(De-)Regulating the Creative Economy

Rostam Josef Neuwirth

Abstract

Drastic changes have occurred throughout the past century and the world community is struggling to find the exact concepts to describe, understand and, possibly, govern them. One of the concepts used to describe these changes is the so-called “creative economy”. Even though the concept is becoming more frequently used, it lacks a precise definition and its meaning remains elusive. Moreover, the proliferation of related concepts, such as the “experience economy”, the “cultural economy”, the “knowledge-based economy” and the “creative and cultural industries”, further obscures its precise scope and meaning. These concepts are, however, no less elusive, particularly because they are of a dual or oxymoronic character, which variably combines aspects of culture, creativity and intellectual creation on the one hand with those of the economy, business, trade and commerce on the other.

In sum, the conceptual uncertainties also translate into major difficulties in finding appropriate regulatory responses in the sphere of law. The aim of the present article is therefore to cast light on the meaning of the concept of the creative economy with a view to paving the way for its better and more efficient regulation in the legal sphere. To this end, the first part offers a comprehensive interpretative analysis of the “creative economy” with a view to establishing its value to the present global governance debate. Based on the evidence that designates the creative economy as an evolving concept requiring a multidisciplinary model for the formulation of an adequate approach in law- and policymaking, the second part discusses some of the creative economy’s major implications in the sphere of law. In this regard, several regulatory examples appear to advocate the abandonment of the conventional in favour of a more holistic method of regulation. The article concludes with some recommendations that are deemed useful for further debate and research in this area, which ultimately may contribute to the formulation of the kind of creative laws that are needed for the successful regulation of the creative economy in the future.

Keywords | Creative Economy, Governance, International Law, Trade Linkage Debate, Regulation, Deregulation

JEL Classification: K00, K10, K20, K33

DOI: 10.2478/v10212-011-0004-6

Introduction

“We pierce doors and windows to make a house; And it is on these spaces where there is nothing that the usefulness of the house depends. Therefore just as we take advantage of what is, we should recognize the usefulness of what is not.”

Lao Tzu¹⁾

The world's community of scientists of all disciplines, law- and policymakers, stakeholders and citizens is searching for terms that appear not only to describe adequately but also to give meaning to the current world. Due to their efforts we are now experiencing the prolific creation of concepts that are aimed at casting light on an even larger number of phenomena that still appear to await their due explanation. Perhaps, if Cicero were asked today to address an assembly representing the world community, he might well have exclaimed “*O tempora, O verba!*”, or in English “Oh what times! Oh what words!”.²⁾ Indeed, the world of today appears to be submerged in growing complexity, possibly surpassed in severity only by an ever-faster rhythm of change.

To this increasing pace of change and growing complexity we eventually respond by devising more and more technical concepts, without the necessary time to ponder their actual significance and proper meaning, which are derived not only from a literal, but also from a systemic, contextual, historical and teleological method of interpretation. Such a response, however, threatens to lead to a Babylonian confusion of linguistic concepts, which, possibly entangled in a vicious circle, leads to a further increase in complexity and a further boost in the acceleration of perception. Also a lawyer, Cicero might well have been aware of the difficulties that such linguistic confusion may cause for the domain of law. Concepts, the meanings of which remain unclear, are unlikely to provide a proper foundation for their usage in laws and other regulatory instruments or, at least, complicate the process of their due application. Even more so, the lack of clarity regarding their meaning becomes more problematic when it stems from an inadequate understanding of the phenomena that these concepts are meant to denote and define.

Against the backdrop of the global governance debate, one important linguistic concept that needs to be critically assessed in terms of its adequacy to denote and define a set of complex phenomena is that of the “creative economy”. At this stage it is unclear whether it constitutes a mere buzzword, a pipe dream, a policy catchword or in fact an accurate description of the recent trends in the way the present world economy works. Moreover, a series of terms exists, the relation of which may vary from being irrelevant or antagonistic to being synonymous or complementary. The many variations cause further uncertainty about the concept's precise role. As such, it begs the question of whether it reflects the dominant *Zeitgeist*, introduces a pioneering notion or perhaps establishes a new rhetorical paradigm. Hence, it follows that, in spite of the concept's prolific use in various contexts, the overall meaning remains unclear. The same degree of uncertainty that pervades the terminology also penetrates the legal realm. In the context of the legal realm, it is a recurrent trend that the world political organization, and with it also the legal responses, has problems keeping pace with its economic organization.³⁾

1) Lao Tzu, *Tao Te Ching* (Ware: Wordsworth Classics, 1997) at 23.

2) See F. Richter, ed., *Ciceros Reden gegen Catilina* (Liepzig: B.G. Teubner, 1869) at 21.

3) See also A.A. Young, “Economics and War: A Presidential Address” (1926) 16 *The American Economic Review* 1 at 7.

Given the many facets and uncertainties that envelop the legal implications that may derive from the creative economy, the present paper offers an inquiry into the deeper meaning of the concept with a view to fostering research in this regard and to helping to adapt the teaching methods for this subject in order to facilitate the adoption and implementation of laws and regulations in this area. At this stage of the research, it is not intended to provide concrete and definite answers but to pose the right questions and to delimit the scope and determine the goals related to the creative economy. To this end, the first part of the article explores the concept of the creative economy through a comprehensive interpretative approach. It also asks whether the creative economy may perhaps be a rhetorical paradigm for the present era. In the second part, the focus shifts from a conceptual to a regulatory perspective. The regulatory perspective entails a discussion of the concept of the creative economy and its most closely related notions with a view to identifying the main principles that are deemed useful for the regulation of the creative and cultural industries. Finally, the inquiry not only includes a sketch of basic outlines for the regulation of the creative economy but also aims to arrive at more principal findings about the present state of the world today and about the role of law in shaping its future.

