Government of Canada
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CULTURAL INDUSTRIES FOREIGN INVESTMENT MEASURES IN SELECTED COUNTRIES

International Comparative Policy Group
ICP/DGIR

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The purpose of this report is to identify and compare current policies and regulatory practices in a number of OECD and non-OECD countries with regard to measures affecting foreign investment in the cultural industries.

This report is the result of a preliminary survey of existing literature (1986-90) from the OECD, GATT, the Council of Europe, the Office of the United States Trade Representative (USTR), legislation, official documents and Price-Waterhouse monographs. Investment Canada and the DOC's Trade Policy Division (DPT/DGIR) were also consulted.

Industry structure barriers to foreign investment, comparative advantages, competition policy, government "stall tactics" or case studies of foreign investment forays in the countries selected (and inherent difficulties therein) were not included.

Twenty-six countries were examined in all, selected with the following guidelines:

- somewhat less developed market economy countries and therefore those more likely concerned with foreign investment such as Argentina, Brazil, Greece, Korea, Mexico, Portugal, Spain and Venezuela;
- those English-language countries with parallels to the challenges from US cultural product which Canada faces: Australia, Ireland, and New Zealand;
- somewhat less developed market economies where the English language is dominant: India, Indonesia, and the Philippines; and
- other OECD countries not mentioned above, including Belgium, the Federal Republic of Germany, France, Italy, Japan, Luxembourg, the Netherlands, Norway, Sweden, Switzerland, the United Kingdom (UK), and the United States of America (US).

While treated in some of the literature and legislation, both forms of direct and indirect investment are considered without distinction in this preliminary review. While efforts were made to consult as much primary documentation as possible, the actual legislation, and any policies for its implementation were not gathered at this time. However, given the on-going long-term interest in this area, a more practical analysis could be done, if required, and would constitute a comprehensive second phase to this review. This second phase could also provide more detail on conditions of approval and ownership restrictions.

General

The review of policies, legislation, and regulatory practices in the 26 OECD and non-OECD countries identified a number of common approaches and trends.

The situation in the countries reviewed varies in both general and sectoral impediments to foreign investment. Overall, targeted treatment of specific cultural industries was identified in less than one-half of the possible situations. Most of the measures, however, have been in place for quite some time. Very few countries have or are considering blanket foreign investment authorization procedures and impediments for the cultural industries. When the cultural sector is identified, the measures are usually specific to only one or two of the industries. Broadcasting is most often singled out for specialized foreign investment restrictions, with film and video investment restrictions followed by newspaper/periodical publishing appearing less often.

In many instances, the cultural industries, except for broadcasting, are not identified separately though they come under the general foreign investment approval/review process, conditions of approval and restrictions applied to all sectors. How frequently these general measures are applied to the cultural industries is outside of the scope of this review. The trend towards a reduction of investment restrictions in broadcasting, as well as the recent introduction in Switzerland of draft legislation to liberalize foreign investment restrictions in the film industry, are two examples of a slight but noticeable movement away from foreign ownership restrictions as a contemporary public policy instrument. This is also, to a degree, reflected multilaterally where efforts to reduce trade in services barriers are being pursued. However, the issue at GATT is not yet settled, and suggestions, primarily from Western Europe (with support from Canada), for the special treatment or exclusion of the cultural sector may be realized.

Broadcasting

In broadcasting, the cultural area traditionally with stringent barriers to foreign investment, the rules are becoming relaxed. The original foreign investment restrictions in broadcasting were implemented for a number of reasons including aregulated public and private monopoly industry structure, national interest considerations over management of the frequency spectrum (shared with telecom) political and cultural sovereignty and even national security concerns.

In Western European countries, foreign ownership in broadcasting is increasingly being allowed, though in varying degrees. This development should be viewed as part of an overall deregulatory movement of broadcasting regimes throughout the region, with similar reform elsewhere. Increased pressures of commercialization as well as developments of communications technologies and the resultant "globalization" of broadcasting prompted deregulation. Changes elsewhere are somewhat slower. In Australia and New Zealand for example, while some inward investment is now permitted, it is still limited to small minority participation with advance approval from foreign investment review boards still required. In South America, Venezuela also now permits minority foreign equity participation. However, Brazil, Greece, Mexico, Japan and Canada remain closed to foreign ownership in the broadcasting area. The United States situation requires separate mention.

The long-standing US policy to restrict foreign ownership in broadcasting to a minority position continues to be rationalized in terms of "national security". This justification, used to support a range of US domestic and foreign policy stances, remains unique in the cultural sector. It is also in marked contrast to the US stance at GATT against any cultural exceptions (with the US position suggesting that broadcasting should be excluded) in the current preparatory audio-visual discussions for the Uruguay Round of trade in services negotiations.

Another dichotomy between "national security" and the U.S. GATT position is the recent passage of a House of Representatives bill which would restrict foreign ownership in cable television. Current foreign investment restrictions in broadcasting do not include cable. While this bill may never become law, it reflects growing protectionist sentiments within the US Administration over perceived foreign involvement in the domestic television-entertainment industries.

Parallels to US "National Security" Rationale

Analogies to "national security" are apparent in other countries as grounds for investment restrictions in key sectors. For Canada, "cultural sovereignty and identity" has underpinned numerous cultural policy initiatives, including the FTA exemption and foreign investment rules. In Brazil, key sectors, including areas within the cultural industries, are considered "strategic industries" which require foreign investment protection. Inward investment is not allowed by France in certain industries whose activities may, in certain circumstances, be "harmful to public order, health or safety." In the cultural sector, this rationale reappears with "public security" being a criterion for government intervention in the operation of foreign language or foreign-based publications. More generally, France reserves the right to withhold approval of foreign investment if not considered within the "national interest". Finally, Sweden is proposing to legislate the term "national cultural interest" so as to better define the existing rationale of "national public interest" to trigger foreign investment review.

