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**Chair**

**Ms. Marlene Catterall**

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## Standing Committee on Canadian Heritage

Monday, December 6, 2004

• (1530)

[English]

**The Chair (Ms. Marlene Catterall (Ottawa West—Nepean, Lib.)):** I'm calling to order this meeting of the Standing Committee on Canadian Heritage. Pursuant to Standing Order 108(2), this is a study of Canada's position to UNESCO on the preliminary draft of the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions.

We have numerous witnesses today, and I want to assure those in the second tranche of witnesses that we will be fairly rigid about giving everybody fairly equal time. We'll hear from departmental officials for the first hour of our meeting, then we'll switch. Then, for the last half hour, perhaps we can have an interchange of views.

Ms. Peterson, I guess you're the head of the delegation here. You have the list of other witnesses from Canadian Heritage, from International Trade Canada, and from Foreign Affairs Canada. Are you going to be starting?

**Ms. Susan Peterson (Associate Deputy Minister, Department of Canadian Heritage):** Yes, I would like to start with a statement.

We're very pleased to be here with you today. As you can see, I have with me Mr. Jacques Paquette.

[Translation]

He is the Assistant Deputy Minister for International and Intergovernmental Affairs. Also with me is Mr. Artur Wilczynski, Director of International Relations and Outreach for the Department of Canadian Heritage.

[English]

Also here are Doug George, director of intellectual property, information and technology trade policy division, at International Trade Canada; Mr. Michael Brock, the director general of international cultural relations bureau, at Foreign Affairs Canada; and Philip Stone, director general of trade investment branch, at Canadian Heritage.

We circulated a brief ten-page deck for your information. It outlines where we have come from and how far we've progressed in building international support for a convention on the preservation and promotion of a diversity of cultural expression. I'm just going to focus on the key elements of this deck.

As page 2 notes, we began this process with two objectives in mind. The first is to set clear ground rules so that Canada and other countries can maintain policies that promote their culture while at the same time respecting international trade rules and ensuring markets

for cultural exports. As most of you know, Canada is very open to cultural goods and services from around the world: 95% of the films that are watched in cinemas in Canada are from outside Canada; 80% of sales of magazine on newsstands are from outside Canada; 73% of sound recordings listened to in Canada are from outside the country, as are 60% of books sales; and on television, 59% of English-language programs are from outside Canada. So this is in no way an effort on Canada's part to attempt to change the reality that Canada has been and will continue to be extremely open to the cultural goods and services from countries around the world.

Our second objective is to recognize the special, unique role, if you wish, of cultural goods and services and the rights of states to preserve and promote cultural diversity.

Page 3 looks at what we have done so far. We have worked very closely with numerous partners, at both the domestic and international levels, to achieve these objectives. At the international level, Canada's efforts led to the launch of the International Network on Cultural Policy. This is the only context in which ministers of culture from around the world can get together on an annual basis to discuss issues of common interest. You know that finance ministers do that all the time, and so do trade ministers and a number of others. Cultural ministers decided that they would very much like to do this as well, and it has been very fruitful. That group has grown from 18 members in 1998 to over 60 ministers of culture today, and all have been actively involved in the pursuit of this convention.

At the same time, we have engaged international partners such as the Organization of American States and La Francophonie, and bilateral partners as well, including France, the United States, China, and Brazil, for example, to raise awareness of cultural diversity and the issues involved.

Page 4 briefly asks the question, why UNESCO? Simply, it was selected as the appropriate venue to discuss the convention because of the scope of its membership and the fact that it's the only United Nations-based organization with a cultural mandate.

Page 5 is the UNESCO process to date. Much work has taken place since the adoption, in October of last year, of a resolution calling on the director general of UNESCO to prepare a draft convention on the protection of the diversity of cultural contents and artistic expressions. As you know, a group of experts prepared a preliminary text. Minister Frulla, in partnership with Quebec Minister Beauchamp, held a consultation on this with civil society. In September, UNESCO held a first meeting of the intergovernmental committee that will prepare the convention.

That meeting was not a negotiating session, but it certainly generated a lot of interest. As page 6 shows, over 600 people from 132 member states participated. What was clear from that meeting was that the draft circulated by the director general was agreed to be a good start, a good point of departure, if you like, for intergovernmental negotiations.

In addition to the initial review of the text, at that time a bureau was elected and a drafting committee was created. This meeting, which, after all, was held only a little over two months ago, in effect represented the very beginning of a formal intergovernmental negotiating process.

• (1535)

Turning to page 7, mid-September was set as the date for countries to send in written submissions on the draft convention. Canada did so, of course, and it is my understanding that approximately 87 of the 192 UNESCO member states have submitted written comments. The secretariat is now compiling the input, and the drafting committee will meet next week to review that input. They will then prepare a revised text for the next session of the intergovernmental meeting that will take place early in February. So things are moving quite quickly, and it is the February meeting at which real negotiations will begin.

I'm now on page 8. To date, the submissions and the interventions of various states have demonstrated a potential that this convention could evolve in a direction that is outside and beyond the mandate given to the director general of UNESCO by the UNESCO General Conference. This is very important to us. It is our objective as a country to have a focused and effective convention. We believe a focused convention will be an effective one. Our submission repeatedly returns to our primary message that the convention must recognize the dual nature of cultural goods and services. That is, yes, they have an economic dimension, but they have a social dimension as well and are not like other goods and services. Canada's submission also insists that the convention reaffirm the right of states to take measures in support of the diversity of cultural expressions.

Page 9 covers key issues that are outstanding. We're going to continue to work, both here at home and abroad, to ensure that the convention meets Canada's needs and interests. As a matter of priority, and as reflected in our submission, Canada believes that the scope, the objectives, the rights, and the obligations of the convention need to be clarified. When that is done, then it makes sense to turn to the other key issues that are on the table. But until one really understands and gets some sort of agreement on scope, objectives, rights, and obligations, it's a little hard to go on to the next set of important issues, including follow-up mechanisms and dispute settlement mechanisms and the like.

Turning to page 10, what is Canada doing now? We're very active. Canada will participate in the drafting committee meeting as an observer, and Mr. Wilczynski will participate as the rapporteur of the intergovernmental meeting. We will continue to consult with other orders of government, with federal departments, and with civil society, to ensure to the extent possible that we really do have a coordinated, pan-Canadian approach to this convention. We will also continue, of course, to assess the convention as it evolves, and we certainly are prepared to work tirelessly to make sure it meets our

objectives. We've put a lot of effort into getting it this far, into supporting it this far, and we have every intention of continuing to do just that.

Madam Chair, my officials, those from Foreign Affairs and from International Trade, and I will be happy to take questions.

• (1540)

**The Chair:** Thank you very much.

Mr. Schellenberger.

**Mr. Gary Schellenberger (Perth—Wellington, CPC):** Thank you.

I thank everyone for being here today.

I haven't had a great amount of time to go over everything that's here, but I come from a riding that has a national institution, a cultural theatre. I come from Perth—Wellington. The Stratford Festival is within my riding, so I know it is an internationally renowned theatre, and I know we have various theatres of the same quality in Canada.

Also, I must say that I was scanning some of the movies that were on the movie networks the other evening, and as I went through, all of a sudden I recognized a face. It was the face of William Hutt. Had I not recognized the face, I probably wouldn't have realized that it was a Canadian movie.

There are various things that I think we have to do, whether they're on the international scene or not. We have to try to get some of our people known, whether they be directors, or whether it be through particular movies or things like that. We need to get them known so that even in Canada we know what "Canadian" is. If we don't understand it necessarily in Canada, it's hard to be recognized in the global market.

Another thing that I do realize, too, is that our movie industry, whether it be technicians or directors or things like that, is being hurt right now with the American look, to try to get everything back to Hollywood or back into the United States. I know Arnold Schwarzenegger is working very hard to take back some of the work that we've had. Again, then, can a new cultural instrument work if the United States continues to use a narrow definition of culture, whereas Canada and most other nations use a broad definition? That's my first question.

Two, what are some of the greatest challenges facing Canada related to cultural diversity and globalization?

**Ms. Susan Peterson:** To take your second question first, when I joined the Department of Canadian Heritage a couple of years ago, it was fascinating to read a history of Canada's cultural policy, going right back to earliest radio. Basically, it has always been a history of trying to ensure that there's a place for Canadian content and to make sure it is created and reaches Canadians. The Government of Canada has used all sorts of tools at its disposal to ensure that happens, whether it be tax credits, whether it be regulation requiring Canadian content on television, whether it be subsidies of various sorts to television, book publishers, and what have you, or whether it be restrictions on foreign ownership of cultural industries in Canada. It has used a whole array of instruments at its disposal over time.

The objective now certainly is to ensure that in the future other countries' views of what is legitimate and not legitimate in those fields does not undermine Canada's right—and other countries' rights—to go on using instruments to make sure its own cultural content is created and indeed reaches Canadians, and that Canada indeed secures export markets, too, because we are doing rather well and increasingly well in export markets.