1. *The Concept of the Creative Economy*

1.1 *An Interpretative Approach*

From a literal point of view, it is hard to spot the precise origin of the concept of the creative economy. This comes as no surprise given the prolific use of the concept in many different languages in recent years. Literature and policy documents in different languages are often dedicated to the creative economy, or to its translations into *Kreativwirtschaft*, *l'économie creative*, *economía creativa* or 创意经济 (*Chuangyi Jingji*). An early reference in the English language is the book by John Howkins, *The Creative Economy: How People Make Money from Ideas*, published in 2002.⁴⁾ This book's focus is more on the side of business than on that of public policy- or lawmaking. Accordingly, it does not provide a clear definition of the creative economy but it is said to comprise the following sectors: advertising, architecture, art, crafts, design, fashion, film, music, performing arts, publishing, R&D, software, toys and games, TV and radio, and video games.⁵⁾ In the search for a viable definition, a more revealing source is provided by the United Nations Conference on Trade and Development in two relevant publications so far, entitled the *World Creative Economy Report*, published in 2008 and 2010, respectively.⁶⁾ Both these reports feature a comprehensive analysis of the concept of the creative economy and its implications in a wide range of fields. As for a possible definition, the 2008 UNCTAD report states the following:

4) J. Howkins, *The Creative Economy: How People Make Money From Ideas* (London: Penguin, 2002).

5) *Ibid.* at 88-117.

6) See United Nations Conference on Trade and Development (UNCTAD), *World Creative Economy Report 2010: Creative Economy: A Feasible Development Option*, available at: http://www.unctad.org/en/docs/ditctab20103_en.pdf; and see United Nations Conference on Trade and Development (UNCTAD), *World Creative Economy Report 2008: The challenge of assessing the creative economy towards informed policy-making*, available at: http://www.unctad.org/en/docs/ditc20082cer_en.pdf.

The creative economy is an evolving concept centred on the dynamics of the creative industries. There is no single definition of the creative economy nor is there a consensus as to the set of knowledge-based economic activities on which the creative industries are based. There is no one-size-fits-all recipe but rather, flexible and strategic choices to be made by national governments in order to optimize the benefits of their creative economies for development.⁷⁾

The findings by UNCTAD confirm that there is currently no single definition of the creative economy. However, the report also restates the close connection to the creative industries, which UNCTAD defines as follows:

The creative industries:

- are the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary inputs;
- constitute a set of knowledge-based activities, focused on but not limited to arts, potentially generating revenues from trade and intellectual property rights;
- comprise tangible products and intangible intellectual or artistic services with creative content, economic value and market objectives;
- stand at the crossroads of the artisan, services and industrial sectors; and
- constitute a new dynamic sector in world trade.⁸⁾

The problem with the above definition of the creative industries, however, is that it is also not exhaustive and, instead, raises further questions. This is because the concept of the creative industries, as the root for the concept of the creative economy, is often interchangeably or synonymously used for the cultural industries, or the cultural economy for that matter. The cultural industries are a concept the precise origin of which can at least be traced back to the German concept of *Kulturindustrie* (culture industry) as coined by Theodor W. Adorno and Max Horkheimer.⁹⁾

The cultural industries also know many distinct definitions, all of which vary in scope.¹⁰⁾ The main difference from the concept of the creative industries is that – following a curious journey through various scientific disciplines ranging from philosophy, via economics to the political economy and constantly evolving in line with technological innovation – it eventually became enshrined in law.¹¹⁾ The term cultural

7) See UNCTAD, *World Creative Economy Report 2008*, *supra* note 6, at iii; and UNCTAD, *World Creative Economy Report 2010*, *supra* note 6, at 2-10.

8) See UNCTAD, *World Creative Economy Report 2010*, *supra* note 6, at 8.

9) See Th.W. Adorno, *The Culture Industry: Selected Essays on Mass Culture* (London: Routledge, 1991) at 98 (“The term culture industry was perhaps used for the first time in the book *Dialectic of Enlightenment*, which Horkheimer and I published in Amsterdam in 1947. In our drafts we spoke of ‘mass culture’. We replaced that expression with ‘culture industry’ in order to exclude from the outset the interpretation agreeable to its advocates: that it is a matter of something like a culture that arises spontaneously from the masses themselves, the contemporary form of popular art”).

10) See e.g. D. Hesmondhalgh, *The Cultural Industries* (London: Sage, 2002) and D. Throsby, *Economics and Culture* (Cambridge: Cambridge University Press, 2001).

11) See R.J. Neuworth, *The Cultural Industries in International Trade Law: Insights from the NAFTA, the WTO, and the EU* (Hamburg: Dr. Kovač, 2006) at 30-68.

industry was first legally recognized in international trade law in the 1988 Canada–United States Free Trade Agreement, which reads as follows:

For purposes of this Chapter:

cultural industry means an enterprise engaged in any of the following activities:

- a) the publication, distribution, or sale of books, magazines, periodicals, or newspapers in print or machine readable form but not including the sole activity of printing or typesetting any of the foregoing,
- b) the production, distribution, sale or exhibition of film or video recordings,
- c) the production, distribution, sale or exhibition of audio or video music recordings,
- d) the publication, distribution, or sale of music in print or machine readable form, or
- e) radio communication in which the transmissions are intended for direct reception by the general public, and all radio, television and cable television broadcasting undertakings and all satellite programming and broadcast network services.¹²⁾

Later, a similar descriptive approach was opted for in the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, where the cultural industries are broadly defined as “industries producing and distributing cultural goods or services”.¹³⁾ In the said convention, however, no mention is made of the creative economy or the creative industries. The term creative industries is a more recent creation and seems to be less frequently used but sometimes also in combination as “cultural and creative industries (CCIs)”.¹⁴⁾ What appears to have been established so far is that they share a cross-cutting nature, which combines several specific and sometimes contradictory features, which translate into the need for concerted practices and greater policy coherence. The same can be said for the creative economy and related concepts, such as cultural economy,¹⁵⁾ knowledge-based economy,¹⁶⁾ experience economy,¹⁷⁾ information economy¹⁸⁾ or creative ecology¹⁹⁾. To substantiate the linguistic confusion

12) Art. 2012 CUSFTA; *Canada-United States Free-Trade Agreement*, (1988) 27 I.L.M. 281; see also Art. 2107 *North American Free Trade Agreement*, (1993) 32 I.L.M. 605.