Cultural Industries

For the three cultural industries - publishing, film and video and sound recording - there does not exist a pattern of consistent and comprehensive treatment. When dealt with at all, the cultural industries are usually treated separately. In only one instance was specific treatment of sound recording reported. While "the press", "printed media" "publications which appear at least once per month" defined restrictions in the newspaper and periodical industries, no direct reference to book publishing was identified.

No mention of specific authorization procedures or investment restrictions for sound recording could be found, except for Korea which referred to the "production of phonograph records." Specific restrictions are more common for both publishing and film and video in some countries. Argentina, Australia, Brazil, France, Mexico and Venezuela have specific policies and requirements/barriers for newspaper and periodical publishing. In film and video France, India, Indonesia, Mexico, Philippines, Portugal, Spain and Switzerland maintain varying degrees of restrictions to inward investment.

In general newspapers/periodical measures relate to traditional political and cultural sovereignty concerns over limiting foreign control of the news-media. To a degree, this rationale also supported extension to the electronic media once radio and television broadcasting became widespread. With the focus on ensuring national control of the news-media versus publishing in general, it is interesting to note, in contrast, that no measures specific to the book publishing industry were identified in any of the countries reviewed. Of course, the historic, competitive advantage of strong domestic publishers and language barriers in most European countries help explain this phenomenon. Similarly, the existence of established national sound recording enterprises throughout Europe, with well-developed domestic and linguistic markets, offset the need for foreign investment measures specific to this industry.

In film and video, the rationale can be more closely tied to historical concerns shared in Canada regarding the long-standing international dominance enjoyed by the US-based film production and distribution industry. Accordingly, while France, Spain and Switzerland all benefit from a natural language barrier to US and US-style English language film products, each has used foreign ownership restrictions, in combination with quotas and subsidies to develop domestic industries.

Also relevant to the problems facing the English-language film and video industry in Canada is the treatment by India, Indonesia and the Philippines of foreign investment in this sector. All three countries maintain highly restrictive foreign investment measures specific to the film and video industry. They also share the use of English as one of the predominant languages. The US government and industry regularly single out the negative impact these measures have on US interests. On the other hand, such measures, again in concert with content regulations and assistance programs, have resulted, for example in India, with the development of the world's most prolific domestic film and video production industry.

Comprehensive Treatment of Cultural Industries

Besides Canada, of the countries reviewed, only Mexico has comprehensive authorization procedures over cultural industries as well as maintaining strict limitations in film and video, broadcasting and periodical publishing. Brazil has grouped television, radio and the print media as one of the "strategic industries" to which it applies the same foreign investment restrictions.

With parallels to Canada is Sweden's proposed foreign investment reform which would amend the 1982 investment legislation. The reform would have the cultural sector specifically defined as an area of national interest for foreign investment authorization purposes. The 1982 Swedish foreign investment legislation currently allows the government to evaluate each inward investment in terms of the "contribution to national public interest." Due to lack of precise definition of "national public interest", four clarifications, including a cultural clause, have been proposed.

Foreign Investment Authorization Procedures and Agencies

Most countries have mechanisms in place for the approval, registration and "control" of foreign investment. Some legislation, for example, in Argentina, requires a top-level government review, on a case-by-case basis, of investment applications in certain cultural industries sectors. In almost all cases, prior approval must be received before any investment takes place. While the exact process varies extensively, most countries employ an <u>a priori</u> approval versus a <u>post facto</u> review.

A number of the countries have investment review boards which must grant approval before any transaction takes place. Australia, Mexico and New Zealand all have official investment review agencies: a Foreign Investment Review Board (FIRB), a Foreign Investment Commission (FIC) and an Overseas Investment Commission (OIC) respectively. Legislation requires all three agencies to give prior approval for foreign investment in broadcasting and newspapers concerns. The non-broadcast cultural activities in Mexico are considered "classified" and require prior authorization. While New Zealand now allows minority ownership share foreign investment in the broadcast sector, each application must be approved by the OIC. India, Indonesia and Philippines also have review boards.

Others countries delegate the authorization process to one or more of the existing central ministries. More than half the countries have application procedures administered by finance/ industry/treasury ministries and/or the country's national bank for evaluation.

No cultural ministry was identified as having responsibility for the actual administration of the cultural foreign investment approval process, though certain agencies which analyze developments in the cultural sector report to the cultural ministries. This review did not identify the existence of a specialized agency in any of the countries which exclusively reviews foreign investments in the cultural sector. In terms of specialized knowledge and monitoring of activities in this sector, a number of countries, such as France and Spain, have institutions which, besides responsibilities such as the delivery of industry support programs, undertake systematic analyses of the economic and industrial profiles of their cultural industries. While there exists a central foreign investment review board in Indonesia, certain economic sectors critical to that country have been given special single-sector investment review agencies.

The very specific approval processes and ownership restrictions in Australia and New Zealand for broadcasting and periodical publishing, and those for film and video in the above three Pacific Rim states, parallel the challenges facing English Canada. These countries, more so than many others with natural language barriers to English-language media and domestic cultural conglomerates, feel required to maintain a strong foreign investment policy position.

