



Comments from the Coalition for the Diversity of Cultural Expressions

in the context of the consultation on

Future accession negotiations of the Comprehensive and Progressive Agreement for Trans-Pacific  
Partnership

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## 1. Presentation

The Coalition for the Diversity of Cultural Expressions (CDCE) brings together the main French- and English-speaking professional organizations in the cultural sector in Canada. It is composed of 30 organizations that collectively represent the interests of more than 200,000 professionals and 2,000 companies in the book, film, television, new media, music, performing arts and visual arts sectors. The CDCE speaks as a Coalition, after consultation with its members.

Equally concerned about the economic health of the cultural sector and the vitality of cultural creation, the CDCE works mainly to ensure that cultural goods and services are excluded from trade negotiations and that the diversity of cultural expressions is present in the digital environment.

It promotes the *UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions* and ensures its implementation to give it full force of application at the national level.

It also ensures that the government's capacity to implement policies to support local cultural expressions is properly preserved and deployed; that trade liberalization and technology development do not systematically lead to a standardization of content and a disruption of local ecosystems in the face of foreign investment; and that the CDCE also provides the secretariat of the International Federation of Coalitions for Cultural Diversity (IFCCD).

This contribution was prepared by the coordination of the CDCE, in collaboration with the CDCE Executive Committee.

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## **2. Introduction**

The Coalition for the Diversity of Cultural Expressions (CDCE) has been the voice of the cultural sector for more than 20 years to ensure the protection and promotion of the diversity of cultural expressions. Throughout this process, it has been able to rely on the Canadian government's determination to exempt culture from trade negotiations.

The CDCE thanks Global Affairs Canada for holding the current consultations that allow it to communicate its concerns and recommendations for negotiations on possible accessions to the Global and Progressive Agreement Trans-Pacific Partnership (CPTPP).

In the following pages, the CDCE will ask the Canadian government to take every opportunity to further improve the protection of culture in the CPTPP. Indeed, we recognize that the Canadian government's efforts to move from TPP to CPTPP have been significant and have resulted in improvements to the text.

The CDCE is well aware that the context will not necessarily lend itself to the renegotiation of the text already agreed. However, the negotiations that could begin may provide an opportunity to close gaps that have been reported in the CPTPP.

After a reminder of Canada's commitments to protect the diversity of cultural expressions, we will highlight the importance of protecting culture in the context of electronic commerce. Then, we will specifically address the few remaining gaps in the CPTPP and finally present our recommendations to Global Affairs Canada. The reader will find in the appendix the list of our recommendations.

## **3. Canada's commitment to the protection of the diversity of cultural expressions in trade agreements**

### **3.1. Importance of the diversity of cultural expressions**

The importance of culture for the society has been affirmed on many occasions by the Canadian government, civil society and companies in the telecommunications and broadcasting sectors. Beyond the declarations, this commitment was materialized by all the steps taken by the governments of Canada, Quebec and civil society that finally led to the adoption in 2005 of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, of which Canada was the first signatory.

Cultural expressions make it possible to materialize our identity, to share it, to make it known to the world and to make it evolve. They promote social integration, allow us to interpret our past and imagine the future. They inform and entertain. They constitute an invaluable collective heritage. It is for this reason that governments in Canada have adopted cultural policies and laws over the decades that have enabled the development of so many cultural talent and enterprises.

Canadians are committed to Canadian cultural content and support the federal government's support: “78% of Canadians consider content made in Canada to be of moderate or high importance to them personally. In addition, [m]any focus group participants said they support a government role in the development of Canadian content. Some view Canadian content as helping to strengthen unity and shared identity. Others noted that financial support to ensure the production of Canadian content helps to develop talent of

actors, writers, and producers and creates employment throughout Canada.”<sup>1</sup>

### **3.2. Canada's obligations under the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions**

The efforts of all actors in the cultural sector and governments led to the adoption in 2005 of UNESCO's Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Among other provisions, the preamble to the Convention stipulates that "cultural activities, goods and services have both an economic and a cultural nature, because they convey identities, values and meanings, and must therefore not be treated as solely having commercial value"<sup>2</sup>. The Convention also recognizes the sovereign right of the Parties to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory (Article 5).