•(1545)

**Mr. Gary Schellenberger:** How are the economic and technological consequences of globalization affecting the promotion of Canada's cultural policies?

**Ms. Susan Peterson:** What I am going to do right now is start asking others, because I don't want to be the only person who answers questions.

**A witness:** We're quite happy.

**Ms. Susan Peterson:** Oh, you're quite happy if I continue? What if I'm not?

**Voices:** Oh, oh!

**Ms. Susan Peterson:** Clearly, you want to hear from all three departments, and not just from me on this.

On the economic and technological, would you like to take a stab at that?

**Mr. Jacques Paquette (Assistant Deputy Minister, International and Intergovernmental Affairs, Department of Canadian Heritage):** If I go back to the convention that is being negotiated, the point is that we are trying to achieve our objectives. The main objective, as we said, is to make sure governments maintain the capacity to adopt policies in the cultural domain. What we have noticed is that we have to be able to provide, first of all, a clear definition in the convention, and also make sure the convention is well focused in order to be able to achieve our goals.

Some of the issues you are raising will be part of the discussion. We will come to the definition especially of the scope of the convention and what we're trying to achieve, but the basic element is really to ensure that we preserve that capacity of states to adopt policies to preserve and promote their cultural expression.

**The Chair:** Thank you.

We will go to Mr. Kotto.

[Translation]

**Mr. Maka Kotto (Saint-Lambert, BQ):** Thank you, Madam Chair.

I would first like to welcome all of you.

My question is for Ms. Peterson. I would like you to enlighten us since, to many, this is a rather esoteric debate, a wander through the legal labyrinths that are of little interest to the general public. However, we know that this convention, if it is signed, will bring a number of things in its wake, and we want everything to be administered under the aegis of either UNESCO or the WTO.

It may be that the Department of Industry is more inclined to consider that cultural policies and support for culture should come under the WTO. Would you agree with that?

[English]

**Ms. Susan Peterson:** Canada's position is clear on this, in that our aim is to give this convention its full importance by placing it on an equal footing with other agreements. We believe it's very important to establish a relationship with other international instruments that are not hierarchical, that are equal. This would not be subordinated to any trade convention; it would be equal to any trade convention, and they would indeed be complementary.

This gets to the other question. What if there are disputes? Certainly, Canada's position is that there absolutely needs to be a strong, effective, and appropriate dispute resolution mechanism attached to this convention, although the details, as I suggested in my introductory comments, would be worked out once you've nailed down the first priority questions about the scope and obligations under this convention.

So there is no question of subordination of this convention to a trade convention.

[Translation]

**Mr. Maka Kotto:** I will go even further. You mentioned an effective dispute resolution mechanism. Do you not consider it a problem if these mechanisms are restrictive rather than effective?

•(1550)

**Mr. Jacques Paquette:** Or even effective and restrictive.

**Mr. Maka Kotto:** Or even effective and restrictive.

**Mr. Jacques Paquette:** I have a number of things to say about that. First, a number of departments and provinces have provided us with excellent, very detailed comments. The document that we have presented is in some ways a first step, and we are awaiting comments. We have not put everything on the table, since there will be more detailed discussions in January.

The text of the Canadian submission contains two stages. The first involves suggestions to the committee which will be meeting to begin examining the entire document. With respect to certain sections, we were told that further talks would be held. Detailed comments are already available in other areas.

With respect to the conflict resolution mechanisms, we don't yet know what will be included in the convention, since these mechanisms have not yet been decided upon. We prefer to concentrate on this part, and leave the details of the conflict resolution mechanisms for a later time.

That is more or less the suggestion that we made to the drafting committee which will be meeting in December. Let us devote our time and energy to defining the elements that will be covered by the convention.

In our discussions with other countries—and this is more or less what Ms. Peterson was saying—we have noted that some countries attempt to broaden the convention and scatter it in various directions. All the Canadian stakeholders were unanimous in saying that it is necessary to properly target the convention for it to be effective.

**Mr. Maka Kotto:** As these negotiations are being held, the United States is in the process of establishing bilateral agreements with other nations. Does that worry you?

Along with this convention, the WTO may—and I say may—develop its own project, which could include culture. Is that not also a concern for you?

What do you have to say about that?

**Mr. Jacques Paquette:** I would say that we have already been quite efficient in conducting these discussions. If you look at how the file has evolved over the past years, you will see that we have already accomplished a great deal.

Now, as we begin these talks, the countries are already questioning certain things. The protection of cultural diversity has now entered the wider arena. A movement that we had not seen a few years ago is beginning to emerge. The UNESCO discussions will have an influence on what is debated in other areas.

We are making progress. The agenda is an ambitious one, particularly if we consider that there are 192 countries around the UNESCO table, so, as you can imagine, the visions are quite divergent. The aim is to manage to come together to bring to fruition the convention that we would all like to have.

**The Chair:** Thank you, Mr. Kotto.

Mr. Angus.

[English]

**Mr. Charlie Angus (Timmins—James Bay, NDP):** Thank you, Madam Chair.

I'm very impressed with the work in terms of the importance of articulating diversity of culture internationally.

My concern is that when we talk about binding mechanisms and putting this agreement on equal footing with other trade agreements, I think we have to be really clear. We have 192 countries that we're negotiating with, but only one counts—the U.S.—and the U.S. isn't in the business of making international agreements. They make ad hoc coalitions of the convenient whenever it suits them, and they use the WTO as their mechanism. I think anything we talk about in terms of culture has to be framed in terms of the WTO.

For example, in my previous life as a magazine editor I was quite shocked one day to find out that in going to the post office for bulk rates, I was seen as having an unfair advantage over *Penthouse* and *People* magazines, because our magazine, which articulated northern Ontario culture, was able to get a bulk rate. The WTO ruled against us.

That to me is an example of how far the U.S. government is willing to go with trade law to push their agenda, which is the export of Mickey Mouse into every part of the world that has not yet seen Mickey Mouse.

My question is, what kinds of binding mechanisms can we put in place, and how can we possibly put a cultural agreement on equal footing with the power of the WTO?

• (1555)

**Ms. Susan Peterson:** How can we possibly? There are a good number of countries that are allies with Canada in wanting to do just that.

It's interesting, I went to the most recent ministerial meeting of the International Network on Cultural Policy in Shanghai, and I was really fascinated to see ministers from very diverse countries feeling that it is time to do something on this.

So yes, it will require will and it will require people coming together around a common view. But we're optimistic that there will be some power in numbers, if you wish, as long as we can keep this convention, as we believe, appropriately focused in order to be effective, and not let it wander off into a lot of other territory from which it would be difficult then to come back and accomplish what we really have in mind here, which is to protect governments' rights to have policies with respect to cultural goods and services and artistic expression.

That's what we're there to do. In a sense, it's amazing we've gotten this far, perhaps.

**Mr. Charlie Angus:** I agree. I think the direction we're going in is fantastic.

But my concern...and I guess I'll express it in terms of our trade negotiators. My sense, in terms of cultural arts, is that trade negotiators see culture as any other widget that's traded. We have international agreements, and a lot of people who do trade like organizations like the WTO, because it's simple.

So how do we ensure that we maintain our cultural bottom line, which we are bringing forward in UNESCO, when we are going into trade negotiations that are continually mercenary in their desire to open the borders to U.S. exports?

**Ms. Susan Peterson:** Who would like to add, please?

**Mr. Doug George (Director, Intellectual Property, Information and Technology Trade Policy Division, Department of International Trade Canada):** Thank you.

Canada has had a long-standing policy when it comes to trade and culture and trade negotiations. When we're negotiating our trade agreements, pending development of a convention on cultural diversity it's our policy that we will not assume new obligations that would limit our policy flexibility in the area of culture, nor will we ask other countries to take commitments in cultural areas where we're unwilling to take commitments. Further, we continue to seek a general exemption for culture in both bilateral and regional trade agreements such as those we have with Chile, Israel, and Costa Rica.

With the UNESCO agreement, we're seeking a new international instrument on cultural diversity that will set out clear ground rules that allow states to maintain policies to promote culture while also respecting the rules of international trading systems and ensuring markets for our cultural exports.

**Mr. Charlie Angus:** So with what we negotiate with UNESCO, that would be a bottom line in terms of our trade negotiations with the U.S. at the WTO or in other areas?

**Mr. Doug George:** In the WTO, in the ongoing negotiations, for example, if we're asked to take GATT's services commitments in the area of audiovisual, we will not do that, nor would we ask any other country to take commitments on our behalf in the area of audiovisual. With the U.S. we have the exemption in NAFTA, which kicks back to the Canada-U.S. FTA.

**Mr. Charlie Angus:** So those are bottom lines, then?

**Mr. Doug George:** That's our policy at the moment, yes.

**The Chair:** Your time is up. I should just say, though, you're a bit out of date. It's not Mickey Mouse anymore. It's the seven princesses.

**A voice:** It's SpongeBob.

**The Chair:** We're trying to corrupt all the little girls of the world now.

Mr. Rodriguez.