Current Directions

In general, and except for the Swedish proposal, the review did not indicate any current trend towards the widespread introduction of new measures restricting foreign investment in the cultural industries. At the national level, and especially in Western Europe, there appears slight movement, if the deregulatory trends in broadcasting are included, away from introducing such policy instruments. One example (and there are not many) of a withdrawal from foreign investment measures is in Switzerland, where long-standing legislative measures in the film distribution and exhibition areas will be replaced by a new Act which favours quota restrictions over ownership.

This is not to say that the 36 separate foreign investment measures in the cultural industries in 23 of the 26 countries reviewed are being abandoned (Table 1). Rather, since many of these measures have been in place for quite some time, and due to a range of other support programs now commonly employed, treatment of foreign investment has become just one of many public policy options.

The general drive towards liberalization of trade and investment both within regional blocs and multilaterally is also an important factor. This development will influence both the volition and ability of countries to introduce new investment measures which they have not employed for the cultural sector.

For many states, such as the UK and the Federal Republic of Germany, historically high domestic market shares coupled with strong domestic cultural industries precluded the requirement for investment controls. (see Tables 2,3,4). This has never been the case in Canada. Even though these countries are now facing the challenge of increased foreign dominance and control in their markets, measures other than investment controls will probably be favoured. This does not mean, however, that foreign investment in the cultural sector is not a concern. Rather, in light of their specific needs as well as the general deregulatory climate, other measures may be more effective.

To a degree, the Western European approach is best reflected in the broader EC strategy to counteract the growing US influence in the audio-visual milieu. National and regional efforts are in place which provide European cultural industries with a range of well-funded production and distribution assistance measures. The EC's "Télévision sans Frontières" Directive reflects the perceived need for interrelated regulatory controls as well.

In part to protect this directive, Europeans are also proposing that an "audio-visual exception" (depicted by the US as a cultural exception) be included in the forthcoming GATT Trade and Services Agreement. This Agreement, which will affect both trade and investment, highlight European desire of having the prerogative, much like the Canadian cultural industries exemption in the Free Trade Agreement, to introduce future measures to protect and enhance national audio-visual cultural industries.

It is too early to predict whether this exception will be incorporated in the GATT agreement. Similar discussions regarding the relationship of the audio-visual sector to the Code of Liberalization on Invisible Transactions have resumed at the OECD.

Growing concerns with cross-media ownership is expected to also have a direct effect on foreign investment, given the tendency towards the expansion of global media conglomerates. This apprehension has compelled some countries to limit cross-media investments (eg. new Italian and Dutch broadcasting legislation), though, at the present, the purpose is more to encourage domestic competition.

Some mention is required on the different treatment of foreign investment from EC member countries versus other countries. The Treaty of Rome prohibits any discriminatory treatment based on nationality between EC Member countries in establishment matters. In addition, in order to facilitate the free exercise of the right of establishment, directives are being adopted with the aim of harmonizing national regulations on market access for both goods, services and investments (no investment directive as of yet in the cultural sector). Accordingly, in some countries, such as France, foreign investment treatment, primarily in the authorization process, varies between EC and non-EC countries.

In terms of both market share and control of the domestic market, the Canadian English-language cultural industries are comparatively in a very weak and abnormal position, thereby limiting their effectiveness in supporting cultural sovereignty and identity objectives. In other countries with foreign investment measures in the cultural sector, the position of the related industries are somewhat better, though direct correlations cannot be readily demonstrated.

Except for broadcasting, Canada has had limited experience in the use of foreign investment measures to support domestic industries and consumption. While broadcasting has traditionally be a restricted sector in a number of other countries, there are numerous examples of long-standing restrictions in other cultural industries as well. Of the 26 countries reviewed, 36 measures specific to the cultural industries were identified out of a possible 104 (Table 1).

These measures, while more commonly found in the film/video and newspaper/periodical publishing industries have been an important component of the mix of public support measures all four categories of countries examined. Even where language was an effective barrier, other countries, both European and lesser developed market economies, continue to employ investment restrictions, though in tandem with regulatory controls and subsidies. Canada is not alone in maintaining a coherent package of well-developed policies and programs including foreign investment measures. At a time when a North American Free Trade zone is being considered, the parallels between Canada and Mexico in their policies toward foreign investment should be stressed. In both countries, while the climate for foreign investment is favourable, comprehensive restrictions in the cultural sector remain essential.

The management and control of foreign investment is generally a centralized function and not usually delegated to the specific government ministries responsible for the sectors. There are, however, exceptions where key economic sectors have their own specialized agencies to either monitor developments in specific industries (including cultural areas) and, less frequently, review and approval foreign investment. Often, the process takes place within central ministries themselves. In any case, advance approval is the favoured approach to authorizing the investment.

Other countries employ rationales analogous to Canada's "culturally sensitive areas" to support foreign investment measures in the cultural sector. Even the United States often used "national security" justification is used to support long-standing restrictions in broadcasting.

While there is not substantial movement to introduce new cultural industries investment controls in other countries, most of the measures are not being withdrawn. In fact, some "refinement", which could be viewed as similar to the current efforts in Canada, are being considered in Sweden.

At the multilateral level, there is a general movement towards the liberalization of both trade and investment rules. Nevertheless, discussion at GATT has focused on the possible need to exempt the cultural sector from the Uruguay trade in services round.

ARGENTINA

Argentina has traditionally welcomed foreign capital and expertise and legislation does not preclude foreign investors from any particular activity. Approval is required for foreign investment in broadcasting and newspaper and periodical publishing.

