

Creative Trade for Human Development

Patrick Kabanda



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Abstract

In recent years, international trade in creative goods and services has been expanding. But this upward march is not lifting all boats. Although many developing countries are endowed with vast cultural wealth, they still lag behind. In addition, women are not faring well. Much needs to

be done to expand creative trade for human development. Suggestions here include implementing a Women Artisan Trade Initiative, creating a cultural trade index, developing appropriate intellectual property initiatives, and considering creative trade in economic diversification strategies.

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Patrick Kabanda

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Patrick Kabanda is a consultant for the Office of the Senior Vice President and Chief Economist at the World Bank. He received a Master of Arts in Law and Diplomacy from The Fletcher School at Tufts University and his Bachelor and Masters of Music degrees from The Juilliard School. He is currently writing a book based on his working paper called *The Creative Wealth of Nations* (with a Foreword by Amartya Sen). The author welcomes your feedback. Contact: pkabanda@musikaba.net; www.musikaba.net.

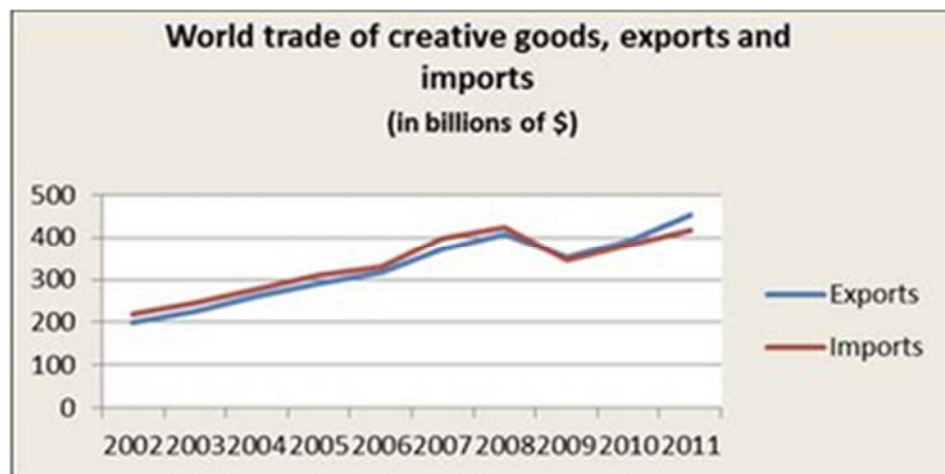
Introduction: *Beyond Trade in Typical Goods*

Adequately nurtured, creativity fuels culture, infuses a human-centred development and constitutes the key ingredient for job creation, innovation and trade while contributing to social inclusion, cultural diversity and environmental sustainability.¹

— UNDP and UNCTAD, *Creative Economy Report 2010*

International trade in cultural goods and services presents a fascinating inquiry into how global commerce fueled by creative work can influence human development. This trade has been expanding. See figure 1.² “Global exports of such goods and services as arts and crafts, books, graphic and interior design works, fashion, films, music, new media, printed media, visual, as well as audiovisuals, picked up in 2011 — the latest year for which figures are available — from \$536 billion in 2009 and \$559 billion in 2010,” according to United Nations Conference on Trade and Development (UNCTAD). “The sector has now exceeded its pre-crisis peak of \$620.4 billion in exports in 2008.”³ But while this upward march is notable, it is not slum-dunk evidence that ‘creative trade’ is lifting all global boats in human and economic progress.

Figure 1



Source: UNCTAD, based on official data in UN COMTRADE Database⁴

¹ United Nations, *Creative Economy Report 2010: Creative Economy: A Feasible Development Option* (UNDP/UNCTAD, 2010), xix, accessed April 3, 2015, http://unctad.org/en/Docs/ditctab20103_en.pdf.

² It is not clear if these creative exports and imports are both goods and services.

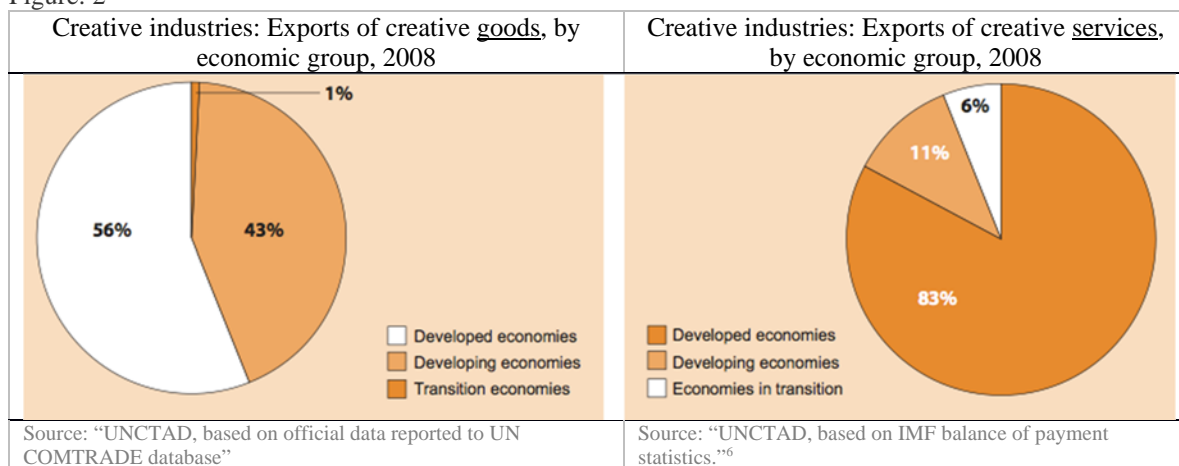
³ UNCTAD, “Trade in Creative Products Reached New Peak in 2011, UNCTAD Figures Show,” May 15 2013, accessed April 3, 2015, <http://unctad.org/en/pages/newsdetails.aspx?OriginalVersionID=498>.

⁴ Ibid.

Although developing nations have immense cultural resources — human and physical; tangible and intangible — they are lagging behind. See figure 2.

Since income contributes to human development by affording people to earn a living, the paucity of gains here for developing countries is concerning. Further, if human development “is about expanding the richness of human life, rather than simply the richness of the economy in which human beings live,”⁵ questions abound: Does focusing on the contribution of creative work to instrumental trade figures sidetrack the value of other aspects such as cultural diplomacy? What is the measure of impact for nations where cultural statistical accounts are especially weak? What are the gains for ‘creative women’ across the developing world? How about the issue of exploitation and those at the very bottom of the cultural trade chain?

Figure: 2



Even trickier, the work of the World Trade Organization (WTO), the body that coordinates the multilateral trading system of trade in goods and services, is often misunderstood. “Reading about the WTO in the popular press,” as Simon Lester and others note, “it is easy to come away with misconceptions about how the organization operates.”⁷ So, what is the WTO?

The WTO is a “Member-driven organization, in that most of the decisions that come out of the WTO are the result of an agreement among all of the countries or customs territories that are WTO members.” It “is not a global parliament with legislators making decisions that national governments must follow. Rather, it is a tool of the governments themselves, through which they make joint decisions.” The crucial point to note is this: The WTO “does not govern its members from above, but rather governs through the Members.”⁸ This

⁵ “About Human Development,” UNHDR, accessed March 2, 2015, <http://hdr.undp.org/en/humandev>.

