

# **The Creative Sector in CARICOM: The Economic and Trade Policy Dimensions**

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# **The Creative Sector in CARICOM**

## **Introduction**

The creative industries have emerged to be a key growth sector in the Caribbean economy through its contribution to GDP, exports, and employment as well as its impact on destination and intellectual property branding. The region has created for decades many globally recognizable artists and events that have generated global reach beyond what the region's size would suggest. Shifts in the structure and operation of the global economy, for example, the digitization of cultural content, present new opportunities for expansion and diversification in the Caribbean economy.

The aim of this paper is to offer an analysis of the structure and performance of the creative sector and to outline the key challenges and opportunities facing the Caribbean. The paper will then provide an assessment of the trade policy context and regulatory environment. The paper concludes with an industrial and innovation policy framework that identifies specific strategic options for the development of the sector.

## **The Global Creative Economy**

The cultural and creative sector refers to aesthetic, identity and copyrightable goods, services, and intellectual property. It embodies a wide array of activities that make and circulate sounds, words, and images, or a combination of the above. It applies to artistic, creative, and copyright works that are identifiable commodities and services that are for sale or display in some marketplace or public arena. In short, the term cultural or creative industries describes the economic activities of artists, arts enterprises, and cultural entrepreneurs, for-profit as well as not-for-profit, in the production, distribution, and consumption of film, television, literature, music, theatre, dance, visual arts, masquerade, broadcasting, multimedia, animation, fashion, and so on.

There are some key features that make the cultural/creative industries distinctive from other sectors in the economy and therefore shape the context and the operations of firms. The cultural/creative industries sector is distinctive in that it has several transaction networks and income streams. The sector generates income from the sale of goods (e.g. merchandise sales), the provision of services (e.g. professional fees), and the licensing of intellectual property (e.g. royalties).

The cultural/creative industries also create circular goods, services, and intellectual property. For example a book can be adapted into a screenplay for a movie, which would then generate a soundtrack (e.g., CD recording) and possibly even specialty merchandise. In this sense it is not final goods that are produced in the cultural/creative industries. Cultural goods are rarely destroyed in use. They also operate like semi-public goods in that the act of consumption by one individual does not reduce the possibility of consumption by others.

The creative sector is a major growth pole in the knowledge economy. Global market demand for cultural content has risen steadily in the last decade. In economic terms, the cultural/creative industries sector is one of the fastest growing sectors of the world economy. In the years 2000 to 2005, trade in goods and services grew at an average of 8.7 per cent annually. The value of world exports is estimated at \$424.4 billion in 2005 (3.4 per cent of world trade) up from \$227.4 billion in 1996.<sup>1</sup>

There are few global estimates of the creative sector, but of the studies that have been done there is much variance in methodologies and definition of the activities. One of the key studies is the PricewaterhouseCoopers Entertainment and Media Outlook, which provides global analyses and market forecasts for 14 industry segments, including television networks (broadcast and cable) and distribution (station, cable, and satellite), filmed entertainment, recorded music, video games, radio, books, newspapers and magazine publishing, as well as advertising, theme and amusement parks, and sports. It estimates that the global trade was worth \$1.2 trillion in 2003 and that it will rise to \$2.2 trillion in 2012.

The PWC 2008 report also indicates that as a share of the global creative economy, digital and mobile distribution will rise from 5 per cent in 2007 to 11 per cent in 2012, the equivalent of \$234 billion. Data for 2007 shows that the recorded music industry is the forerunner with digital revenues accounting for 15 percent of the industry. The next biggest impact on the creative sector is from the newspaper industry with 7 percent. Films and Books attract 3 and 2 percent from digital revenues.

**Table 1: Global Digital Revenues by Industry, 2007**

Industry	Digital (%)
Recorded music	15
Newspapers	7
Films	3
Books	2

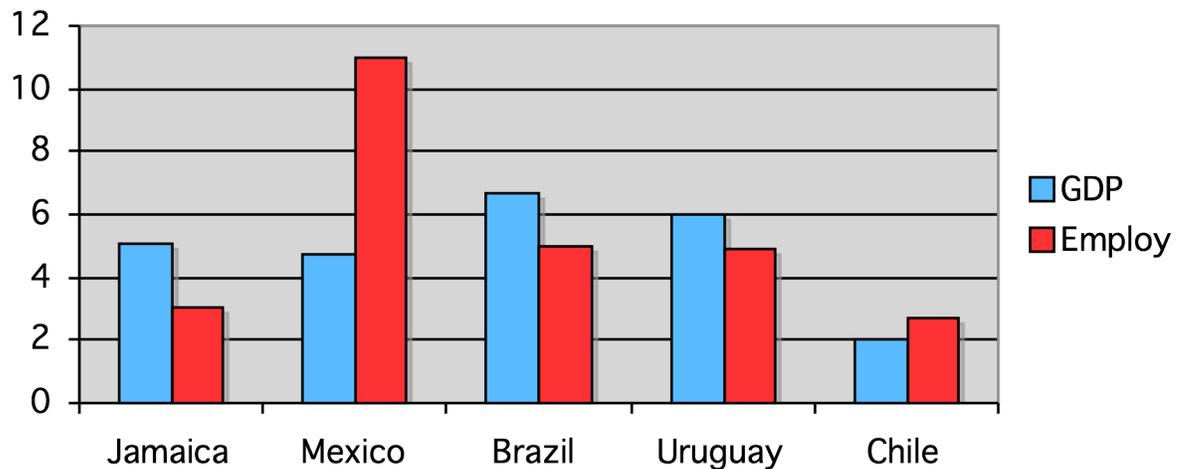
Source: IFPI (2008) Digital Music Sales Report 2007. London: IFPI.

