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TELECOMMUNICATIONS AND CULTURE: TRANSBORDER FREEDOM OF INFORMATION OR CULTURAL IDENTITY?

*Kenneth C.C. Stein**

I am pleased to see so many of you here. I am competing with Diana Krall tonight, a great Canadian jazz singer and pianist. She has probably 25,000 to 28,000 people attending her concert downtown. This is not fair. At least she is cultural, so Cleveland is getting culture from a Canadian point of view.

I wanted to talk about a new strategy to deal with culture and trade. This is not a strategy designed to end disputes. That would be boring. There are too many Irish lawyers in Canada to allow us to end disputes. What I would like to talk about is an effort that has been underway by our Sectoral Advisory Group on International Trade (SAGIT), the special advisory group whose mission it is to try to develop a better framework dealing with the cultural and trade issues.¹

In describing this approach, I am reminded of a Canadian Senator who was the bane of all speechwriters. He knew exactly what he wanted to say, but he could never find a speechwriter good enough to put his thoughts into words. One day he got a speech. He hated it and tore it up. Then, he got another speechwriter, and at the last minute, after a great amount of anxiety, and hoping against hope that it would come out all right, he started his speech. It went something like this: "I am here tonight to show to all of you how we can solve all of the problems of the nation. I'm here to show you how we can end poverty in our land; how we can bring peace and security to all of mankind. In short, ladies and gentlemen, I am here to show you how we can finally reach the promised land." The Senator is thinking, hey, this is pretty good. I might hire this guy. Then, he turns the page, and it is blank, except for one line. It said, "You're on your own, sucker, wing it."

So Dan and I are going to wing it. We are going to talk about a new strategy that we tried to develop, and I have to admit that it needs a lot of flesh on the bones to make it into something meaningful. This reflects a great deal of effort on the part of a very diverse set of people that make up the

* Stein bio.

¹ SAGIT: Canadian Cultural Industries Sectoral Advisory Group on International Trade. For a description of SAGIT and their mission, see *Consultations on FTAA and WTO Negotiations, Sectoral Consultations – Culture* (visited July 13, 2000) <<http://www.dfait-maeci.gc.ca/tna-nac/discussion/culture-e.asp>>.

Cultural Industries Committee.² It includes people who represent the magazine industry, the publishing industry, and artists, creators, broadcasters, and cable television people. The essence of it was that the exemption route that we had been on for so many decades just was not effective, and we had to try a different approach.

What I would like to do tonight is outline that different approach, answer any questions, advance our new approach and try to get you on our side. This is the beginning of a process rather than a final report; the beginning of a dialogue between Canada and other countries regarding how we deal with the issue of culture and trade. The first thing we have to do when we deal with this is to blame Canada. There was a great song called "Blame Canada."³ It was the highlight of the Academy Awards.

Essentially, the kind of principle we are trying to enunciate is that culture is the heart of a nation, the ability to tell your own stories, to have your own music, to have your own news, and to be able to tell Jack Valenti to take a hike.⁴ That is really the heart of what your country is all about. Nations really do need strong domestic cultures to maintain their sovereignty and their sense of identity. Culturally, people must have a sense of who they are as a unified group.

Globalization is a positive thing for Canadians in particular. Globalization means the reduction of trade barriers and the elimination of borders. At the same time that very process is leading to a sense within people that they need to reaffirm their local culture and their local sense of identity and being. I cannot speak for other countries, but I know that within Canada there is a strong sense of local identity and a need to reaffirm their perspective of what is happening in the world. One of the problems is that the trade organizations and organizations like the International Monetary Fund (IMF) and any organizations like the United Nations Educational, Scientific and Cultural Organization (UNESCO) have ignored that. They have not dealt with the strong local sense of identity that people have who want to be plugged into their community.

I would ask that when you look at the cultural issue, to think of it as being symptomatic. Unless trade people can deal with the cultural issue, how do you expect them to deal with environmental issues, labor issues, or social standards? They must be able to deal with individual issues. They cannot just

² *Canadian Culture in a Global World: New Strategies for Culture and Trade*, The Cultural Industries Sectoral Advisory Group on International Trade (1999).

³ Fox Oscar 2000: A "South Park" Oscar Defeat? Blame Canada, (visited July 7, 2000) <http://www.foxnews.com/fn99/entertainment/oscar00/oscars_blamecanada.sml>.

⁴ Jack Valenti is the President and Chief Executive Officer of the Motion Picture Association of America.

go off into the smoke-filled room and make their deals. They have to be able to deal with the kinds of issues that people are concerned about.