⁶ United Nations, *Creative Economy Report 2010*, 127, accessed April 3, 2015, http://unctad.org/en/Docs/ditctab20103_en.pdf.

⁷ Simon Lester and Bryan Mercurio with Arwel Davies and Kala Leitner, *World Trade Law: Text, Materials and Commentary* (Oxford and Portland (Oregon): Hart Publishing, 2008), 65.

⁸ *Ibid.*

observation looks democratic. Nonetheless, while improvement has been made, there are concerns that developing countries have yet to make meaningful progress here.

Take intellectual property, a flagship measure in expanding trade in cultural output. Even if developing countries have asked for a break “in terms of obligations imposed on them” under the WTO’s Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), it is important to see how this measure began: “The rules in the TRIPS Agreement that promote stricter intellectual property protection were clearly a response of lobbying by Western companies that owned and developed intellectual property, such as pharmaceutical, entertainment, and software companies.”⁹ In a way, this has implications on internal and external trade in creative output by developing countries. In places with a history of customary law and shared tangible and intangible assets, the TRIPS Agreement is almost irrelevant.¹⁰ This episode shows that how trade in creative goods and services can be influenced to contribute to human development requires policies tailored for developing countries’ needs. Moreover, implications of such trade on creative women also require broader consideration. These approaches are not new. But much more needs to be done.

This discussion seeks to address the constraints and opportunities in what may be called 'creative trade.' It examines how trade in creative work can advance human development, even if the linkages are neither automatic nor guaranteed. It is based on sources ranging from trade literature to interviews, with a caveat that while some data and research consulted are recent, some are not.

The Organization of the Paper

The next section discusses the categories of trade in the creative sector. It proceeds to provide basic concepts of how trade in creative work can enhance human development. This is followed by a discussion of such barriers as the gender divide, the invisibility of creative trade, the delicate debate of culture and commerce, and the challenge of intellectual property protection. A discussion on the WTO’s General Agreement on Trade in Services (GATS) comes next. This is followed by recommendations. They include how to expand opportunities for women in creative trade, the development of a cultural trade index, and a case study on the Republic of Korea’s Copyright Commission. A quick remark on other policies, including the development of cultural trade agreements ends the discussion.

⁹ Simon Lester et al., *World Trade Law*, 42.

¹⁰ J. Michael Finger, interview by author, tape recording, Somerville, MA, November 28, 2011. See also Patrick Kabanda, “The Arts, Africa and Economic Development: The Problem of Intellectual Property Rights,” *Law, Social Justice and Global Development Journal* Issue 2016 (1) (May 1, 2016) Part 2, accessed May 17, 2016, http://www2.warwick.ac.uk/fac/soc/law/elj/ld/2016-1/patrick_finalfinal.pdf.

The Delivery Channels of Trade in Creative Output

In the patterns of trade, creative work may fall into two broad categories: goods, such as crafts and designer furniture, and services like live performances, architecture, and writing. Some creative products can be both — as services, like downloadable music or live performances, and as goods, like CDs and DVDs; or as sculpture making as a service and the sculpture itself as a good; or giving a lecture on how to write a novel as a service, and the novel itself as a good. Further, trade in creative work expands to cultural tourism, education, and the like. If people go to the Arab Republic of Egypt to see pyramids, or if they visit Indonesia to see art, they are technically tourists. But since they are going to see items related to creative work, this is trade in services related to cultural or creative tourism. In other words, intangible creative products are captured under trade in services and tangible creative products are captured under trade in goods. Generally speaking, however, even trade in cultural services is sometimes captured under trade in goods. The following table shows examples of how trade in creative work can contribute to human development.

Figure 3

How Trade in Creative Work Can Enhance Human Development: Basic Concepts¹¹		
<p>The Trade and Economics Theory</p> <p>More trade in cultural goods and services from developing countries is generally good for development.¹²</p>	<ul style="list-style-type: none"> ▪ This commerce (other things being equal) is likely to expand income for creative workers in the developing world. ▪ In the aggregate this is likely to contribute to a country’s GDP and even to the Human Development Index (HDI) and employment figures. ▪ Trade in cultural goods and services can also indirectly brand nations positively and hence induce, tourism, education, and investments in other sectors. ▪ Regarding gender, ‘creative trade’ can expand opportunities for rural women whose creative agency in the artisanal sector, for example, is significant world-wide. 	<ul style="list-style-type: none"> ▪ This income can expand ‘creative people’s’ capabilities as they earn a living from a practice and tradition they have reason to value. In turn, this boosts creative output, as it sustains artistic work. ▪ The direct and indirect contribution from trade in creative products is a welcome addition to any country’s economy. ▪ Since women share most of the household responsibilities in the developing world, as widely noted, increased income (however little) is likely to contribute to the welfare of their families.

¹¹ For more on trade, economics, and peace see: “Why Trade?” Simon Lester et al., *World Trade Law*, 12-14.

¹² NB: In this case, the consideration is on the positive outcomes, even though, as is true even in other sectors, this trade can also fuel labor exploitation and the like.

<p>The Trade and Peace Theory</p> <p>There are long-standing calls to limit conflict in areas with significant cultural monuments. In this context, these treasures are normally associated with trade in cultural tourism and other intangible value.</p> <p>The premise that all trade, generally speaking, expands global stability is worth noting. “The thinking behind this theory is that countries which trade with each other are less likely to declare war against each other. By creating ties between countries of each people [— and creative trade here makes a fascinating case study —] the risk of armed conflict is reduced, as there will be constituencies that oppose war and look for peaceful solutions.”¹³</p> <p>The recent Iraq war and the turmoil in such places as Syria test this premise. Nevertheless, “[in] practice, the theory has been borne out—with limited but notable exceptions—not only in modern times, but also as far back as to at least the Egyptians and Phoenicians.”¹⁴</p>	<ul style="list-style-type: none"> ▪ The peace enjoyed by all (including creative workers) may be, inter alia, a facilitator of revenue and employment in the cultural sector. ▪ In addition to commerce, cultural monuments are generally a source of dignity and pride. ▪ Trade in cultural goods can indirectly enhance cultural diplomacy and cultural democracy (even though these programs can be promoted by themselves) ▪ ‘If you are going to trade with a country,’ as David Throsby puts it, ‘then they need to understand you and you need to understand them and the way to do that is through cultural exchanges.’¹⁵ This is a stark contrast from waging wars with each other. 	<ul style="list-style-type: none"> ▪ A peaceful world obviously contributes to human development. And needless to say, peace generally enables an investment climate that also stimulates economic growth. In creative spheres, moreover, peaceful countries with notable cultural monuments are likely to attract more tourism and people-to-people cultural interactions. ▪ Cultural dignity, while especially hard to measure, adds to people’s human development as a source of inspiration, spirituality, or other reasons they have reason to value. ▪ Cultural diplomacy can enhance peace, as it promotes the mutual respect between nations. Such respect can promote trade and even human development, happiness, and well-being across borders, as people become more inquisitive and enjoy each other’s cultures. ▪ Further, the arts can also promote trade beyond cultural products, hence the adage “Where Culture Leads, Trade Follows.”¹⁶ Nation branding via the arts can be realized here.
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¹³ Simon Lester et al., *World Trade Law*, 12-14.