Canada was the first country to ratify the Convention. Today, 145 countries, in addition to the European Union, have ratified it. The Convention does not take precedence over other treaties. Nevertheless, Parties must take the Convention into account when interpreting and applying these other treaties (Article 20) and must promote its objectives and principles in other international forums (Article 21). These are binding commitments for the parties that adhere to them.

All States are faced with the challenges of adapting laws to the digital environment. In its *Operational Guidelines on the implementation of the Convention in the digital environment*, the Conference of Parties to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions recommends measures to "promote dialogue between private operators and public authorities in order to encourage greater transparency in the collection and use of data that generates algorithms, and encourage the creation of algorithms that ensure a greater diversity of cultural expressions in the digital environment and promote the presence and availability of local cultural works"<sup>3</sup>.

### **3.3. The Canadian exemption clause and the CPTPP**

The cultural exemption appears in Canada with the negotiations of the Canada-U.S. Free Trade Agreement (FTA). We will not repeat here the account of the historical evolution of the Canadian cultural exemption<sup>4</sup>.

However, we must remember that Canada has shifted from its traditional approach when it negotiated reservations in certain chapters of the Comprehensive Economic and Trade Agreement (CETA) and the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPP). In the CETA, reservations and the reference to the 2005 UNESCO Convention protect Canada's ability to formulate policies to maintain cultural sovereignty relatively well<sup>5</sup>.

In the case of the CPTPP, significant concessions have been made, notably in the chapter on e-commerce for which a specific reservation for culture is missing. However, after the withdrawal of the United States, Canada signed side letters with the remaining 10 partners to generate bilateral agreements that specify that "Canada may adopt or maintain discriminatory requirements on service suppliers or investors to make

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<sup>1</sup> <https://crtc.gc.ca/eng/publications/s15/pol1.htm#pr1>

<sup>2</sup> <https://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>

<sup>3</sup> UNESCO (2017), *Operational Guidelines on the Implementation of the Convention in the Digital Environment*, Article 16.2.

[https://en.unesco.org/creativity/sites/creativity/files/sessions/digital\\_operational\\_guidelines\\_en.pdf](https://en.unesco.org/creativity/sites/creativity/files/sessions/digital_operational_guidelines_en.pdf)

<sup>4</sup> See comments submitted by CDCE as part of the Consultations for Possible Negotiations on Electronic Commerce at the World Trade Organization (WTO) on April 25, 2019. Online: <https://cdec-cdce.org/en/wto-e-commerce/>

<sup>5</sup> <https://www.ledevoir.com/culture/496243/alena-les-industries-quebecoises-de-la-culture-et-l-alena-2-0>

financial contributions for Canadian content development and may adopt or maintain measures that restrict access to on-line foreign audio-visual content"<sup>6</sup>. We will discuss this issue in more detail in the next section.

It should also be noted that a preamble has been added to the CPTPP, the 6th paragraph of which reaffirms "the importance of promoting corporate social responsibility, cultural identity and diversity, [...], as well as the importance of preserving [the] right [of Parties] to regulate in the public interest"<sup>7</sup>. This represents an improvement over paragraph 9 of the TPP's preamble which, while proposing a similar text, did not include cultural diversity.

Fortunately, as part of the renegotiation of the North American Free Trade Agreement (NAFTA), despite the survival of the retaliation clause, Canada succeeded in obtaining a comprehensive cultural exemption, which applies to the entire agreement, including electronic commerce. This result is all the more encouraging as the United States has sought from Canada cultural concessions, specifically in the chapter on electronic commerce.

## **4. The importance of protecting culture in the field of e-commerce**

The CDCE has recently made numerous contributions<sup>8</sup> that describe the impacts of technologies and models for providing cultural content online, and then propose ways to ensure that the diversity of cultural expressions is protected and promoted. We will first briefly present the main issues for the cultural sector, and then describe how e-commerce provisions could limit Canada's ability to meet various challenges in the digital environment.

### **4.1. Current challenges for the protection and promotion of the diversity of cultural expressions**

The developments of technologies and models for the provision of online cultural content have a huge impact on cultural ecosystems at various levels. We refer the reader to the CDCE submission filed on January 11, 2019 with the Broadcasting and Telecommunications Legislative Review Panel<sup>9</sup> for a full explanation. In these comments, we will briefly describe the major issues for the cultural sector.