In most developed market economies, the creative industries account for 2-5 percent of GDP and have generated consistent and stable growth in the last decade as exemplified in a rising share of employment and exports. Similar trends are observed in some large LAC countries, such as Mexico, and Brazil, which have strong capabilities in the audiovisual sector and large home and diasporic markets. Figure 1 provides data on GDP and employment impact of the creative industries for selected countries in Latin America and the Caribbean. As to be expected, Brazil ranks the highest with a GDP contribution of 6.7 percent and an employment share of 5.0 percent. The creative sector is also big in Mexico with a GDP share of 4.77 per cent and a sizable employment share of 11 per cent. Even a smaller economy like Uruguay has impressive figures to report with 6.0 percent and 4.9 percent shares in GDP and employment, respectively.

<sup>1</sup> UNCTAD p. 24.

Similarly, Jamaica, the only Caribbean country for which there is data has a GDP share of 5.1 per cent and an employment contribution of 3 per cent. Chile is the country with the lowest impact from the creative industries with a GDP share of 2 percent and an employment impact of 2.7 percent.

**Figure 1: Creative Industries' Contribution to Select Latin American and Caribbean Economies**

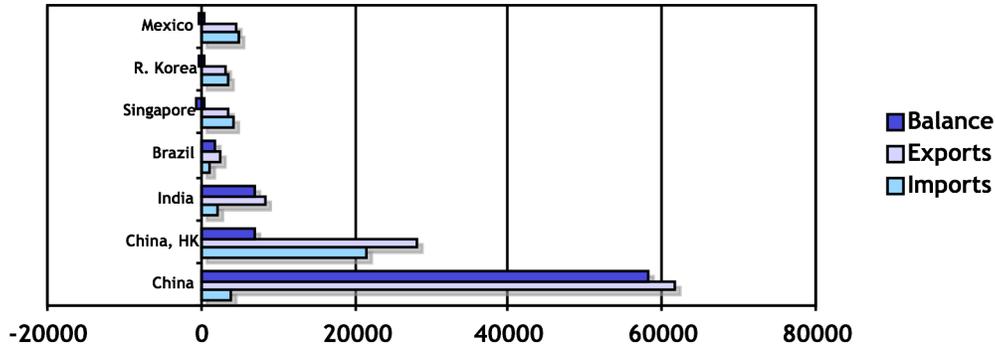


Source: OAS (2004) "Culture as an Engine for Economic Growth, Employment and Development" and WIPO (2006) National Studies on Assessing the Economic Contribution of the Copyright-based Industries, Creative Industries Series No. 1. Geneva.

### The Creative Goods

Creative goods accounts for close to 80 per cent of total world trade in creative content. While the developed economies are the main traders of creative goods the share of the developing world in terms of exports has expanded quickly from \$56 billion in 1996 to \$136 billion in 2005. However, most developing countries are net importers except for China, Hong Kong, India and Brazil. Mexico, Singapore and the Republic of Korea are the next best performers but they have minor deficits (see Figure 1). What this illustrates is that while the creative industries sector is making an increased contribution to GDP, exports and employment to developing countries most operate with large trade imbalances in cultural goods. This fact is illustrated well in figure 3 which shows trade balances for the Caribbean, Central America and South America over the period 1996 to 2005.

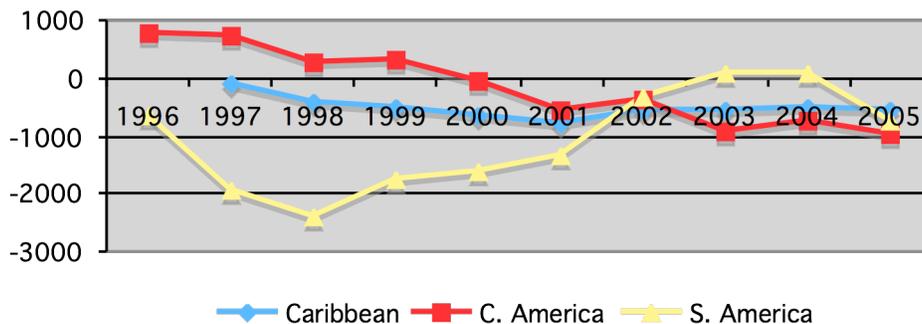
**Figure 2:  
Top Developing Countries: Balance of Trade in Creative Goods, 2005  
(US\$mn)**



Source: UNCTAD/UNDP 2008

The case of Caribbean and Latin American countries is instructive. What Figure 3 shows is that although several countries from the region are known for their arts and cultural exports they still have a significant deficit in the trade of cultural goods. Part of the explanation is that the table reflects data only for merchandise trade and does not include trade in services, royalties earnings and earnings from cultural, heritage and festival tourism where these economies are able to generate some earnings.

**Figure 3:  
Trade Balance in Creative Goods for the Caribbean, Central America and South America, 1996 – 2005 (\$m).**



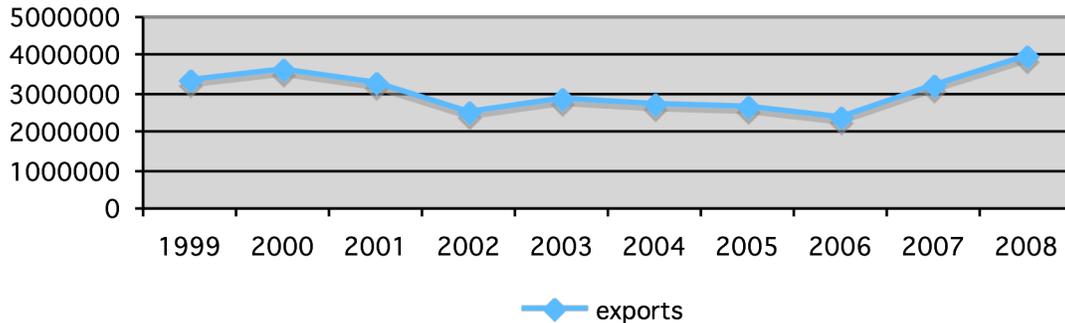
Source: UNCTAD/UNDP 2008

*Case Study: The Export of the Steelpan Instrument*

The steelpan instrument is the main merchandise export from the creative industries in Trinidad and Tobago, accounting for over 80 percent of total exports. In the last decade 1994, the steelpan sector's export sales have

fluctuated. The year 2000 saw a peak of exports at TT \$3.6 million. Since this period instrument exports dropped to a low of \$2.4 million in 2006, The decline is related to slower growth in main markets, like the US, in the post 9/11 period. In recent years sales have rebounded sharply such that earnings are at record levels of almost \$4.0 million in 2008.