¹⁴ Ibid.

¹⁵ Deborah Cameron, “It’s Not All Sun and Beaches,” *Age*, October 3, 2006, accessed April 10, 2015, <http://www.theage.com.au/news/arts/its-not-all-sun-and-beaches/2006/10/02/1159641258854.html>.

¹⁶ For more on this concept see: David Throsby, *The Economics of Cultural Policy* (New York: Cambridge University Press, 2010); Patrick Kabanda. 2014. *The Creative Wealth of Nations: How the Performing Arts Can Advance Development and Human Progress*. Policy Research working paper; no. WPS 7118. Washington, DC: World Bank Group. <http://documents.worldbank.org/curated/en/2014/11/20400813/creative-wealth-nations-performing-arts-can-advance-development-human-progress>; and Patrick Kabanda, “Where Culture Leads, Trade Follows’: A Framework for Developing Uganda’s Music as International Trade in Services” (master’s thesis, The Fletcher School of Law and Diplomacy, Tufts University, 2013).

<p>The Sustainable Trade Theory</p> <p>Except for a few exceptions, trade in the cultural sector naturally promotes goods and services, which are greener.¹⁷</p>	<ul style="list-style-type: none"> ▪ Sustainable products are generally better for the environment. 	<ul style="list-style-type: none"> ▪ Leading greener and sustainable livelihoods is likely to fuel meaningful human development. Sustainable trade and growth can also be counted under this umbrella.
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While the above concepts are basic, they are not easily achieved — at least in developing countries. The next discussion goes on to consider some reasons why this is the case, starting with barriers for ‘creative women’ in ‘creative trade.’

Barriers for Women in Creative Trade

First, generally speaking, in any kind of work (and jobs, or employment), the global perception that any meaningful employment is for men, not women, has not entirely abated.¹⁸ (This issue is worth recalling, as it is historical and present world-wide — albeit with variations from culture to culture.) In creative work, this perception presents a double whammy for women: their efforts in crafts, ceramics, weaving and other areas are often seen as ‘lowly’ jobs for women.¹⁹ Hence, with a few exceptions, no national strategies have been made to effectively see how women’s creative output can be part of the parcel for competitiveness in international trade.

Second, in the context of information asymmetry, women tend to have less information on such provisions as market structures and trade opportunities, even those provided by the Internet. This is because of the structural issues like education and digital divides between men and women that prevail in many countries.

Third, women tend to have less mobility than men.²⁰ In our context, this may limit their ability to participate in local and international cultural trade fairs, for example.

Fourth, some aspects of trade in services that encompass creative work — cultural tourism comes to mind — may actually end up facilitating the exploitation of women. Whereas men and children are not entirely immune, in societies that objectify women, females may be asked to dress or appear in ways that potentially exploit their bodies, for instance.

¹⁷ See David Throsby, *The Economics of Cultural Policy*.

¹⁸ Michelle Bachelet, “Free Trade Needs Free Women,” *International Trade Forum Magazine*, July 01, 2012, accessed April 6, 2015, <http://www.tradeforum.org/article/Free-trade-needs-free-women/>.

¹⁹ See related discussion here: Moira Vincentelli, “Trajectories: Survival, Revival, and Innovation in Women’s Ceramics,” Carleton College | World Ceramics: Transforming Women’s Traditions, accessed March 4, 2015, <https://apps.carleton.edu/campus/gallery/worldceramics/essays/vincentelli/>.

²⁰ United Nations Inter-Agency Network on Women and Gender Equality (IANWGE), “Gender Equality and Trade Policy,” IANWGE, accessed April 6, 2015, http://www.un.org/womenwatch/feature/trade/gender_equality_and_trade_policy.pdf.

Fifth, since men generally hold leadership positions in trade unions, women may have less say here, let alone the impetus to start their own unions.²¹

Sixth — and this point extends to all sectors — there is an “erroneous perception that women's income is supplementary rather than central to households’ well-being. Gender stereotypes perpetuated through social norms assign women to unpaid social reproduction roles and functions, such as primary caregivers in the family and as those responsible for household chores, leaving women with very little time to improve their skills or seek new work opportunities.”²² Indeed, wage gaps between men and women persist even in rich countries.

The Near Invisible Nature of Trade in Creative Output

Although the creative sector is increasingly becoming recognized, it is not yet fully understood. In many countries this is the case.²³ Consider the following points:

In 2012, Wasant Bharath, the Government of the Republic of Trinidad and Tobago’s Minister of Trade, Industry, and Investment remarked: “The creative industries sector's economics, operations and commercial potential is not fully understood in many countries around the world.” This is from a minister from a nation where a “study on the local music industry has shown that it is estimated to generate TT \$169 million annually, [about USD\$26.5 million] employing some 5,600 persons. [And where at] a national level, [the] Carnival remains by far the largest generator of revenues within the music/entertainment sector, [contributing] TT \$154 million [about USD\$24.2 million] and employing over 3,500 persons.”²⁴

In Creative Industries and Economic Evolution Jason Potts goes on to conclude: while creative industries play an important role in the innovation process, this contribution is both under-appreciated and widely misunderstood:

The creative industries have been under appreciated as drivers of innovation because they have been over-represented as a welfare problem. Their role has been misunderstood because we have not taken enough notice of the deep similarity of artists and entrepreneurs.²⁵

Moreover, creative work is encompassed in a long list of names. While this in a way reflects the diversity of the creative sector, it potentially adds to the confusion — policy makers

²¹ International Labour Organization (ILO), *Gender Equality at the Heart of Decent Work* (Geneva: ILO, 2009), accessed April 6, 2015, http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_105119.pdf.

²² IANWGE, “Gender Equality and Trade Policy.” In a way this issue is related to the first point.

²³ Mexico News, “Mexico, Latin America Leader in Creative Industries,” October 30, 2014, accessed April 7, 2015, <http://www.mexiconewsnetwork.com/news/creative-industries/>.

²⁴ Government Information Services Limited, “Creative Industry Misunderstood Globally - Bharath,” November 6, 2013, accessed April 7, 2015, <http://www.news.gov.tt/content/creative-industry-misunderstood-globally-bharath#.VSP9i2Yvbok>.

²⁵ Jason Potts, *Creative Industries and Economic Evolution* (Cheltenham Glos (UK); Northampton (USA): Edward Elgar, 2011), 196.

often need concepts clearly defined (even if, as commonly seen, they may not act on the relevant information available). Consider these names: cultural industries, creative industries, leisure industries, entertainment industries, content industries, copyright protected industries, cultural economy, and creative economy. The names may differ slightly here and there, but they all have a ‘common area’ glued by creative work. The Inter-American Development Bank therefore proposed “a practical definition [called] the ‘Orange Economy,’ starting from the common area.”²⁶ Whether this definition will gain traction remains to be seen.

Culture and Commerce

The debate of art and commerce is often delicate. There are some who maintain that culture is culture. It is priceless and that it should not be commodified. As Kaushik Basu put it, “there are purists who shirk at the mention of art and commerce in one breath.” Moreover, “The recent headlines about how a group of international investors and speculators allegedly exploited several Chinese artists no doubt make us wary of the brew of art and markets.”²⁷ Nonetheless, the disinclination to consider sound strategies for cultural development because of the ‘purist’ ideology potentially hurts the promotion of comprehensive trade policy in creative fields.

