SYLLABUS

January 2021

ENTERTAINMENT AND MEDIA LAW

DU LLM in International Law - Academic year 2020-2021

Instructor: **Lilian Hanania** (PhD in International Law - University Paris 1, Attorney and Mediator (Paris and São Paulo); Email: lilian@hananiaconsult.com)

Dates and Time:

- 7 online classes on Fridays 12pm – 14pm, starting on February 12th, 2021.
- 1-hour written evaluation on April 2nd, 2021 (12pm – 1pm).

COURSE DESCRIPTION

The course will focus on both International Trade Law and International Law on Culture. It will examine and reflect upon international trade agreements, as well as UNESCO treaties in the cultural field, which may impact the international regulation of cultural actors, with emphasis on media and entertainment services providers. Emphasis will be placed on the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, which deals with cultural industries and cultural goods and services, including in the digital economy.

GRADES

Grades will be based 50% on 1 written evaluation and 50% on class participation (including a presentation in class).

STRUCTURE OF THE COURSE

The course will consist of 7 2-hour sessions and a 1-hour written evaluation.

GENERAL GUIDANCE

- Students are expected to have read the texts and to have examined the international legal instruments recommended for each class.
- Reading assignments may be adjusted with prior notice.
- The classes will mix lecture, discussion, and debate, but have as their main objective to allow reflection and discussion with and among the students.

COURSE SCHEDULE

1st session (12/02/2021): Presentation and Introduction - International Trade Law and cultural diversity concerns

Required readings

- Revision of the European Audiovisual Media Services Directive (AVMSD) https://ec.europa.eu/digital-single-market/en/revision-audiovisual-media-services-directive-avmsd
- Revised European Audiovisual Media Services Directive (AVMS) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02010L0013-20181218
- Council of Europe Convention on Cinematographic Co-production (revised) (Rotterdam, 2017) https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/147, https://www.coe.int/en/web/culture-and-heritage/cinematographic-coproduction, https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/220

2nd session (19/02/2021): Cultural goods and services in the WTO - 1

Required readings

- WTO Services Sectoral Classification List https://www.wto.org/english/tratop_e/serv_e/serv_sectors_e.htm
- The General Agreement on Tariffs and Trade (GATT 1947) https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm
- The General Agreement on Trade in Services (GATS) https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm
- WTO Dispute settlement chart https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c6s1p1_e.htm

Complementary readings for presentation (1 presentation)

Canada – Periodicals case

- Canada — Certain Measures Concerning Periodicals (DS31) - Appellate Body report https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds31_e.htm

- C. Carmody (1999) "When 'Cultural Identity was not an issue': thinking about Canada - certain measures concerning periodicals", in *Law and Policy in International Business*, Winter 1999, vol. 30, nº 2, 1999, pp. 231-320.

3rd session (26/02/2021): Cultural goods and services in the WTO - 2

Required readings

- 2001 UNESCO Universal Declaration on Cultural Diversity http://unesdoc.unesco.org/images/0012/001271/127162e.pdf
- 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions https://en.unesco.org/creativity/convention/texts

Complementary readings for presentation (1 presentation)

China – Publications and Audiovisual Products case

- China — Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Entertainment Products (DS363) - Appellate Body Report (21 December 2009), https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds363_e.htm
- S. Van Uytsel (2014) "The CDCE and the WTO – in search for a meaningful role after China-Audiovisuals", in L. Richieri Hanania (dir. & ed.) *Cultural Diversity in International Law: The Effectiveness of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, London/New York, Routledge, pp. 40-53.

4th session (05/03/2021): Cultural services in bilateral and regional economic and trade agreements

Required readings

- L. Richieri Hanania (2019) "Trade, culture and the European Union cultural exception", *International Journal of Cultural Policy*, 25:5, 568-581, DOI: 10.1080/10286632.2019.1626844.
- L. Richieri Hanania (2012) "Cultural Diversity and Regional Trade Agreements: The European Union Experience with Cultural Cooperation Frameworks", *Asian Journal of WTO & International Health Law and Policy*, vol. VII, n. 2, Sept. 2012, pp. 423-456 http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2087639.