[*Translation*]

**Mr. Pablo Rodriguez (Honoré-Mercier, Lib.):** Thank you, Madam Chair.

Can you tell me how many bilateral trade treaties Canada has signed with other countries like Costa Rica and Chile?

[*English*]

**Mr. Doug George:** Off the top of my head, I couldn't say.

**Mr. Pablo Rodriguez:** You don't know.

[*Translation*]

Do these bilateral treaties always contain a cultural exemption?

•(1600)

[*English*]

**Mr. Doug George:** That's Canada's negotiating position in bilateral trade agreements, yes.

**Mr. Pablo Rodriguez:** Okay, so it should be the same with the free trade of the Americas,

[*Translation*]

the FTAA,

[*English*]

as we say in French.

**Mr. Doug George:** That is our position in the FTAA, yes.

[*Translation*]

**Mr. Pablo Rodriguez:** Once the UNESCO convention has been signed, will it take precedence over other agreements that involve cultural content?

**Mr. Jacques Paquette:** We want the convention to have a place within the international system. At this time there exists a kind of vacuum, that this convention is trying to fill. We want to define what is meant by the capacity for states to adopt laws or measures that would protect cultural expression. This element has to be taken into account, particularly when the trade of goods and services is involved. It is a matter of recognizing the two aspects of these goods and services. On the one hand, we seek to gain access to markets and have open cultural markets. On the other hand, when decisions must be made, we must take into account the capability of states to adopt certain measures or policies. This convention seeks to provide these definitions so as to occupy a field that is still empty. We want it to become part of the international reality.

We said at the outset that, for very simple legal reasons, when new treaties are signed, they must not displace other treaties. However,

there should not be a hierarchy created. This convention will therefore not be subordinate to any other conventions. The conventions will be on equal footing.

One of the issues involves existing human rights conventions. In view of the debates that have taken place so far, we know that some countries might want to use this convention on the principle of cultural diversity to try to renege on some of their human rights commitments. This question must be managed very tactfully in order to avoid giving any perverse effects to this convention. That is part of the debate.

As we said at the outset, we have provided comments on the actual wording of the text. However, there remains a great deal of work to be done. Once the committee has compiled all of the comments submitted by some 78 countries, at the end of January, the real negotiations on the text will begin.

**Mr. Pablo Rodriguez:** Mr. Angus mentioned the United States. Is it possible to discuss cultural diversity with them, or is their approach very unilateral?

**Mr. Jacques Paquette:** First, you must remember that the United States is not part of UNESCO. Secondly, they were involved in the UNESCO decision to begin these discussions, so that makes them stakeholders. There have also been consultations.

I will let Artur provide you with more details.

[*English*]

**Mr. Artur Wilczynski (Director, International Relations and Outreach, International and Intergovernmental Affairs, Department of Canadian Heritage):** I would like to add to that. We have been engaging the United States both bilaterally and multilaterally on the question of cultural diversity. The first time we did it in a very direct way was as part of the Summit of the Americas process in Quebec City, which included a declaration on cultural diversity.

There was a component of that in the declaration and an entire chapter on a plan of action on cultural diversity that resulted in the holding of two ministerial-level meetings on cultural diversity in the context of the Organization of American States, where the U.S. actively participated and joined consensus on a number of important questions linked to cultural industries, to cultural goods and services.

Are they at the same place as we are in the negotiations? No. Has there been important progress made since we began the discussions with them on this question in 2001? Yes. I think in addition to the fact that they've come back to UNESCO, their written submission says they are interested in reaching consensus on a convention. We are now in discussions with them on what the nature of such a convention would be.

•(1605)

**The Chair:** Thank you, Mr. Rodriguez. That's it?

**Mr. Pablo Rodriguez:** Yes.

**The Chair:** Ms. Oda.

**Ms. Bev Oda (Durham, CPC):** Thank you, Madam Chair.

Thank you for appearing and for giving us this opportunity to talk with you about this important convention.

Fundamentally, I would like to talk with you about the scope. You've identified yourselves. I appreciate the notes and your comments. You are demonstrating that your attempt is to narrow the scope; however, I understand how you're doing this.

If you want to narrow the scope, why would Canada suggest that the title of the convention be changed from what is proposed now to "preservation and promotion"? "Promotion" is being added. I think this is your suggestion.

Promotion is not defined anywhere. It seems to me promotion goes beyond the initial objective of this undertaking here. Can you answer this? Why do you believe promotion should be included in the mandate, the scope, and the objectives of this convention?

On top of that, you've suggested and recommended the elimination of articles 7 and 8, particularly article 7 regarding promotion. To me, there's an inconsistency here.

**Mr. Artur Wilczynski:** Thank you very much for the question.

In terms of the addition of the word "promotion", I think part of the objective of this convention is to raise awareness, in general, that we believe as a global community that cultural diversity is a good thing, a positive thing that enriches all of humanity.

As part of the Universal Declaration on Cultural Diversity...there was a mandate from that to do so. The convention, in particular, by switching it from "protection" to "preservation and promotion", captured it in more positive terms and in more active terms than simply "protection", which was viewed as too passive.

On articles 7 and 8, we're focusing on a right element in terms of what states parties will do at the domestic level. It basically compels states parties to.... For example, the existing article 7 says that "States Parties shall provide all individuals in their territory with"—

**Ms. Bev Oda:** I've read that, thank you, and I'm limited in time. I understand that.

However, I disagree with you. I think the inclusion of the word "promotion" makes it too wide in scope. It enables a number of activities that are not defined and not limited for any one country to undertake, etc. Certainly it was the protection of cultural diversities that I think was the original understanding, that every country should have a right to protect its own culture and to operate within a global environment.

I know this is still in the early stages of drafting, but when we see the reality of what's happening, where the exemption in the NAFTA agreement is being tested, where we have American legislators signing bills that will enhance the ability of their production industries and their creators, etc., where we have a country, the major country in the Americas, disregarding WTO rulings, for example, in softwood lumber... This is a wonderful initiative, but how much confidence should we have in this convention, that in fact what we're trying to achieve here is going to be achievable?

**Ms. Susan Peterson:** I think that is the question we'd all like to know the answer to. That's why we're going to effectively keep on working as hard as we can to make sure other countries understand what's at stake if they do not and to have a coalition of support, both among governments and among civil society, that will make it clear why this is so important in order to get an adequate consensus there.

I guess the alternative would be to not try. Canada has certainly put an enormous amount of effort into it, and it will continue to do so.

● (1610)

**Ms. Bev Oda:** If you look at the SAGIT report, it actually gave recommendations that were more specific and concrete. I don't necessarily see those recommendations reflected to the degree that one might hope. For example, they suggested that there would be specific measures and a range of measures that a country could undertake. I find there is a section in there, but it's still very theoretical. It's not as practical as I hoped it would be.

**Mr. Jacques Paquette:** As you understand, that's really the beginning of the discussion. We were reacting to a text that was actually prepared by experts. There's some way to go.

The negotiations in January will be crucial. As you know, there will be many countries around the table. It's not only that having these kinds of negotiations requires a lot of work, but we have to be successful in convincing the others to follow our line and we also have to create allies.

I should note here that the EU countries have decided to work together as one unit. If you look at their submission, they're in line with us. That's already a very solid base to be able to advance our interests in that context.

**Ms. Bev Oda:** Thank you.

I have a final comment, Madam Chair. I would make a note that it's difficult to thoroughly analyze this and form an opinion when we're still waiting for the current government to provide an overall cultural policy, which they say they've been working on for two years.

Thank you.

**The Chair:** Thank you, Ms. Oda.

Madam Bulte.

**Hon. Sarmite Bulte (Parkdale—High Park, Lib.):** Madam Chair, I can go last.

Mr. Khan or Mr. Simms....

**The Chair:** You're next. Oh, no, they're next.

My apologies again, Mr. Bergeron. I'm showing favouritism today unconsciously.

[Translation]

**Mr. Stéphane Bergeron (Verchères—Les Patriotes):** The unconscious government trend rears its head.

Madam Chair, with regard to Canada's position as it compares to the European one, I understand that when negotiating, one cannot put all of one's cards on the public table. Earlier, Mr. Paquette told Mr. Rodriguez that the United States was part of UNESCO and that we are involved in negotiations with them at this time.

However, we must remember that the United States, until very recently, had withdrawn from UNESCO and if they have returned, it is because of this debate on cultural diversity. However, we know that the Americans feel that their cultural products have a commercial component.

I am very much concerned by the fact that the Canadian government, like all European governments, refuses to say whether it is prepared to subject the provisions of the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions to WTO rules. Since we are well aware of what motivates the Americans in the current debate, I will ask the same question that was asked by my colleague. What is Canada's position on the possibility of subjecting the provisions of a future convention on cultural diversity to the WTO rules?