The Intellectual Property Challenge

Figure 4

"Intellectual property (IP) refers to creations of the mind, such as inventions; literary and artistic works; designs; and symbols, names and images used in commerce.

IP is protected in law by, for example, patents, copyright and trademarks, which enable people to earn recognition or financial benefit from what they invent or create. By striking the right balance between the interests of innovators and the wider public interest, the IP system aims to foster an environment in which creativity and innovation can flourish.”²⁸

Source: WIPO

In trade, intellectual property is one of the obvious measures to harvest earning from creative work. This is through copyright, patents, trademarks, and geographical indicators, for example. But this tool, which forms the basis of the WTO’s TRIPS framework, is complex, to say the least. It is often misunderstood and difficult to manage.

In areas like education and innovation, moreover, intellectual property can be a problem. It can inhibit the sharing of knowledge — this is so even if “the exclusive rights given

²⁶ Felipe Buitrago and Iván Duque, *The Orange Economy: An Infinite Opportunity* (Washington, DC: Inter-American Development Bank, 2013), 33-49, accessed April 7, 2015, http://publications.iadb.org/bitstream/handle/11319/3659/BID_The_Orange_Economy%20Final.pdf?sequence=7.

²⁷ Kaushik Basu, *An Economist's Miscellany* (New Delhi: Oxford University Press, 2011), 75. This issue is also discussed here: Patrick Kabanda. 2014. *The Creative Wealth of Nations*.

²⁸ World Intellectual Property Organization (WIPO) “What Is Intellectual Property?” WIPO, accessed April 11, 2015, <http://www.wipo.int/about-ip/en/>.

are generally subject to a number of limitations and exceptions, aimed at fine-tuning the balance that has to be found between the legitimate interests of right holders and of users.”²⁹

And since such areas as and pharmaceutical patents and even agricultural inventions fall under intellectual property, the concern is that this measure can take a toll on development. Even though “protecting a Nigerian movie from piracy, for example, is not the same thing as protecting patents for AIDS drugs,”³⁰ there are many in policy circles who turn a deaf ear once they hear the term intellectual property. This lack of differentiation (in intellectual measures) adds to the barrier of promoting a law that is often assumed a Western import. And it must be remembered that in addition to the cost of implementation, intellectual property adaptation is at different stages of maturity (or application) in many countries³¹ — this is so even if the TRIPS Agreement is supposed to help harmonize these differences. Infringement is also not abetting anytime soon.

The mystery of intellectual rights coupled with ever proliferating industrial counterfeits has left many artisans and other ‘creative natives’ in unspeakable situations. Ghana is a perfect example. A Ghanaian law aimed to register textile designs was passed in the 1960s, but consider this: some celebrated designs like the *Kente* were purposely omitted “because of their communal nature.”³² The conundrum this has caused for Ghanaian artist Gilbert “Bobbo” Ahiabile is a case in point. “Although Bobbo’s traditional weaving has been featured at the Smithsonian and his creations are sold through various channels, there is no legal protection for the traditional design cloths he creates. Theoretically, if he registered a copyright for each design, only he would be able to reproduce them. This approach is not realistic, as the designs are used to mark events in tribal life. Bobbo would have a cultural monopoly, something he feels unable to do.” When J.C. Penny reproduced his designs on bed sheets and sold them to the American public there was no legal recourse for Bobbo, as Betsy J. Fowler observes. “This is offensive to the artisan’s community because each design is specific to events in tribal life.”³³

In WTO, India and Emerging Areas of Trade: Challenges and Strategies, P. Vaijayanthi and Reena Roy paint a bleak picture — a picture that effectively delinks human development and creative work:

[W]hile some of the Impoverished weavers of Andhra Pradesh, India, are committing suicide out of the despair over their inability to take care of their families, the size of the markets enjoyed by the copies of their products that are churned out in China and Southeast Asia is unknown, but is substantial. ...

²⁹ World Trade Organization (WTO) “What Are Intellectual Property Rights?,” accessed April 8, 2015, https://www.wto.org/english/tratop_e/trips_e/intell_e.htm.

³⁰ Patrick Kabanda. 2014. *The Creative Wealth of Nations*.

³¹ Also see Ibid and James D. Wolfensohn, Interview by Author, Personal Interview | Tape Recording, New York, NY, January 14, 2013, 98-99.

³² Betsy J. Fowler, “Preventing Counterfeit Craft Designs” in *Poor People’s Knowledge: Promoting Intellectual Property in Developing Countries*, ed. J. Michael Finger and Philip Schuler (Washington, DC: The World Bank and Oxford University Press, 2004), 126.

³³ Ibid., 126-127. This issue is also discussed here Patrick Kabanda, “The Arts, Africa and Economic Development.”

Legal protection for artists has been in the global market for decades, but the issues of protection of ancient designs, and symbols and traditional knowledge utilized in artisan crafts have not been well established in the United States [and elsewhere]. Southwestern Indian-type basketry has been copied in Pakistan, and Romania has begun manufacturing and selling knockoffs of Taiwanese knockoffs of Indian jewelry. In almost every case, prices of such item are less than what would be charged for authentic material.³⁴

Further, many countries too often focus on trade in extractives and physical goods like agro-based commodities such as coffee or cocoa — and now and again, even at the expense of education. Therefore, it is difficult to craft policies that promote creative work, an area where the assumption is that the ‘return on the investment’ is unclear, or worse, nil.

Global Trade Policy: The WTO’s GATS Treaty

While cultural trade comes in both goods and services, a number of creative imports and exports are realized under the latter. Consider, movie downloads, live music performances, or architectural renditions. In world trade policy, however, creative services are almost a drop in the bucket. They are lumped in a broad category, ranging from dental to legal work and from Internet access to museum visits. So, how are services defined? “International trade in services, according the WTO, “is any service or labour activity across national borders to provide satisfaction to the needs of the recipient or consumer other than the satisfaction provided by physical goods (although they might be incorporated in physical goods), or to furnish an input for a producer of goods and/or services other than physical inputs (although the former might be incorporated in the latter).”³⁵ Defining them, as Simon Lester and others conclude, emphasizes their non-physical nature.³⁶ And indeed, “services have been described more colloquially as ‘everything you cannot drop on your foot.’”³⁷ Though intangible, the presence of services in world trade has gained attention in recent years.

They “currently represent more than two-thirds of World Gross Domestic Product (GDP) (71 per cent in high-income countries against 55 per cent and 47 per cent respectively in middle- and low-income countries).”³⁸ Due to their intangible nature, however, “services can be more difficult to trade internationally”— in our context, the difficulties in tracing their trade patterns, piracy, and even visa challenges for artists are well-known. Still, services “represent the fastest growing sector of the global economy and account for two thirds of global output [as just noted], one third of global employment and nearly 20 percent of global trade.”³⁹

³⁴ P. Vaijyanthi and Reena Roy, “Protecting Traditional Knowledge — Will Sui Generis Suffice?” in *WTO, India and Emerging Areas of Trade: Challenges and Strategies*, ed. P. Rameshan (New Delhi: Excel Books, 2008), 264-65.

³⁵ WTO, *Draft Glossary of Terms*, MTN.GNS/W/43 (Geneva: WTO, July 8 1988), accessed April 15, 2015, https://www.wto.org/gatt_docs/English/SULPDF/92050117.pdf.