13) Article 4 para. 4 (and para. 5) CDCE; *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, adopted in Paris on October 20, 2005; available at: <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>.

14) See e.g. European Commission, *Unlocking the Potential of Cultural and Creative Industries (Green Paper)*, COM(2010) 183 final (April 27, 2010) at 5. The report also notes that work is currently being carried out to define the scope of the cultural and creative industries.

15) See e.g. F. Benhamou, *L'économie de la culture* (Paris: La Découverte, 2001).

16) See e.g. D. Rooney, G. Hearn & A. Ninan, *Handbook on the Knowledge Economy* (Cheltenham: Edward Elgar, 2005); see also F. Machlup, *The Production and Distribution of Knowledge in the United States* (Princeton: Princeton University Press, 1962).

17) See J.B. Pine & J.H. Gilmore, *The Experience Economy: Work is Theatre & Every Business a Stage* (Boston: Harvard Business School Press, 1999).

18) See J. Howkins & R.L. Valantin, *Development and the Information Age: Four Global Scenarios for the Future of Information and Communication Technology* (Ottawa: International Development Research Centre, 1997) mainly at 3 and 38.

19) See e.g. J. Howkins, *Creative Ecologies: Where Thinking Is a Proper Job* (New Brunswick: Transaction Publishers, 2010).

further, in at least one case the concept of the culture industry has also, in my eyes wrongly, been translated into the German language as *Kreativwirtschaft* (creative economy).²⁰⁾ This confusion, which ignores the historical evolution of the concept of the culture industry, however, supports the view that a strong genuine link exists between the cultural industries and the creative economy.

Strongly supported by historical evidence, a major difficulty in the context of the creative economy and its synonyms is that they all operate with extremely vague and dynamic terms that are subject to change and changing conditions. This is also reflected in UNCTAD's following characterization of the concept:

The concept of the "creative economy" is an evolving one that is gaining ground in contemporary thinking about economic development. It entails a shift from the conventional models towards a multidisciplinary model dealing with the interface between economics, culture and technology and centred on the predominance of services and creative content.²¹⁾

The same has been found to be true for the concept of culture, which has escaped from a rigid legal definition. Adorno himself warned of the difficulty of formulating and implementing a cultural policy by stating that the essence of culture itself is negated when subjected to administration and planning because culture is particularly nurtured by concepts such as autonomy, spontaneity and criticism.²²⁾ Accordingly, instead of trying to regulate culture, the drafters of the UNESCO Convention took into account that "culture takes diverse forms across time and space" and restricted the regulatory scope to the "diversity of cultural expressions".²³⁾ Technology, most likely and unless one has already forgotten the time before the Internet and mobile telecommunications, needs no further explanation, as every one of us has been and is experiencing with awe the drastic acceleration of the pace of its innovation.²⁴⁾ The third term invoked by UNCTAD above is "development", which assumes a change (or improvement) in a present condition in the future and, thus, is itself a highly dynamic and elusive term that is open to different interpretations.²⁵⁾ Even the term "creativity" is held to evade a precise definition given that creativity must be deemed to be of an equally dynamic character and to refer to a core characteristic of humanity and the basis of all wealth.²⁶⁾ UNCTAD also renounces the

20) See Art. 4 (5) Übereinkommen über den Schutz und die Förderung der Vielfalt kultureller Ausdrucksformen, BGBl. III (March 21, 2007). The correct translation for *Kreativwirtschaft* is „cultural economy“ or „economy of culture“, whereas clearly, as the term "culture industry" originated in the German language, the correct translation of cultural industries should be "*Kulturindustrien*".

21) See UNCTAD, *World Creative Economy Report 2008*, *supra* note 6, at 3-4.

22) See Th.W. Adorno, "Culture and Administration" in Th.W. Adorno, *The Culture Industry: Selected Essays on Mass Culture* (London: Routledge, 1991) 107 at 123.

23) See Recital 7 of the Preamble of the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, *supra* note 13.

24) For an account of technological innovations in the past and the legal disputes that ensued, see e.g. A. Jones, *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago: University of Chicago Press, 2009).

25) See also R.J. Neuwirth, "A Constitutional Tribute to Global Governance: Overcoming the Chimera of the Developing-Developed Country Dichotomy", (2010) EUI WP LAW 2010/20.

26) See e.g. A.C. Albertson, *Creative Immortality: a Trinity Rule in Social and Political Economy. The Creative Element of Mankind, the Basis of All Wealth* (New York: Economic Publishing Co., 1912).

formulation of a single definition but instead identifies artistic, scientific, technological and cultural creativity as the core elements of the creative economy.²⁷⁾ Similarly, the concept of the economy alone necessarily frustrates attempts to find a precise definition, as is confirmed by the many economic theories and past controversies concerning the dominant political model of economic organization as expressed in the notions of liberalism, socialism, communism or capitalism. Even capitalism, often hailed as the dominant manifestation of economic models of organizations, was described by Schumpeter as highly dynamic when he introduced the concept of “creative destruction” and wrote that “capitalism, then, is by nature a form or method of economic change and not only never is but never can be stationary”.²⁸⁾ In short, it is reasonable to affirm that the precise meaning of economy is equally dynamic and evolves in time and space.