- 1- The Canadian legislative framework does not apply to online programming services (Netflix, Spotify, etc.), which are largely foreign. They are not subject to requirements for discoverability and financing of local and national content. This has a negative impact on the reach of our culture, and maintains a system that is unfair to national companies.
- 2- Programming services do not share information with the Canadian Radio-television and Telecommunications Commission (CRTC) and Statistics Canada. We have no information on Canadians' access or exposure to a variety of content. These companies do not necessarily comply with the conditions of the CRTC's exemption order affecting them, and the CRTC does not have the power to impose sanctions to enforce its regulations.

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<sup>6</sup> The letters use the same wording and are available online: <https://international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/text-texte/letters-lettres.aspx?lang=eng>

<sup>7</sup><https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/text-texte/cptpp-ptpgp.aspx?lang=eng>

<sup>8</sup> See CDCE website: <https://cdce-cdce.org/en/>

<sup>9</sup> Online, on the CDCE website: <https://cdce-cdce.org/en/brief-by-the-cdce-in-the-context-of-the-broadcasting-and-telecommunications-legislative-review/>

- 3- Although conventional television continues to play an important role in the lives of Canadians, these services are continuously losing audiences. This results in a reduction in the revenues of broadcasting companies, which are the only ones required to contribute to Canadian content support funds. As a result, the resources of these funds are decreasing. This is what forced Canadian Heritage to increase its contribution to the Canada Media Fund in 2017.
- 4- Radio revenues are stable. So are broadcasters' regular contributions to music production funds. On the other hand, the loss of income in the music sector is huge due to the drastic change in music consumption patterns. The sale of physical and digital albums is in continuous decline and streaming is constantly increasing. Financial benefits for the entire sector are shabby.
- 5- These decreases in financial resources in the audiovisual and music sectors, combined with constant decreases in advertising revenues from conventional media, have negative effects on the diversity of cultural expressions, both quantitatively and qualitatively. For example, in the audiovisual sector, spending on Canadian programs is declining and some specific content (programs of national interest, local news, content aimed at Aboriginal or linguistic minorities, fiction, documentaries, children's works) is likely to be particularly affected. In the music sector, the loss of revenue is also reflected in a decrease in the number of projects that can be supported or in the resources available to promote them.
- 6- The opportunities in terms of discoverability and financing are not the same for the English and French markets in Canada. Francophone products are less well exported and have a smaller funding base.
- 7- The models implemented in the digital age are impoverishing many artists, creators and cultural professionals. The median earnings of artists are \$23,100, 45% lower than those of Canadian workers<sup>10</sup>. The introduction of some 40 exceptions to the Copyright Act in 2012, and its inadequacy to technological realities, has considerably weakened the incomes of creators and rights holders.
- 8- The *Copyright Act* is full of exceptions, does not oblige companies using user-generated content to pay copyright, and weakens the remuneration of cultural sectors, which affects the creation of new works.
- 9- Telecommunications service providers (Internet and mobile) benefit from access to online cultural content: video and audio represent the vast majority of time spent online for Canadians, for a combined total of 72%<sup>11</sup>. Their revenues are growing and their profit margins were 38.1% in 2017<sup>12</sup>, but they do not pay a penny for the financing of cultural content.

#### 4.2. Adapting the legal framework to contemporary realities

Canada has undertaken the revision of key laws for the cultural sector (broadcasting, telecommunications, radiocommunication and copyright) to address some of these challenges. The majority of organizations heard during the consultations stressed the need to adapt our laws to the digital world to ensure the sustainability of cultural industries as instruments to support the creation of cultural content. In its report

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<sup>10</sup> Hill Strategies (2019), A Statistical Profile of Artists in Canada in 2016: <https://canadacouncil.ca/research/research-library/2019/03/a-statistical-profile-of-artists-in-canada-in-2016>

<sup>11</sup> CRTC (2018), *Harnessing Change. The Future of Programming Distribution in Canada*, <https://crtc.gc.ca/eng/publications/s15/mar1.htm#f10>

<sup>12</sup> CRTC (2018), *Communications Monitoring Report*, pp. 86 and 95.

on the future of programming distribution in Canada<sup>13</sup>, the Canadian Radio-television and Telecommunications Commission (CRTC) states that the status quo in the music and audiovisual sectors is no longer acceptable. In the book sector too, the changes brought about by digital technology, including piracy, are disrupting the business<sup>14</sup> model.