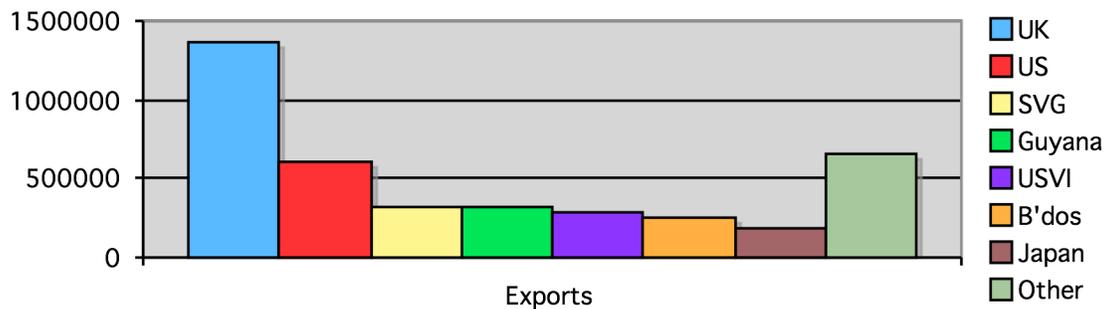
**Figure 4: Steelpan Instruments Exports, 1999 – 2008, (TT\$)**



Source: Central Statistical Office, several years.

The main markets in recent years have been the UK and the US, which accounts for close to half of all exports (see Figure 5). The next biggest markets are Caribbean countries like St. Vincent and the Grenadines (SVG), Guyana, US Virgin Islands and Barbados. The next major extra-regional market is that of Japan.

**Figure 5: Key Markets for Pan Exports, 2008 (TT\$)**



Source: Central Statistical Office, 2008.

### Creative Services

The analysis of trade in the creative sector needs to move beyond the goods sector to incorporate trade in the services sectors as well as trade in copyright and royalties. Data on trade in creative services are largely undeveloped on account of the weak informational infrastructure, particularly in developing country regions. Services sector has enjoyed a rate of growth of 8.8 percent in

recent years. Best estimates put the size of the creative services sector at \$89 billion in 2005 up from \$52.2 billion in 2000, an 11.2% annual growth rate. In terms of regional shares, the developed economies accounted for 82% of total exports while developing countries' share was 11% and that of transition economies was 7%.<sup>2</sup> In 2005 the top exporting services were architectural services (\$27.7 billion) followed by cultural and recreational services (\$27.5 billion).

Services trade is manifested in different modes. Table 2 outlines the various modes of services supply as it would apply to the creative sector. Mode I is cross-border supply which refers to services that is transmitted via some form of telecommunications, for example, sound engineering (a soundtrack) or architectural services (e.g. blueprints) that are sent to a client via email. This is an area where Caribbean countries have expanding capabilities on account of the importance of the diaspora as markets in the EU, US and Canada. Consumption abroad is where consumers from one country travel to use services in another country. This involves tourism related activities such as cultural, heritage and festival tourism where Caribbean countries have strong export capabilities given the importance of the tourism sector to their economies. Mode III refers to a firm establishing commercial presence in another country to provide a service, for example, setting up a radio station or a booking agency. This is another area where Caribbean countries have weak capabilities in spite of the importance of the diasporic markets. The last mode (IV) speaks to the movement of natural persons, for example, a visual artist or a music band on tour. This is the area where a large share of the services exports for the Caribbean creative sector.

**Table 2: Modes of Supply in Trade in Creative Services**

Mode I: Cross-border supply	Supply of services from one country to another, for example, sound engineering services or architectural services transmitted via telecommunications.
Mode II: Consumption abroad	Consumers from one country using services in another country, for example, cultural, festival and heritage tourism.
Mode III: Commercial presence	A company from one country establishes a subsidiary or branch to provide services in another country, for example, setting up a booking agency.
Mode IV: Movement of natural persons	Individuals travelling from their own country to offer services in another, for example, an artist or band on tour.

Data on trade in creative services is very weak or none existent. In most territories trade data (extended balance of payments in services) does not capture this information. In addition, because industry associations do not

<sup>2</sup> See UNCTAD/UNDP (2008) *The Creative Economy Report 2008: the Challenge of Assessing the Creative Economy: Towards informed policy-making*. UNCTAD/UNDP, Geneva, p. 134.

adequately represent the sector it is very difficult to get an appreciation of the volume or value of trade in creative services emanating from the region. The only area for which there is any reliable data is in mode II activities (consumption abroad) such as cultural, festival and heritage tourism.

*Case Study: Bob Marley Museum*

The Bob Marley Museum was established in 1986 in Kingston, Jamaica five years after the death of the reggae musician Bob Marley. The Bob Marley Museum houses an 80-seat theatre; a gallery of Marley memorabilia; a library with the latest books on Bob Marley, reggae music, and more; a gift shop selling T-shirts, posters and CDs as well as unique African arts and crafts; and the Queen of Sheba restaurant which offers Jamaican cuisine. The museum is located at Bob Marley's former place of residence. It was also home to the Tuff Gong record label and record manufacturing plant which was founded by The Wailers in 1970. In 1976, it was the site of a failed assassination attempt on Bob Marley.