This brief inquiry into the meaning of the concepts underlying or related to the creative economy demonstrates how volatile, dynamic and elusive its meaning is. As an additional feature, there appears to be a pattern in a sense that the concept of the creative economy and some of its synonyms appear to be contradictory or paradoxical, such as the notion of “creative destruction”. Similarly, the concept of the culture industry was deliberately designed as an oxymoron and a similar tension between apparently contradictory concepts could be said to be intrinsic to the concept of the creative economy (and the cultural economy).²⁹⁾ Paradoxes and oxymora, due to their inherent contradiction, naturally have the effect of challenging our dominant logic and, most of all, our dominant way of legal thinking, which is based on the mutual exclusivity and not the complementarity of antagonistic concepts. Moreover, the tensions created by paradoxes and oxymora add further elements of dynamism, which make it even more difficult to make out a precise meaning of the creative economy. This quality inherent in the concept of the creative economy also explains the need for a multidisciplinary approach as outlined by UNCTAD.

In sum, the various interpretative inquiries, literal, textual and historical, into the meaning of the concept of the creative economy, its single constituents as well as its synonyms and related concepts, are confronted with major difficulties. These difficulties can best be summarized as being caused by their evolving and cross-cutting nature as well as the high degree of ambiguity that appears to be caused by the combination of contradictory statements that these concepts entail. As a result, it is useful to take a step back and finally have a closer look at the purpose and perhaps derive from that an insight into the meaning and the message the concept of the creative economy is meant to convey to policymakers and regulators.

1.2 *Creative Economy: A Rhetorical Paradigm?*

If the meaning of creative economy is so elusive it is interesting to ask why it is becoming more widely used. Perhaps the answer lies precisely in its ambiguity, which derives from the inherent tension and dynamism that makes the concept's use so attractive for the present time. As a result, its main function is to give an exact account of

27) See UNCTAD, *World Creative Economy Report 2008*, *supra* note 6, at 9-10.

28) See J.A. Schumpeter, *Capitalism, Socialism, Democracy* (London: Routledge, 1976) at 82.

29) See also R. DeFillippi, G. Grabher & C. Jones, “Introduction to Paradoxes of Creativity: Managerial and Organizational Challenges in the Cultural Economy” (2007) 28 *Journal of Organizational Behavior* 511.

the reality that we perceive in the world today. In other words, it can be referred to as a rhetorical paradigm that was born out of concrete changes to the perception of reality and has been confirmed in several cases and contexts since then.³⁰⁾ In this regard, a first important change is what I would call the “acceleration of perception”. Although constantly recorded throughout history, this acceleration has been exponentially mounting with the invention of the cinematograph or Kinetoscope, which practically set pictures that used to be captured in still photography into motion, whence the concept of the “motion picture”. Later it was also aptly expressed by Paul Nora in the notion of an “acceleration of history”, or the “increasingly rapid slippage of the present into a historical past that is gone for good, a general perception that anything and everything might disappear”.³¹⁾ It is also directly linked to the coining of the concept of the culture industry as mentioned above. In the meantime, the cultural industries have evolved into a wide set of cultural products that are dependent on the so-called “information and communication technologies” (ICT).

Throughout history the evolution of the economy has been closely related to innovation in the field of technology. This is manifest in the moves from an agrarian to an industrial and further to a service and perhaps a creative or experience economy.³²⁾ These moves are accompanied by corresponding steps in the invention and subsequent exploitation of new energy resources, such as fire, coal, electricity, fossil, nuclear and alternative energy resources, and the new machines these energies subsequently allowed to be engineered and operated. Simultaneously, the processes characterizing the economy appear to move gradually from the production of tangible products to the production of ever-finer and more intangible products³³⁾ or, more generally, to foster the convergence not only of industries³⁴⁾ but of an even wider variety of elements that were previously considered as antagonistic or unrelated. The uneven pace of technological change has also been placed at the roots of the “sudden explosive expansion of capitalism” and economic globalization’s wider impact on governments, states and the world as a whole.³⁵⁾ The effect of both technological changes and technology on change is the ultimate origin of political organizations’ difficulty in keeping pace with economic organizations. Change, in principal, also has an important effect on law and the legal realm, which was aptly described as follows:

The omnipresence of change throughout all human experience thus creates a fundamental problem for law; namely, how can law preserve its integrity over time,

30) See also J.W. Wenzel, “The Rhetorical View of Argumentation: Exploring a Paradigm” (1987) 1 *Argumentation* 73 at 75, writing that “rhetorical paradigms in argumentation would include those analytical and critical studies that create or confirm theoretical understanding by examination of particular cases, and that do so in an especially compelling manner”.

31) See P. Nora, “Between Memory and History: *Les lieux de Mémoire*” (1989) 26 *Representations* 7 at 7.

32) See also *The Experience Economy: Work is Theatre & Every Business a Stage*, supra note 17, at 6.

33) See e.g. J. Rifkin, *The Age of Access: How the Shift from Ownership to Access is Transforming Capitalism* (London: Penguin, 2000).

34) See e.g. M.C. Roco & W.S. Bainbridge, *Converging Technologies for Improving Human Performance: Nanotechnology, Biotechnology, Information Technology and Cognitive Science*, NSF/DOC-sponsored report, National Science Foundation (June 2002).

35) See P. Shankar Jha, *The Twilight of the Nation State: Globalisation, Chaos and War* (New Delhi: Vistaar, 2006) at 25.

while managing to address the newly emerging circumstances that continually arise throughout our history.³⁶⁾

The conflict between change on the one hand and law being expected to provide certainty and predictability on the other may help to explain the gradual shift from a static to a more dynamic perception of the legal sphere. This tendency, which perceives law as a process rather than as a norm engraved in stone, can also be tracked down to the terminological shifts from globalization to glocalization, from legislation to regulation or from government to governance. Like entropy, these trends share an increase in complexity caused by the convergence of the fields of politics, economics and culture, which accounts and calls for subsequent changes in the sphere of law. The changes notwithstanding, the progress made in the sphere of law, both theoretically and practically, seems not to be far-reaching enough to encompass the challenges deriving from them. In view of the rapid changes introduced by technology, the reform efforts needed at the national, regional and global levels either fail, proceed too slowly or are merely superficial. The reforms usually fail to address the centre of the problem, which concerns first the theoretical framework and second the institutional framework deriving from the former.³⁷⁾