[English]

**Ms. Susan Peterson:** I feel that I'm becoming repetitive, but Canada's position is certainly that there is no way this convention would be subordinate to trade conventions. It's a fundamental rule of international law that one has to respect the international obligations that one has already committed to. There's no question of this one being higher than a trade convention, but there's no question of it being lower than a trade convention in the hierarchy. One has to respect present and existing undertakings, including human rights undertakings. That's why we've been so clear and so insistent on an equal footing and no hierarchy position on this issue.

• (1615)

[Translation]

**Mr. Stéphane Bergeron:** I understand, but this only serves to maintain the vagueness of the Canadian government's real position. If there is a conflict between the WTO provisions and those of a future convention on the protection of cultural diversity, what will Canada's position be on the priority or preference that must be given to one set of provisions over another?

[English]

**Ms. Susan Peterson:** Well, that would get us into the dispute.

[Translation]

**Mr. Jacques Paquette:** Unfortunately, we must tell you that we find this question premature, since the contents and the scope of the convention itself have not yet been defined. Once we know what it looks like, and we are not there yet... I said that there were 192 countries at the table. There is a great deal more to discuss. Canada's position is relatively clear on this. Once it has been done, as in all other cases, we will be in a position to sit down and define the dispute resolution mechanism.

**Mr. Stéphane Bergeron:** You tell me that the countries are discussing this at length. You say that Canada's position is relatively clear and in the same breath you tell me that my question is premature. If Canada has a clear position, what is it?

**Mr. Jacques Paquette:** Exactly what I have just said. That is Canada's position, and it is shared by the European Union as well. The content of this convention must be set out before any discussions can begin on relations with other bodies and on a dispute resolution mechanism. That is the stated position.

**Mr. Stéphane Bergeron:** Up until now, Canada's position has always seemed to be relatively clear: culture would not be subservient to the normal trade regulations. However, according to what you are saying now, there is room for debate. We are now ready to agree that culture can be subordinate to standard trade regulations.

**Mr. Jacques Paquette:** That is not what I said. I said that the definition of the relationship between this convention and the

existing conventions will have to be examined. I am not saying that it will be subordinate to other rules. As we have already said, there will not be a hierarchy. We don't want this convention to be subordinate to the WTO rules.

**Mr. Stéphane Bergeron:** Then what is there to discuss if Canada's position is so clear, namely, that culture must not be subordinate or subject to international trade rules? What leeway do we have when negotiating or discussing this?

**Mr. Jacques Paquette:** I repeat that we must ensure that we have a properly targeted convention and clear definitions within that convention. Depending on how the discussions go, the convention might take a different turn. We believe that it must be well targeted, which is not necessarily how all of the other countries see it. Depending on how things turn out, it will then be easier to finalize the process, because there is also a process involved.

**Mr. Stéphane Bergeron:** Madam Chair, I would like to make a closing remark.

**The Chair:** I am sorry, but you have already taken your six minutes.

Mr. Simms.

[English]

**Mr. Scott Simms (Bonavista—Gander—Grand Falls—Wind-sor, Lib.):** I just have a quick question. This is for Mr. George.

I'll ask you a question about intellectual property information technology. The deck we've seen talks about follow-up dispute settlement mechanisms with respect to intellectual properties. My chief concern is about the policing of this in other nations. We can be very serious about intellectual properties and protection of artists' rights, but I get the feeling other nations are not as serious as we are.

Do you care to comment on that?

• (1620)

**Mr. Doug George:** Yes. On your basic premise that other nations are not as serious, I can say that two of our largest trading partners have as one of their top priorities this year increased enforcement: the European Union and the United States. The U.S., as mentioned, has come up with a STOP program—

**Mr. Scott Simms:** What I'm looking at is some of the larger markets, where people may not be as serious—Southeast Asia, perhaps, and India.

**Mr. Doug George:** It is a concern of a number of countries to ensure greater enforcement. I was at a meeting last week in Geneva where one of our larger trading partners was explaining the steps it was taking to increase enforcement.

**Ms. Susan Peterson:** I might add that the convention as drafted now has, in addition to words on dispute settlement mechanisms, references to other follow-up bodies. It's not as if this thing would be created and then just exist on its own. Although we would want to be sure that the kinds of bodies envisaged would end up being—

**Mr. Scott Simms:** Can you give me an example?

**Ms. Susan Peterson:** Yes. For instance, they mention a general assembly of state parties. That would be the body they call the “sovereign body” of this convention. It would meet every two years, or more often if necessary, and it would be assigned a number of responsibilities. This is on page 11 of the draft convention, for those who have it.

In addition to this general assembly that would be in charge, if you wish, there would be created, it is proposed, an intergovernmental committee established within UNESCO. It would meet once a year. It would be to promote the objectives of this convention, and I see the words say “and to encourage and monitor the implementation thereof”. It's not as though this thing would be born and then just have to take care of itself somehow.

Part of the objective behind these bodies too would be to avoid disputes, so that you don't end up having to use the dispute settlement mechanism too often.

So these would be in place, and there would be ongoing promotion of the convention, to see how it's being implemented and what have you.

**Mr. Scott Simms:** I'm just concerned down to the nitty gritty, you could say, when it comes to a lot of our intellectual properties that are distributed abroad—which can happen instantaneously. I get the feeling many countries may ignore the fact that we have great artists who put out great material and don't get their justice, I guess you could say, around the world. I'm worried that these bodies you speak of have about as many teeth as an earthworm, if you'll pardon the expression.

I have deep concerns about this and I'd like more information on these bodies as such. I'm assuming that in your discussions with them they are sincere—they seem to be sincere—and I'm not particularly talking about the U.S. or European Union; I'm talking most about the other members, where we know they abuse intellectual properties quite flagrantly.

**Mr. Doug George:** We have international rights and obligations under a number of World Intellectual Property Organization—WIPO—treaties, as well as TRIPS. We take our job of enforcement seriously.

**The Chair:** You can have one more question, if you wish, Mr. Simms.

**Mr. Scott Simms:** Can I share my time with Mr. Rodriguez?

Thank you, Madam Chair.

[Translation]

**Mr. Pablo Rodriguez:** Mr. Paquette, I would like to come back to Mr. Bergeron's question.

You say that the convention must neither take precedence over the WTO nor be subordinate to it. Therefore, some type of dispute

settlement mechanism is required. You also say that it is somewhat premature to talk about it because discussions on this will be held.

It is all very well to discuss this, but I would like to know Canada's position and what will be said when these issues are raised?

**Mr. Jacques Paquette:** You will find the answer in our brief. We have set out the basic criteria, namely, equal status for the convention. This implies that one will not take precedence over another.

When it comes to disputes, then I must discuss content. I am sorry, but there is no way around it. If someone asks me what disputes we will manage, I can only say that I don't know because we haven't yet spelled out what will be covered by the convention.

You are talking about a process to manage a content which, for the time being, has not yet been defined. We are working on it. There are some various specific elements and provisions. We have submitted comments that reflect what the provinces, the other departments and the coalitions have told us. We will then begin the discussions.

We feel that before defining what disputes we will manage, we must ensure that we are fully aware of the content of this convention, since we don't know if it will generate any disputes. The fact remains that for the time being, we are incapable of answering the first question. That is why we say that it is too early to talk about a dispute resolution process.

The elements that we have submitted...

● (1625)

**Mr. Pablo Rodriguez:** I don't want to go into detail, but I would like an idea of your general intention. Would you like one to take precedence over the other? Philosophically, what is your position?

**Mr. Jacques Paquette:** Philosophically speaking, I would say that if we get the convention that we want, when a difficulty or a challenge arises, the fact that a country has been able to make decisions or take any steps of a cultural or policy nature will be taken into account, which is not the case at this time. That is what we are moving toward.

**Mr. Pablo Rodriguez:** That sounds like a politician talking. We are the ones who should be giving you that kind of answer. Maybe we should trade places.

[English]

**The Chair:** Mr. Brown, were you next?

[Translation]

**Mr. Stéphane Bergeron:** That is the type of answer we can expect during question period, but not here.

[English]

**The Chair:** Are you next? It's your turn, and then Ms. Bulte's.

**Mr. Gord Brown (Leeds—Grenville, CPC):** Thank you, Madam Chair.

I'd like to thank our witnesses for coming today.

I know a little bit about UNESCO. In my riding of Leeds—Grenville we have the Thousand Islands-Frontenac Arch Biosphere Reserve, which was recently recognized. Also, most of the Rideau Canal runs through my riding, and it's trying to get recognition as an international heritage site recognized by UNESCO.

I'm interested in all the conventions coming about. My first question would be, who represented Canada at the intergovernmental meeting that took place in October 2003? Who were the people who actually represented Canada at that meeting?

**Mr. Artur Wilczynski:** At the general conference in 2003 it was the Minister of Canadian Heritage who was there. I believe the Minister of Foreign Affairs was also at the general conference. It's a governmental, ministerial-level meeting for that body.

**Mr. Gord Brown:** So we had the Canadian heavy hitters there representing us.

Also, what are some of the more significant social and cultural trends in Canada related to cultural diversity and globalization, and what challenges and opportunities do these changes raise for cultural policies?