³⁶ Simon Lester et al., *World Trade Law*, 597-601.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ WTO, “Services: Rules for Growth and Investment,” accessed April 15, 2015, https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm6_e.htm; this observation is also made here:

The creation of the WTO’s General Agreement on Trade in Services (GATS), therefore, “was one of the landmark achievements of the Uruguay Round” trade talks. The results of these talks “entered into force in January 1995.”⁴⁰ In reflecting upon this policy in context of trade in cultural services (and beyond), consider the following excerpt:

The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT): creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization.⁴¹

In its mandate to promote progressive trade, the GATS treaty “distinguishes between four modes of supplying services: cross-border trade, consumption abroad, commercial presence, and presence of natural persons.” The table below considers where creative trade comes in here:

Figure 5

The GATS modes of supplying services and how creative trade fits in	
<p>“Cross-border supply is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail).</p> <p>[In addition to architectural services, movie streaming from Nigeria to UK, for example, can be counted here.]</p>	<p>Consumption abroad refers to situations where a service consumer (e.g. tourist or patient) moves into another Member's territory to obtain a service.</p> <p>[Cultural tourism can be counted here.]</p>
<p>Commercial presence implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member's territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains).</p> <p>[An office of, say, a Brazilian Music Station in Japan, or Juilliard in China can be counted here.]</p>	<p>Presence of natural persons consists of persons of one Member entering the territory of another Member to supply a service (e.g. accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.”⁴²</p> <p>[Performers, music teachers, or other creative persons teaching or giving lectures and workshops, for example, can be counted here.]</p>

Source: WTO

In global trade policy, the exchange of cultural services could be effectively governed by the GATS. But given the broad nature of this framework, concerns of global trade in cultural services are ‘lost in the details.’ Apart from architecture, there is pretty much no specific mention of trade in creative services. This may be part of the global neglect of

Patrick Kabanda, “Haiti’s Economic Imperative,” [Letter to the editor] *International New York Times*, January 20, 2015: 7, accessed June 4, 2015, http://www.nytimes.com/2015/01/20/opinion/haitis-economic-imperative.html?_r=0.

⁴⁰ WTO, “The General Agreement on Trade in Services (GATS),” accessed April 15, 2015, https://www.wto.org/english/Tratop_e/serv_e/gatsqa_e.htm#1.

⁴¹ Ibid.

⁴² Ibid. For more on this framework, generally see: Patrick Kabanda. 2014. *The Creative Wealth of Nations*, 29-66.

cultural commerce — or simply because the crafters of the document did not immediately have culture on their radar. While the GATS was a welcome addition to world trade rules, it has yet to be fully used to effectively trade culture services, especially from developing countries. The following recommendations (from women’s barriers to copyright protection) consider how trade in cultural output can be enhanced to promote gains for developing countries.

Recommendations

- *Trade and Gender*

As discussed earlier, women’s creative agency in the field of creative work is significant. In a development policy, this creativity can be tapped to address such issues as rural poverty, a tyranny that too often compromises human development in villages full of creative women. But few countries have a framework geared to promoting the works of, say, female artisans in international trade. This work has been left largely to ad-hoc NGO operations and business entities that are sometimes rife with labor exploitation, inefficiencies and uncompetitive trade patterns. While structural barriers that keep women behind (on all fronts) cannot be overcome overnight, the following measures are worth deliberating:

- 1) Design and implement a Women Artisans in Trade Initiative (WATI) that functions on local, regional and international levels. The mandate of this program would be to promote artisan works (such as baskets, beads and necklaces) by rural women in local and international trade. The devil is in the details, as they say. But such an initiative deserves scrutiny at the WTO debates and even when considering local economic diversification strategies. Moreover, this program could be linked to such programs as “The Global Platform for Action on Sourcing from Women Vendors.”⁴³ But unlike Global Platform, a 10-year initiative that was started by the International Trade Centre (ITC), WATI would be focused on creative work of women artisans.

Needless to add, the African Growth and Opportunity Act (AGOA) aims to provide opportunities for African products to effectively enter the United States market, for example. These products include crafts and other ‘creative goods.’⁴⁴ But again, WATI could be aligned to AGOA to trade more products by African female artisans. Such a framework could be adapted to other regions as well.

⁴³ “Established in September 2010, the ITC led Global Platform for Action on Sourcing from Women Vendors is a 10-year initiative that aims to increase the amount of corporate, government and institutional procurement secured by women vendors for the ultimate purpose of bringing economic benefit to women and their communities.”— International Trade Centre, “The Global Platform for Action on Sourcing from Women Vendors,” accessed April 9, 2015, <http://www.intracen.org/itc/projects/women-and-trade/the-global-platform-for-action-on-sourcing-from-women-vendors/>.

⁴⁴ See: Susan Ellis, “\$10 Billion Handicraft Market -- and AGOA -- Courts African Artisans,” IIP Digital, U.S. Department of State, accessed April 25, 2015, <http://iipdigital.usembassy.gov/st/english/article/2003/12/20031219120643silles0.1855585.html#axzz3YLaG50Rf>.

- 2) Start a Gender and Cultural Trade Fellowship at the WTO. ITC and other organizations are advancing women's economic progress through trade, but more needs to be done. An annual gender and trade fellowship (awarded to students from developing countries) could help keep creative women's barriers in international trade at the radar of the WTO's agenda.
- 3) Create clubs or associations of women in the creative sector from developing countries. Such associations could be local and regional but connecting with international partners like the Association of Women in International Trade (WIIT).⁴⁵ Such groups are not new. But few of them take on specific issues on trade in cultural output by women. The mandate here would be to consider such areas as, marketing, mentorship, education exchanges, and even concerns of exploitation. Needless to say, even men's groups and public and private sectors could be engaged. The overall agenda would be to make sure that cultural trade does indeed advance capabilities and human development of creative women.

- *Index for Trade in Cultural Goods and Services*

Create a Trade in Creative Goods and Services Index, which ranks countries according to the amount of cultural items they export and import.

Since the creation of the gross domestic product (GDP) and the gross national product (GNP), other indices like the Human Development Index (HDI) and the Gross National Happiness (GNH), have enriched the development debate. It is no secret that the cultural sector lacks data, and that the true value of many cultural experiences cannot be measured. Nonetheless, at least in the area of cultural commerce, it is worth exploring the development of an index that would track patterns of trade in cultural goods and services. The index that may be called the "Cultural Trade Index" (CTI), may argue the need for data collection and cultural trade development. It could look like this:

⁴⁵ This is "the premier nonpartisan professional organization in Washington, DC, for individuals – particularly women – who share an interest and expertise in the field of international trade." — WIIT, "About WIIT," accessed April 10, 2015, <https://www.wiit.org/about/>.