Let us look at the cultural situation in Canada. Foreign competition dominates the Canadian cultural market. It is amazing to us that we have a culture, given that forty-five percent of the book sales, eighty-one percent of the English language magazines, eighty percent of the music sales, eighty-five percent of the film revenues, and ninety-five percent of the screen time is not Canadian. Now this is voluntary: people vote, but they do not watch Canadian films, they go to watch American films. Finally, all major U.S. networks are available in Canada. When I come to the states and I go through my cable guide, I do not find any Canadian channels. When you come to Canada, all of the U.S. services are there.

So that leads us to ask what principles guide Canadian cultural policies and programs? It is an amazing list. First of all, it is freedom of expression. We have been quite successful at developing new services, new choices and new means of expression within our system. It means freedom of choice. Remember, a very important thing about Canadian cultural measures is that no author, artist, or actor receives any protection. All the creators in our society have to make it in the world. The only thing that we try to do within Canada is preserve access. We do it through a whole strange way of means and measures, but the individual creators and creative people in our country do not get the kind of protection that people seem to think they get. They are on their own. How they succeed as Diana Krall, Celine Dion, or Shania Twain is very much on their own terms. What we try to create in Canada is the means to give them that start.

We firmly believe in freedom of expression, freedom of choice and access. Access is key, because it relates to Canadian content rules. It also relates to our desire to control distribution. How stuff gets on the air, how it gets on the telephone system is all very much a part of Canadian cultural principles.

Cultural diversity is guiding Canadian cultural principles. I live in the city of Toronto. Eighty percent of the kids attending schools in the city of Toronto speak English as their second language. Toronto is thought to be the English breadbasket in Canada, even by Canadians, but the best Italian restaurants and the best Chinese restaurants in the world are in Toronto. The basic television service in Richmond Hill offers Chinese language services in basic cable service. Cultural diversity is something Canadians really appreciate and love about our country; the multiculturalism, the sense of what that gives us.

Finally, partnerships are important. I am from the cable industry. When I was appointed as Chairman of the Cultural Special Advisory Group, the

headline was that the fox really has been put in charge of the chickens. We do believe in partnerships, and in the cable industry we believe in trying to do things that are Canadian. Typically, we depend on some pretty straightforward means of supporting what we are trying to do on the cultural side. We have financial and program incentives. As a cable company, we are taxed at a rate of five percent. That is five percent right off our bottom line, which means sixty million dollars a year of hard cash does not go as a bonus to me. It goes into developing the Canadian film production industry. Those incentives are there, and they have had some success.

Canada has content requirements, tax measures, foreign investment and ownership rules, and other measures to protect intellectual property. Those have generally made up the toolbox of things we have been dealing with on the cultural side. Some of the comments being made today on the whole range of dispute issues reflect that we have been under a lot of pressure to change how we deal with the cultural side. We have to recognize that, because there is tremendous pressure for change.

We truly do have a global multinational economy. Canada is very much a part of that multinational economy. The reason the Toronto Stock Exchange (TSE) index is doing a lot better than other indexes these days is due primarily to the performance of Bell Canada and Nortel. They are very much a part of how we succeed and see ourselves in the world. The trend is toward more open markets. We have seen this even in statistics over the last couple of days. There is an increase in the trade numbers. This is providing enriching and tremendous benefits to all Canadians, including digitization and convergence. Are you getting your Internet service from the telephone company, cable company, or satellite company? I know you have had great success with your satellite services in the United States. In Canada, two satellite companies have gone over the million subscriber number. They have done this in only three years. What has taken us forty years to achieve, they have done in the last few years. In a very few short years, my cottage in the remote woods of North Toronto will be able to get high-speed Internet service through a satellite.

The whole sense that the economy is changing from goods to services really makes culture a much more important part of how we see the future and challenges the traditional approaches. The old approaches, the board of broadcasting, tax, simultaneous substitution, controls on who can provide services in Canada, a lot of those things are becoming outmoded and just do not go with the times. The most important thing that is going on which convinced the artists, creators, film producers, and the broadcasters that are part of my committee that there is need for a change was really the whole development of the content economy.