For the CDCE, urgent actions are required to support the creation and discoverability. However, some of the recommendations made by the CDCE may never materialize unless the Canadian government's ability to protect and promote its culture is adequately protected. We will now provide two examples of the changes we consider necessary.

First, as part of the review of the *Broadcasting Act*, the CDCE proposes that online programming services, both foreign and Canadian, contribute to the enhancement and financing of Canadian content. This can be achieved in the short term by a Direction from the Governor in Council to amend the New Media Exemption Order. This proposal implies that the CRTC will have to determine the best ways to regulate the presence and promotion of Canadian content on online programming services. These regulations must be accompanied by an obligation to provide data on the cultural content accessed by Canadians.

Second, as part of the revision of the *Copyright Act*, the CDCE supports the proposal that the new Act be adapted to contemporary reality so that digital platforms pay intellectual property rights to those who own them in Canada and that the private copying regime includes technological devices that provide access to cultural content.

## 5. The weaknesses of the CPTPP

### 5.1. The absence of a global exemption for culture

The CPTPP should have included a comprehensive cultural exemption clause, applicable to all chapters of the agreement. Instead, Canada has accepted the inclusion of a number of reservations and clauses in certain chapters of the agreement. We agree that it could be beneficial not to exempt culture from certain provisions. However, we prefer that possible exceptions to the cultural exemption, which would be extremely specific and limited, be included in the exemption, rather than providing for cultural reservations in certain chapters or for certain provisions. This would better protect the culture from applications that do not yet exist.

### 5.2. The absence of a specific reservation for electronic commerce

Following the withdrawal of the United States in January 2017, the Canadian government signed letters of agreement with the other 10 partners to enhance existing cultural reserves. The relevant paragraph of these letters reads as follows:

*Canada and [the other Partner] agree that, in continuing to give effect to the Agreement, notwithstanding the following language in Annex II – Canada – 16 and 17 – under the Cultural Industries Sector, first paragraph under the subheading “Description,” that states “except: (a) discriminatory requirements on service suppliers or investors to make financial contributions for Canadian content development; and (b) measures restricting the access to on-line foreign audio-visual content”, Canada*

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<sup>13</sup> <https://crtc.gc.ca/eng/publications/s15/>

<sup>14</sup> See, for example, ANEL's December 2018 submission to the Copyright Act Review: [https://www.anel.qc.ca/wp-content/uploads/2018/12/Me%CC%81moire-de-l'Association-nationale-des-e%CC%81diteurs-de-livres-ANEL\\_Comite%CC%81-PCHP.pdf](https://www.anel.qc.ca/wp-content/uploads/2018/12/Me%CC%81moire-de-l'Association-nationale-des-e%CC%81diteurs-de-livres-ANEL_Comite%CC%81-PCHP.pdf)



*may adopt or maintain discriminatory requirements on service suppliers or investors to make financial contributions for Canadian content development and may adopt or maintain measures that restrict access to on-line foreign audio-visual content*<sup>15</sup>.

These letters corrected a fundamental gap in Annex II, which exempts cultural industries from the application of certain obligations set out in Chapters 9 (Investment) and 10 (Cross-border trade in services), by cancelling two exceptions to this protection granted to culture :

*Canada reserves the right to adopt or maintain a measure that affects cultural industries and that has the objective of supporting, directly or indirectly, the creation, development or accessibility of Canadian artistic expression or content, except:*

*(a) discriminatory requirements on service suppliers or investors to make financial contributions for Canadian content development; and*

*(b) measures restricting the access to on-line foreign audio-visual content*<sup>16</sup>.

However, neither Annex II nor the letters of agreement refer to Chapter 14 on electronic commerce, and more specifically to Article 14.4, which we refer to here:

1. *No Party shall accord less favourable treatment to digital products created, produced, published, contracted for, commissioned or first made available on commercial terms in the territory of another Party, or to digital products of which the author, performer, producer, developer or owner is a person of another Party, than it accords to other like digital products. [...]*

3. *The Parties understand that this Article does not apply to subsidies or grants provided by a Party, including government-supported loans, guarantees and insurance.*

4. *This Article shall not apply to broadcasting*<sup>17</sup>.

