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Creative Industries in the Digital Economy: Opportunities for Small States

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Background

The creative industries consist of economic transactions on knowledge-based activities, or expressions of intellectual property (IP). The sector is dynamic, and no single definition exists. However, given their sociocultural and economic importance, the United Nations co-ordinated the mapping and classification of the creative industries in the 1990s, and several main clusters identified are still relevant – namely, artisanal products, visual arts, performing arts, cinema and audiovisual (including digital animation), multimedia, literature, books and publishing. For example, the ever-expanding e-sport and gaming sector falls under multimedia entertainment. While creative expressions may have a cultural component, the term "creative industries" may include functional fields not primarily concerned with cultural expression, such as architectural designs and software development, or animation, for modelling or demonstration.

The creative industries operate in the context of the digital economy. While some creative activities require a physical audience, a large segment of creative transactions are native to the digital realm, such as remote gaming teams. Other activities, like print and music publishing, have either migrated or can be replicated, from the physical to the digital, Internet-based domain. The delivery of creative products, goods and services has been transformed by increased access to and use of Internet-based digital platforms, which have spurred new business models for monetising creative content in the digital, or Internet-based, economy. This issue of *Commonwealth Trade Hot Topics* focuses on priorities for Commonwealth co-ordination of regulations and business support for creative industries in the digital economy as a strategy for mitigating the impact of the digital divide on small states.

Creative industries in the digital era

The United Nations Educational, Scientific and Cultural Organization (UNESCO) Framework for Cultural Statistics (FCS) 2009 outlines cross-category matrices such as creation/production, transmission/

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dissemination, consumption, registration/protection and participation as means of disaggregating specific activities. These patterns are converging in the digital economy, thereby shifting the creative sector from a linear value chain to an intricate interactive network of production and trade in ideas and value added, and of delivery and consumption; and overlapping roles for content producers, distributors and consumers. The digital economy obliges responsive yet facilitating policies, strategies and regulatory approaches to harness the economic potential of the creative industries for Commonwealth countries. It provides the potential for expanded markets and related intelligence on consumer behaviour and preferences, given the apparently limitless ability to achieve global scale with marginal additional costs relative to "brick and mortar" operations. The expansion of Internet businesses may also be relatively efficient, or less risky than in previous times, as there is enhanced ability to capture and forecast consumer behaviour data using computing power, and relative ease of fragmentation of production using inputs from players in different countries. However, the prospects of the digital economy for integrating developing economies into creative production in this "made in the world" era is undercut by the imbalanced competitive landscape that has evolved from the first mover advantage of dominant Internet businesses.

Facilitating the creative industries can potentially boost domestic and export income, job creation, and contribute towards achieving the 2030 Development Agenda through Sustainable Development Goal (SDG) 5 – reduce gender inequality, SDG 8 – decent work and economic growth, SDG 9 – industry, innovation and infrastructure and SDG 10 – reduce inequality. Participation in the creative industries sub-sectors tends to be skewed towards males or females, certain income profiles and other demographic factors. Differentiation in the relative access to market opportunities in the digital economy translate to country-level differences based on the socioeconomic profile of economies, and limit market integration to a few states. In the digital era, participation in international trade rests more heavily on effective access to technology, e-commerce platforms and business networks, financing for business and literacy in running an ICT-enabled enterprise. For creators, who tend to be informally organised in the cultural industries of developing economies, there is a risk of social marginalisation and exclusion from the digital economy without facilitation and affordable intermediation services.

The United States International Trade Commission reports that global e-commerce increased from US$19.3 trillion in 2012 to US$27.7, with business-to-business (B2B) transactions representing 86 per cent of the transactions. In 2015, China and the USA were the top players in the business-to-consumer (B2C) market; the USA followed by the EU and China were the largest spenders on public cloud computing. Concentration of influence on the digital economy among developed and large developing states poses a risk of exclusion of less advanced economies, particularly small and vulnerable economies. These latter tend to be open traders with a narrow economic base, for which trade in intangibles holds relatively high potential for achieving sustainability when compared with trade in merchandise and price-volatile commodities.