In principle, humanity, at present, seems to be split, perceiving the world through the lens of old conceptions and old concepts, while living and experiencing it with the most advanced technologies, the complexity of which and the consequences they entail most of us fail to understand and are unable to control. Consequently, the dilemma is that neither has the political organization kept pace with its economic counterpart, nor has humanity's domination over human activity kept pace with the human domination over nature. From a teleological perspective, the term creative economy, like many other recent concepts, can be said to introduce a rhetorical paradigm that mandates the adaptation of our concepts and conceptions to our accumulated knowledge about the world. The mandate entails the acceptance of the paradigm shift of the scientific and technological discoveries of the past century while directing the attention towards the creation of the corresponding and adequate legal structures that are necessary to organize this world in a sustainable and equitable manner. In the context of this paper it means, first and foremost, engaging in efforts that create suitable conditions for the adoption of the kind of creative laws needed for a creative economy.

2. A Regulatory Perspective

2.1 Preliminary Considerations

Given the confusion about the terminological and conceptual aspects of the creative economy, it comes as no surprise that the regulatory process is lagging behind. Thus far,

36) See M.L. Johnson, "Mind, Metaphor, Law", (2006) 58 *Mercer Law Review* 845 at 845.

37) See e.g. G20, Leaders Statement, *The Pittsburgh Summit* (September 24-25, 2009), available at http://www.g20.org/Documents/pittsburgh_summit_leaders_statement_250909.pdf; United Nations High Level Panel on Coherence, *Delivering as one: Report of the High-level Panel on United Nations System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment*, (UN GA A/61/583 (20 November 2006)); Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN GA Doc. A/59/2005 (March 21, 2005); P. Sutherland et al, eds., *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (Geneva: WTO, 2004).

the debate on the creative economy has been centred on the meaning and scope of the concept and ways to formulate policies implementing the objectives associated with it. However, once the meaning has become sufficiently clarified and the policy objectives have been identified, it is time to focus on the regulatory instruments to be adopted. To date, it has been recognized that the creative economy is an evolving concept that is mainly constituted by the cultural and creative industries and their output, involves a multitude of stakeholders and industries, requires cross-cutting strategies and marks a shift from conventional models to a multidisciplinary model dealing with the interface between economics, culture, technology and politics. As for the legal sphere, it can be stated that the present legal framework, which is largely based on the conception and architecture of the present international legal order formulated in the post-war period, is proving to be inadequate for dealing with the complexities and specificities that make out the creative economy. The same is reflected in previous findings collected in other areas, such as notably the culture and trade debate in general and the regulation of the cultural industries in particular.³⁸⁾

In this regard, the UNCTAD 2010 report identified among several domestic constraints experienced by many countries “the lack of a clear framework for understanding and analyzing the overall interactions of the creative economy as a basis for tailored and forward-looking policymaking”.³⁹⁾ The same is even more relevant at the international level, with the recent proliferation of international organizations and the ongoing fragmentation of international law.⁴⁰⁾ The same has even been found for the realm of international trade law.⁴¹⁾ Most likely though, it reflects a more general problem that is directly linked to legal science and the present scientific and societal paradigm. One aspect of this general problem, which is also closely related to the linguistic confusion, is that legislation tends to be too casuistic, too prolific and too hastily adopted (albeit usually taking a long time to agree on and implement).

These tendencies pose a serious problem because, as a cross-cutting and multidisciplinary concept, the creative economy is not limited to one area of law. Instead, it relies on and combines several areas of law that – not only in the curricula of most law schools but also in practice – are still considered to form distinct fields and are consequently taught and practised as separate disciplines. Regrettably, such a legal approach stands in stark contrast to recent business models, which underline the need for a new mindset and confirm that for a strategy to be successful “everything has to happen together, or nothing happens at all”.⁴²⁾ Applied to the field of law- and

38) See also R.J. Neuwirth, “The “Culture and Trade Debate” Continues: The UNESCO Convention in Light of the WTO Reports in China – Publications and Audiovisual Products: Between Amnesia or Déjà Vu?” (2010) 44 *Journal of World Trade* 1333.

39) See UNCTAD, *World Creative Economy Report 2010*, *supra* note 6, at 253.

40) See also P.-M. Dupuy, “A Doctrinal Debate in the Globalisation Era: On the “Fragmentation” of International Law” (2007) 1 *European Journal of Legal Studies* 1; and C.P.R. Romano, “The Proliferation of International Judicial Bodies: The Pieces of the Puzzle” (1999) 31 *N.Y.U. J. Int’l L. & Pol.* 709.

41) See P. Delimatsis, “The Fragmentation of International Trade Law” (2011) 45 *Journal of World Trade* 87.

42) See A.M. Brandenburger & B.J. Nalebuff, *Co-opetition: A Revolution Mindset That Combines Competition and Cooperation: The Game Theory Strategy That’s Changing the Game of Business* (New York: Doubleday, 1996) at 14.

policymaking, the regulation of the creative economy and its central industries therefore requires the maximum degree of coherence and consistency. Accordingly, the regulation of the creative economy invokes associations mainly but not exclusively with the following areas of law: international trade and investment law, labour law, intellectual property rights law and competition law. By the same token and from an international institutional perspective, UNCTAD lists the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the United Nations Environmental Programme (UNEP), the United Nations Development Programme (UNDP), the United Nations Educational, Cultural and Scientific Organization (UNESCO) and the International Trade Centre (ITC) among the competent international regulatory agencies.⁴³⁾ These international organizations and the institutional conflicts that may arise between them correspond by and large to the scope of the so-called “trade linkage debate”, or “trade and ... problems”, which focuses on the reciprocal implications of the objectives of trade liberalization on the one hand and the protection of various social, cultural and political issues on the other.⁴⁴⁾ In a multilevel governance system, the same institutional conflicts may arise *mutatis mutandis* at the supranational and national levels between the governing structures’ different ministries or departments.