The Bob Marley Museum is the most visited attraction in Kingston and the main drawing card for heritage tourism. In 2006 there were 31,101 visitors, an increase of 15% on 2005 levels. The vast majority of visitors are adult (70%), with children (22%) and students (8%) making-up the remainder. The majority of adult visitors (90%) are foreigners or non-nationals. It is estimated that 70-80% of the overseas visitors are coming from hotels in the North Coast and are doing a day trip to Kingston. About 10% of the overseas visitors are diasporic or regional tourists.

Destination branding is a critical element of the economic impact of heritage tourism (see Table 3). The Bob Marley image is one of the most utilized, if not pirated, images in the world. The Robert Marley Foundation handles licensing of the Bob Marley image and other intellectual property matters.

**Table 3: Strategic Assessment of Economic Impact of the Bob Marley Museum**

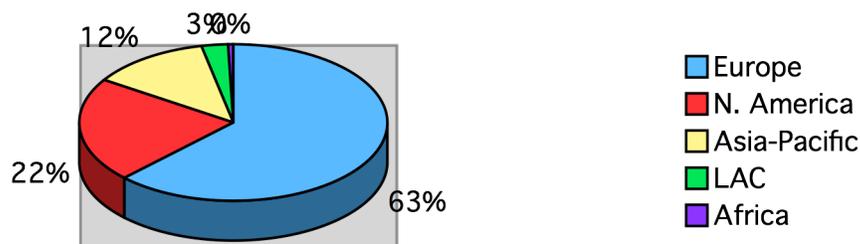
<b>Micro-Strategic Impact</b>	<b>Macro-Strategic Impact</b>	<b>Destination Brand Value</b>
The principal source of earnings is from entrance fees. There is much scope given the cache of the Bob Marley name for new income streams from merchandising and Internet/ecommerce distribution systems.	The museum enjoys the highest level of visitation in the Kingston area when compared with other attractions. Given its prime location the museum is able to attract sightseeing tourists as well as business and diplomatic tourists.	The brand value of Bob Marley to the country of Jamaica is inestimable but very significant. However, the brand is very diffused and management of licenses and intellectual property rights relating to Bob Marley's music and associated products continues to be a challenge for the Robert Marley Foundation, which has the overall responsibility for their integrity.

## Intellectual Property

Intellectual property is a key growth area in the global economy and one of the core features of the creative sector. Copyright and related rights are the main forms of intellectual property through which the creative goods and services are protected and commercialized. Royalties earnings and licensing fees are a key source of income for rights-owners such as authors, composers and producers.

In terms of the global trade in intellectual property in the creative sector the most recent data on global authors' rights and royalty collections worldwide in 2006 reached 7,155,532,807 Euros, a 6% increase over 2005<sup>3</sup>. Of this amount Europe accounts for approximately 63% or 4.48 billion Euros. North America is the next largest region in terms of collections with 1.55 billion Euros. Developing country regions like Asia-Pacific collected 878 million, Latin America and the Caribbean 211 million and Africa 34 million (see figure 6). These data only cover royalty collections from the national societies and not the royalty payments between collection management organizations, for example, inflows and outflows to foreign collections societies.

**Figure 6: Global Royalty Collections by Region, 2006**



Source: CISAC 2007

Prospects for royalty-based creative trade (i.e. digital content like Internet TV and mobile music) appear to be very strong based on recent data from a CISAC study. This is a burgeoning element of the creative economy from which only a few developing countries are benefiting. For example, estimates from UNCTAD show that the top exporters of new media from the developing world are the key industrial economies in Asia (China, Singapore, Korea, Taiwan, India and Malaysia) and other developing country regions like Latin America and the Caribbean and Africa are not active participants.<sup>4</sup> It is also important to note that these countries are faced with the problem of under-reporting in relation to the

<sup>3</sup> This is data based on the earnings from CISAC members.

<sup>4</sup> See UNCTAD/UNDP (2008) *The Creative Economy Report 2008: the Challenge of Assessing the Creative Economy: Towards informed policy-making*. UNCTAD/UNDP, Geneva, p. 134.

public performance of copyright works by the collective management organizations in OECD countries, particularly the US.<sup>5</sup>

#### *Case Study: Caribbean Copyright Link*

Caribbean Copyright Link (CCL) is a joint venture between four copyright management organizations<sup>6</sup> in CARICOM and associate members organizations<sup>7</sup>. It is a non-profit company incorporated in 2000. Its mandate is to strengthen collective rights management in the region and in so doing expand the royalty-based earnings of rights owners. CCL represents the implementation of a regional system for collective management in the Caribbean including the provision of data management services. CCL is one of the success stories in the creative sector. This is exemplified by its expanded royalty collections from US\$1.2 million in 1999 to US\$2.6 million in 2005<sup>8</sup>.

The Copyright Music Organization of Trinidad and Tobago is a good example of progressive institutionalization within the CCL network. It has severed its membership well in recent years as exemplified by the steady growth in performing rights royalties from TT\$ 7.2 million in 2003 to \$13.6 million in 2007 (see figure 7). Over the period there has been growth in other key income sources like foreign performing rights royalties (from \$395,305 to \$680,820) and recording rights income (from \$69,262 to \$1,052,979).

The members of CCL have recently done an assessment of the key issues impacting on the copyright management system in the region<sup>9</sup>. The following is a select list of recommendations:

- Compliance with copyright legislation by Government departments;
- Greater sensitivity by enforcement agencies – copyright infringement and piracy are not victimless crimes;
- The development of a legal framework that recognises all relevant rights and allows for the affordable and speedy resolution of legal cases;
- The expansion of CMOs in those territories where rights-owners and creators are presently not represented;

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<sup>5</sup> See Keith Nurse, "Copyright and Music in the Digital Age: Prospects and Implications for the Caribbean" *Social and Economic Studies* 49.1 (2000): 53-81.

<sup>6</sup> The four founding members of CCL are the Jamaica Association of Composers, Authors and Publishers Ltd (JACAP); Copyright Music Organisation of Trinidad and Tobago (COTT); Copyright Society of Composers, Authors and Publishers Inc. (COSCAP - Barbados); and, Eastern Caribbean Copyright Organisation for Music Rights Inc. (ECCO – St. Lucia).