UNESCO estimates that cultural and creative industries' capitalisation of economies is US$2,250 billion, with 29.5 million jobs created globally and accounting for 7 per cent of global gross domestic production. However, measuring the direction of trade in creative industries, and their impact on national economic performance and growth, has become more complex, as national borders have become less relevant in the digital economy. This complexity impinges on evidence-based policy-making. Several Commonwealth countries, including Australia, Canada, India, New Zealand, Nigeria, Singapore and the UK, employ best practices in the creative industries that could serve as lessons for other members. Intra-Commonwealth co-operation could range from technical co-operation in skills transfer, co-production and instituting cultural statistics frameworks; investment promotion via business-to-business matching, facilitating access to distribution channels; and regulatory co-operation for Internet governance. In the promotion of creative industries, the Commonwealth's advantage may rest on its tradition of celebrating cultural diversity and authenticity, which is the well-spring for culture-based media and content.

Measuring creative industries contribution to Commonwealth countries

Methodologies for measuring the creative industries vary across the Commonwealth, and this accounts for the variance in assessment of the national and global estimates of the sector's importance. The UK has, over time, set a standard for measuring the impact of the creative industries through Cultural Industries Mapping disaggregated classification of the sector.[1] In addition, the UK Creative Industries Production System (CIPS) segments creative activities into content origination, production, distribution and consumption. The UK Office of National Statistics has endorsed the Dynamic Mapping Methodology for creative occupations developed by Nesta, a non-state entity dedicated to the arts and to raising the number of jobs in the creative sector by 2030. Other Commonwealth countries – Australia, New Zealand and Singapore – have adopted the CIPS, with adaptations to suit local context. Australia and New Zealand have now adopted a system of Cultural and Creative Activity Satellite Accounts, which incorporates some of the UK's innovations. Canada has also adopted a Culture Satellite Account, adapted from the Canadian Framework for Culture Statistics emanating from coordination of the Statistics and Canadian Cultural Heritage Departments. Foreign Affiliates Trade Statistics also inform trade in creative products data.

The respective systems vary in the extent to which they disaggregate or augment the creative industries clusters mentioned above and combine related data on value added, employment and creative industries purchases in different markets – for example tourists in-country. Organisation for Economic Co-operation and Development (OECD) countries have adopted trade in value added data, which is a best practice in measuring the dispersion of value addition to a particular product across different countries, thereby improving the accuracy of data on the value of exports.

Commonwealth countries in the creative economy

Measuring trade in creative industries is challenging for countries, and leads to underrepresentation of the economic and social importance of the sector. Creative industries span multiple sectors in the national accounts, including royalties and licence fees; telecom, computer and information services; recreational, cultural and sporting services; and other business services. Creative goods span art and crafts, visual arts, design products and publishing and print media in the Harmonised Tariff Schedule. The growth of creative industries is strong: world exports of charges in the use of IP, such as royalties and licence fees, rose by 10 per cent to in 2017, keeping pace with growth in merchandise trade of 11 per cent and an increase in exports of commercial services of 8 per cent in the same year. For trade in services, the World Trade Statistical Review 2018 reported that trade in services of WTO members totalled US$5.19 trillion in 2017, with the top 10 traders accounting for 53 per cent of total commercial services trade. The UK is among the top three exporters of commercial services, alongside the USA and Germany. India and Singapore joined China as the top three developing country exporters of commercial services.

The leading traders of charges for the use of IP were the EU states, with exports of US$151.3 billion and 74.3 per cent of the share in world receipts, and the USA, with other economies trailing in the distance. In the top 10, Commonwealth countries Singapore, Canada and India ranked sixth, eighth and ninth. The EU's performance was led by the Netherlands, Germany and the UK. While there was an increase in charges on IP, this trade was mostly between developed countries. This is a signal of the digital divide and the limited ability of Commonwealth developing countries to effectively monetise and trade in IP. Intra-EU receipts of IP charges alone accounted for 45 per cent of the total, followed by the USA, with a share of 19.7 per cent of the EU's receipts. Singapore was the source of 5.8 per cent of the EU's receipts of IP charges; Canada paid 1 per cent of the EU's total IP receipts and Australia 0.9 per cent. These figures report official charges and receipts but may underestimate consumption of creative goods and services linked to the exports of travel services, which grew 8 per cent as a result of a 6.8 per cent rise in global tourist arrivals distributed across all regions, though with robust gains to North Africa.