This regulatory scope in both institutional and substantive terms, however, seems not to go far enough. Taking a closer look and considering, for instance, the implications of only the regulation of the cultural industries as an important aspect of the creative economy, a much broader approach is needed. If we take for instance the definition of the cultural industries of CUSFTA, which includes books and printing media, films, video and sound recordings, as well as broadcasting, and expand it to the related areas of video games, cultural heritage and tourism as well as architectural services the relevance to a wider set of laws comes to the fore. This means that in addition to the basic areas of economic law, the various laws on cultural property, cultural heritage, intangible cultural heritage, traditional knowledge and diversity of cultural expressions to mention but a few need to be taken into account too. Including further tourism, the life-style or experience economy, offering, for instance, various forms of entertainment, leisure, wellness, culinary delights, shopping and the like, then the regulatory scope drastically widens to include environmental laws, health and food security regulations and immigration laws. More profoundly, it requires a combined consideration of the still widely separated areas of public and private as well as municipal and international law.⁴⁵⁾ Ultimately, an important precondition for a single legal norm or other regulatory instrument to be effective is that it must be part of an effective and consistent legal system. A problem that exemplifies this observation is that of piracy and counterfeit goods, which pertains notably but not exclusively to the domain of intellectual property laws. Intellectual property laws are said to be a crucial area of law for the creative economy. The problem of

43) See UNCTAD, *World Creative Economy Report 2010*, *supra* note 6, at 231-252.

44) See e.g. A.T.F. Lang, “Reflecting on ‘Linkage’: Cognitive and Institutional Change in the International Trading System” (2007) 70 *The Modern Law Review* 523 and J.P. Trachtman, “Trade and ... Problems, Cost-Benefit Analysis and Subsidiarity” (1998) 9 *E.J.I.L.* 32.

45) See also C.E. Rudder, “Private Governance as Public Policy: A Paradigmatic Shift” (2008) 70 *The Journal of Politics* 899, R.J. Neuwirth, “International Law and the Public/Private Law Distinction” (2000) 55 *Austrian J. Pub. & Int’l L.* 393; and A.C. Aman, Jr., “The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy” (1998) 31 *Vand. J. Transnat’l L.* 769.

piracy and counterfeit goods is held to be subject to wide misperceptions.⁴⁶⁾ These misperceptions are also due to the fact that the problem is not fully understood in its entirety and not all the relevant factors and areas of law are taken into account. The misperceptions also translate into paradoxes, such as the so-called “piracy paradox” found to exist in the fashion industry, which consists of the strange fact that the low level of intellectual property protection does not necessarily harm the overall innovative dynamism of the industry, but may instead prove to be advantageous.⁴⁷⁾ As an important industrial branch of the creative industries, the fashion industry can be used as a model for other industries that are confronted with the problem of intellectual property rights violations, which underline the need for a more holistic approach in attempts to regulate economic behaviour. More generally, the central challenge encountered in these attempts has been aptly summarized as follows:

The current period could therefore be characterised as one searching for a holistic model wherein both cultural and economic considerations can be properly represented and policies can be developed which balance the multiple economic, cultural, social, environmental and other objectives of urban development, and which assert a role for local cultural differentiation in a globalising international economy.⁴⁸⁾

This citation uses the notion of urban development, which underlines the importance of cities in the creative economy.⁴⁹⁾ In this regard, it also highlights the importance of the simultaneous consideration of the local and the global level, which no economy, country or territory can ignore. The importance of such simultaneous consideration is captured by the paradox of glocalization, which derives from the Japanese concept *dochakuka*, which was originally used to adapt farming techniques to local conditions.⁵⁰⁾ Later it became known by virtue of global business strategies that were more sensitive to local differences as summarized in the slogan “think globally, act locally”.⁵¹⁾

These are but two examples of paradoxes encountered in the process of attempting to regulate the creative economy and many more exist. For this reason, an additional regulatory challenge has to be considered, which is closely related to the acceleration of change in general and the growing speed with which innovative cycles recur in particular. These tendencies require not only a sound understanding and good knowledge of the law as it is but also a better understanding of the dynamics underlying

46) See e.g. P.K. Yu, “Four Common Misconceptions About Copyright Piracy”, Michigan State University, DCL College of Law, Public Law & Legal Theory Working Paper Series, Research Paper No. 01-16, <http://ssrn.com/abstract=443160>; and A. Schwabach, “Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere” (2008) 2 *Journal of International Media & Entertainment Law* 65.

47) K. Raustiala & Ch. Sprigman, “The Piracy Paradox: Innovation and Intellectual Property in Fashion Design” (2006) 92 *Virginia Law Review* 1687 at 1722.

48) See D. Throsby, *supra* note 10, at 126.

49) See e.g. L. Kong & J. O’Connor, *Creative Economies, Creative Cities: Asian-European Perspectives* (Dordrecht: Springer, 2009).

50) See H. Haque Khondker, “Glocalization as Globalization: Evolution of a Sociological Concept” (2004) 1 *Bangladesh e-Journal of Sociology* 1-9 at 4.