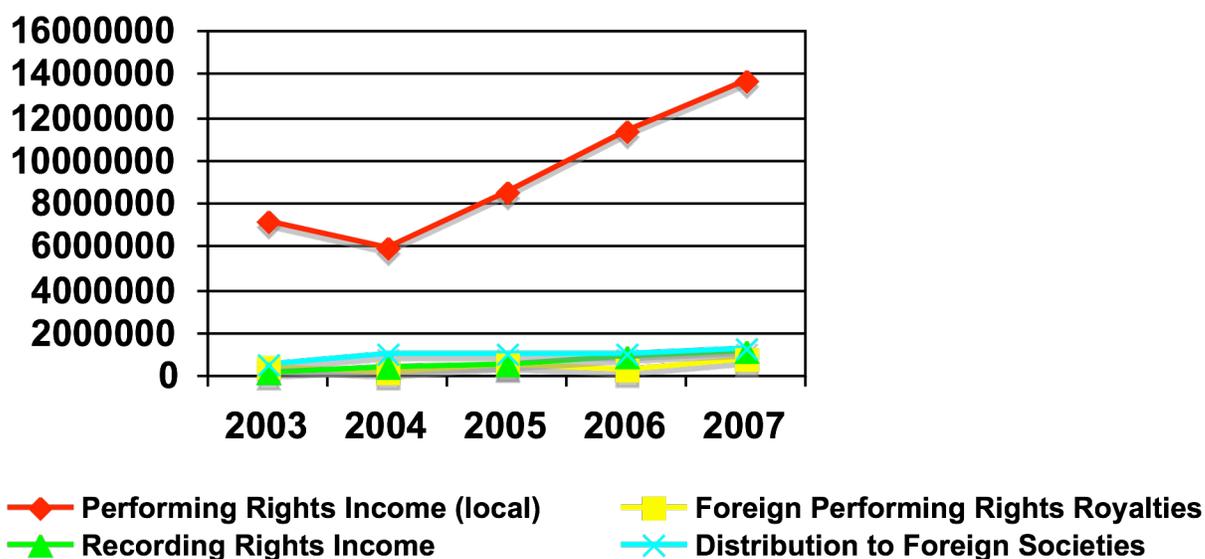
<sup>7</sup> The associate members of CCL are ACDAM (Cuba), SASUR (Suriname), BSCAP (Belize), JAMMS and JAMCOPY (Jamaica).

<sup>8</sup> For further details see chapter in Keith Nurse (2006) *The Cultural Industries in CARICOM: Trade and Development Challenges* (EU PROINVEST and Caribbean Regional Negotiating Machinery).

<sup>9</sup> See CCL (2009) *Submission of CCL to the 20<sup>th</sup> Meeting of the Regional Cultural Committee*. Port of Spain: Caribbean Copyright Link.

- Ratification of the WIPO Digital Treaties and the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;
- The implementation of a CARICOM regional broadcast policy which includes regional music content requirements of at least 30% with further stipulations to guarantee airplay for all genres;
- Greater educational and awareness programmes on piracy and other forms of intellectual property infringement;
- CARICOM countries should establish a double taxation rate for royalty earned within the region of 0%.

**Figure 7: COTT Royalty Revenue and Distribution, 2003 - 2007 (TT\$)**



### The Trade Policy Context

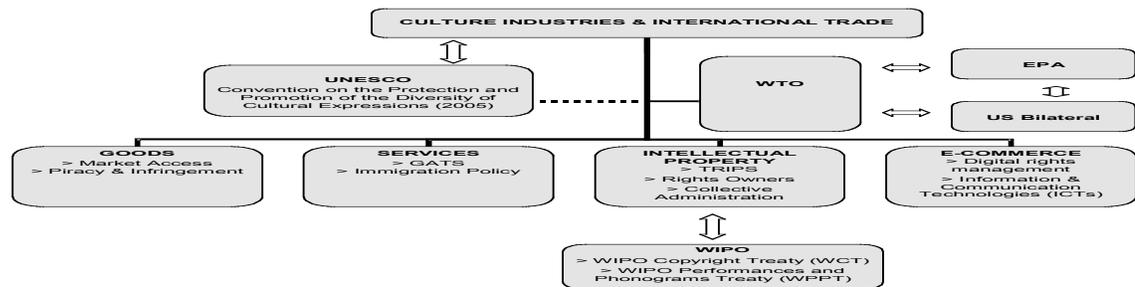
Cultural and entertainment goods, services and intellectual property are captured in a range of international regimes and instruments in the multilateral and regional trading system<sup>10</sup>. Essentially, there are five critical areas that impact on cultural and entertainment industries and, in many ways, given the innovations and evolving dimensions of the industries involved, these areas are increasingly interconnected:

<sup>10</sup> See Van den Bossche, Peter (2007) Free Trade and Culture: A Study of Relevant WTO Rules and Constraints on National Cultural Policy Measures. (Amsterdam: Boekmanstudies).

1. WTO GATS — covers a range of services that relate to the cultural sector: news agency services, motion picture industry, theatrical services, libraries, archives, museums, etc.<sup>11</sup><sup>12</sup>
2. WTO GATT — covers market access in relation to goods.
3. WTO TRIPs — covers copyright, geographical indications, trademarks, traditional knowledge, etc.
4. E-commerce — given that so many areas are increasingly linked to the digital arena.
5. The 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions—the most recent instrument to be created to foster understanding of the policies that can effectively promote cultural diversity while dealing with the challenges associated with trade in cultural goods and services.
6. The emergence of regional trade agreements such as the Economic Partnership Agreements between the EU and the ACP and bilateral agreements with the US.

The diagram that follows illustrates the expansive range of issues affecting cultural industries and highlights the need for close coordination of trade, industrial, and intellectual property policy (see Figure 8).