In the 20th century, we had a goods-driven trade environment. Services were a very small part of that, and culture was a very small portion of that. So it was easy to exempt culture. It was easy to say we are dealing with goods, with automobiles, wheat, and all those other interesting things, but culture is exempt. As we move into the 21st century we have to recognize that we are moving into much more of a service economy; two-thirds of the industrial output and two-thirds of employment services. It is interesting that the trade side is not as high. Trade is driven by the goods side of things, but services are increasingly important, and culture is a huge part of that. Culture, especially the entertainment industry, is the number one export industry in the United States. As you move into that kind of transformation your policies have to adjust. The change that we made was to recognize that there was not a lot of popular support in Canada for cultural nationalism. There is not a lot of currency there in terms of talking with the European Union or others.

We borrowed a leaf from our environmental friends who were so successful in Seattle, in finding the importance of cultural diversity. Why is cultural diversity important? It is important because it allows for all the things that Canadians, Americans, and the rest of the civilized world enjoy; things that we enjoy as common values and individual expression. Individual expression is impossible when Jack Valenti determines what you are going to watch. Individual expression is all about independent films and about those weird channels on your cable dial or the radio station that broadcast music that nobody has ever heard before.

We have our own stories, music, and humor. Unfortunately, American humor is Canadian humor. We export all the Canadians. We have our own stories. It is very important to have a multitude of voices; the multicultural richness and diversity of many voices. I hear that a lot in Cleveland. Cleveland talks about the diversity of the city, the different cultural events, the different things that make up the richness of the city. That is very important to Canadians and to our cities.

Preservation of language is a huge issue for Canadians. Most of us do not understand the ideals of Quebec separatism. We understand the need for people to have their own language. They want to have their own aspirations and have their own kids be able to have their own values expressed through that language and through the experience that gives them within their own society.

Finally, it is important for Canadians to have a sense of value for the individual. As an individual, I am not buried by everybody else. I can have my own views. That is something I learned from our native people in terms of how they see themselves.

After about two years, our Committee decided that what we wanted to explore were new international instruments on cultural diversity. What we have tried to do was to take culture out of the trade discussion, which is really locked in, and try to make cultural diversity an ideal, an objective. How do we deal with it? Would it be a new instrument? It is like the Land Mine Treaty⁵ or more like an environmental accord.

Unfortunately, some of those do not seem to work that well, but, we thought that we needed to take culture out of the trade situation. We have to try to create a new kind of instrument, which recognizes the importance of cultural diversity, acknowledging cultural goods and services are different. This is still an ongoing debate in Canada. I had to go to Parliamentary Committees where they would ask why our group was more important than wheat farmers. We had to explain that we are not more important than wheat farmers. We were just different.

We have to ensure access for indigenous cultural products. The reason that our musicians are so successful is that it is easier to get access to Canadian broadcasting networks than it is to get access to U.S. networks. It is easier for a Canadian entertainer than for an American entertainer. Canada has a lot of stars, comedians, humorists, and artists, because we have given them access. Their futures are not determined by their producers or by the major studios. A lot of them make it on their own talent. Shania Twain from Ontario, Terry Clark from Calgary, or Diana Krall from British Columbia, my competition tonight, made it because they get that kind of access. It should not just be a situation where we only have general principles. We must try to come up with some rules. This is what you can do. You can set screen times. Advertising revenues can either be controlled or not, but it is important to come up with specific rules guaranteeing access. How you guarantee content, the availability of your own artists, and your own stories for your own country is something that we should set out in rules. It should be legally based. I am an engineer; I fought against this, and I lost. But it should be rules-based because we felt principles can be misinterpreted and misapplied. So the search for rules became very much a part of what we wanted to do.

In conclusion, the view we came to in all of this was that trade policies must fit within freely chosen political objectives. When President Bill Clinton came on Tuesday night and gave his speech in Seattle, every Canadian knew that the rest of the week was a waste of time. They may have stayed there and they may have gone through the hassles, but Mr. Clinton gave a very political speech that showed he was going to back up Al Gore

⁵ Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 1997 WL 49691.

and the labor movement in the United States, which meant this thing is going to go nowhere. Clinton is one of the most political leaders of our time.

The thing we all have to recognize is that the political agenda drives the trade agenda, not the reverse. Trade people can say that they are not interested in sea turtles, but they are totally out to lunch. People in Seattle were able to have the impact that they had because the rest of the world did not understand what was happening. Until you draw in people and individuals under trade policies, and until you draw them into the political objectives, it just is not going to work; culture is part of that whole agenda.

Cultural diversity is an important value in itself. It is more important in this new, global, content-driven economy that America is leading. Finally, any support you can give me for the new cultural instrument would be most welcome.