51) See e.g. C.S.F. Chow, E.P. Y. Tang & I.S.F. Fu, “Global Marketers’ Dilemma: Whether to Translate the Brand Name into Local Language” (2007) 20 *Journal of Global Marketing* 25.

the subject matter to be regulated. Hence, identifying the relevant areas for the regulation of a creative economy is not enough. They also require a consideration of their inherent dynamism and mutual connections. As an example, such awareness is reflected in the architecture of the Treaty Establishing the European Economic Community (EEC) and to a lesser extent also in the General Agreement on Tariffs and Trade (GATT). In the case of the EEC, it is the economic consequences deriving from the establishment of a customs union and the introduction of the four freedoms that are addressed by the introduction of competition rules, rules on the approximation of laws, a common commercial policy and later various integration clauses enhancing the coherence of economic policymaking.⁵²⁾ In the case of the GATT, it is mainly the underlying idea of a comparative advantage theory, the most-favoured nations (MFN) and national treatment (NT) principles and the prohibition of quantitative restrictions.⁵³⁾

Both regulatory regimes serve as useful sources of inspiration for the future regulation of the economy based on past insights of a theory of economic integration.⁵⁴⁾ However, in the present context of the creative economy and particularly the latest technological changes introduced by the digital revolution a critical study of the effects that can be expected to occur is required. In this regard, the concise yet comprehensive look at the concept of the creative economy and related terms, such as the cultural industries, governance and glocalization, has indicated most importantly the need for a new mindset. In view of the juridical efforts to address the manifold changes introduced throughout the past century notably by the complex interplay between technology, culture, economics and politics, still no clear idea has emerged about the best ways to regulate the creative economy. In the most general terms, the central function of the concept “creative economy” – especially in expression of its underlying complex oxymoronic or paradoxical nature – is to introduce a holistic model for law- and policymaking.

2.2 The Holistic Paradigm

The tensions that are combined in the concept of the creative economy, which are created by the combination or convergence of cultural or creative with economic and trade-related aspects, require, most of all, a more holistic way of thinking. Applied in general terms, this means that the concepts to be found in antagonism need to be identified and subsequently analysed in isolation but not without subsequently considering their mutual relation not only in terms of exclusivity (“either/or” thinking) but also in terms of their complementarity (“as well as” thinking).⁵⁵⁾ To exemplify this thinking briefly in practical terms, we can use the concept of glocalization in the context of the creative economy. In an international trade law context, glocalization not only points to the simultaneous consideration of the local and the global but, it can be argued,

52) See *Treaty Establishing the European Economic Community*, signed in Rome on March 25, 1957, (1957) 294 U.N.T.S. 5 (entry into force: January 1, 1958) (Rome Treaty); and see R. Lane, “New Community competences under the Maastricht Treaty” (1993) 30 C.M.L.R. 939.

53) See Art. I, III, and XI of the *General Agreement on Tariffs and Trade* (GATT), (1947) 55 U.N.T.S. 187.

54) See especially B. Balassa, *The Theory of Economic Integration* (London: George Allen & Unwin Ltd, 1962) at 2, distinguishing the following stages of economic integration: free trade areas, customs unions, common market, economic union, complete economic integration.

55) See R. DeFillippi, G. Grabher & C. Jones, *supra* note 29.

also to a careful combined consideration of domestic and foreign or imported goods. The domestic/foreign dichotomy was captured by the paradoxical conundrum concerning the old (and now obsolete) controversy about the *exception culturelle*, i.e. an exemption for cultural products laid down in international trade rules. The paradox consists of the fact that for a domestic cultural industry to be competitive, governments usually pursue a strategy of protectionism in order to safeguard the survival and competitiveness of the domestic industry. Nonetheless, protectionist measures tend to keep foreign cultural products out, which may prove to be counterproductive in the process of the creation of domestic cultural products. The reason is that the domestic products will neither be able to satisfy the domestic consumer preferences for a wider diversity of content nor be able to compete in a world market, since the industries and artists producing them will lack the know-how needed to be globally appealing. In other words, it appears that, paradoxically, the more you want the domestic industries to be viable and to be able to compete with the foreign industries, the more you will have to open borders and allow them to interact. Of course, this general strategy to succeed will require adequate support from flanking measures to be taken in other areas, such as education, research and development, infrastructure and security, to name but a few.

A second feature of more holistic thinking applied to the regulation of the creative economy is found in the treatment of change and the dynamism inherent in various economic activities as briefly outlined previously. This implies a temporal aspect of regulation, which needs to combine the past and the future. As a partial expression of this kind of thinking, the 2010 policy address of the Chief Executive of the Macau S.A.R. noted the need to “look ahead without losing track of the present”.⁵⁶⁾ In terms of holistic thinking, it would have been more complete also to consider the legacy of the historical past, which, for instance, in the creative economy of Macau is well represented by the role of cultural heritage, also included in the UNESCO list.⁵⁷⁾ It can also be applied to a strategy for development, which would lead to a more critical reflection on the concepts of “developing country” and “developed country”. In this regard, the concept of a developed country must be held to be too static, and is fallacious notably in the context of the creative or cultural economy because one could argue that the degree of economic development may be measured and compared whereas in terms of cultural development it clearly contradicts the principle of the equal dignity of and respect for all cultures.⁵⁸⁾ In this regard, I have argued elsewhere that – for the sake of a more sustainable and equitable development – we may give up this flawed dichotomy and, instead, coordinate our efforts globally and establish a preference for all to live in “developing countries”.⁵⁹⁾

56) See the Policy Address for the Fiscal Year 2011 of the Macao Special Administrative Region (MSAR) of the People’s Republic of China, delivered by the Chief Executive, Mr. Fernando Chui Sai On, on November 16, 2010, at 48-53; available at: http://www2.gcs.gov.mo/policy/download/en2011_policy.pdf.

57) See Homepage of UNESCO, “Historic Centre of Macao”, available at: <http://whc.unesco.org/en/list/1110>.

58) See Art. 2 (3) Convention on the Protection and Promotion of the Diversity of Cultural Expressions (CDCE), UNESCO Doc. No. CLT-2005/Convention Diversite-Cult. Rev. (October 20, 2005).

59) See R.J. Neuwirth, “A Constitutional Tribute to Global Governance: Overcoming the Chimera of the Developing-Developed Country Dichotomy”, *supra* note 25.