Broadcasting

The approval of the Executive Branch must be obtained prior to foreign investment in radio and television enterprises.

Newspaper and Periodical Publishing

The approval of the Executive Branch must be obtained prior to foreign investment in newspapers and periodicals. No restrictions in book publishing are apparent.

Restrictions on Foreign Ownership

Executive Branch approval is also required when a transfer of majority ownership to the hands of foreign investors takes place in an existing local company with a net worth in excess of US$10 million, either through a capital contribution or an acquisition of existing equity rights.

The acquisition of an underlying business with a value of over US$10 million, not already foreign-owned, is also subject to this Executive Branch approval.

Foreign investments that involve transfer from local investors of any portion of the equity rights, or of the underlying business, of entities with a net worth of up to US$10 million require a lower level of approval (i.e. that of the Application Authority). This applies also to foreign equity injections that result in major foreign ownership of such entities.

AUSTRALIA

All foreign direct investments in broadcasting and newspapers are subject to approval by the Foreign Investment Review Board (FIRB). All foreign direct investments in other sectors over A$10 million are subject to Board review and are generally approved unless judged contrary to national interest. Acquisitions of more than 15% of an Australian firm are also subject to FIRB approval, under the same "national interest" guidelines.

Broadcasting

Foreign investment in radio and television is governed by the Broadcasting and Television Act 1942. The Act provides that a "foreign person", as defined by that Act, may not hold or control, directly or indirectly, more than 15% of the issued capital or voting rights in a licensee company, and that two or more "foreign persons" may not hold or control in aggregate more than 20% of the issued capital or voting rights in a licensee company.

Newspaper Publishing

Foreign investment in mass circulation of newspapers is restricted. All proposals by foreign interests to establish a newspaper in Australia are subject to case-by-case examination, irrespective of the size of the proposed investment prior to approval. Further, approval is not normally given to proposals by foreign interests to establish ethnic newspapers in Australia, unless there is substantial involvement by the local ethnic community and effective local control of editorial policy. No restrictions in book publishing are apparent.

BELGIUM

In general, there are no restrictions on foreign ownership and no registration requirements for capital in Belgium.

Broadcasting

Foreign investment is allowed in this sector, however, it is limited to 49%. An interesting dimension is that regulations insist on cross-media ownership. Specifically, at least 51% of the capital of broadcasting undertakings aimed at the Flemish community must be owned by publishers of Dutch language daily/weekly print media.

BRAZIL

Although the Brazilian government officially welcomes foreign investment, Brazil's policies toward foreign investment are generally restrictive. Foreign investment is prohibited in several sectors considered "strategic industries", one of which is the media. No mention is made of book publishing or sound recording.

Broadcasting

Foreign ownership of television and radio media is prohibited.

Newspaper and Periodical Publishing

Foreign ownership of newspapers and periodicals publishing undertaking is prohibited. No mention is made, however, of book publishing.

Film and Video

While there are no specific restrictions on foreign investment in this cultural sector, there are strict content requirements, limiting the number of foreign film titles which can be distributed in the Brazilian home video market, for example, and which may impact on foreign investment decisions.

FEDERAL REPUBLIC of GERMANY

Virtually no public monopolies exist in any industry sector. One hundred percent foreign ownership is permitted, and encouraged across the political spectrum.

Broadcasting

In some federal states, or lander, which have jurisdiction in this matter, private broadcasting companies may be licensed if they meet certain obligations without resident or non-resident status being a consideration.

Bilateral Investment Treaties

Germany has entered into a number of "friendship" treaties with some countries and is currently negotiating investment protection treaties with others. From the point of view of inward investment these treaties are irrelevant, since they give investors no greater protection than that which is in any case available under domestic legal provisions fundamental to the whole economic climate of the country.

They do, however, provide a certain assurance to German outward investors and, in particular, provide a legal basis for the government's export insurance company, Hermes, to issue insurance policies covering expropriation and exchange control risks in third party countries.

FRANCE

France permits up to 100% foreign investment, and since January 1990, approval procedures have been expedited. Approval is automatic if not denied within one month of application. The government reserves the right to approve each investment. Foreign investment from EC countries may be reviewed, "and where deemed politically or economically advisable, to find an alternative French solution". Reasons of national interest are grounds for denial, and this expression has not been defined. Within the cultural sector restrictions are extensive for a country that is culturally strong and enjoys a language barrier to US and US-style English-language cultural products.

Broadcasting

"Audiovisual communication enterprises" (private television, private local radio, cable networks), with the exception of activities in the computer services sector, are subject to authorization or concession requirements, depending on the case. A non-EC company may not own more than 20%. A company may not own more that 25% of a national broadcaster, or 50% of a satellite or regional broadcaster.

Newspaper and Periodical Publishing

A corporate body with over 50% foreign ownership may not directly participate in the capital financing of more than one enterprise engaged in the publication in the French language of political and general information appearing at least once per month, i.e., newspapers, periodicals. This "general information" category can be broadly interpreted. Moreover, such participation is limited to less than 20% ownership of the direct or indirect voting rights of the enterprise.

This limit does not apply when international agreements adhered to by France include either a national assimilation or reciprocity clause, or when the publication in question is directed to foreign communities residing in France. Morality and public security are additional criteria which can be applied to foreign language or foreign-based publications sold in France though they do not directly relate to foreign investment control. No restrictions in book publishing are apparent. Foreign investment in this sector is not significant.

