

Comments from the Coalition for the Diversity of Cultural Expressions

Within the Framework of the

Consultation of Canadians on a possible Canada-European Union Digital Trade Agreement

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Introduction to the CDCE

The Coalition for the Diversity of Cultural Expressions (CDCE) brings together the leading francophone and anglophone professional organizations in Canada's cultural sector. It is composed of around fifty organizations that collectively represent the interests of more than 350,000 creators and professionals, as well as 3,000 enterprises in the book, film, television, new media, music, performing arts, and visual arts sectors. The CDCE speaks as a coalition, following consultation with its members.

Concerned both with the economic health of the cultural sector and the vitality of cultural creation, the CDCE primarily advocates for the exclusion of cultural goods and services from trade negotiations and for the presence of cultural diversity 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 effect at the national level. The CDCE ensures that the government's capacity to implement policies supporting national and local cultural expressions is preserved and effectively deployed; that trade liberalization and technological development do not systematically lead to content homogenization or disrupt local ecosystems in the face of foreign investments. The CDCE also serves as the secretariat of the International Federation of Coalitions for Cultural Diversity (IFCCD).

1. Introduction

For more than 25 years, the CDCE has represented the voice of Canada's cultural sector to ensure the protection and promotion of the diversity of cultural expressions. Over this period, it has relied on the Canadian government's determination to exclude cultural goods and services from the scope of its trade agreements.

On June 25, 2025, the Government of Canada launched a [public consultation](#) on the development of a possible Canada-European Union (EU) digital trade agreement. The CDCE thanks Global Affairs Canada for holding this consultation, which allows it to contribute to the exploratory discussions on a digital trade agreement (DTA) with the EU.

Our comments and recommendations focus primarily on the necessity of including, in any form of DTA, a general cultural exemption clause. Such a clause is essential to preserve Canada's sovereign right to adopt measures and policies aimed at protecting and promoting the diversity of cultural expressions within its territory. Without such an exemption, commitments undertaken under a DTA could limit Canada's ability to support its cultural expressions in the digital environment. Given market dynamics, these expressions could be overshadowed by cultural products and services from other countries. This is why the inclusion of a clear and well-crafted cultural exemption remains indispensable in Canada's trade agreements. In this regard, the CDCE recalls the clear commitment made by the Prime Minister on April 1, 2025, in *The Globe and Mail* regarding trade negotiations with the United States: "The French language and Canadian culture, including Quebec culture, and supply management will never

be on the table.”¹

After recalling Canada’s commitment to the diversity of cultural expressions and emphasizing the importance of protecting culture in the digital space, including its commercial dimension, we will then provide specific recommendations concerning the potential development of a DTA with the EU. The CDCE is aware that this consultation is very broad in scope, extending beyond culture, and marks the starting point of a long process that could potentially lead to the development of a DTA with the EU. We will follow the subsequent steps with interest.

2. Canada’s Commitment to Protecting the Diversity of Cultural Expressions in Trade Agreements

2.1. The Importance of the Diversity of Cultural Expressions

The adoption in 2005 of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (hereinafter the “Convention”) marked the culmination of efforts undertaken by the governments of Canada, Quebec, and civil society. It represented a strong affirmation of the fundamental role of culture in our societies.

Cultural expressions embody our identities, convey our values, and carry meaning. They allow us to share our worldview, make it known, and help it evolve. Rich in their diversity, they are a fundamental driver of sustainable development. By promoting human rights and social inclusion, cultural expressions help interpret our past and imagine our future. They inform us, entertain us, and constitute an invaluable collective heritage.

For this reason, over the decades, Canadian governments have adopted ambitious cultural policies and laws that have enabled the growth of a multitude of talents and cultural enterprises nationwide.