**Figure 8: Diagram Linking Culture Industries & International Trade to Trade, Industrial, & Intellectual Property Policy<sup>13</sup>**



For developing countries the introduction of culture into global trade rules and governance is an issue of immense concern. In many respects it is a contest between the liberalization of trade in cultural goods and services under the WTO as well as through regional trade agreements and the promotion of cultural diversity through the UNESCO Convention<sup>14</sup>. The Convention calls for the parties to incorporate culture into sustainable development and for international

<sup>11</sup> For further discussion see Christoph Beat Graber, *Audiovisual Media and the Law of the WTO*, in: Christoph Beat Graber/Michael Girsberger/Mira Nenova (Hrsg.), *Free Trade versus Cultural Diversity*, Schulthess: Zürich 2004, 15-65.

<sup>12</sup> See WTO, Council for Trade in Services, "Audiovisual Services: Background Note by the Secretariat", S/C/W/40, 15 June 1998.

<sup>13</sup> This diagram is taken from Keith Nurse, et al., (2006) *The Cultural Industries in CARICOM: Trade and Development Challenges*. EU PROINVEST and Caribbean Regional Negotiating Machinery, Bridgetown, Barbados.

<sup>14</sup> For further discussion see Tania Voon, *Cultural Products and the World Trade Organization*. Cambridge: Cambridge University Press, 2007.

cooperation to support the development of the cultural industries and policies in developing countries through technology transfer, financial support and preferential treatment.

#### *The CARIFORUM-EU Economic Partnership Agreement*

The CARIFORUM-EU Economic Partnership Agreement (EPA) that was signed in October, 2008 is the first regional group within the ACP to secure a comprehensive agreement with the European Union (EU) that covers not just goods but services, investment, and trade related issues such as innovation and intellectual property. The EPA reinforces and widens Duty Free Quota Free (DFQF) access for CARIFORUM (CARICOM<sup>15</sup> along with the Dominican Republic) goods into EU markets. In the services sector the EPA provides market access for Caribbean firms and professionals in terms of cross border trade, investment, consumption abroad and temporary movement of persons in business services, communications, construction, distribution, environmental, financial, transport, tourism and cultural and entertainment services.

One of the innovative features of the EPA is the level of market access obtained for entertainment services - the first of its kind for the EU in any trade agreement - and the deepening of cultural cooperation under the Cultural Protocol. As such, the cultural sector is addressed in the EPA through two approaches: (a) a trade liberalization construct where market access for entertainment services is granted by both parties, and (b) through the Protocol on cultural cooperation which is premised on the UNESCO Convention.

#### *Market Access Provisions in the EPA*

The first key element of the EPA from the perspective of the cultural sector is the level of trade liberalization between the CARIFORUM countries and the EU where for the first time the EU has made a comprehensive offer in the liberalization of entertainment services (CPC 9619) other than audio-visual services (see Box 1). The rules of the Services and Investment chapter and the general provisions of the EPA govern the liberalization of the entertainment and cultural services. Under the EPA, CARIFORUM countries secured market access commitments by 27 European states, with some limitations in two states, Germany and Austria<sup>16</sup>. Once the EPA comes into force these commitments will take effect immediately for the EC-15, within three years for the EC-10<sup>17</sup> and in five years for Bulgaria and Romania.

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<sup>15</sup> CARICOM is a regional grouping of developing archipelagic states. CARICOM has 15 full members: Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat (UK), Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

<sup>16</sup> Germany limited its commitments to 96191 and 96192, and Austria to only Authors, and Dance Instructor services.

<sup>17</sup> Cyprus, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia.

Box 1: EU Services Commitments - Entertainment services CPC 9619  
(other than audio-visual)

96191 Theatrical producer, singer group, band and orchestra entertainment services  
96192 Services provided by authors, composers, sculptors, entertainers and other individual artists  
96193 Ancillary theatrical services n.e.c.  
96194 Circus, amusement park and similar attraction services  
96195 Ballroom, discotheque and dance instructor services  
96199 Other entertainment services n.e.c.

Trade in international services is supplied through one or a combination of four modes. Under the services chapter in the EPA the EU has liberalized its market to different degrees (relative to its offer in the Doha Development Agenda (DDA)) in each of the modes of supply. In Mode 1 (cross-border supply) the margin of preference granted to CARIFORUM countries is not very significant given that the EU listed reservations. Similarly, in Mode 2 (consumption abroad) the gains have not been very high given that this is the least restricted mode of supply. In Mode 3 (commercial presence) there are the expected exclusions for the audio-visual sector<sup>18</sup> but there are general improvements, for instance the fact that the commitments cover more EC member states; and that they involve the removal of many nationality requirements, some residency requirements and limitations on juridical form.<sup>19</sup>

The area where the CARIFORUM countries gained the highest level of preference is in terms of Mode 4 (movement of natural persons). The EPA provides for quota free market access for temporary entry (for up to six months in a calendar year) by contractual service suppliers (CSS)<sup>20</sup> and employees of these services firms. Market access is subject to qualification requirements and economic needs tests<sup>21</sup>.

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<sup>18</sup> The audiovisual sector is highly contested under the WTO-GATS. At the conclusion of the Uruguay Rounds the EU and other large producing countries took exemptions from the MFN principle for the audiovisual sector. Nineteen countries included this sector in their GATS schedule including the US ( See WTO, Council for Trade in Services, "Audiovisual Services: Background Note by the Secretariat", S/C/W/40, 15 June 1998.

<sup>19</sup> For detailed analysis see Pierre Sauve and Natasha Ward, "Services and Investment in the EC-CARIFORUM Economic Partnership Agreement: Innovation in Rule-Design and Implications for Africa," p. 7-8.

<sup>20</sup> Under the EPA chapter on Services, Contractual Service Suppliers (CSS) are defined as follows: Natural persons of the EC Party or of the Signatory CARIFORUM States employed by a juridical person of that EC Party or Signatory CARIFORUM State which has no commercial presence in the territory of the other Party and which has concluded a bona fide contract to supply services with a final consumer in the latter Party requiring the presence on a temporary basis of its employees in that Party in order to fulfil the contract to provide services.