Film and Video

Film productions and distribution industries and the operation of cinemas may be authorized if the investors concerned come from countries with which France has signed international agreements including a national assimilation or reciprocity clause.

GREECE

In general, it appears that there are no specific foreign investment restrictions in the cultural sector except for broadcasting. The approval process for foreign capital requires that foreign investors who are residents of non-EC countries apply to either:

1. Ministry of National Economy (investment and protection of foreign capital), or
2. Bank of Greece (for registration)

Broadcasting

Private radio and television broadcasting entities must be owned by nationals.

INDIA

Indian government policies and practices severely restrict foreign investment and impose unacceptable conditions on those companies that do invest in India. Foreign investment, when allowed, must serve narrowly defined national goals.

The terms of all foreign investment proposals must be approved by the Foreign Investment Board. Strict foreign rules apply in the film and video sector. The foreign investment restrictions in broadcasting and publishing are not known.

Film and Video

Motion picture imports are subject to quotas. Moreover, foreign companies are forced to channel imports through a competing Indian government agency that itself imports films. Foreign picture companies are excluded from the Indian home video market.

INDONESIA

Although publicly committed to seeking foreign investment, Indonesia maintains policies and regulations that deter such investment. Indonesia has strict regulations on foreign investment in key resource sectors, and has agencies that handle mining, petroleum and forestry investment specifically. All proposed foreign investment in these sectors must be approved by the Investment Promotion Coordinating Board (BKPM) and other agencies as necessary.

While film and video is the only sector highlighted in documentation as having restrictions in place, the Indonesian tradition of creating separate agencies to handle key sectors must be taken into consideration.

While national majority ownership is not a requirement for establishing a foreign enterprise, Indonesian equity participation must be at least 20% and all foreign investment must be in the form of a joint venture with an Indonesian company.

Film and Video

Foreign film distributors are prohibited from establishing branches or subsidiaries. Rather, all imports and in-country distribution must be handled through a single association.

IRELAND

There are no restrictions on the percentage of foreign ownership of local enterprises or on foreign participation in joint ventures. However, "Irish cultural content" rules might make it difficult for a foreigner to obtain a licence from the Irish Radio and Television Commission (IRTC) in practice without an Irish partner.

ITALY

In general, 100% foreign ownership of Italian corporations is permitted. Italy also has many bi-lateral treaties which are outward looking. In some sectors which have traditionally been held by monopolies, there have been recent changes signalling increased freedom for foreign investment.

Although there does not appear to be any regulation in Italy in terms of limiting foreign investment, there is one law that could be interpreted as discriminatory, though only in terms of how an enterprise intends to operate. Law

No. 43 of February 7, 1956 requires that foreign capital investment be made "for the purpose of establishing or expanding productive enterprises". If the introduction of foreign capital is for the purpose of acquiring an investment in an existing Italian enterprise, with no element of expansion present, the investment is not eligible for the benefits of preferential treatment even though the enterprise falls within the "productive" definition. this could apply to the cultural sector as well.

All investment still must seek approval by the Ministry of the Treasury for a provisional declaration. A second application to the Ministry of the Treasury must be made after the investment has occurred for a permanent certificate. This will be issued within 90 days of the application, after the Treasury is satisfied that the investment has resulted in the expansion of a "productive" enterprise.

Except for broadcasting, and in light of the foregoing, there do not appear to be any measures restricting foreign ownership in the cultural sector.

Broadcasting

Private sector broadcasting is open to foreign investment. The new Broadcasting Act limits cross-media ownership, both foreign and domestic, to 20% of a single sector's resources. This hard-fought measure was included primarily for competition policy purposes and directed at dominant Italian players.

JAPAN

A review of Japanese legislation makes it appear that foreign investment is welcome in Japan. Formal Japanese legal barriers which controlled foreign investment before 1980 have been largely dismantled.

Applications to invest in Japan are in the form of a report, including the objectives of the business and the amount and timing of the proposed investment must be filed with the Ministry of Finance and relevant Ministries through the Bank of Japan within three months of the anticipated date of the investment. Following submission of the report, there is a 30-day "suspense period" during which the government investigates the application. Within this period, the proposal will either be approved or will be returned for revision and resubmission.

Except for broadcasting, there do not appear to be any specific foreign-investment regulatory restrictions for the cultural industries sector.

Broadcasting

A license to operate radio and television broadcasting facilities, and permission to establish cable television broadcasting facilities shall not be granted to:

i) A person who is not a Japanese citizen;
ii) A foreign government or its representatives;
iii) A foreign juridical person or body; or
iv) A juridical person or body in which a person or persons mentioned in any of the three preceding items are officers who execute business or hold one-fifth or more of the voting rights.

KOREA

Korea has made progress in gradually opening its market to foreign investment, yet it maintains its discretionary case-by-case investment approval process to delay or place various conditions on investment projects.

All foreign investment of over US$3 million or 50% foreign equity must be approved by the Ministry of Finance. The Ministry then passes the applications to other Ministries concerned with the particular investment. Korean legislation identifies service sectors which must be protected through a "negative list", thereby prohibiting or severely curtailing equity participation, among other factors.

Though no additional information on the cultural industries, was available, Korea requires, by law, local equity participation for the production of phonograph records and videotape. This specific industry law, also gives Korea the right to block foreign investment entirely.

LUXEMBOURG

There appear to be no registration requirements for foreign capital nor are there any restrictions on foreign ownership in Luxembourg. Foreign investment is permitted in the cultural industries including broadcasting. In fact, the Compagnie luxembourgeoise de radiodiffusion, the precursor of CLT, is the product of French and Belgian capital.