The Canadian population is deeply attached to Canadian cultural content and supports its backing by the federal government: 91% of Canadians believe it is important to protect Canadian culture and identity, particularly in the face of U.S. influence, and 83% wish to see increased investment in the production of television, film, and digital content to ensure high-quality productions for both national and international audiences. Moreover, 86% of Canadians believe the government should actively support the cultural and creative industries through direct funding and tax credits.²

¹ Van Praet, Nicolas, *Quebec’s language law and Alberta’s power imports fuel U.S. trade grievances*, *The Globe and Mail*, April 1, 2025, updated April 3, 2025, <https://www.theglobeandmail.com/business/article-quebecs-language-law-and-albertas-power-imports-fuel-us-trade/>

² Canadian Media Producers Association (CMPA), *New poll finds majority of Canadians support political parties that champion Canadian identity and Canada’s cultural industries*, April 14 2025, <https://cmpa.ca/pressreleases/new-poll-finds-majority-of-canadians-support-political-parties-that-champion-canadian-identity-and-canadas-cultural-industries/>.

2.2. Canada's Obligations as a Signatory to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions

The treatment of cultural goods and services at the international level underwent profound changes at the end of the 20th century. This shift led to a new approach that emphasized the protection and promotion of cultural diversity. This conceptual evolution encouraged states to turn to UNESCO to negotiate the adoption of an international legal instrument. The objective was no longer to view cultural diversity as a trade obstacle to be analyzed solely through the lens of international trade law, but rather as a standalone cultural matter requiring an approach grounded in the principles and objectives of cultural law. It was within this framework that UNESCO adopted, in 2005, the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. In force since 2007, this convention lies at the heart of the creative economy and plays a regulatory role at the culture–trade interface.

Among its key provisions, Article 1 of the Convention establishes the objective “to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning.” This statement reinforces the idea expressed in the preamble that these 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.”³ The Convention also enshrines, in Article 5, the sovereign right of Parties to adopt measures and policies to protect and promote the diversity of cultural expressions within their territory.

Canada was the first country to ratify the Convention. Today, 157 states, as well as the EU, are Parties. While the Convention does not override other treaties and establishes no hierarchical relationship with other legal instruments, it imposes clear obligations on signatory states. In accordance with Article 20, Parties must take the obligations of the Convention into account when interpreting and applying other treaties or when undertaking new international obligations. Article 21, in turn, invites Parties to promote the objectives and principles of the Convention when entering into new commitments.

All states face challenges in adapting their laws to the realities of the digital environment. In its Operational Guidelines on the Implementation of the Convention in the Digital Environment (paragraph 19.4), the Conference of Parties to the Convention on the Protection and Promotion of the Diversity of Cultural Expressions recommends promoting “the consideration of introducing cultural clauses in international bilateral, regional or multilateral agreements, namely provisions that take into account the dual nature of cultural goods and services, including preferential treatment clauses, with particular attention to the status of e-commerce that shall recognize the specificity of cultural goods and services.”

³ UNESCO, Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005, <https://fr.unesco.org/creativity/convention>.

2.3. The Shared Necessity and Will to Support Cultural Expressions in Canada and the European Union

The protection, promotion, and sustainability of cultural expressions require active support through the adoption of structuring measures, whether legislative, regulatory, or financial. Contrary to the idea that high-quality content will naturally find its place in the market, numerous examples show that purely commercial logic is insufficient to ensure the viability of national culture. In Canada, this issue was notably emphasized by the Canadian Radio-television and Telecommunications Commission, which published its report in January 2020:

In the last 40 years, Canadian broadcast policy has supported the production of Canadian television drama, although it has never made sense from an economic standpoint. Drama (including scripted comedy) is the most popular genre on television, but it is also the most expensive genre to make. The Canadian broadcast rights to a US television drama — which may cost \$3-4 million an hour to make and is largely paid for by the US networks — can be purchased for a few hundred thousand dollars. By contrast, a Canadian TV drama in English may cost \$1-3 million an hour to make. But to finance this, the Canadian broadcast network would have to provide a much higher licence fee commitment—one that would exceed any expected ad revenue. The result is that Canadian drama will not be produced by the market unless it is supported by a toolkit of government cultural policy measures⁴.

This example, drawn from the audiovisual sector, resonates across all cultural disciplines. Except for the United States, whose domestic market, influence, and philanthropic sector are sufficient to support culture, countries seeking to create, produce, and promote their talents and identity must actively support their culture by adopting various measures, including requiring broadcasters to finance and air national content.