Complementary readings for presentation (3 presentations)

TOPIC 1 Audiovisual services under trade agreements negotiated by the United States – perspectives for the digital audiovisual content

- US-Chile Free Trade Agreement (FTA) (2003) https://ustr.gov/trade-agreements/free-trade-agreements/chile-fta/final-text
- Canada-United States-Mexico Agreement (CUSMA) (2020) https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cusma-aceum/text-texte/toc-tdm.aspx?lang=eng

TOPIC 2 The Canadian cultural exception for cultural industries

- Consolidated CPTPP (2018) *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/text-texte/toc-tdm.aspx?lang=eng
- EU-Canada CETA (2016) *Comprehensive Economic and Trade Agreement between Canada, of the one part, and the European Union and its Member States, of the other part*. 2016 http://ec.europa.eu/trade/policy/in-focus/ceta/ceta-chapter-by-chapter/.

TOPIC 3 EU Cultural Cooperation Frameworks

- European Union (2011) *Protocol on Cultural Cooperation* in the *Free trade Agreement between the European Union and its Member States, of the one part, and the Republic of Korea, of the other part* [2011] OJ L 127, 14 May 2011 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2011:127:FULL&from=EN.
- European Union (2008) *Economic Partnership Agreement between the CARIFORUM States, of the one part, and the European Community and its Member States, on the other part*, including its Protocol III on Cultural Cooperation [2008] OJ L 289/3-1955, 30 October 2008 http://ec.europa.eu/world/agreements/downloadFile.do?fullText=yes&treatyTransId=12969.

5th session (12/03/2021): The legitimacy of cultural policies and International Law on Culture

Required readings

- *International Covenant on Economic, Social and Cultural Rights*, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 https://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx
- 2001 UNESCO Universal Declaration on Cultural Diversity http://unesdoc.unesco.org/images/0012/001271/127162e.pdf
- 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions https://en.unesco.org/creativity/convention/texts

Complementary readings for presentation (2 presentations)

TOPIC 1 The right of everyone to take part in cultural life – how may it affect trade agreements?

- UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment n° 21, Right of everyone to take part in cultural life* (art. 15, para. 1 (a), of the International Covenant on Economic, Social and Cultural Rights) http://www.refworld.org/docid/4ed35bae2.html.

TOPIC 2 The 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage and the 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions – distinctions and complementarity

- 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage http://unesdoc.unesco.org/images//0013/001325/132540e.pdf
- 2005 UNESCO Convention for the Protection and Promotion of the Diversity of Cultural Expressions https://en.unesco.org/creativity/convention/texts

6th session (19/03/2021): The exchange of cultural goods and services in the digital context

Required readings

- L. Richieri Hanania (2015) "The UNESCO Convention on the Diversity of Cultural Expressions as a Coordination Framework to promote Regulatory Coherence in the Creative

Economy", *The International Journal of Cultural Policy*, DOI: 10.1080/10286632.2015.1025068, pp. 1-20.

- Video by Octavio Kulesz (2016) "Challenges and Opportunities for Cultural Diversity in the Digital Era" https://www.youtube.com/watch?v=0kt87FjSeCA&t=2s

Complementary reading for presentation (1 presentation)

- L. Richieri Hanania and A.-T. Norodom (2016) "Introduction", in L. Richieri Hanania and A.-T. Norodom (eds.), *Diversity of cultural expressions in the digital era*, Teseo https://www.teseopress.com/diversityofculturalexpressionsinthedigitalera/.
- M. Burri (2016) "Exposure diversity as a new cultural policy objective in the digital age", in L. Richieri Hanania and A.-T. Norodom (eds.), *Diversity of cultural expressions in the digital era*, Teseo https://www.teseopress.com/diversityofculturalexpressionsinthedigitalera/.

*** Special participation of a representative from the French Coalition for Cultural Diversity *(to be confirmed)***

7th session (26.03.2021): Review and Conclusions

*** Special participation of the Secretary of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions *(to be confirmed)***

- Questions before written exam on April 2nd, 2021.