World trade in cultural products has also traditionally been concentrated among more advanced economies, but new players are emerging. While the USA was the largest importer of cultural goods in 2010, China displaced it as the largest exporter of such goods in that year. India, Turkey and Malaysia have been emerging as cultural goods exporters; the highest importers are steadily North America, Europe and Asia. Canada exported US$16 billion worth of cultural goods and services in 2016,

1 These are advertising, architecture, arts and antiquities markets, crafts, design, designer fashion, film and video, interactive leisure software, music, performing arts, publishing, software and computer services and television and radio.

the top destination markets being the USA, China, the UK and France; these were also Canada's top source markets for US$20.8 billion worth of cultural products in that year. Crafts, film and video were Canada's top exports, and top imports were crafts, books and performing arts. Exports of creative products, goods and services represented 2.5 per cent of Canada's exports in 2016.

EU exports of cultural goods increased from €22.8 billion to €28.1 billion between 2012 and 2017, reflecting an increase of 36 per cent in its trade surplus of €6.3 billion in 2012 to €8.6 billion in 2017. The UK accounted for 3.5 per cent of EU exports of cultural goods in 2017, which was above the EU average for extra-EU exports. The EU's top cultural exports in 2017 were jewellery, works of art and books; this is consistent with the main cultural goods traded by developed countries. Developing countries typically export visual arts and crafts, fashion and jewellery. This holds true for the Organisation of Eastern Caribbean States (OECS), which exported US$8.2 million worth of cultural goods in 2013 and US$16.7 million in cultural services in 2013. OECS cultural trade performance has fluctuated with trends in the global economy but there is an overall contraction in official cultural trade, which could signal digital marginalisation of the sub-region.

While trade in printed matter and recorded media has declined in the digital era, the online media and content sector is a high growth potential sector. In music, digitisation and e-commerce have centralised production and recording, sales and marketing and retail distribution processes to digital spaces. Digital production and distribution have delinked to market penetration from proximity to location-specific functions such as manufacturing, packaging and shipping and wholesale distribution. The scenario is similar for literary printing and publishing, which is rapidly adopting the electronic book (ebook) format as an alternative, and often price-competitive, mode of distributing content. The performing arts can now be enjoyed through live performances or as recorded content in audiovisual formats. Therefore, there is a high potential for Commonwealth States to access global markets for creative goods and services. This is evidenced by audiovisual services, which dominate trade in cultural services. For India and Nigeria, the audiovisual sector has had significant positive economic impact; Bollywood and Nollywood, respectively, are new industries that have become globally competitive through targeted governmental support. South Africa has also grown and diversified its exports markets for cultural and creative goods away from the USA and the UK to include more African and European partners.

The extent of dedicated sector policies to support the growth of creative industries varies across the Commonwealth; however, creative industries development requires significant government support and an enabling regulatory environment. Commonwealth developing and small states would require capacity-building support and effective access to digital markets to increase their creative exports in the digital economy. In the case of the Caribbean small states, some market players are responding through pooling resources for the development of alternative distribution platforms with curated creative content targeting special niche market segments – for example diaspora markets. At the Caribbean level, the Association of Caribbean Copyright Societies has been exploring the development of a regional platform with key industry players, and new businesses have emerged to deliver Caribbean content. However, achieving scale and access to diaspora markets may require joint ventures and partnerships in larger markets to mitigate market access barriers, such as nationality requirements for telecommunications and broadcast firms and nationality-based restrictions on content broadcast.

Creative industries in the digital economy and the WTO

Digital governance refers to measures that governments, quasi-governmental organisations and industries use to regulate commercial activities online. In the WTO, e-commerce "is understood to mean the production, distribution, marketing, sale or delivery of goods and services by electronic means". In practice, attempts are being made to disaggregate "digitally ordered", "platform-enabled" and "digitally delivered" trade. E-commerce work falls under the remit of four WTO bodies: the Council for Trade in Services; the Council for Trade in Goods; the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS); and the Committee on Trade and Development.