The relevance of this necessity has been renewed since the beginning of the current U.S. administration. In February 2025, the White House issued a memorandum⁵ targeting certain foreign commercial practices, such as taxes imposed on American media companies to fund local production. The U.S. Trade Representative subsequently opened investigations into these practices, deemed non-reciprocal. At the same time, a letter from Republican governors sent in July 2025 criticized the Canadian Online Streaming Act for obligations presented as discriminatory against American companies, allegedly threatening bilateral digital trade.

These developments demonstrate that it is crucial for Canada and the EU to join forces to support cultural expressions and ensure their protection within their respective territories, while maintaining a balanced trade dialogue that respects international commitments, notably through the adoption of a

⁴ Innovation, Science and Economic Development Canada, *Canada's Communications Future: Time to Act – Final Report*, January 29, 2020, <https://ised-isde.canada.ca/site/broadcasting-telecommunications-legislative-review/en/canadas-communications-future-time-act>

⁵ The White House, *Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties*, February 21, 2025, <https://www.whitehouse.gov/presidential-actions/2025/02/defending-american-companies-and-innovators-from-overseas-extortion-and-unfair-fines-and-penalties/>

general cultural exemption in the digital environment.

2.4. The Essential Role of the Cultural Exemption Clause in DTAs

In Canada, the integration of the cultural exemption clause into trade agreements dates back to the negotiations of the Free Trade Agreement with the United States. Without going into detail on the historical evolution of this approach⁶, it is important to recall that Ottawa has routinely adopted a general cultural exemption to exclude cultural industries from the scope of its trade agreements and has maintained this exemption in nearly all of its trade agreements since 1988, including in the most recent renegotiation of the Canada-United States-Mexico Agreement (CUSMA)⁷.

However, it should be noted that the Comprehensive Economic and Trade Agreement (CETA) and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) marked a departure from Canadian tradition. Rather than relying on a general cultural exemption, Canada included specific reservations limited to certain chapters. In the case of the CPTPP, this approach led to significant concessions, notably in the chapter on e-commerce, which does not contain a specific cultural reservation clause⁸.

In the absence of a general cultural exemption, foreign digital programming services subject to Canadian content rules or other requirements to implement cultural policy could invoke claims of discriminatory treatment, highlighting the importance of including such an exemption clause.

In sum, with a view to the potential development of a DTA between Canada and the EU, the CDCE recommends from the outset adopting an approach consistent with that used for CUSMA, namely the integration of a general cultural exemption clause applying to the entire agreement.

⁶ See the CDCE's comments: *CDCE's recommendations on Canada's Future World Trade Organization (WTO) Negotiations on E-Commerce*, April 26, 2019, <https://cdce-cdce.org/en/publications/cdces-recommendations-on-canadas-future-world-trade-organization-wto-negotiations-on-e-commerce/>

⁷ See Article 19.4 of the Canada–United States–Mexico Agreement (CUSMA), 2020, <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/usmca-aceum/text-texte/19-services.aspx?lang=fra> : Article 19.4: Non-Discriminatory Treatment of Digital Products

1. No Party shall accord less favorable treatment to a digital product created, produced, published, contracted for, commissioned, or first made available on commercial terms in the territory of another Party, or to a digital product of which the author, performer, producer, developer, or owner is a person of another Party, than it accords to other like digital products. [Footnote page 3].

2. This Article does not apply to a subsidy or grant provided by a Party, including a government-supported loan, guarantee, or insurance.

Footnote page 3: For greater certainty, to the extent that a digital product of a non-Party is a “like digital product,” it will qualify as an “other like digital product” for the purposes of Article 19.4.1 (Non-Discriminatory Treatment of Digital Products).