MEXICO

Foreign investment is permitted in Mexico, and recent legislation has opened up approximately 60% of the Mexican economy to foreign investment. Foreign ownership continues to be limited to 49% of business enterprise capital. In the event when majority foreign ownership is authorized, specific conditions regarding local content, export performance, location and research are imposed. While Mexico continues to liberalize foreign ownership in general, it maintains very strict limitations in the cultural sector.

Foreign ownership is not permitted in film and broadcasting. Non-broadcast cultural industries are specifically "classified" activities, requiring prior approval for any inward investment.

Broadcasting

Radio and television broadcasting ownership is restricted to Mexican citizens.

Newspaper and Periodical Publishing

Within this sector, the prior approval of Mexican Foreign Investment Commission's is required for foreign investment to hold a majority interest in these activities. Book publishing is not included.

Film and Video

Investment in this sector is restricted to Mexican citizens.

NETHERLANDS

There do not appear to be any restrictions on foreign ownership in the cultural sector, with the exception of broadcasting.

Broadcasting

Ownership regulations for the new private channels are in the broadcast sector are currently under review in the context of the new media bill tabled in the spring of 1990.

NEW ZEALAND

Except for broadcasting, there do not appear to be any restrictions on foreign investment. In most cases, foreign entities can acquire up to 100% foreign ownership of New Zealand businesses. No performance requirements are attached to foreign direct investment.

Foreign investment and is considered on its merits and is generally considered in terms of helping the government to reduce its overseas debt.

Foreign investment comes under the authority of the Overseas Investment Act 1973. The Overseas Investment Regulations 1985 are administered by the Overseas Investment Commission (OIC). Any foreign entity wishing to establish a business or branch, acquire 25% or more of any class of share in a New Zealand company or acquire the assets of a business where payment exceeds NZ$2 million must first obtain the OIC's approval.

Broadcasting

Investment in this sector is restricted to 15% and requires the approval of the OIC.

NORWAY

Foreign ownership up to 100% is possible in Norway. In general, there are no rules in force governing foreign investment, nor is any local partner or shareholder is required. Registration of the enterprise must be made with the Bank of Norway, the Ministry of Finance, the Securities Commission and the Ministry of Business.

Except for broadcasting, there do not appear to be any restrictions on inward investment in the cultural industries.

Broadcasting

Radio and television legislation has recently been liberalized, and in private sector broadcasting, up to 20% foreign ownership is permitted.

PHILIPPINES

A number of investment barriers are maintained in the Philippines, including lack of national treatment for foreign corporations, equity participation limitations, and involuntary divestment requirements. Most investments of significant size are subject to central government licensing provisions by the Board of Investment. Specific attention is paid to the film and video sector. The situation concerning foreign investment within the broadcast and publishing sectors is not known.

Film and Video

The foreign licensor's share of proceeds from foreign film distribution is limited by law. As well, there exists a quota of 30% of screen time must be devoted to domestically produced films. While not an overwhelmingly nationalist quota, these two measures act to reduce the participation of foreign film producers and distributors.

PORTUGAL

Broadcasting

Foreign investment in this sector is allowed. The exact level of ownership allowed is not known.

Newspaper and Periodical Publishing

Participation by foreign investment is restricted to 10% in newspaper and periodical publishing enterprises.

Film and Video

Establishment in the cinema sector may be subject to prior authorization.

SPAIN

Foreign investment is generally permitted and does not require prior authorization for acquisitions of up to 50% of the share capital of a Spanish enterprise.

All foreign investors are required to register investments made in Spain with the Ministry of Economy and Finance. Such investments are evidenced by a public document, and the notary or stockbroker is required to report the foreign investment to the Foreign Investment Registry. Banks must report all foreign investment and movements of foreign capital to the Bank of Spain.

In addition to the registration of initial investments, the following modifications in foreign majority-owned investments require the prior verification of the Ministry of Economy and Finance:

1. Change in the objects of the company.
2. Increase in capital or in the percentage of foreign investment.
3. Change in any condition imposed by a previous authorization.

Specific restrictions in the cultural industries include broadcasting, and film and video.

Broadcasting

Foreign direct or indirect investment is restricted to 25% ownership in the areas of radio and television.

Film and Video

While no specific measures limiting foreign investment in film and video have been identified, Spain retains a "reservation" regarding its support of the OECD's code of liberalization of capital movements (1982). This may relate to dubbing licence requirements for distribution of non-Spanish films.

SWEDEN

Investment in Swedish enterprise by persons or companies domiciled abroad is subject to approval by the Bank of Sweden. Approval is readily given for the establishment or acquisition of a subsidiary company in Sweden. However, as concerns foreign investment in a Swedish enterprise, the 1982 "Law on Foreign Acquisitions of Swedish Firms", limits investment to less than 40% of capital and less than 20% of voting strength of all shares in the company.

However, a recent proposition before the Swedish Parliament would have the current foreign investment legislation amended to specifically define the cultural sector as an area of national interest for foreign investment review purposes. The 1982 foreign investment legislation allows the government to evaluate the investment's contribution to "national public interest".

Because of this broad definition, four clarifications, including a cultural clause, has been proposed. More specifically, the Bill proposes to allow the government to review planned foreign investment so as to determine if the acquisition of a Swedish enterprise affects the "national cultural interests or equivalent (i.e., companies involved in information or media sectors)". The government wishes to retain the right for investment review in the minority or majority acquisition of a Swedish enterprise.