**Ms. Susan Peterson:** That's a general question not related to this convention, is that correct?

Certainly in the Department of Canadian Heritage one thing we've done of late, and I mean over the past two or three years, is try to make our programs in Canadian Heritage more reflective of the talents, the excellence, the expressions of Canadians from various origins. We've done this in a number of ways, by making sure our programs are not overly burdensome so that people can't understand how to apply. We reach out to these groups to make sure we are not inadvertently excluding people from the support our programs have for culture across this country, be it at the community level or for bigger organizations.

To give you an example, we support a number of schools that offer professional training in various artistic disciplines. Recently, we've been supporting an East Indian dance company that really does top-level professional training, as well as another company that does training in aboriginal performing art. That's just one small example of how we're trying to make sure that when we evaluate applications to our programming, we do it in a way that takes into consideration the changed demography, the changed reality, the cultural diversity Canada now has.

•(1630)

**The Chair:** Ms. Bulte.

**Hon. Sarmite Bulte:** Let me begin by congratulating you on being where you are today, considering that the SAGIT released its report in February 1999 and that we are actually at a point where we can look at a draft text. I think that's quite remarkable, in the way of the world. Congratulations to all of your departments for that.

I'm interested in knowing who's negotiating on our behalf. I noticed that Foreign Affairs have been very quiet in this. Are these negotiators taken as seriously as, say, NAFTA was? Do we have a Jonathan Fried negotiating on our behalf there? I want to know how Foreign Affairs and International Trade and Heritage Canada are coordinating from a logistics point of view.

**Mr. Artur Wilczynski:** In terms of the coordination, we work hand in glove with the other departments, quite frankly, in terms of preparations on Canadian positions and for intergovernmental meetings. We've been using a number of different approaches over the course of the years to advance the issue.

For the cultural diversity convention, the draft, the first intergovernmental meeting, which took place in September, the head of the Canadian delegation was Jean-Pierre Blais, the assistant deputy minister—

**Hon. Sarmite Bulte:** But are we going to have real negotiators negotiating this thing out—not at the departmental level, but as serious as it was when we negotiated NAFTA? I want to know who is going to be negotiating that, clause by clause, at the table, and not at the ADM level. I want to know who our negotiators are going to be. Have we chosen those negotiators?

**Ms. Susan Peterson:** Mr. Paquette is the new ADM in this area, replacing Jean-Pierre Blais. Exactly how we're going to put together our team of negotiators is yet to be determined. You'll certainly have a key role.

**Hon. Sarmite Bulte:** I have another question on NAFTA. I know a little about this because I chaired the trade committee in 1999, when SAGIT was released. How is this new instrument going to relate to NAFTA?

While you're right, Mr. George, that our position is that until we have an instrument we won't be taking any obligations with respect to culture, unfortunately, with NAFTA, we do have that retaliatory provision in there. I'd be interested in seeing how this convention is going to play with that retaliatory provision. I'd also be quite interested in seeing—and it's not exhaustive, but you actually listed cultural business services here—what's going to happen to the old cultural business services definition that was in NAFTA.

At any rate, I'm interested in how those two play in together. I think it's a very important instrument, but I really want it to be seen as being as important as NAFTA, as GATS, as WIPO.

Mr. George, perhaps you can help us move along that WIPO ratification as well, through your department. That would be greatly appreciated.

**Mr. Doug George:** The same applies here as in previous answers, that it's very difficult at this stage to say what's going to come out of the UNESCO convention. The UNESCO convention on its own cannot alter the terms and conditions of NAFTA, but as we know, we have in NAFTA, in article 2106, an exemption for culture that then refers us back to the Canada-U.S. FTA, article 2005.

To say anything beyond that would just be speculative, at this point.

**Hon. Sarmite Bulte:** I guess that was my concern, because originally, when SAGIT made its report in 1999, it didn't particularly talk about where we were going to put this instrument. Right now it has sort of landed in UNESCO's place. Is this really the proper forum in which we should be negotiating this instrument?

**Mr. Jacques Paquette:** I can't really give you an answer other than that's where it's happening. There was a decision taken and agreed to by all the member countries of UNESCO. That's the reality we're dealing with at the moment.

•(1635)

**Hon. Sarmite Bulte:** Thank you.

**The Chair:** The final question will come from the chair, and then we will switch our witness panel. I would ask you all to stay in case we want to come back to any of you.

Help me out here, as a relative newcomer to this whole field of public policy. You said our position is to protect culture while respecting the rules of trade. It seems to me that's like putting a 200-pound person in good shape in the same ring as a 120-pound person in not such good shape, that the whole protection of culture is, by definition, an exemption and an override on trade rules.

Can Mr. George please explain to me how the two can be put on equal par in Canada's position?

**Mr. Doug George:** I'll also refer to my colleagues—

**The Chair:** No, this is a trade issue.

**Mr. Doug George:** When you negotiate, you try to negotiate new rules in conformity with your existing obligations. That's our approach going into the UNESCO negotiations.

**The Chair:** But haven't we exempted culture from previous trade negotiations? Why would it now be on a par with trade regulations?

**Mr. Doug George:** We're talking about two international agreements. Canada's position is to take on no new commitments in areas of culture in the WTO negotiations.

I have to refer to Heritage, the lead in actually negotiating the UNESCO convention.

**The Chair:** I suspect there's a debate that's going on between the two of you, and that should probably go on at this committee, as to how you can have two on a par when one is in need of protection and the other is not. I don't think I'm going to get an answer right now, but I certainly wanted to raise the issue.

**Mr. Doug George:** I can point to the biodiversity convention as another example of an international agreement that addresses some issues that are addressed under trade. And Canada considers them on a par.

**The Chair:** We'll take a short break while we change our panel of witnesses.

Thank you.

• \_\_\_\_\_ (Pause) \_\_\_\_\_

•(1645)

**The Chair:** Order, please.

Who is going to be the head of this delegation?

[*Translation*]

**Mr. Pierre Curzi (Co-Chair, Chair, Union des artistes, Coalition for Cultural Diversity):** I believe I am up first. There are a number of us in the delegation, but we all work well together.

**The Chair:** Thank you very much. The longer witnesses speak, the less time committee members will have to ask their questions.

**Mr. Pierre Curzi:** We will be very brief.

I would like to thank the committee for welcoming us here this afternoon.

Allow me to introduce Ms. Maureen Parker.

[*English*]

She is executive director of the Writers Guild of Canada, which represents Canada's English-language screenwriters. She is also a vice-president of the coalition.

[*Translation*]

I would also like to introduce Mr. Robert Pilon, who is seated to my right. He is the Vice-President of the Coalition for Cultural Diversity.

My name is Pierre Curzi. I am the President of the Union des artistes, as well as the Co-Chair of the Coalition for Cultural Diversity. I have been the co-chair since the organization was founded five years ago. The other co-chair, Mr. Scott McIntyre, from British Columbia, could not be here today.

The other people here with us will introduce themselves. This is Mr. Ken Stein.

[*English*]

**Mr. Ken Stein (Chair, Cultural Industries and Vice-President, Corporate and Regulatory Affairs Shaw Communications, Sectoral Advisory Group on International Trade for Cultural Industries):** I'm Ken Stein, chairman of the Special Advisory Group on Trade and Culture, as it then existed, which came forward with the idea in the first place of proposing a cultural instrument to deal with trade issues and culture. I have some remarks I can make, but I'm at your pleasure in terms of making the remarks and/or dealing with questions, as you would like.

**Mr. Gary Neil:** My name is Gary Neil, and I'm executive director of the International Network for Cultural Diversity, a global NGO network of 300 members in more than 70 countries.

Similarly, I have a couple of minutes of remarks, as you wish.

**Mr. Peter Grant (Senior Partner, McCarthy Tétrault and Member of Sectoral Advisory Group on International Trade, As Individual):** I'm Peter Grant, a lawyer at McCarthy Tétrault. I specialize in communications law and cultural policy. I've been on SAGIT, which Ken Stein chairs, for the last 12 years. I was heavily involved in coming up with the original idea for a new instrument.

My book was published earlier this year. I gather the clerk has circulated copies of it.

**The Chair:** Is it part of your comments to the committee?

**Voices:** Oh, oh!

**Mr. Peter Grant:** That's right. And the book is called *Blockbusters and Trade Wars*.

I have a minute or two of comments, but that's it; I'd be delighted also.

**The Chair:** Shall we start with you, Monsieur Curzi?

[Translation]

**Mr. Pierre Curzi:** Ms. Maureen Parker will begin and I will then speak for a few minutes.

**The Chair:** Thank you.

[English]

**Ms. Maureen Parker (Vice-President, Executive Director, Writers Guild of Canada, Coalition for Cultural Diversity):** Good afternoon, members of the committee.

I'm going to give you a bit of background on the Coalition for Cultural Diversity and the work we've been doing to build support for the idea of a convention or treaty that would enshrine in international law the right of Canada and all other countries to have policies designed to ensure healthy national cultural production, ensure genuine cultural diversity at home, and contribute toward greater diversity at the international level.