⁸ See the CDCE's comments: *Consultation on FTA negotiations with the United Kingdom and its possible accession to the CPTPP*, April 27, 2021, <https://cdce-cdce.org/en/publications/consultation-on-fta-negotiations-with-the-united-kingdom/> ; and *Comments from the CDCE in the context of the consultation on Future accession negotiations of the CPTPP*, August 26, 2019, <https://cdce-cdce.org/en/publications/comments-from-the-cdce-in-the-context-of-the-consultation-on-future-accession-negotiations-of-the-cptpp/>

2.5. Maintaining the Definition of Cultural Industries in Canada's Trade Agreements

The definition of cultural industries used by Canada to exempt them from commitments in trade agreements has changed little over time, despite transformations in cultural industries, products, and services. This strategy offers several advantages.

First, it demonstrates the Canadian government's consistent commitment to protecting its cultural industries. Second, it ensures coherence across the various trade agreements concluded by Canada. Third, in the event of a dispute, this approach allows for an evolving interpretation of cultural industries, accommodating contemporary forms of cultural products and services.

That said, Canada may wish to revise this definition. The CDCE is actively considering this issue and, at this stage, does not take a position either for or against such a revision.

The CDCE nevertheless expresses significant reservations. If the current definition of cultural industries were to be revised, it would be essential that it at least include the elements currently encompassed by Canada's traditional definition.

Canada should also ensure that the new definition does not invalidate or limit the scope of the previous definition, including in the context of digital trade. Any potential redefinition should aim solely to clarify the original scope, not to reduce it.

Finally, the CDCE stresses the importance of consulting representatives of the cultural sector should a new definition be discussed as part of these negotiations.

2.6. Protecting Cultural Sovereignty in the Era of Digital Technologies and AI

The rapid development of digital technologies and online distribution models has profoundly transformed cultural ecosystems. These changes affect the creation, dissemination, and discoverability of content, challenging states' ability to protect and promote their cultural expressions.

The CDCE has closely monitored these transformations, highlighting their impacts and proposing concrete actions to preserve Canadian cultural sovereignty. In March 2025, it published 10 proposals aimed at addressing its members' priority concerns, including broadcasting, copyright, and developments related to generative AI⁹.

In recent years, Canada has undertaken major legislative reforms to address these issues. In 2023, the adoption of Bill C-11, the *Online Streaming Act* (S.C. 2023, c. 8), notably gave the CRTC a central role: ensuring that audiovisual and audio streaming services, as well as social media platforms, contribute, like traditional media, to the creation, production, and promotion of Canadian and Indigenous music, shows, and films. This bill enjoyed support from [a wide range of Canadian](#) and Indigenous

⁹ CDEC, *10 Proposals to Strengthen Canada's Cultural Sovereignty*, March 24, 2025, <https://cdce-cdce.org/en/publications/2025-federal-election-9-proposals-to-strengthen-canadas-cultural-sovereignty/>.

organizations.

In copyright law, consultations were conducted in 2021 on “a modern copyright framework for online intermediaries.” These consultations aimed to ensure that “the Copyright Act remains consistent with modern realities and that revenues of web giants are shared fairly with Canadian creators.”¹⁰ Then, in 2024, a new consultation specifically on copyright in the era of generative AI led to the publication of [consensus recommendations](#) by the Canadian cultural sector.

During the same period, the European legislator also took action. First, in 2018, by adopting the Audiovisual Media Services Directive (AVMSD), aimed at “create and ensure the proper functioning of a single European Union market for audiovisual media services*, while contributing to the promotion of cultural diversity and providing an adequate level of consumer and child protection”¹¹ (emphasis added). Then, in 2024, by adopting the *EU AI Act*¹², which includes provisions on training data transparency and copyright compliance.

It is important to note that the legislative frameworks in this area, both in the EU and in Canada, are emerging and evolving, and differ in some respects. In Canada, for example, no AI-specific law has yet been enacted, despite an attempt in 2023 with Bill C-27, which is now defunct. It should also be noted that, unlike the European approach, Canada favors a prior consent (“opt-in”) model, a key principle that must be preserved¹³. Nevertheless, in both jurisdictions, the need to develop a licensing market for cultural content is recognized, and civil society is mobilizing to ensure that consent and remuneration principles are respected in the development of this technology.

Canada’s and the EU’s ability to protect their cultural ecosystems depends on a fundamental condition: the recognition of their sovereign right to protect and promote their cultures, respecting their specificities, without this being compromised by digital trade governance mechanisms, such as DTAs.

