise exports (Coalition of Services Industries 2014). With the increase in trade in services comes an increase in trade agreements dealing with services. Just in the past 10 years, among the 135 RTAs notified at the WTO, a little over two-thirds (67%) cover both goods and services, compared to virtually none before 1994.

What exactly do recent RTAs cover? The structure of the agreements differs from one state to another. For example, the US model has separate chapters for cross-border trade in services, telecommunication services, and e-commerce, while the European Union (EU) tends to place these under a general “Trade in Services” heading, with telecommunications services and e-commerce considered as subsections. Also, while the United States adopts a “negative list approach,” meaning that all sectors are covered by the agreement except for reservations listed in annexes, the EU model is based on the “positive list approach,” in that only those sectors identified in commitment schedules are bound by the agreement. In agreements based on the negative-list approach, “classification is arguably less of a threshold issue since all sectors are covered in principle, and the focus is more on the governmental policies that are or could constitute market access barriers since all sectors are covered in principle” (Weber and Burri 2012, 91). With RTAs now covering both goods and services, the approaches tend to intertwine, creating confusion and increasing regulatory complexity. The repercussions of such regulatory complexity are not yet clear and the fear, especially in the case of cultural industries, is that it can lead to deeper liberalization commitments for services than initially intended.

Traditionally treated as separate industries falling under different regulatory regimes, the telecommunications and audiovisual sectors are increasingly converging into “one single communications sectors” (Geradin and Luff 2004, 5). Audiovisual services are the area of cultural industries that seem most affected by the convergence with telecommunication services, both on a technological and regulatory basis. In recent RTAs, and especially those signed by the United States, cultural industries are mentioned only in the chapters pertaining to services and further divided into two subcategories: (1) Recreational, Cultural and Sporting Services, which include all cultural activities other than the audiovisual sector, for example theater, live performances, libraries, museums, and print media; and (2) Audiovisual services, which include films, radio, television, and sound recordings.

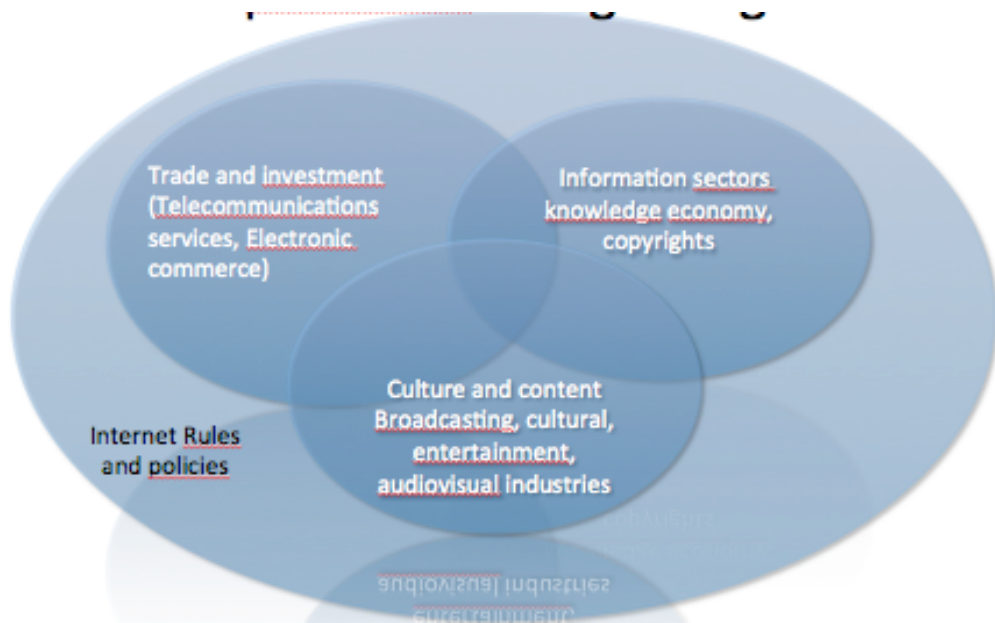
This classification scheme essentially replicates the one proposed at the WTO in 1991 (known as the W/120 classification of services) and used in the GATS. For the first time, cultural industries other than films were included as a sector to be covered by commitments under the WTO. Only films had been mentioned in the GATT (1947), at Article 4 on “Special Provisions Relating to Cinematograph Films,” after Europe, and in particular France, feared losing market shares for local films at the expense of the booming American postwar movie industry. Article 4 stipulated the conditions under which parties could maintain quotas on local content projections in movie theaters. In this case, films were considered products, merchandise for which quantitative restrictive measures seemed necessary, and were applied, to protect an industry. It is only in the 1990s that the WTO added audiovisual and cultural services in its classification scheme.

In table 1.3, we see that cultural industries, whether audiovisual or not, are considered services subject to commitments under the GATS and more recent regional trade agreements. We observe a “sectoral interconnection” operating between telecommunication and audiovisual services: while the latter is separated from other cultural services, it is coupled with telecommunication services under the header “Communication Services.” In comparison, in the classification scheme of the North American Free Trade Agreement (NAFTA), which we consider as an “old” model, audiovisual products and services were considered cultural industries. This is no longer the case in most of the recent US regional trade agreements. For example, in the lists of reserves annexed to the US–Colombia trade agreement of 2012, radio communication services fell under audiovisual services, not cultural services. In the US–Panama agreement signed the same year, the United States classified both cable television and “direct broadcasting satellite (DHS) television services and digital audio services” under “Communication services” (table 3.2).

