

u^b
UNIVERSITÄT
BERN

nccr trade regulation
swiss national centre of competence in research

international law of contemporary media
session 10 (interactive):
regulation for cultural diversity?
pros and cons

mira burri, dr.iur.,
fall term 2011, 17 may 2011

© 2011 NCCR Trade Regulation, University of Bern, Bern, Switzerland. All rights reserved. www.nccr-trade.ch

nccr trade regulation
swiss national centre of competence in research

moot court: the rules of the game

- **15 minutes** per group for the presentation of the arguments
- **5 minutes** per group for counter-arguments (i.e. arguments that “destroy” the arguments of the opposing party)
- **2 minutes** for in-group discussion and tactic-building
- **5 minutes** for rebutting these counter-arguments
- the honourable jury decides on the case
- a brief follow-up discussion.

© 2011 NCCR Trade Regulation, University of Bern, Bern, Switzerland. All rights reserved. www.nccr-trade.ch

nccr trade regulation
swiss national centre of competence in research

structuring the debate

- **2 questions asked: should and can** we put in place regulation for the protection and promotion of cultural diversity?
- in particular **having in mind the changes in contemporary media**, the current state of affairs in media markets and their now inherently fluid nature (as digital technologies develop rapidly and become integrated in our everyday lives)
- having also in mind **the politics of cultural diversity** (UNESCO; strong national protectionist voices).

© 2011 NCCR Trade Regulation, University of Bern, Bern, Switzerland. All rights reserved. www.nccr-trade.ch

globalisation and its effects

- complex; not to be neatly classified as negative or positive
- different statistics used for different political purposes; the rhetoric may have negative effects in itself as it may obscure realities
- developed states at the forefront of cultural products exports; at the same time (excl. the US) at the forefront of the pro-cultural diversity 'battle'
- marginalisation of local voices
- but also numerous expressive opportunities for those.

paradoxes

- most fundamentally: cultural diversity as a concept problematic from the viewpoint of the nation state; still it is mostly for the nation state to act
- modern societies become more heterogenous in themselves and homogenous between them
- others: e.g. development of local film conglomerates (e.g. Bollywood) can actually restrict the diversity of productions at local level (while positively contributing to diversity at the global level)

digital media effects

- as there is no scarcity, rationales for creating reserved self-spaces for domestic content and barriers to entry to foreign cultural content become redundant; if such measures maintained, they do **not** work(!)
- new empowerment and engagement of users/creators
- need to readjust the tools of media/cultural policies (present toolboxes mostly inadequate: 2 examples – EC AVMS Directive and French tax rebate for video game production)
- new challenges.

new challenges

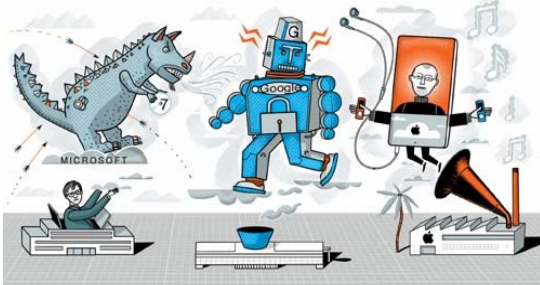
nccr trade regulation
netherlands national centre of competence in research

- more and various content; multiple platforms as a problem: **'false diversity'**: no actual diversity in consumption; quality?
- catering for those 'left behind'
 - minorities / language groups
 - **gap between digital haves and have-nots** (intergenerational/inter-class/developed vs. developing societies)
 - **media literacy**
- **fragmentation of audiences**: dangers for social cohesion; public debate; identity building and continuity
- **access** (multifaceted notion).

new challenges

nccr trade regulation
netherlands national centre of competence in research

- consolidation of companies: precious few control content and access
- (e.g. top global brands; microsoft buys skype)
- what if 'do not evil' does not work?
- expansion of copyright and strengthening the enforcement mechanisms: the user becomes from reader 'pirate'
- chilling creativity
- old toolbox vs. new toolbox: if culture quotas do not work, what does?



- lack of global competition rules that can address media concentration, horizontal and vertical abuses of dominance
- expansion of intellectual property that may make cultural content inaccessible or accessible only under certain terms and conditions.

copyright's expansion

- expansion in scope
- expansion in time
- expansion in enforcement: trade sanctions; TRIPS/TRIPS+ and technological protection measures)
- narrowing of fair use
- previously unknown control over the use of a work (e.g. adobe ebook reader: *Alice's Adventures in Wonderland* permissions: 'no text selections can be copied from this book to the clipboard' / 'no printing is permitted on this book' / 'this book cannot be lent or given to someone else' / 'this book cannot be read aloud'.

10

regulation in real- and in cyber-space

- 4 modalities of regulation (Lessig):
- law
- social norms
- markets
- architecture (architecture in cyberspace is not given; code can be modified (e.g. free/against payment; passwords/no passwords; monitoring/no monitoring; open access/ restricted access)
- need to be vigilant and realise the discrete as well as the overall effects of regulation (incl. its unintended consequences)
- not all challenges fall within the domain media law.

11