2.7. Canada and the European Union: Partners for Cultural Diversity in the Digital Environment

In a globalized digital environment marked by a tendency toward content homogenization, the diversity of cultural expressions and the affirmation of cultural sovereignty, as enshrined in the 2005

¹⁰ Government of Canada, *The Government of Canada Launches Consultation on a Modern Copyright Framework for Online Intermediaries*, April 14, 2021, <https://www.canada.ca/en/canadian-heritage/news/2021/04/the-government-of-canada-launches-consultation-on-a-modern-copyright-framework-for-online-intermediaries.html>.

¹¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (AVMS Directive), EUR-Lex, May 17, 2019, <https://eur-lex.europa.eu/FR/legal-content/summary/audiovisual-media-services-directive-avmsd.html>

¹² Regulation (EU) 2024/1689 of the European Parliament and of the Council of 13 June 2024 laying down harmonised rules on artificial intelligence and amending certain Union legislative acts, Official Journal of the European Union, L 219, 12 July 2024, <https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX%3A32024R1689>

¹³ See CDEC’s position: *CDCE’s Recommendations for the Review of the Copyright Act*, October 15, 2020, <https://cdec-cdce.org/en/publications/cdces-recommendations-for-the-review-of-the-copyright-act/> and *Bill C-27 on Artificial Intelligence and Data: The CDCE presents requests to protect the Canadian cultural environment*, March 14, 2024, <https://cdec-cdce.org/en/publications/cdce-brief-c27/>

Convention, cannot be limited to strictly national actions. International cooperation therefore appears as an essential vector.

Already united through the Canada–European Union Digital Partnership, “share common views on the importance of information and communication technology for their economy and society. Both sides support a positive, inclusive, and human-centric vision of the digital economy and society where the design, development, governance, and use of technology are guided by democratic values and respect for fundamental rights.”¹⁴ It goes without saying that copyright protection is fully aligned with this shared vision.

From this perspective, cooperation between Canada and the EU represents a strategic lever to promote digital governance that respects cultural rights and values cultural diversity. To strengthen this convergence, the CDCE recommends that the recommendations outlined in this consultation be integrated into the development of a potential Canada–EU DTA.

3. CDCE Recommendations Regarding a Canada–EU DTA

Recommendation 1

Canada should include a paragraph in the DTA stating:

"This agreement does not apply to any measure adopted or maintained by Canada concerning cultural industries."

The model agreement should also include a footnote containing the Canadian definition of cultural industries as set out in the USMCA, Article 32.6.

Recommendation 2

Canada should ensure that nothing in the DTA prevents it from establishing requirements for companies to comply with any measure requiring the submission of information, including information resulting from algorithmic or other technological processes.

Recommendation 3

Canada should also ensure that the DTA does not create obstacles to the implementation of digital rights management tools or technological protection measures that could block the free flow of digital products in order to protect copyright.

Recommendation 4

Canada should not make commitments under a DTA that could negatively affect the remuneration of copyright holders, particularly provisions similar to network service exceptions or “safe harbor”

¹⁴ Innovation, Science and Economic Development Canada (ISED), “Canada–European Union Digital Partnership,” last modified December 12, 2023, <https://ised-isde.canada.ca/site/ised/en/canada-european-union-digital-partnership>

exceptions, or other copyright exceptions. Canada should not make commitments that would limit its ability to protect copyright.

Recommendation 5

Nothing in a Canadian model digital trade agreement should prevent the Canadian government from requiring foreign companies to provide data in the context of their public policy obligations.

Recommendation 6

Given the rapid evolution of data and artificial intelligence provisions, it is imperative that the government consult the cultural sector if new commitments are to be negotiated.

Recommendation 7

Canada should refrain from including in the DTA any measures that could prevent it from collecting taxes or other contributions, including those aimed at funding cultural content, from companies engaged in digital activities.

Recommendation 8

The DTA should ensure that Canada retains the power to define the conditions for access to any funding for culture.

Recommendation 9

Nothing in the DTA should affect current or future public enterprises operating in the cultural sector.