Just last month, on November 2, the coalition marked the fifth anniversary of its founding. A great deal has been accomplished in those five years, and we're now at a critical stage, with the process now underway at UNESCO to develop a Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions.

The CCD brings together 37 major national cultural organizations from all sectors of Canadian culture. They include major French-language associations such as the UDA, the actors organization that Pierre leads, and English-language organizations such as the Writers Guild of Canada, which I represent; ACTRA; Actors' Equity; the Directors Guild; the producers' associations CTPA and APFTQ; the independent music producers CIRPA, ADISQ, and SOCAN; CAB; the Association of Canadian Publishers; the distributors, and many others.

What brought us together and has kept us together is our agreement on the one key principle that Canada must have the right to determine the policies needed to ensure healthy levels of cultural protection in this country, so Canadians can choose cultural products rooted in their own experience, along with books, films, TV, plays, and music from elsewhere.

We came together to defend this principle because it was increasingly being called into question through international trade agreements. This pressure became extremely obvious to all of us in 1998, when Canada lost its policy on split-run magazines as a result of a decision at the WTO. It was also clear that other challenges were looming. These events served as catalysts leading to our coming together to establish the CCD.

The major cultural organizations in Canada established the CCD to pursue a single mission, on our behalf, to safeguard the right of Canada to develop, implement, and maintain cultural policies, and to refine these or introduce new ones in response to changing circumstances, including the advent of new technologies. Preserving this policy base is crucial to Canada's cultural sovereignty.

Certainly the need to maintain the right to have such policies has long been clear in the case of Quebec, with a French-language population of 7 million on a continent of more than 300 million English speakers. The success of those policies in these bookstores,

on television and movie screens, on radio, and in the theatres has been equally obvious.

In the case of English Canada, the need for such cultural policies has been every bit as important. Sharing a common language with our neighbour, the U.S., the challenge has been how to remain open to films, TV programs, and other cultural works from the U.S., while still ensuring that there's space for our own stories. As Peter Grant will explain in detail, the economics of culture are such that if this question were purely left to the market, Canadians would not have access to the range of cultural works they can now choose from.

For Canada, this challenge is at least as old as radio. However, today in the satellite era, many other countries are now facing this challenge because, in a sense, we are all on the U.S. border now.

The coalition has set about pursuing its policy by working along two tracks. First is advocacy work designed to build support both at home and internationally for an instrument on cultural diversity that would enshrine the right of countries to have cultural policies. Second, during the critical period when this convention is being negotiated and put into place, we are working to ensure Canada sticks to its position of refraining from liberalizing commitments affecting culture and trade talks, while promoting this Canadian position of a moratorium on liberalization commitments affecting culture around the world.

• (1650)

From the beginning, the coalition has concentrated significant resources on mobilizing support among cultural organizations in other countries, because this campaign is, by definition, an international one. The coalition has therefore carried out literally dozens of international missions, meeting with cultural organizations in Argentina, Australia, Brazil, Korea, Japan, and many other countries. It has also initiated and helped stage three major international conferences, most recently this past June in Seoul, Korea, where some 150 organizations from 57 countries were represented.

As a result, there are now some 19 national coalitions modeled on our own around the world, and more are in the process of being created. These coalitions have come together through an informal federation we call the International Liaison Committee. We have obtained observer status in the UNESCO process now underway to develop the Convention on the Protection of the Diversity of Cultural contents and Artistic Expressions.

In building support for the UNESCO convention, the coalition's work has often been complemented by similar work being done at the national government level by Canada. Canada has played a leading role in driving this process along, building support among other countries for a strong, truly effective convention. We are now in international negotiations at UNESCO, and achieving this objective will be no small task. It is crucial that Canada not let up.

As you know, Canada, along with other countries, officially filed its comments regarding the draft text of the convention with UNESCO. The coalition submitted its own position to Canadian Heritage while it was preparing these comments, and Pierre will discuss the CCD's position and our response to the comments Canada filed with UNESCO.

Pierre.

[*Translation*]

**Mr. Pierre Curzi:** Thank you. I will indeed speak to our position with regard to comments made by Canada to UNESCO on November 15. I will focus on three issues you raised. In fact, there are three basic issues, the first being the scope of the convention, the second, the right of sovereign states to establish their own cultural policies, and the third and most important being the legal status of the convention in relation to other international instruments.

As for the first issue, we share the point of view of the government, which is that the scope of the convention should focus on the protection of the diversity of cultural content and artistic expression. Otherwise, if we try to address every aspect of cultural diversity, the process of adopting the convention might fail.

As for the right of sovereign states to establish their cultural policies, which is the second issue, our position is in line with that of the government. We would nevertheless add that the right of a sovereign country must be included in the objectives of the convention. In our opinion, once this right has been enshrined, it must not be limited on the basis that a culture may be threatened or vulnerable.

In our opinion, the third point should be strengthened. There should be a paragraph allowing a country to adopt provisions restricting foreign ownership of cultural industries.

Lastly, the fourth point, which is not mentioned in Canada's comments, would consist in replacing the notion of proportionality by a notion and a criterion regarding access to the diversity of cultures throughout the world. I can come back to this issue later on.

The third point, which is the most important one, involves the legal status of the convention and the way it stands in relation to other international instruments. We believe that one issue must be clearly spelled out, namely the relationship between the convention and international instruments involving human rights. We are convinced, and I believe that the government agrees with this position, that human rights conventions must have precedence over any convention on cultural diversity. In fact, the Canadian government clearly stated this, and I quote:

States parties may not refer to the provisions of this Convention in order to breach human rights guaranteed by international law or to limit the scope thereof.

Now, what about the relationship between the convention and international trade agreements? As members of the coalition, we affirm that this convention, if it is to meet its objectives efficiently,

must absolutely have a legal status under international law which is equal to international trade agreements.

This status is included in three basic articles, namely articles 19, 13 and 24. We believe that there is an underlying principle in each of these articles. As you may remember, article 19—be it version A or version B—is being debated. The principle on which it is based involves, in our opinion, the notion of fairness.

Version B of section 19 reads as follows: “Nothing in this convention shall affect the rights and obligations of the States Parties under any other existing international instruments.” Version 19 B is unacceptable and we believe it must be rejected. It would create a completely unfair situation: on the one hand, some countries would not have to abide by the convention and would still be able to negotiate a cultural policy, whereas, on the other hand, many other countries having signed multilateral agreements would lose control over their cultural industries.

• (1655)

We are convinced that version A must absolutely be adopted. However, we believe it must be strengthened in the following way.

We recommend that states parties be given the right, in the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, to include provisions allowing states having already signed on to free trade commitments in the area of culture to gain access to a procedure allowing them to review their obligations, so that they may have more freedom to support their cultural sectors. This means that, although a state may have made a commitment, it could, based on the well-defined scope of application of the convention, regain jurisdiction over its cultural sector. I am referring to article 19.

We believe that the principle underlying article 13 must be that of consistency. Article 13 deals with international trade agreements which states parties to the convention may sign between themselves after having ratified and adopted the Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions. We believe that this article should be amended by adding a very clear statement formally stating that states parties shall refrain, within the framework of international trade agreements, from entering into liberalization agreements which violate the objectives of the convention. The idea is therefore to strengthen this article so that the commitment of a state party to the convention take precedence over any other agreement.

Lastly, we believe that the underlying principle contained in section 24, which deals with the settlement of disputes, is the matter of efficiency. If the UNESCO convention is to have equal legal status to that of other international trade agreements, it becomes clear that its dispute settlement mechanism must therefore also be equal to, and have a similar mechanism to, that of other dispute resolution mechanisms contained in other international agreements. In more concrete terms—and this is the important part—a state party may unilaterally trigger the dispute settlement mechanism. Further, any decision made in a dispute must be binding upon the two parties involved in the dispute.

To make the convention more efficient, we propose that it include a provision stipulating that the states parties formally commit to using the mechanisms included in the convention to settle disputes, which means that only the convention is applicable.

Third, when a state has not ratified the convention, we feel it is essential that the state whose policy is being contested have the prerogative to also use the dispute settlement mechanism contained in the UNESCO convention.

I would like to conclude by sharing with you some of our opinions regarding the position of the Canadian Government. I will read them to you so that I don't have to improvise.

With regard to the two proposed versions of article 19, which we referred to earlier, the Canadian government simply affirmed, in its comments to UNESCO, that work must continue on finding an option which meets the objectives of the convention. In that regard, the Canadian government says the following:

Given its relationship to other instruments, Canada also recommends that the concepts addressed in articles 13 and 19 be considered together.

That is what you could call a virtuous position.

As far as the legal status of the convention and its relationship with other international instruments is concerned, the Government of Canada simply makes a few very general comments which read as follows:

The relationship between the convention and other international agreements should be mutually supportive and non-hierarchical. The convention can and must achieve its important objectives while being consistent with the rights and obligations of States parties under existing international agreements.

• (1700)

I am almost finished, Madam Chair.