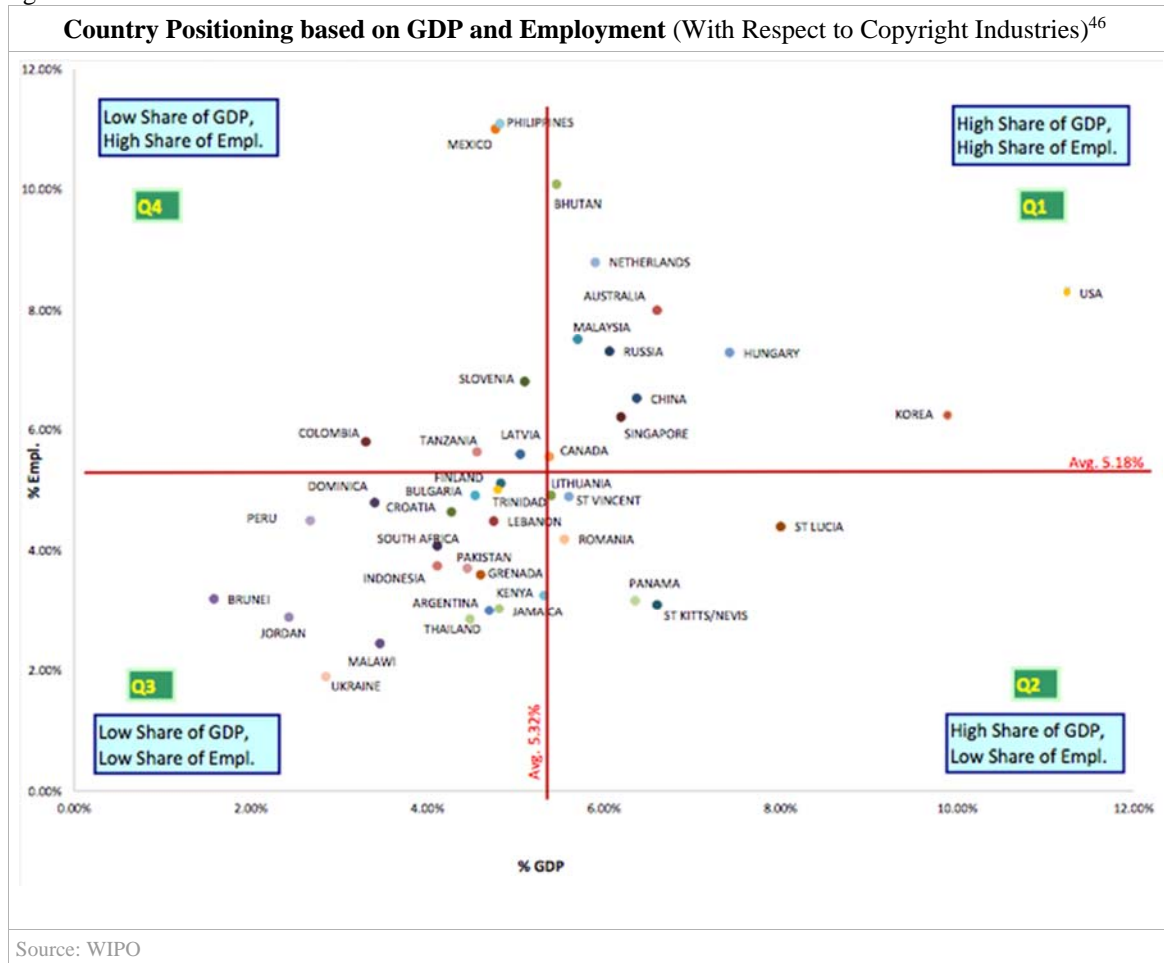
Figure 6

Country	Exports of Cultural Services - Contribution to GDP, 2015	Exports of Cultural Goods - Contribution to GDP, 2015	Percentage of People employed in the cultural sector, 2015	Percentage of the cultural contribution and related sectors to GDP, 2015	Govt. Expenditure on cultural trade promotion and cultural diplomacy, 2015	Consumer Expenditure on Imports of Cultural Services, 2015	Consumer Expenditure on Imports of Cultural Goods, 2015	Rank # 2015
Country A	2 %	4%	15%	8%	\$ 5 M	\$10 M	\$ 15 M	1
Country B	1%	3%	14%	7%	\$ 3 M	\$10 M	\$ 15 M	2

Such an index is not all encompassing. In fact, this caveat is worth stressing: underlying data feeding into this index will need to be improved. But the index could facilitate the debate on instrumental outcomes of creative trade and its contribution to human development.

- *Intellectual Property Development: Policy Lessons from Korea*

Figure 7



Since intellectual rights are among the long-standing channels that can enable earnings from the “creations of the mind,”⁴⁷ this point is worth stressing. In trade patterns, output from creative work is especially noted via copyright. Nevertheless, it also extends to

⁴⁶ “The national studies suggest that some of the factors that define the position of countries on the plot could be summarized as follows: Positioning of copyright industries in domestic and global markets; Monetary value attached to creative products; National policies supporting this sector of the economy; Cultural characteristics and national traditions. The majority of the countries are clustered either in the upper right quadrant (Q1; high share of GDP, high employment) or in the lower left quadrant (Q3; low share of GDP, low share in employment). Keeping in mind that this clustering is relative to the average contribution of copyright industries in the sample, it could reveal potentially important patterns in the development of copyright industries over time.” — *WIPO Studies on the Economic Contribution of the Copyright Industries* (Geneva: World Intellectual Property Organization 2014), 5-6, accessed April 11, 2015, http://www.wipo.int/export/sites/www/copyright/en/performance/pdf/economic_contribution_analysis_2012.pdf.

⁴⁷ WIPO, “What Is Intellectual Property?”

patents, trademarks, industrial designs and even geographical indicators. Like other sectors, the so-called copyright industries contribute to employment and GDP, even as they enhance other aspects of human development. See figure 7.

Korea presents a useful study into how copyright industries interact with development. The following case study looks at this Asian nation whose copyright-related contribution to GDP was nearly 10 percent (2012), according to the World Intellectual Property Organization (WIPO).⁴⁸ In this place, Korean pop aka “K-pop has become a fixture of pop charts not only in Korea but throughout Asia.”⁴⁹

Case Study: The Korea Copyright Commission

*Recognizing the damage [that piracy] is doing to Korea’s artists, entertainers, authors, publishers, distributors, technicians, and others involved in copyright-related industries—the government has been working overtime to craft IP policies that increase liability for service providers in a reasonable way, while making Internet piracy a much higher priority for law enforcement. At the same time, the government adopted digital rights management software tools as a way to prevent digital theft through technical means.*⁵⁰

— Global Intellectual Property Center, U.S. Chamber of Commerce

Korea has developed one of the most dynamic intellectual property frameworks today. Established in 1949 “as an external bureau of the Ministry of Commerce and Industry under the name of Patent Bureau,” Korea’s intellectual property framework was renamed the Korean Industrial Property Office in 1977. And in 2000, it was renamed the Korean Intellectual Property Office (KIPO).⁵¹ KIPO’s vision and goal are as follows:

Vision: “To realize an intellectual property (IP)-based creative economy

Goal: To promote corporate growth and happiness through Intellectual property”⁵²

⁴⁸ Ibid., 3

⁴⁹ John Seabrook, “Factory Girls: Cultural Technology and the Making of K-Pop,” *New Yorker*, October 8, 2012, accessed June 4, 2015,

http://www.newyorker.com/reporting/2012/10/08/121008fa_fact_seabrook?currentPage=all; see also Patrick Kabanda. 2014. *The Creative Wealth of Nations*, 37.