<sup>21</sup> The main criteria for economic needs tests will be the assessment of the relevant market situation in the Member State or the region where the service is to be provided, including with respect to the number of, and the impact on, existing services suppliers.

Under Mode 4 provisions artists, cultural practitioners and professionals will enjoy the same basis for entry as business professionals once they are CSS or registered businesses. For entertainment and cultural services, the following conditions apply for contractual service suppliers:

1. The natural persons are engaged in the supply of a service on a temporary basis as employees of a juridical person (firm or company), which has obtained a service contract for a period not exceeding 12 months.
2. The natural persons entering the other Party should be offering such services as an employee of the juridical person supplying the services for at least the year immediately preceding the date of submission of an application for entry into the other Party. In addition, the natural persons must possess, at the date of submission of an application for entry into the other Party, at least three years professional experience<sup>22</sup> in the sector of activity which is the subject of the contract.
3. The natural person shall not receive remuneration for the provision of services other than the remuneration paid by the contractual service supplier during its stay in the other Party.
4. The temporary entry and stay of natural persons within the Party concerned shall be for a cumulative period of not more than six months or, in the case of Luxembourg, 25 weeks, in any twelve month period or for the duration of the contract, whatever is less.
5. Access accorded under the provisions of this Article relates only to the service activity which is the subject of the contract; it does not confer entitlement to exercise the professional title of the Party where the service is provided.
6. The number of persons covered by the service contract shall not be larger than necessary to fulfill the contract, as it may be decided by the laws, regulations and requirements of the European Community and the Member State where the service is supplied.

In trade policy terms the quota free market access for CSS is an important achievement for the CARIFORUM countries. It offers some level of preference because very few EU states have commitments for the temporary movement in entertainment services<sup>23</sup>. This is also a critical area for diversification of the Caribbean export economy and to boost competitiveness in other related services like tourism and ecommerce. In this sense the EPA does not lock the Caribbean into the established international division of labour.

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<sup>22</sup> Obtained after having reached the age of majority.

<sup>23</sup> See CRNM "Getting to know the EPA" [www.crn.org](http://www.crn.org), accessed September 2008. It states that "only two EU states have made commitments in the WTO for the temporary movement of contractual service suppliers in entertainment services; and in the EU-Chile Trade Agreement only four states."

### *The Protocol on Cultural Cooperation*

The Protocol on Cultural Cooperation (see annex I) provides the framework within which the Parties shall cooperate for facilitating exchanges of cultural activities, goods and services, including inter alia, in the audiovisual sector. In addition the Protocol aims to facilitate the implementation of cultural policies that protect and promote cultural diversity, collaboration with the aim of improving the conditions governing exchanges of cultural goods and services and to redress the structural imbalances and asymmetrical patterns which may exist in such exchanges.

The Protocol also aims to put into practice the UNESCO Convention. Indeed, the preamble of the Protocol states that it intends “to effectively implement the UNESCO Convention and to cooperate within the framework of its implementation, building upon the principles of the Convention and developing actions in line with its provisions, notably its Article 14, 15 and 16.”

In summary, the Protocol has three key components. The first relates to articles in the Protocol that concern issues of exchanges, training and collaborations. As Table 4 below illustrates these include Articles 2, 4, 7, 8, and 9. The areas captured here range from cultural exchanges and dialogue to technical assistance and collaboration in performing arts, publications and the protection of sites and historic monuments. These articles are not binding commitments and are essentially hortatory. In this sense, they are reminiscent of the provisions for the cultural sector in the Cotonou Agreement.

Table 4: Key Aspects of the Protocol on Cultural Cooperation

Exchanges, training and collaborations	Art. 2 – Cultural exchanges and dialogue Art. 4 - Technical assistance Art. 7 – Performing arts Art. 8 – Publications Art. 9 – Protection of sites and historic monuments
Temporary movement	Art. 3 – Artists and other cultural professionals and practitioners
Audio-visual services	Art. 5 – Audio-visual, including cinematographic, cooperation Art. 6 – Temporary importation of material and equipment for the purpose of shooting cinematographic films and television programmes

The second key element of the Protocol involves the temporary movement and entry of artists and other cultural professionals and practitioners. It relates to the movement of two groups: (a) those involved in the shooting of cinematographic films or television programmes, and (b) a broader list of entertainment services providers involved in cultural activities such as, for example, the recording of

music or contributing an active part to cultural events such as literary fairs, festivals, among other activities. From a Caribbean standpoint an important addition is the mention of ‘mas performers and designers’ as a category of service providers (see Box 3).

Box 2: Artists and other Cultural Professionals and Practitioners

- (a) Theatrical producers, singer groups, band and orchestra members;
- (b) Authors, poets, composers, sculptors, entertainers and other individual artists;
- (c) Artists and other cultural professionals and practitioners participating in the direct supply of circus, amusement park and similar attraction services, as well as in festivals and carnivals;
- (d) Artists and other cultural professionals and practitioners participating in the direct supply of ballroom, discotheque services and dance instructors;
- (e) Mas performers and designers.

There are two important restrictions that apply to temporary movement under the Protocol. The first is that under Article 3.1 of the Cultural Protocol, these entertainers are facilitated temporary entry “provided that they are not engaged in selling their services to the general public or in supplying their services themselves” while staying in the other Party. The rationale is that the Protocol would address the temporary movement of those who cannot avail themselves of the market access commitments undertaken by Title II “Investment, Trade in Services and E-Commerce”. The second restriction is that entry, when allowed, shall be for a period of up to 90 days in any twelve month period. In effect, these elements of the Protocol target the movement of not-for-profit cultural operators as well as those pursuing contracts and involved in marketing.