• (1705)

**The Chair:** Mr. Curzi, I just wanted to point out that you have spoken for 11 minutes already.

**Mr. Pierre Curzi:** I am sorry.

**The Chair:** I heard that some of our members will need to leave by 5:30 p.m. and that one member has to leave at 5:00 p.m. As well, we have to give some time to the other witnesses. Thank you.

**Mr. Pierre Curzi:** I would like to conclude by saying that the coalition deplores the fact that the Canadian government, at this advanced stage of the process, still has not spelled out its position on a number of crucial issues involving the legal status of the convention and how it stands in relation to other international agreements.

Thank you, Madam Chair.

[English]

**The Chair:** Mr. Stein.

**Mr. Ken Stein:** I have remarks, and I'll be brief.

I would like to basically focus on two issues. The first is the SAGIT's rationale regarding the need for an international agreement or instrument on culture diversity. It seems like a very complicated kind of topic, and I think there is a strong rationale for doing that. Secondly—and this is more of a personal view in this sense but it represents some of the discussion of the cultural industries—there

are key issues that must be dealt with in the future as this moves forward.

In 1999 the members of the SAGIT completed their review of Canadian cultural policies and issues as they related to trade. What was important at that time was that we had a number of significant disputes that related to everything from digital music to satellite broadcasting and split-run magazines. In the SAGIT's view, the fact that each of these issues was dealt with on a case-by-case basis was in fact a major part of the problem. We therefore recommended a new strategy that would specifically address cultural diversity and that would result in a binding agreement that would set out clear rules as to what could be done to support cultural diversity.

The SAGIT recommended that Canada lead the development of a rules-based agreement or instrument that would recognize the importance of cultural diversity, acknowledge that cultural goods and services are significantly different from other products, acknowledge domestic measures and policies that are intended to ensure access, set out the rules on the kind of domestic regulatory and other measures countries can and cannot use, and establish how trade disciplines would apply or not apply to cultural measures that met the agreed-upon rules.

The standing committees on heritage and foreign affairs and international trade accepted this recommendation and urged the government to move forward. The government, as Madam Bulte pointed out, did do that. Although 1999 to 2004 sounds like a long time, remember that through that time period we haven't seen any new WTO agreements either, though there were a certain number of things that happened, starting in Seattle, that tended to make the world a bit more interesting in terms of dealing with these issues.

Needless to say, we do think from an industry point of view that the progress Madam Copps and Mr. Pettigrew made was quite significant, and the accomplishment in getting UNESCO to agree to take on the drafting of the convention was a significant achievement.

To this point, we do think we have seen significant process. It may take some time to draft a final agreement, and I think some of us have particular views on what happens while that process goes on. But the influence of this effort has been far-reaching, and even though we have not yet reached anything close to a final agreement, I think the development of it and the process have been significantly important.

The key issues for the future are, number one, the drafting of and the agreement on a convention through the UNESCO process. Here what's really important is that there will be a high degree of consultation internationally and there will be a wide range of viewpoints. One of the other areas where Canada has taken a lead on this is in terms of consultations with citizens' groups in civil society. That's a very important part of how this will all develop, but I'm sure Gary and others can talk to that.

The second is how this relates to the World Trade Organization discussions as they move forward. The fact that UNESCO is dealing with the issue in itself provides the means to influence development of trade agreements, and I would commend to you Don Stephenson's remarks at the last UNESCO consultation. They were very good and they were very well put.

In a sense, Canada has always preferred the multilateral approach, but we must also try to influence bilateral agreements as they develop around the world. Those will be crucially important. While this activity is going on internationally, we must ensure that what we do domestically is consistent with protecting and advancing our cultural objectives.

To this point, I'll say that many of our industries are concerned about the lack of action by the government and this Parliament in dealing with the black and grey markets. An inability of Canadians to be competitive in the distribution of services to Canadians will in the end undermine any international arrangements, no matter how strong they may be. In other words, while we focus on international agreements, we may find it all useless because we've lost the battle at home.

Finally, any policy we move forward on—and this is based on the discussions we had with people across the country as well and from different groups—must be based on providing opportunities for Canadians to develop cultural goods and services around the world. Let us not lose sight of the fact that this is an export market for many Canadians. Our artists, writers, producers, filmmakers, and television producers have a market around the world they want and deserve access to. At the same time, we must always ensure that individual Canadians have access to the best the world has to offer here in their own country. Otherwise, they won't support the system.

•(1710)

Thank you very much for your time and attention.

I look forward to your questions.

**The Chair:** Thank you very much.

Mr. Neil.

**Mr. Gary Neil:** Thank you, Madam Chair, vice-chairmen, distinguished members of the committee, and colleagues.

I'll try not to be repetitive and will just add a few points.

As someone who spends most of his time travelling the world speaking about the adverse effects of globalization on world cultures and working to build support for the proposed UNESCO convention, I can't tell you how pleased I am to be appearing before you today. As a Canadian, I'm extremely proud of what all of us have accomplished in such a short time.

The INCD has been involved in the campaign in support of the convention since we first met in Santorini, Greece, in September 2000. The phenomenal success to date has really resulted from a collaborative effort between civil society and governments. Canadian organizations and their governments have been in the forefront of the campaign.

The federal government is taking a leadership role internationally, fulfilling the promises it made in the last two speeches from the throne. Support has come from all of the opposition parties. It's only two years minus a few days since I last appeared before this committee, when your predecessors unanimously supported the proposed convention. There are many people whose work has helped to bring about the success, and some of them are with us today.

The draft UNESCO Convention on the Protection of the Diversity of Cultural Contents and Artistic Expressions, despite its cumbersome name, actually holds great promise not only for Canadian artists and cultural producers and all of our cultural industries but for the arts and cultural sectors worldwide. What we need now is the vision and courage to fulfill that promise and to seize the opportunity we've helped to create. The INCD looks forward to collaborating with Canada as we advocate for a timely and effective convention.

Let me first address just very briefly the question of timeliness. With the revival of the Doha development agenda, with the new timetable for requests and offers in the negotiation of the GATT, and with the aggressive bilateral trade agenda being pursued by the United States, it's important that UNESCO attempt to meet its deadline for concluding the terms of the convention next October. I suspect most of us here share that perspective, but working for a speedy resolution to the UNESCO process cannot bring about an ineffective convention. That would be a disaster.

For INCD there are three crucial tests that a successful convention must meet, and there's no priority to these.

First, in terms of status, the convention must be equivalent to the trade and investment treaties and must prevail where the issue concerns cultural policies and cultural diversity. That's a slightly different focus, I think, from that of some of the other speakers. Since the INCD first put forward its own draft of the potential treaty in 2002, we've been warning against a provision that prohibits derogation from existing rights and obligations.

We, like everyone else, are therefore concerned about article 19 of the UNESCO draft since there's no doubt both options would make the new convention subordinate to the WTO. We're delighted the Canadian government shares our concerns at least in part and is seeking to find new language that could ensure there will be a hierarchy of international treaties—with the exception of human rights obligations, I might add.

Second, the convention must be a tool for poorer countries to develop their cultural capacity and creative industries. Also from the beginning, INCD has been blunt that the convention must be about more than a fight for audiovisual market share among rich countries of the north. To have true cultural diversity we need more balanced global exchanges of cultural goods and services. This requires that the least-developed countries, developing nations, and countries in transition must be assisted to develop their music, stories, and arts capacity and must have access for their artists and cultural producers to the richer markets of the world. We'll all gain from improved exchange. We've put forward some ideas about how that might be accomplished.

We're disappointed that Canada, a country that is proud of its record of support for the developing world, has not yet embraced some of the ideas we've put forward. We believe it's also in Canada's self-interest to consider these measures, because without such strong provisions the convention will fall short of the number of signatories needed to make it effective. Those from the global south need a powerful incentive to resist the strong push that will surely come from the United States and others to refrain from joining the new convention.

Finally, the convention must acknowledge the broad scope of policy tools used to promote cultural diversity and preserve the right of governments to adapt and adopt new ones in coming years to respond to technological developments and changing circumstances and needs. Canada's position tabled with UNESCO contains a range of excellent proposals that address this issue, and we look forward to working with Canadian delegates to further refine provisions of the convention to ensure it achieves this objective. We continue to believe that the rights of artists and creators and concerns about vulnerable cultures legitimately belong in the convention as well.

• (1715)

Madam Chair, the members of INCD, more than 300 NGOs from more than 70 countries, deeply appreciate the leadership shown by the Government of Canada. It's already made a profound difference. INCD itself could not carry out its work without the continuing financial support we received from the Department of Canadian Heritage. While we acknowledge the wonderful work to date, we know there's much more to do before we win the battle. INCD calls on the Canadian government to continue to show vision and leadership and to embrace the ideas we've put forward, because this is a road to an effective convention that will make a real difference.

Thank you.

**The Chair:** Thank you very much, Mr. Grant.

We have exactly six minutes left before members of the committee have to leave.