⁵⁰ *IP Rights and Broadband Development in South Korea: Lessons Learned for the United States* (Washington, DC: Global Intellectual Property Center | U.S. Chamber of Commerce, May 24, 2010), accessed April 11, 2015,

http://www.theglobalipcenter.com/sites/default/files/reports/documents/15652_SK_Broadband.pdf.

⁵¹ “KIPO’s History,” Korean Intellectual Property Office, accessed April 13, 2015, http://www.kipo.go.kr/kpo/user.tdf?a=user.english.html.HtmlApp&c=10200&catmenu=ek01_02_01.

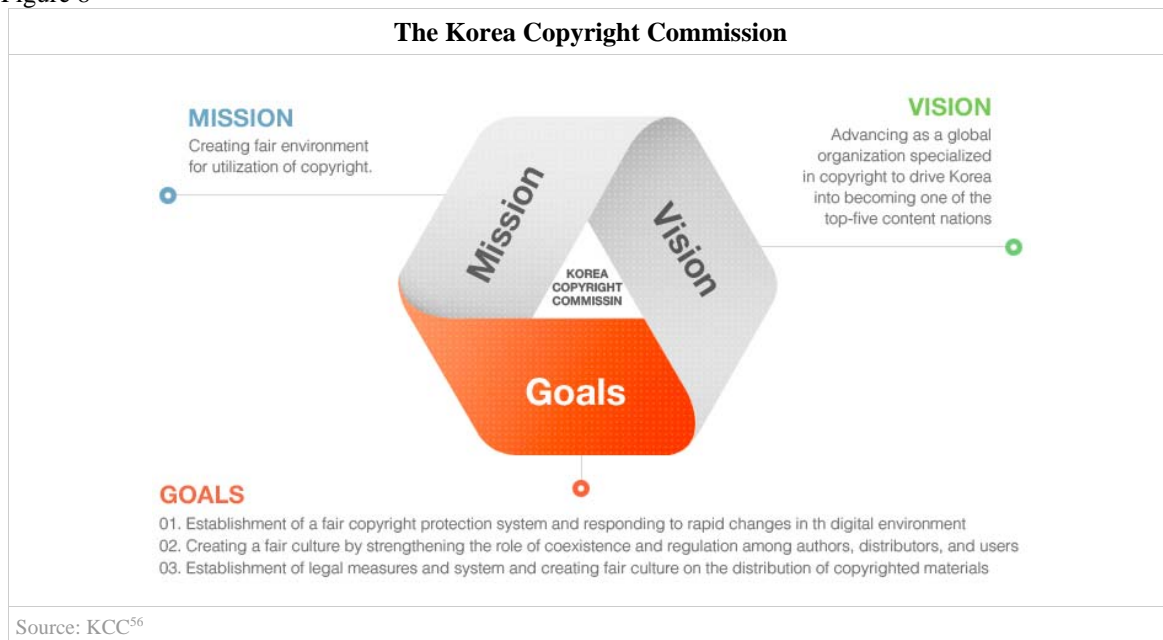
⁵² “Vision and Goals,” Korean Intellectual Property Office, accessed April 13, 2015, http://www.kipo.go.kr/kpo/user.tdf?a=user.english.html.HtmlApp&c=40100&catmenu=ek01_04_01.

The above objectives are clearly beyond protecting creative work. But this language is relevant to informing the intellectual leadership that guides Korea's earnings (and even dispute settlements) from copyright-industries. We proceed to consider the Korea Copyright Commission, “the nation’s sole agency dedicated to copyright-related affairs.”⁵³ This Korean achievement provides lessons to developing countries and even their developed counterparts. And here we reflect on the role of copyright protection in stimulating creative work, trade, and other aspects that expand human development.

The Korea Copyright Commission

The Korea Copyright Commission (KCC) was established in 2009 under Article 112 of the Copyright Act. Its history, however, runs years back. And in a way, its evolution shows how KCC, whose aim is to play “a pivotal role in the protection of copyright, promotion of the legitimate use of works, and development of the copyright industry”⁵⁴ has kept up with the times. Korea's Copyright Commission for Deliberation and Conciliation (formerly “Copyright Commission”) and “The Program Deliberation Commission (formerly “Computer Programs Protection Commission”) (CPPC) were established in 1987. In 2005 and 2007, the Digital Content Use Protection Center and the Illegal Software Reproduction Report Center were established respectively (under CPPC). These bodies were merged to form KCC (in 2009).⁵⁵ See figure 8 for KCC's objectives.

Figure 8



⁵³ Korea Copyright Commission, “KCC Introduction,” accessed April 12, 2015, <http://www.copyright.or.kr/eng/about-kcc/introduction/introduction.do>.

⁵⁴ Ibid.

⁵⁵ Korea Copyright Commission, “KCC Introduction, History,” accessed April 13, 2015, <http://www.copyright.or.kr/eng/about-kcc/introduction/history.do>.

⁵⁶ Ibid.

In development debates, as noted earlier, the fact that intellectual rights, including copyright protection itself can hold back economic growth is not new. In fact, in the arts the maxim that “A good artist is a good thief” is as ancient as creativity itself. Civilizations have learned from each other for millennia and continue to do so.

Nonetheless, a prominent distinction must be made between the facilitation of sharing, using, or building on other ideas and rewarding those who deserve to be rewarded. It is no secret that many artists struggle to make ends meet while their works are pirated. This not only diminishes their income, but it also takes on toll on other aspects of their well-being — many feel hopeless when they realize that they are unable to fight infringement, delinking creative work and human development. Moreover, creative economies themselves lose income, as more and more revenues are lost via piracy. To tackle this debate, Korea seeks to “realize a cultural renaissance.”⁵⁷ In 2013, Yoo Jinryong, Korea's new Minister of Culture, Sports and Tourism explained his nation's position:

Figure 9

“A new administration was recently inaugurated in Korea and one of its policy priorities is to “realize a cultural renaissance”. Against this backdrop, efforts to reassess the value of culture are being made more vigorously than ever. In addition, the economic paradigm is being shifted from the past industrial economy where the source of value creation was labor, capital and knowledge to the creative economy, which is based on imagination and creativity.

Copyright lies in the heart of all these changes. Copyright is the foundation for the advancement of culture and the arts, together with the growth of the contents industry, by providing a guarantee for rewards corresponding to efforts to create high-quality contents. It is also the driving force leading the era of the creative economy. In a society where copyright is not respected and legitimate rewards for creators are not guaranteed due to illegal reproductions, it is impossible to realize core values of the creative economy, which are novel creativity and imagination. ...

Meanwhile, the Korean government has also pushed ahead with a policy task of “facilitation of fair and convenient use of copyrighted works” in a bid to promote new creation activities and create an environment where the public can use copyrighted works unhindered.

The economic benefit of the utilization of public information is estimated at KRW 10 trillion annually. Advanced countries are therefore actively responding to cultural and economic demand by securing public domain such as expired copyrighted works, dedicated works through donation or permission for free use, and works open to the public by public organizations free of charge, and expanding services to provide them.”⁵⁸

Source: Yoo Jinryong, Minister of Culture, Sports and Tourism, Republic of Korea (October 2013)

⁵⁷ Yoo Jinryong, A Message from the Minister of Culture, Sports and Tourism, *2012 Annual Report on Copyright in Korea* (Seoul: Korea Copyright Commission, 2013), 6-8, accessed April 13, 2015, <http://www.copyright.or.kr/eng/doc/activities/2012AR.pdf>.