As we can see, this article does not apply to broadcasting. But the term broadcasting is not defined in this chapter. It is, however, in Chapter 18 on intellectual protection:

**broadcasting** means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” if the means for decrypting are provided to the public by the broadcasting organisation or with its consent;<sup>18</sup>

If the scope of the term broadcasting for the purposes of Article 14.4 is not clear to us, what is certain is that the definition of cultural industries is much broader. Think, in particular, of books, periodicals and newspapers.

Without a cultural reservation, such a clause could be interpreted as preventing Canada from requiring platforms distributing cultural content to offer, promote or introduce local content to their users in Canada, or to set presence thresholds. It could also be interpreted as preventing Canada from requiring online service providers to make financial contributions for the development of Canadian content.

Of course, Article 14.2 provides that, generally, the measures in the e-commerce chapter must comply with the obligations, including exceptions and non-compliant measures, of the relevant provisions of Chapters 9

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<sup>15</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/text-texte/letters-lettres.aspx?lang=eng>

<sup>16</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/31-2-a3.aspx?lang=eng>

<sup>17</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/14.aspx?lang=eng>

<sup>18</sup> Article 18.57 <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/18.aspx?lang=eng>

(Investment) and 10 (Cross-border trade in services). Paragraph 5 of this article states:

5. For greater certainty, the obligations contained in Article 14.4 (Non-Discriminatory Treatment of Digital Products), Article 14.11 (Cross-Border Transfer of Information by Electronic Means), Article 14.13 (Location of Computing Facilities) and Article 14.17 (Source Code) are:

(a) subject to the relevant provisions, exceptions and non-conforming measures of Chapter 9 (Investment), Chapter 10 (Cross-Border Trade in Services) and Chapter 11 (Financial Services); and

(b) to be read in conjunction with any other relevant provisions in this Agreement<sup>19</sup>.

Indirectly, the cultural reservation in Annex II would apply to Article 14.4 and even to the other provisions of the chapter on electronic commerce. However, in the opinion of cultural exemption lawyers, "uncertainties remain as to the articulation between these non-compliant provisions/exceptions/measures relating to "services" or "investment" and the rules of the chapter on electronic commerce that deal with "digital products"[our translation]<sup>20</sup>.

The actual scope of e-commerce commitments under the CPTPP and their impact on potential Canadian cultural policies applicable in the digital environment thus appears more ambiguous than civil society would have liked.

A cultural reservation directly linked to the chapter on electronic commerce, without any applicable exception, would have completely removed any doubts on the matter. To a lesser extent, the inclusion of a sentence to link the e-commerce chapter directly to the reservation in Annex II would have been more reassuring.

### 5.3. Accession of new partners to the CPTPP

Although the signing of the letters of agreement represented a very significant improvement, there can be no guarantee that new partners will agree to sign a letter of agreement with Canada on the issue of culture.

What will happen, in particular, if the United States decides to return to the partnership? Will Canada lose the comprehensive cultural exemption it managed to maintain in the Canada-USA-Mexico Agreement (CUSMA) since the United States will be able to refer to the PTPGP rules?

### 5.4. Intellectual property rights

In general, the CDCE considers that trade agreements should not include copyright provisions, particularly those that are similar to the exception for Network Services<sup>21</sup> in the Canadian *Copyright Act* or the Safe Harbour of the United States *Digital Millennium Copyright Act*<sup>22</sup>.

Some provisions of Chapter 18 on intellectual property should not have been included in the TPP. Article 18.66 opens the door to the extension of exceptions to the copyright regime. Section 18.82 and Schedule 18-E are also problematic, the first by significantly limiting the liability of Internet service providers for

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<sup>19</sup> <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-tpa/text-texte/14.aspx?lang=eng>

<sup>20</sup> Guèvremont, Véronique, Bernier, Ivan, Otasevic, Ivana et Clémence Varin (2019), Comments presented by Chaire UNESCO sur la diversité des expressions culturelles in the context of the consultations on Canada's Future World Trade Organization (WTO) Negotiations on E-Commerce.

<sup>21</sup> Section 31.1 of the *Copyright Act*.