**Mr. Peter Grant:** Okay, I think I'll take one minute, if that's permitted.

I gather that the clerk of the committee has circulated a book I wrote on that. It contains an abundance of material on the unique economics of cultural products and the background to the search for a convention.

I guess, just to cut to the chase, my comments really are that the UNESCO initial draft, while it's flawed in a number of respects, could play a very useful role, with appropriate amendments, and could be made into an acceptable convention that would accomplish the Canadian objectives we sought. I've seen the Canadian comments and heard from our friends from the government, and I agree with them. I think that in general they are in the right direction. Clearly, we all agree that the next period of time will be crucial to getting the right wording, because it's the next period when we'll actually see the draft that is likely to be close to the result.

The correct view, I think, in terms of the ranking of these treaties, is that we hope the convention will neither displace nor trump other instruments, but stand alongside them. It can perform a useful role in

bringing other countries up the same learning curve that we went through.

I'll confine my comments to those, and I look forward to your questions.

Thank you.

**The Chair:** I think we have about four minutes left for questions from the committee—and I know this is unfair, but can I ask each person to ask one question.

**Ms. Bev Oda:** Thank you, Madam Chair.

I noticed that more than two members were on SAGIT. Mr. Stein, when you referenced the fact that you at SAGIT were hoping for an instrument that would form a binding or rules-based agreement, do you believe this convention as drafted meets your expectations?

**Mr. Ken Stein:** Not as it's drafted at the moment; it's not close yet.

I think that having agreed to the fact that it would go to UNESCO, we knew going into it that would be the approach they would take. It's what we have. It's just that there are a number of different countries who have viewpoints on this, and it's going to take some time to do it. So it doesn't take away from the effort, but certainly as a first draft, as Peter says, it's a step in the right direction, but as Pierre pointed out as well, there are a lot of issues that have to be dealt with.

**The Chair:** Mr. Kotto, one question, please.

[*Translation*]

**Mr. Maka Kotto:** Thank you, Madam Chair.

I would like to begin by welcoming you to the committee.

You heard the presentation and you also heard what the officials from the Department of Canadian Heritage answered in response to questions. Like us, you no doubt saw that, as regards negotiations involving this convention, the Government of Canada went from having a clear position to a more flexible one.

Does this concern you?

• (1720)

**Mr. Pierre Curzi:** What we are concerned about is that time is running out. The next phase of negotiations begins in two months and the deadline is only 10 months away. However, Canada's position has not fundamentally changed. At this stage, we would have hoped that the government's comments would be clearer, and its position firmer.

It can be argued, as was the case earlier, that within the framework of such negotiations, the government should not completely reveal its position. In fact, this may be the approach taken by Canada's negotiators at UNESCO. However, as representatives of civil society, we consider that it is very important for the government to reaffirm at this point the basic principles which will determine whether this convention is satisfactory to us or not. We are playing our basic role, which is to say that we want the principles of fairness, consistency and efficiency to be clearly stated. This should be enshrined legally. It's not our job to do that, but we will nevertheless keep up the pressure on behalf of civil society to make sure that all of our cultural policies are protected.

[*English*]

**Mr. Ken Stein:** Perhaps I can answer that, or just make a small point.

I remember the first meeting Robert Pilon and I had with the French industry about the cultural exemption or trying to pursue a new instrument. My French isn't the best in the world. We walked out and I said to Robert, "I may have been mistaken, but I thought he called me stupid," and Robert said, "You're right. He did call you stupid".

The thing is that we have come a long way from those meetings in 1999 and 2000. The amount of effort that was required even to get countries to agree to the principles of having this kind of agreement has been an amazing accomplishment.

**Mr. Gary Neil:** Just a very brief point.

I understand that perhaps Canada's position that's been put forward has been done for strategic purposes, but as someone who was at the September meeting and as someone therefore who knows what's going on around UNESCO, I know there's a need for strong leadership to really focus on the critical questions. I think the civil society movement globally is looking to Canada to provide some of that leadership, that very targeted, effective, strong leadership to focus the debate, focus the discussion, so we can arrive at what we all here want, which is an effective convention.

**The Chair:** I'm going to ask Mr. Simms now for one question.

I know you didn't get a chance to respond, Mr. Grant, but if you want to jump in on this one, you can answer one of the previous questions, if you wish.

**Mr. Scott Simms:** I, too, congratulate you on the stand that you're taking. I agree with just about everything you said. There you go. That's an easy statement.

Somebody made the comment earlier that there's lots of work to do at home. Mr. Neil, I think that was you, wasn't it? No?

**Mr. Gary Neil:** No.

**Mr. Scott Simms:** Then I guess my question is for you.

In regard to television and the broad spectrum of choice, it seems as if technology has allowed us to come down a bit in our regulations allowing foreign signals to come in. Do you think our domestic channels are now at a disadvantage competitively? In other words, when you say we have a lot of work to do at home, is that one of the things we have to do, to update the way we handle domestic services?

**Mr. Ken Stein:** I think the Canadian Broadcasting System is quite an amazing system. When one looks at the situation now and the satellites and the kinds of choices that people have, one is struck by the fact that in the seventies we actually, as a matter of government policy, encouraged the microwaving of foreign signals throughout the country because we had a fundamental principle at the time, which was that no Canadians, wherever they may be, would be subject to any kinds of controls—if people in Toronto could get NBC, then people in Edmonton could get NBC. When Global was launched and was almost going to go dark, there was nobody there from the government basically to say, no, no, you're protected; we're going to keep you alive. When they were going to go dark, they were going to go dark.

Perhaps in the view of many of us we've actually gone to a system that has gone into too much regulation at the moment and not put enough faith in our broadcasters. We have a very strong broadcasting system. We have companies—CTV, CanWest Global, CHUM, Alliance Atlantis—that are very strong and probably could do more with a different kind of approach.

A fundamental issue we deal with right now is the black market. There are still 500 to 7,000 homes out there.... My neighbour across the street put one up just last week. It just keeps increasing. We may be standing there trying to preserve a system and telling Canadians what limits they have on their signals and, at the same time, just find that they've left the system.

• (1725)

**Mr. Scott Simms:** For the record, thank you, and I agree.

**The Chair:** Thank you very much.

I wish we had more time for questions and discussion, but I think at this point I have to thank you.

[*Translation*]

Thank you for having come this afternoon. I would like to congratulate you for the excellent work you do.

The committee will continue to study the issue.

[*English*]

I haven't asked them yet if they want to make a report on what we've heard this afternoon or provide comments to the minister, but we will get to that.

I want to thank all of you very much. And those who are here to listen and observe, thank you for coming.

I have three small items of business.

At present our meeting on Wednesday is scheduled to start at 3:30 p.m. However, we are invited by the Speaker and by Mr. Mayson, president and CEO of the Canadian Film and Television Production Association, to a reception to meet with those people. I think most members of the committee would want to do that for at least a short while.

So I'm wondering if you would agree to our committee meeting starting a little later. The reception starts at 3:15. Could we start at, say, 4 o'clock instead of 3:30 on Wednesday?

**Ms. Bev Oda:** Madam Chair, could I inquire what's on the agenda for the Wednesday meeting?

**The Chair:** The Tomorrow Starts Today program, to which you have all received five binders worth of information, I understand. We are dealing with the minister's office on that.

Is that agreed that we can start at 4 o'clock on Wednesday, instead of 3:30?

Second, our staff have put together a proposal for a study of film production in Canada, beginning in the new year. If we want to be able to do that, we have to present a budget to the Liaison Committee by next Tuesday, so I would propose that we take a few minutes on that at our Wednesday meeting, if possible.

**Ms. Bev Oda:** Maybe it's because I only became a permanent member of the committee that I'm not fully aware of the full scope of the agenda at this committee. I understood that the department has now announced their own study of the film industry.

**The Chair:** That's news to me.

**Ms. Bev Oda:** We'll have two studies happening simultaneously, is that correct?

**Hon. Sarmite Bulte:** My understanding is that the minister is considering putting together an immediate task force to deal with the immediate issue, not the long term. We will still continue, but there is some call for the industry to convene all the stakeholders as soon

as possible. The spring may be too late. It was not a study; it would be just a task force to basically get an opportunity to bring all the stakeholders together. I don't see why, if that in fact happens, we can't be part of that as well.

**The Chair:** Yes, it's obviously very important.

**Hon. Sarmite Bulte:** It wouldn't be necessarily separate and apart. We're going to do our study in the spring. It just felt as if something should be moving forward.

**The Chair:** The third item was the document that was circulated to us on appointments. Either Wednesday or at the latest next Monday, we have to provide some feedback on which of those and how many and how we would like to deal with them. Perhaps you could have a look at that before our meeting on Wednesday and perhaps even communicate with the clerk about which ones of those you would particularly like to review.

Bev, Jacques can get that document to you.

**Ms. Bev Oda:** I'd like to make sure I have all the documents that were distributed prior to my being officially—

● (1730)

**The Chair:** Welcome. I wasn't aware you had been made an official member, so I'm delighted.

As everybody leaves, I should officially adjourn.

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