Several areas of the WTO trade agenda are relevant to creative industries in the digital economy. Market access and national treatment measures affecting commercial activity in the digital economy include geo-blocking; censorship; local presence, residence or nationality requirements for the provision of content or data storage and processing services (data localisation); joint venture requirements; nationality-based restrictions on use of payment systems for consumers and vendors; pricing stipulations; and burdensome customs and taxation regulations for small operators, particularly those sending small shipments via e-commerce platforms. There is scope to reduce barriers to market entry and to enhance access to business networks and distribution channels. The following sections comment on e-commerce and the General Agreement on Trade in Services (GATS); privacy, data and competition; access to e-payments; and IP.

E-commerce and the GATS

WTO talks on e-commerce should take place in coordination with inclusive negotiations on trade in services to accommodate those Commonwealth countries that are predominantly services economies. E-commerce largely overlaps with cross-border trade in services. There is considerable "water" in GATS commitments for creative industries-related services – telecommunication, broadcasting, motion pictures, sound recording – arising from no commitments, partial commitments and commitments covering entire sectors that are more restrictive than the regime in practice. Changes in creative content delivery in the digital economy imply revised ambitions for trading partners to take binding commitments to allow foreign participation in the various modes for delivering a service. Therefore, the promotion of trade in creative services could benefit from renewed negotiations on market opening via the GATS. Herein lies the difficult balancing act in an era where the technological shifts are viewed as unprecedented and already challenge the WTO's rule-making and interpretation of existing rules.

Slowdown in the WTO negotiations disadvantages services economies such as Caribbean small states, which are also threatened by a lock-out effect if services negotiations are excised from the WTO process. Developing countries have been reserved in joining some WTO plurilateral processes, including the Trade in Services Agreement (TISA), which started in the WTO to clarify ambitions and priorities in the GATS negotiations and then migrated to exclusive talks among participants, with consideration of a free trade agreement on services outside of the WTO. Some Commonwealth countries co-sponsored the Joint Statement on E-Commerce at Buenos Aires in December 2017; some take part in the Friends of E-Commerce for Development Group.[2] There is scope to build on multilateral frameworks for dialogue among Commonwealth members. The possibility of the plurilateral e-commerce negotiations taking an exclusive trajectory should be mitigated through the active and deliberate engagement of developing country members, in order to improve their capacity to participate effectively in such negotiations. This engagement would be critical to mitigating the digital divide.

Fitting e-commerce in the legal architecture of WTO agreements is an issue to be determined. In bilateral trade agreements, there has been divergence on whether trade in intangibles should be treated as trade in services or as a standalone chapter. The issue of likeness of goods with the non-physical equivalents may suggest a need to examine linkages across agreements. While the WTO moratorium has generated the space to examine e-commerce implications without the imposition of a new regime, some members have locked the moratorium commitment in their bilateral agreements and opted to define e-commerce as services. The resultant range of legal frameworks for dealing with trade in the digital economy will require attention in the WTO talks on e-commerce, to make it possible to determine the prospects for consensus, given the now vested interests of certain states on behalf of their large commercial players.

Privacy, data and competition

Trade in data raises concerns related to privacy and competition issues, arising from abuse of dominance by large, integrated firms with big data that may 1) lock out other firms using their market intelligence insights and data-driven technology or 2) behave unfavourably towards consumers and content creators. Crafting rules on trade in data is complex. Treating data collected by a firm in its normal course of business as property and as having the "nationality" of the firm is problematic, given the large, unmeasured proportion of personal data Internet businesses are handling. The "property"

2 Australia, Canada, Mauritius, New Zealand and the UK participated in the TISA negotiations. Australia, Canada, Malaysia, New Zealand and Singapore were among the sponsors of the Joint Statement on E-Commerce. Kenya, Nigeria, Pakistan and Sri Lanka participate in the Friends of E-Commerce for Development group.

rights in the data collected would also overlap with the right to privacy of clients and users; these rights do not fall under a single international framework.