At the regulatory level, the existing agreements on telecommunications services signed in the 1990s do not cover important aspects of today’s telecommunication realities such as the convergence in communications services or broadband networks. The GATS’ annex on telecommunications applies a distinction between the means to transport telecommunication services and value-added services. We find a similar distinction between medium and content in the NAFTA, also signed in 1994. NAFTA defines, in Article 1310, what “enhanced or value-added services” are as: “those telecommunications services employing computer processing applications that: (a) act on the format, content, code, protocol or similar aspects of a customer’s transmitted information; (b) provide a customer with additional, different or restructured information; or (c) involve customer interaction with stored information.” However, the separation between basic and value-added telecommunications services has mostly disappeared from recent RTAs. In the US–Colombia agreement, for example, there is simply no mention of value-added services, neither in the chapter on telecommunications services nor in the lists of reserves. What we do find is a new kind of service labeled “interactive audio and video services,” which falls under audiovisual services but without any mention of the value-added aspect. This begs the question as to whether content and medium have so converged that trading partners no longer feel the need to distinguish them. As Cameron notes: “. . . the lines between different communications technologies are blurring and it is technologically feasible to use the same network—whether it is a telephone network, a cable television network, a wireless network, or a satellite network—for the provision of either telecommunications or audio-visual services” (Cameron 2004, 31).

Looking at the types of provisions pertaining to cultural and telecommunication services found in recent regional trade agreements allows us to illustrate the changes operating in the regulatory schemes of two sectors that are increasingly interconnecting as a result of globalization and the digital revolution. In the following section, we discuss how the new global governance models regulating cultural and telecommunications industries are increasingly based on models of (1) market integration instead of market regulation, due to the eroding distinction between what is considered a product and a service and (2) network coordination instead of interstate

cooperation, as a result of the convergence operating between the traditional cultural and telecommunication regulatory regimes.



D. (MISSING) SECTION 3 DIGITAL MNCS AND REGULATION AT NATIONAL LEVEL (3 PAGES)

- Fiscal issues
- Oligopolistic rivalry and Competition issues
- Cultural – local content issues
- Digital trade issues and economic opportunities and strategies

E. CONCLUSION

New technologies, and specifically the Internet, have transformed a world dominated by state actors mainly involved in trade in goods, market regulation, and international cooperation to one governed by multiple state and nonstate actors, market integration, and network coordination. Trade in services regulation now means developing rules to regulate the commercial, political, and social relations between a multitude of state and non-state actors.

The new regulatory models taking shape are not only becoming increasingly complex, but they are also converging and overlapping: they are integrating. These technological and regulatory transformations lead to a process of institutional “creative destruction,” which breeds uncertainty

about states' role in the new global governance schemes as well as their ability to adopt or maintain national regulatory measures. In the case of the cultural and telecommunications sectors, there is fear of losing regulatory power, increasing cultural homogenization, and erosion of cultural diversity, not to mention big economic losses for artists as well as cultural industry workers.

Globalization and new technologies contribute to increasing interactions between national and international regulatory schemes. We argue that this leads to boundary decisions problems both at a regulatory (between actors) and functional (between issue-areas) levels. We are observing a process of "creative destruction" of "old" models of governance to "new" institutional trajectories between traditionally separate regulatory regimes, but no policies yet in place to back them. The result is that sites of governance are at times conflicting (trade and culture for instance), at times collaborating (telecommunications and trade), but in any case, overlapping. The institutional complexity resulting from the converging of regulatory schemes and issue-areas, however, breeds uncertainty and policy incoherence. The question is how actors, old and new, can advance their interests within the emerging institutional trajectories, and how they can shape the new models of governance in the face of the major challenges that lay ahead as these new models emerge from the confrontation between actors resistant to change (Schemeil 2013) and policymakers facing new power struggles (Rioux 2014).

We have argued that the new regulatory models emerging from this confrontation are increasingly based on two phenomena. First, we observe a shift from international market regulation of national systems to market integration, as demonstrated by the convergence of the cultural and telecommunications sectors, now intrinsically linked under services liberalization schemes that are driven by deep integration and the standardization of rules than tariff reduction. Second, network coordination, instead of interstate cooperation, since the regulation of cultural industries, now involves new actors who are telecommunication giants and Internet access providers, putting pressure on cultural policies, telecommunications regulation, and trade regimes, which are elaborated and managed in silos.

There are still lots of unknowns about how new institutional trajectories are taking shape in an increasingly intertwined and technologically advanced world, but seeking to understand the changes brought on by globalization and new technologies allow us to think how new regulatory regimes are being transformed and the impact of such transformations on national and international policymaking and regulatory schemes.

The biggest threat comes from the monopolization of Internet and cultural industries in the digital age. Internet has become a political and strategic space clearly taken over by the United States, with US companies in the digital economy playing a privileged role in its governance. Internet is a complex and structured space mastered by a large community with differentiated powers and discussions on how to regulate it is now open. Opportunities are there for that the digital revolution brings about better regulation, but threats must not be overlooked and the most important one is that there are no certainty on how to solve new boundary decisions problems.

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