

National Music Councils of Germany, Austria and Switzerland (D-A-CH) Favor Full Exclusion of Art, Culture and Knowledge from TTIP

The German, Austrian, Swiss and Bavarian Music Councils call upon the European Council, the European Union, national Parliaments and Governments to fully exclude art, culture and knowledge from the scope of application of TTIP. This is the sole means of effectively protecting the diversity of culture and media in Europe.

The assumption that art, culture and knowledge will not be affected by TTIP is a myth.

Consequently, we are calling for:

1) Full exclusion of art, culture and knowledge from all chapters of TTIP

2) No negotiations of copyrights and ancillary copyrights

Copyrights and ancillary copyrights are negotiated on the international level within the scope of the World Intellectual Property Organization (WIPO). International agreements on copyrights and ancillary copyrights are signed within this framework. An additional chapter on copyright rules and regulations in TTIP is not necessary. All the more so, when taking into consideration the fundamental differences in European and US copyright-systems. The founding principles of European copyright, which focus on the authors/artists/creators and their non-material intellectual rights, are non-negotiable.

3) No provisions on the protection of investments

TTIP does not need any provisions for the protection of investments nor investor-state-arbitration. Rule of law applies in both the USA as well as in the European Union and its member States. Established judicial systems are in force in the USA and EU as well. Legal recourse is available to all. Investment protection and investor-state-arbitration harbor the threat of undermining constitutional orders and legal systems, and of undercutting State's decision-making capacities and scope of action.

4) Consideration for the breadth of measures that foster diversity

Measures for the protection and promotion of cultural and media diversity, particularly in regard to the freedom of media, should not only to be specified in the cultural and media sectors. Regulation of other domains is inspired by the cultural sector and fosters diversity *i.e.* in the educational, work and insurance sectors and in telecommunications (with for instance the "must carry" regulations that require cable network providers to include local and public-regulated senders). These types of regulations must remain possible in order to guarantee the effective global protection of cultural and media diversity.

5) Technology-neutral Definition of Exceptions

Technological developments have fundamentally changed the ways and means in which culture is produced, disseminated and consumed. Which technologies and dissemination means will be relevant in the next ten, twenty or thirty years cannot be foreseen today. Exceptions for culture and media must thus be defined in a technology neutral manner. The fact that a book is a cultural good, whether it appears in a printed version or as an e-book, must remain beyond all question. The same must be true for the film, TV, radio and music sectors. US interests for an as-broad-as possible market opening are particularly strong in these sectors – especially given the dominant position of US entertainment, media and Internet companies. It must equally remain evident that on-line services in the film, TV, radio and music sectors are cultural services and not information or telecommunications services for data transfer, as the USA maintains.

6) Involvement of all Parliaments within the Union in defining a joint agreement

7) Safekeeping of artistic freedom, copyright protection, adequate endowment of higher education establishments, universities, schools and music schools

With the present state of information, the following threatening consequences could be envisioned from TTIP and TISA in the form of restrictions on:

- cultural infrastructure (orchestral scene)
- public education establishments (schools, music schools, higher education establishments, universities)
- public service broadcasting
- libraries, archives, museums

Every book, every film, every theatrical performance, every music event is a cultural product with a financial value, part of international trade and consequently subject to free trade negotiations – exactly as in TIPP. The European Commission's mandate does not contain any “cultural exception”, as is often asserted. Furthermore, although there is an exception for audiovisual services (film, TV, radio) in the chapter on trade in services and delocalization, in all other areas of the TTIP, such as investment protection or regulatory coherence, audiovisual as well as non-audiovisual media may be subject to negotiation.

The umbrella organizations of the musical scene in Germany, Austria, Switzerland and Bavaria are jointly expressing their concern over the fact that implementation of a free trade agreement will uproot our cultural identity. In the present situation, culture and other commodities are all lumped together even though they are incomparable. The pillars of our society will be weakened if publicly funded culture can be taken away.

All promotion, regulatory measures and standards for the protection and preservation of cultural and media diversity, *i.e.* freedom of the media in Europe, are being put up for debate. With the USA, Europe faces a trading partner that has a fundamentally different understanding of cultural and media policy. The USA and the EU along with its Member States foster different ideas of culture, cultural and media diversity, as well as to their preservation and advancement. Thus, the EU and its Member States have for instance ratified the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, as opposed to the USA. From the US standpoint, culture and media are regular commodities, which should freely circulate on the market. State support is seen from this perspective as economically motivated protectionism that hinders free market. On the other hand, it is self-evident for Europe, that culture cannot be reduced to a mere commodity; it is seen rather as the bearer of social values and identity as well as aesthetics. It is therefore the responsibility of States to enable cultural diversity – beyond the dictate of audiences' present tastes or investors' interests. This is however only possible if a State can act on the cultural policy level. Preserving the possibility to decide on present and future cultural policy is thus of utmost importance for the sustainable protection of artistic, cultural and media diversity in Europe – and in particular with concern for free trade negotiations.

Misunderstood liberalization measures threaten to establish a mono-culture. Negotiators of the free trade agreement must account for and accept these differences in understanding of culture and its promotion, and guard against restricting them through trade regulations.

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