⁵⁸ Ibid.

Notable Korean policies include:

- The Webhard Registration System

The “Korean government launched the “Webhard registration system” to reduce the distribution of online illegal reproductions. It also [initiated] a digital evidence collection and analysis system regarding infringed copies, dramatically reinforcing investigation capabilities of the Special Judicial Police Force for Copyright Protection. In particular, the government introduced the “Citizens’ Opening Monitoring Project” by recruiting monitoring staff who work from home by using computers, including disabled persons, while operating the “Silver Monitors” to watch infringed works year-round. Such efforts contributed not only to uprooting online and offline distribution of illegal reproductions, but also to creating jobs for socially disadvantaged people.”⁵⁹

- Overseas Copyright Offices

To ensure that Korea’s copyright is protected overseas, the government has established offices in Beijing, Bangkok, Manila, and Hanoi.⁶⁰

- Copyright Collective Management Organizations

Korea’s Ministry of Culture, Sports and Tourism has authorized other organizations to provide copyright collective management services. As of now, they are 12 organizations (related to creative work), which have been granted this permission. They include: the Korean Society of Authors, the Korea Music Copyright Association; and the Korea Database Agency, to name a few.⁶¹

- Education and Public Awareness

In order to create a healthy “copyright ecosystem” in which authors are respected and high-quality works are smoothly distributed and consumed, it is still insufficient to merely make related legal improvements and develop IT technology. What is ultimately required is to change the perceptions and attitudes of people, who are members of the copyright ecosystem, toward a more desirable direction.⁶²

— Korea Copyright Commission, 2012

Korea “has concentrated its policy capabilities on education and public awareness programs designed to raise awareness of the importance of copyright, and has implemented a wide range of policy measures.”⁶³ The curriculum here is focused on two areas: i)

⁵⁹ Ibid.

⁶⁰ “Overseas Office,” Korea Copyright Commission, accessed April 14, 2015, <http://www.copyright.or.kr/eng/about-kcc/overseas-offices/beijing-office.do>.

⁶¹ *2012 Annual Report on Copyright in Korea* (Seoul: Korea Copyright Commission, 2012), 116-136, accessed April 14, 2015, <http://www.copyright.or.kr/eng/doc/activities/2012AR.pdf>.

⁶² *2012 Annual Report on Copyright in Korea*, 54.

⁶³ Ibid.

copyright infringement prevention; and ii) professional personnel training.⁶⁴ The following points are among the many outcomes from Korea’s education strategy:

Figure 10

“A total of 1,355,207 persons were educated under the programs from 2008 to 2012.”

Copyright-related content has been introduced “in textbooks of elementary, middle and high schools.”

In 2010 “the Korea Copyright Commission was officially authorized as a copyright distance learning education and training institute by the Ministry of Education, Science and Technology.”

And in 2012 the Commission “was approved as a “lifelong education institute” by the Seoul Jungbu District Office of Education.” This laid “the groundwork for lifelong education.”⁶⁵

Source: 2012 Annual Report on Copyright in Korea

The intellectual property battle is hardly conclusive. Yet (other things being equal) intellectual rights have potential to benefit creative workers in the developing world. While Korea’s approach may be hard to replicate, it provides a useful study to other nations. Moreover, “Korea’s infringement rate of the potential licensed works market decreased to 16.2 percent in 2012 from 21.6 percent in 2009. The U.S. Trade Representative has accordingly excluded Korea from its intellectual property rights watch list for the fifth straight year (2009~2013).”⁶⁶

Although intellectual property is a major concern, it is not the only area in need of systematic policy development. There is a need to consider crafting other policies. Below are a few considerations:

- Table creative trade on national strategies of economic diversification
- Create national cultural trade commissions that facilitate paper work, professional training (for artists) and the like
- Give tax credits and rural grants for such artists as rural artisans
- Develop and fund local cultural institutes
- Develop a global protocol on temporary work visas for artists*
- Engage the private sector effectively — as some scholars have suggested, a modest percentage of profits from extractive industries, for example, could be used to develop culture and trade initiatives.
- Develop national branding strategies that use cultural initiatives
- Develop education training by craft makers as an export in trade in services
- Develop effective cultural trade agreements

⁶⁴ Ibid., 55.

⁶⁵ Ibid.

⁶⁶ Yoo Jinryong, A Message from the Minister of Culture, Sports and Tourism.

* See ‘Temporary Artist Visa’ — Patrick Kabanda. 2014. *The Creative Wealth of Nations*, 44.

On the last, effective trade agreements can help curb problems such as work permits, tariffs and other barriers that constrain culture in international trade. Here, African countries could, for example, start a New Partnership for Africa's Cultural Trade (NEPACT) to promote small-scale creative output in international trade.⁶⁷ Africa comes to mind especially because while it has over 50 nations with common cultural ties, it has a long way to go in building bridges of intra-African trade. In 2011, according to the WTO, trade between African nations stood at a mere 10 percent. Meanwhile, intra-trade “among the EU-27 [was] around 70 per cent, 52 per cent for Asian countries, 50 per cent for North American countries and 26 per cent for South American countries.”⁶⁸ There are many reasons why Africa's intra-regional trade is abysmal. But in the area of creative work, effective agreements among African countries themselves may be an important step in opening up intra-African trade.

Concluding Remark

This discussion began by acknowledging that trade in cultural output has been advancing. And even south-to-south trade in this sector has been expanding.⁶⁹ That said, gains for developing countries are meager. Forward-looking policies are needed for these gains to materialize. For example, it is hardly a stretch to posit this: if the gender divide, piracy, and other barriers against creative trade diminish, this commerce could enhance rural and urban livelihoods, local and global cultural understanding, and much more — aspects that enhance economic growth and human development for all, including those at the bottom rank of creative trade. After all, as Amartya Sen put it, “Trade is not just what the bankers and industrial magnates seek — it is sought, among other things, by the poorest in the world, in their efforts to make themselves a little less miserable.”⁷⁰

Some of the poorest in the world are creative people, including women, who are trying to make their life a little better by weaving baskets, making music, painting murals, you name it. But they need dynamic policies in trade (and beyond) that can enable their creative efforts to bear fruit in our increasingly unequal world. Ultimately, this is among the top needs of how trade in creative work could effectively contribute to human development.

⁶⁷ Patrick Kabanda, “An Untapped Economy: Africa's Creative Sector,” *World Policy Blog*, *World Policy Journal*, February 19, 2014, accessed April 14, 2015, <http://www.worldpolicy.org/blog/2014/02/19/untapped-economy-africas-creative-sector>.

⁶⁸ Valentine Rugwabiza, “Africa Should Trade More with Africa to Secure Future Growth,” World Trade Organization, accessed March 5, 2015, https://www.wto.org/english/news_e/news12_e/ddg_12apr12_e.htm.

⁶⁹ United Nations, *Creative Economy: A Feasible Development Option*, 136-137.

⁷⁰ Amartya Sen, “How Does Development Happen?,” *Cato Journal*, Vol. 25, no. 3 (Fall 2005): 459, accessed April 15, 2015, <http://object.cato.org/sites/cato.org/files/serials/files/cato-journal/2005/11/cj25n3-4.pdf>.

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