<sup>22</sup> Section 512 of the United States *Digital Millennium Copyright Act*: <https://www.law.cornell.edu/uscode/text/17/512>

copyright infringement, the second by restricting derogations to existing measures. Fortunately, the CPTPP suspends the application of some articles, but the parties may decide to reinstate them, while article 18.66 is maintained.

## **6. Recommendations of the CDCE concerning negotiations on possible accessions to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership**

Although we have little information on the scope of the negotiations that will accompany the arrival of new partners, it seems unlikely that negotiations will resume on the agreed texts of the agreement at this stage. If this is the case, we expect the Canadian government to undertake clear consultations on this possibility.

Nevertheless, our recommendations will take into account this eventuality.

### **6.1. Seize opportunities that may arise to obtain a comprehensive cultural exemption**

Eventually, if the negotiation allows the texts of the agreement to be amended, the Canadian government could try to obtain a comprehensive exemption clause. We prefer that possible exceptions to the cultural exemption, which would be extremely specific and limited, be included in the exemption, rather than providing for cultural reservations in certain chapters or for certain provisions. We ask the Canadian government not to agree to provisions that would weaken the global exemption, for example by allowing measures of equivalent effect<sup>23</sup>.

**The CDCE recommends that the Canadian government take advantage of any opportunities that may arise to exempt the culture from the CPTPP and not agree to provisions that would limit or penalize the adoption of measures protected by the exemption.**

### **6.2. A direct cultural exemption in the e-commerce chapter**

If a comprehensive exemption can't be obtained, and if the negotiation allows the texts of the agreement to evolve, the Canadian government could add a clause to exempt culture from the provisions contained in the chapter on e-commerce.

**The CDCE recommends adding cultural industries to Article 14.2 (3).**

### **6.3. Sign letters of agreement with partners**

If it is not possible to amend the text of the agreement, Canada must sign letters of agreement with all new partners. It would seem to us entirely legitimate for Canada to broaden the scope of these letters to ensure the broadest possible cultural exemption. This would allow Canada to sign new letters with already confirmed CPTPP partners.

This extension must necessarily include article 14.4 and should not limit Canada's ability to adopt measures other than the two set out in the letter of agreement, as reproduced in section 5.2.

**The CDCE proposes that the 2nd paragraph of the letters of agreement be replaced by the following text:**

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<sup>23</sup> We are thinking in particular of Article 32.6, paragraph 4 of the CUSMA, commonly known as the retaliation clause.

Canada and [the Partner] agree that, as part of the arrangements for continuing to give effect to the Agreement, this Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry.

#### **6.4. Intellectual property rights**

The CDCE hopes that the revision of the *Copyright Act* in Canada will allow to adapt to the contemporary reality and in particular, to increase the income of Canadian rights holders. Our members agree that the number of exceptions in the *Copyright Act* should be reduced, that digital platforms should pay more to rights holders and that private copying should become technologically neutral. The European Union (EU) has just adopted a directive forcing these platforms to obtain licences for their use of copyright-protected content, which would have been impossible if the EU had made incompatible commitments in trade agreements.

**In order to maintain control over its copyright policies, the Canadian government should require that section 18.82 and Schedule 18-E remain suspended forever, and take every opportunity to eliminate section 18.66.**

### **7. Conclusion**

The negotiations that could begin to allow new partners to join the CPTPP represent an opportunity for Canada to further improve the agreement by increasing the protection to its culture.

This protection is all the more important as Canada has undertaken the revision of several laws that are crucial to the cultural sector. In this context, it is imperative that Canada continue to defend the global cultural exemption, especially when it comes to e-commerce.

## Appendix 1: CDCE Recommendations

### Recommendation 1

The CDCE recommends that the Canadian government take advantage of any opportunities that may arise to exempt the culture from the CPTPP and not agree to provisions that would limit or penalize the adoption of measures protected by the exemption.

### Recommendation 2

The CDCE recommends adding cultural industries to Article 14.2 (3).

### Recommendation 3

The CDCE proposes that the 2nd paragraph of the letters of agreement be replaced by the following text: Canada and [the Partner] agree that, as part of the arrangements for continuing to give effect to the Agreement, this Agreement does not apply to a measure adopted or maintained by Canada with respect to a cultural industry.

### Recommendation 4

In order to maintain control over its copyright policies, the Canadian government should require that section 18.82 and Schedule 18-E remain suspended forever, and take every opportunity to eliminate section 18.66.