From a commercial standpoint the main achievement of the Protocol is the inclusion of Articles 5 and 6 which focus on the audio-visual sector. The provisions of these articles allow for co-productions between producers in the EU and CARIFORUM countries. The co-produced works are to qualify as European works within the EC and as CARIFORUM works where preferential schemes for the promotion of local and regional content are established. This preference is subject to ownership and nationality requirements as well as financial contributions on an 80/20 split for both Parties.

The inclusion of the audio-visual sector in the Protocol represents an area of preference for CARIFORUM countries given the sensitivities and the usual exclusion of the audio-visual sector from multilateral and bilateral agreements by the EU and other developed countries.<sup>24</sup> In this sense the Protocol is a complement to the market access commitments under entertainment services

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<sup>24</sup> For a detailed discussion of this see Silvia Formentini and Lelio Iapadre, *Cultural Diversity and Regional Trade Agreements: The Case of Audiovisual Services*, UNU-CRIS Working Paper, W-2007/4.

because it includes the audio-visual sector which is excluded under the services commitments. From the standpoint of the EU because of the non-binding provisions on cultural cooperation the inclusion of the audio-visual provisions under the Protocol serves to preclude third countries from using the MFN provision to claim that their own service supplier are entitled to equal treatment.<sup>25</sup>

### **Situational Analysis and Recommendations**

Throughout the region governments, business support organizations and regional institutions have been targeting the creative sector for growth and expansion. There is increasing recognition that the creative sector can contribute to the further diversification of the regional economy. The creative industries are considered to have strategic value in terms of market and commercial development and for which innovation and technology policies can be implemented to facilitate growth. On the other hand it can be argued that the sector does not get the level of support it duly requires. This is so largely because the creative industries are not seriously regarded as an economic sector, the key stakeholders are poorly organized and its economic value remains largely undocumented. In this context policy measures have typically been absent. The following situational analysis provides further details on the challenges facing the sector:

- Economic value of cultural industries is largely unmapped, unmonitored, and undocumented. There is a need to create an information infrastructure to capture relevant data and formulate policy recommendations for industrial upgrading and harmonisation of trade policy initiatives. There is also need for policies that support local/regional production and distribution of cultural goods and services.
- There is an unmet demand for comprehensive policy initiatives utilizing a range of measures such as legislation, regulations, programme support, and tax measures.
- Fiscal incentives to support cultural industries are random and often inaccessible due to unclear guidelines. Initiatives to support cultural industries vary from territory to territory and need to be harmonized.
- Intra-regional trade of cultural goods and services has been impeded by cumbersome and restrictive border measures which have limited the growth of certain facets of cultural enterprise and indeed limited the exposure of cultural offerings to wider Caribbean audiences. The CSME is an apt vehicle through which authorities may address these restrictions.
- Institutional capacity of cultural industries is weak. Many sectors lack representation in national fora and therefore have not developed beyond artisan levels. Support services to individuals are scarce or non-existent. Cultural entrepreneurs have problems obtaining financing from the traditional banking

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<sup>25</sup> This point is based on personal correspondence with Pierre Sauve and Natasha Ward.

sector. New mechanisms such as royalties-based lending are not established modes of credit in the regional financial system.

- Establishing local presence in foreign markets is prohibitive, mainly in terms of economic outlay for cultural entrepreneurs. Also, in some sectors, the industries are highly concentrated, making it difficult for regional artists to meaningfully access mainstream global markets.
- Infrastructure for cultural industries is underdeveloped across the region and appropriate venues and physical facilities are scarce. Investment in infrastructure for educational facilities involved in the arts is also needed.
- Policies for trade, industry, and tourism, to name a few, are not always coordinated and therefore inhibit the overall impact and/or applicability of government initiatives. There is a clear need for the harmonisation of national and regional initiatives and cross-cutting commitments.
- There is poor marketing and distribution of regional cultural goods and services both regionally and internationally. Previous initiatives to urge Caribbean consumers to buy Caribbean products need to be reassessed and revamped. Broadcasting of local cultural content is low.

In broad outline, the key policy interventions would entail a number of initiatives from a wide array of stakeholders: the governments including various ministries and agencies along with industry associations, non-governmental development organizations regional organizations and international development agencies. A short list of the main recommendations for fostering an environment conducive to the development of the creative industries includes the following:

- Improved government-industry relations through the harmonization of government policy on trade, industrial and intellectual property policies. Proactive policies aimed at promoting cultural diversity and investment in the cultural sector should be preserved in bilateral and multilateral negotiations (e.g. WTO) and in inter-regional arrangements (e.g. Economic Partnership Agreements).
- Document the economic impact of the cultural industries and establish benchmarks, targets and policy measure to promote employment generation, enterprise development, industrial upgrading and export expansion.
- Increase local and regional content on the airwaves (radio and TV) through local content legislation/regulation where needed. Encourage and facilitate the “uploading” of local and regional content onto the World-Wide-Web, for example, through the webcasting of festival and events.
- Develop cultural industry associations to represent the interest of the sector and also to develop a code of ethics and standards for remuneration rates and work practice (e.g. in the hotel, hospitality and advertising sectors).
- Improve access to finance, credit and business support services for emerging and export-ready firms and artists. Establish booking agencies and trade/export

facilitation centres. These measures should be matched by market development grants and financing for participation in trade fairs.

- Copyright protection and collective administration must form a vital component of the policy agenda including an anti-piracy enforcement and a public awareness campaign. National and regional rights management centres should be established for multiple areas of the creative industries (e.g. music and book publishing).
- Expand the linkages between the creative industries, the tourism sector and the wider economy, for example, through festivals like the Caribbean Festival of Arts and the Pacific Festival of Arts. Facilitate and encourage new marketing strategies targeted at the diasporic and intra-regional markets as well as cultural tourists.
- Develop Internet-readiness for alternative broadcasting, marketing and distribution of cultural goods, services and events. Establish an ecommerce platform and a regional warehousing system for sales and distribution.
- Upgrade the human resource capabilities of the cultural sector through training in the arts as well as training in arts administration, management and cultural entrepreneurship.