At the moment, however, restrictions in the cultural sector are limited to the newspaper and periodical publishing sectors.

Newspaper and Periodical Publishing

The Press Law forbids foreigners to own or publish Swedish periodicals, for example, daily newspapers. The publishing of books is not mentioned.

SWITZERLAND

In Switzerland, virtually no enterprise is closed to private investment, and up to 100% foreign investment is allowed. There are no specific foreign investment authorities as such. Switzerland has entered into a number of investment treaties to ensure equal treatment of investments. Given Switzerland's very lax regulations concerning inward investment, these agreements act to protect the country's outward investment. In the cultural industries, there are specific measures only in film and video.

Broadcasting

Foreign investment in this sector is limited to private undertakings.

Film and Video

Switzerland has a long-standing legislative measure which restricts all film distribution and exhibition to wholly-owned Swiss enterprises. This position is changing, however.

There is currently a new Bill before Parliament which proposes liberalization to the existing restrictions, allowing foreign investment in both distribution and exhibition segments of the industry, though there would still be a limit on the number of films which one distributor could release. Proposed legislation would limit each distributor to 10% of the 400 films coming into the country per year regardless of each company's specific market share. Furthermore, in order to guarantee the diversity of cinema programming, no distributor may have total control over the programming of a single cinema. In order to achieve this, an exhibition licence will only be only granted to cinema owners who exhibit films from more than one distributor.

UNITED KINGDOM

There are no general restrictions on the foreign ownership of local enterprises and joint ventures. There are no requirements for UK participation in a foreign-owned enterprise. Except for the public monopolies, the new Broadcasting Act, 1990 does not restrict foreign investment in private sector enterprises.

Newspaper and Periodical Publishing

National newspapers are limited to 20% foreign ownership.

UNITED STATES OF AMERICA

Broadcasting

Foreign-controlled enterprises may not own more than 20% of a company with a broadcasting or common carrier licence, nor more than 25% of a company controlling a company with such a licence. The Federal Communications Commission (FCC) has discretion to approve more than 25% of foreign interest in the company, if it finds it in the public interest.

The US is unique in its definition of broadcasting and in its request that at a time when most European countries, well-known for their strict regulations on broadcasting, are modifying legislation with unprecedented speed.

The recent passage of a bill in the U.S. House of Representatives which would restrict foreign ownership in the cable industry reflects growing protectionist sentiments within the U.S. Administration over foreign investment in the television industry.

VENEZUELA

The current government in Venezuela is liberalizing the regulatory climate affecting foreign investment. Nevertheless, Venezuela still maintains several investment barriers. Foreign investments must be registered and evaluated. Among the relevant criteria are local content, export performance and technology transfer. Investment in most sectors is limited to a minority position. Foreign ownership of broadcasting is limited to 20%. Besides the foregoing, there do not appear to be any additional restrictions regarding foreign investment in the cultural sector.

Broadcasting

Foreign investment is restricted to 20% in this sector.

Table 1: Foreign Investment Measures in the Cultural Industries

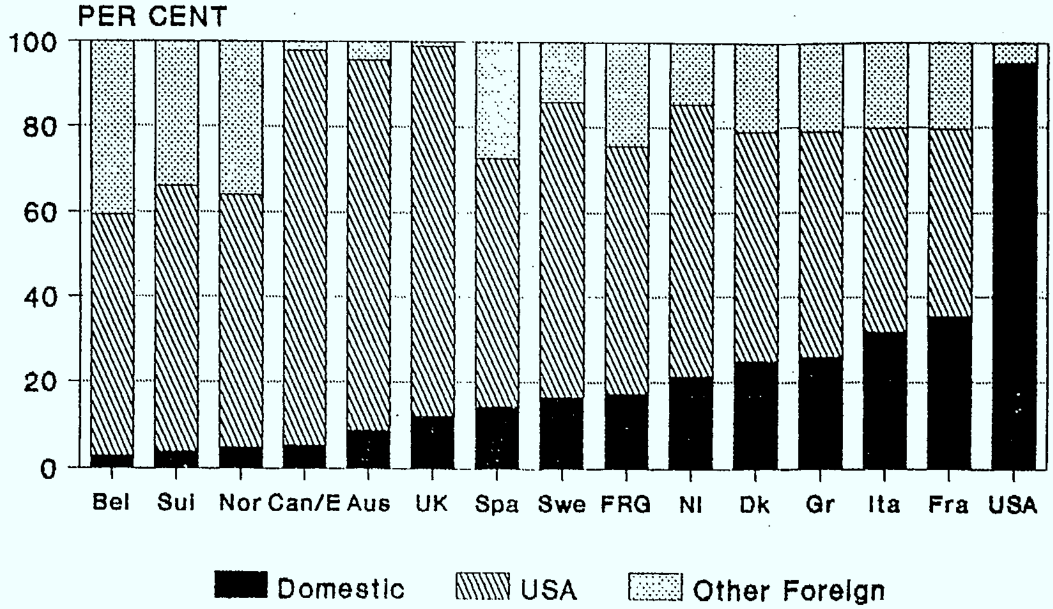
Country	Broadcasting	Newspapers& Periodicals	Film and Video	Sound Recording
Argentina	1	1	-	-
Australia	1	1	-	-
Belgium	1	-	-	-
Brazil	1	1	1	-
FRG	-	-	-	-
France	1	1	1	-
Greece	1	-	-	-
India	-	-	1	-
Indonesia	-	-	1	-
Ireland	-	-	-	-
Italy	1	1	-	-
Japan	1	-	-	-
Korea	-	-	-	1
Luxembourg	-	-	-	-
Mexico	1	1	1	-
Netherlands	1	-	-	-
New Zealand	1	-	-	-
Norway	1	-	-	-
Philippines	-	-	1	-
Portugal	1	1	1	-
Spain	1	-	1	-
Sweden *	-	1	-	-
Switzerland	1	-	1	-
UK	-	1	-	-
USA	1	-	-	-
Venezuela	1	-	-	-
TOTALS	17	9	9	1