There is a risk of countries and sub-national governments creating potentially incoherent rules that stand to complicate consensus-building in multilateral negotiations. The EU has initiated the General Data Protection Regulation (GPDR) to protect the privacy of European citizens and the transfer of personal data outside of the EU and the European Economic Area. The GPDR is to be implemented by the commercial actors of all states doing business with the EU. The administrative capacity to implement the GPDR in small and less advanced states may be limited, and this could stymie the participation and performance of creators in the European market. Some US states have issued corrective taxes on Internet businesses; while WTO members have reserved significant discretion in taxation policy, their application should not serve to run against the non-discrimination principles of the WTO in relation to international transactions.

Dominant lead firms tend to offer bundled services, thus large Internet businesses raise concerns on business practices for customer data use; cross-marketing; and mergers and acquisitions. Large Internet businesses tend to emerge in economies where governments actively support technological innovation, through subsidies and other incentives such as the US Small Business Innovation Research Program and an estimated US$1.24 billion contribution to Amazon in subsidies, grants and other concessions. For regulators, there is a challenge in balancing the innovative contribution of large firms to society while monitoring their size and market influence. The emergence of Internet businesses may oblige testing and clarification of WTO rules on trade in services in relation to provisions in GATS Article VIII Monopolies and Exclusive Services Suppliers and Article IX Business Practices and completion of GATS rules under the Article XV Subsidies agenda. Technology and new commercial practices oblige revising rules to reflect the "made in the world" reality and the new competitive landscape.

Access to e-payments

Access to e-payments is a constraint to e-commerce that affects small firms more acutely, thereby limiting the potential distribution of gains of participation in the digital economy. Most trade is carried out by small firms. Limited access is exacerbated by loss of correspondent banking relationships experienced by Commonwealth developing countries as a part of the "de-risking" activities of OECD states.

Intellectual property

E-commerce is both a user and a creator of content; the duality is an issue that complicates digital rights management. Traditional public governance of intellectual property in the digital economy is challenged by emerging business models. For example, copyright and trademark registrations are specific to a single geographical territory at a time, while Internet sale and distribution can be immediately global, thereby undercutting the opportunity of global sales through the high cost of IP protection in each market or threat of infringement. The TRIPS is therefore relevant to curbing the online flow of content infringing copyright or other IP protection.

Commonwealth small states account for more than half of the Commonwealth membership, but they are at risk of being marginalised or locked out by the digital economy as they exert limited influence on its governance. While technology has enabled easier diffusion of creative content, this feature worsens the vulnerability of creators to loss of earnings arising from piracy, while increasing the minimum required IP protection and the cost of enforcement. In practice, small creative businesses may be obliged to weigh such costs against the opportunities in producing more content and penetrating markets, or may consider the investment in innovation too risky. Therefore, there is an imperative to support protection of creative works in the digital domain.

Conclusion and recommendations

Commonwealth countries have valuable expertise to exchange and channel towards the facilitation of the creative industries. Strengthened coordination of the sector's direction among Commonwealth countries could improve their ability to enhance innovation and earnings, while mitigating the digital divide. Commonwealth countries are challenged not only to manage the transition in this new digital territory and dynamic commercial ecosystem but also to influence the emerging norms for digital governance in order to maximise the income opportunities for developing countries. Commonwealth countries are subject to the extra-territorial application of trading partners' domestic measures to control Internet businesses. While existing trade rules have not been exhausted, they do need to be clarified. Conceptual issues such as the treatment of trade in data and the scope of negotiated WTO disciplines on e-commerce are complex.

Though the Internet has lowered barriers to entry for business, developed countries dominate the supply of media online because of favourable innovation policies, and first mover advantages such as proprietary user platforms and network infrastructure, as well as data collection, storage and computing capacity. Intra-Commonwealth support to regulatory and trade and investment promotion institutions and sector associations is critical to enhance domestic services capacity, and its efficiency and competitiveness. E-commerce frontrunner Commonwealth countries are well positioned to support the less advanced and small Commonwealth countries in key areas, including creative industries data collection frameworks; access to digital distribution channels; IP protection in the digital domain; coordination of policy and regulation of trade at the Commonwealth and multilateral levels; and capacity-building for administration of agreements on e-commerce. Direct firm-level support could also be extended through experience-sharing; business-to-business matching traders and investors towards co-production; market access for digital content; and programmes to increase enterprise technology adoption.

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