* Current proposals in Sweden call for blanket cultural sector treatment

Source: ICP compilation September 1990

Table 2: Domestic Market Share-FILM

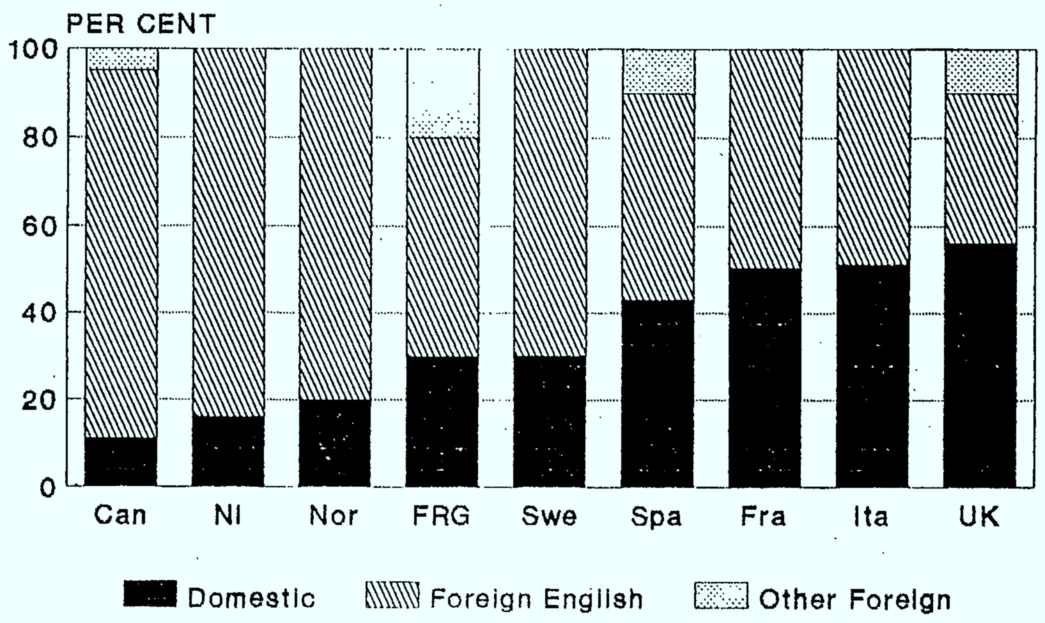
Share of Theatrical Receipts: 1987
Selected Countries



Sources: EIM,DEP,CNC,DOC,The European

Table 3: Domestic Market Share-SOUND

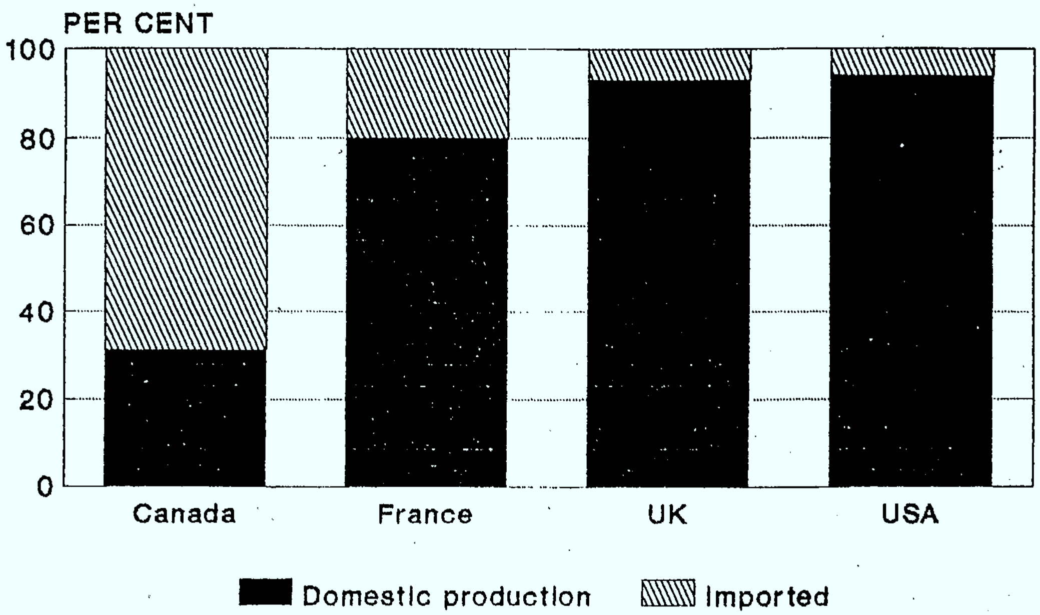
Sales of Popular Music: 1987
Selected Countries



Sources:IFPI,DOC Compendium

Table 4: Domestic Market Share-BOOKS

Sales of Domestic and Imported Books 1986 - Selected Countries



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