As a final example, I would like to point out the paradox concerning two kinds of regulatory measures, namely that of “regulation” and that of “deregulation” as indicated in the title of this paper. In the current state of linguistic confusion and overregulation, there is a real risk of overemphasizing one extreme and overlooking useful past experiences, where a better balance was struck in the respective historical context. One such example is the plans of the European Commission in the 1980s to (de-)regulate the cultural sector. Perhaps only subconsciously, the European Commission appears to have applied Adorno’s words on the autonomy, spontaneity and criticism of culture and Lao Tzu’s insightful remarks quoted above when it explained the outlines of its policy as follows:

Cultural workers will be among the first to benefit from freedom of trade in works of art and cultural goods in general. Artists in the plastic arts will be able to exhibit their works in Community countries other than their own with a minimum of formalities and at very little expenses. Actors, musicians and film directors will enjoy the same advantages when they travel with their scenery, instruments, or equipment. The aim is to solve what is both a practical and a psychological problem: in practical terms, formalities still required at internal Community frontiers are time-consuming and expensive and the deposits which must still be paid can often be substantial; psychologically, cultural workers and organizers of cultural events, including exhibitions, will not feel they are living in a Community until they can move works of art and equipment from one country to another almost as easily and as cheaply as between the two towns in the same country.⁶⁰⁾

This regulatory approach consisted thus of a combined effort of deregulation and regulation through negative and positive integration. This combined effort helped to create the favourable conditions for the cultural sectors and, most of all, its central actors, viz. artists or cultural workers. Hence, instead of directly regulating “culture”, which as was shown before evades a legal definition, the Commission opted for a mixed strategy of negative measures of deregulation (the removal of cross-border barriers) and of positive measures of regulation (e.g. the right of free movement of persons granted to all citizens of the EEC and later the European Union). This emerges in the following explanatory statement by the European Commission:

There is no pretension to exert a direct influence on culture itself or to launch a European cultural policy; what a stronger Community action in the cultural sector means in effect is linking its four constituents – free trade in cultural goods, improving the living and working conditions of cultural workers, widening the audience and conserving the architectural heritage – more closely to the economic and social roles which the Treaty assigns to the Community, to the resources – mainly legislative – that it provides, and to the various Community policies (vocational training, social and regional policies).⁶¹⁾

Even though this example dates from the past, the relevance to today’s creative economy in a globalizing world cannot be denied. In this regard, holistic thinking means basing one’s reflection and decision making on the maximum and optimal amount of information available. This is part of a creative process that accompanies the efforts

60) See European Commission, *Stronger Community action in the cultural sector*, EC Bulletin Supp. 6/82 at 8, pt. 8.

61) See European Commission, *Stronger Community action in the cultural sector*, EC Bulletin Supp. 6/82 at 14, pt. 24.

towards the establishment of a creative economy. However, even in today's age of paradoxes, to use Charles Handy's words, a paradox's hidden meaning may not be unravelled (yet), but it can already be managed.⁶²⁾ To manage the many paradoxes of our time and to unravel the mysteries of the concept of the creative economy is the task that lies ahead. In this effort, holistic thinking, when translated into the sphere of law- and policymaking, means to strive towards greater coherence and the careful consideration of concepts that, *prima facie*, may appear to be antagonistic in character. The challenge is then to ponder carefully their mutual relation and to try to direct the dynamism deriving from it in accordance with the objectives pursued.

Conclusion

The concept of the creative economy is a relatively recent phenomenon. At this stage it is unclear whether it is a buzzword, pipe dream or mere catchword. Following a comprehensive analysis, it has, however, displayed the potential for paving the way to a critical and constructive debate about the present time and the challenges that the future will bring. Whether it will live up to this potential will depend on the efforts undertaken in this direction. As it is reflected in its close relation to the concept of the culture industry, the combination of creative and economic considerations creates a tension, which calls for a new mindset, namely one that is more dynamic, inclusive, coherent or, in short, holistic. Some more concrete ways for holistic thinking to unfold were offered in the examples about the regulation of the creative and cultural industries and the wider question it entails. As a final element, this paper briefly drew the attention to the complementary relationship between regulation and deregulation. Sometimes, less regulation is more efficient and more regulation may mean less legal certainty. Paradoxically, this was also applied by Amartya Sen in his book *Development as Freedom*, in which he points out the potential of personal freedom for the enhancement of personal capabilities and development and social justice in general.⁶³⁾ The same is the case with creativity as a constituent of the creative economy, which was said to consist of aspects of cultural, artistic, scientific and economic creativity. Each one of them requires a healthy dose of freedom, or – in legal terms – a regulatory void to flourish. As recognized in human rights documents, artistic, cultural, scientific and economic freedom is a *conditio sine qua non* for creativity to unfold.⁶⁴⁾ Hence, as wisely noted by Lao Tzu, it is useful to consider not only what is but also *what is not*. It is an important element of culture and of creativity that their manifestations cannot be regulated in terms of concrete results. Instead, only the right conditions can be put in place by way of policies and laws and thus the fertile ground can be prepared from which creativity might autonomously, spontaneously or apparently miraculously emerge. In this quality lies the major challenge of finding the creative laws that allow a creative economy to unfold and pave the way for a more sustainable and equitable development of the world community. This process that we may want to engage in is in fact a privilege as it perhaps opens the

62) C. Handy, *The Age of Paradox* (Boston: Harvard Business School Press, 1994) at 12.

63) See A. Sen, *Development as Freedom* (Oxford University Press, Oxford 1999).

64) Cf. Art. 23 and 27 Universal Declaration of Human Rights (UHDR), GA Res. 217(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/810 (1948); see also *International Covenant on Civil and Political Rights*, December 16, 1966, 999 U.N.T.S. 171 (entry into force: March 23, 1976) and the *International Covenant on Economic, Social and Cultural Rights*, December 16, 1966, 993 U.N.T.S. 3 (entry into force: January 3, 1976).

opportunity to “create” the kind of economy we want to build. This privilege, nevertheless, requires combined efforts and presupposes a clear vision of what we want and what we do not want to achieve as humanity as a whole.

References

- Adorno, Th.W., “Culture and Administration” in Th.W. Adorno, *The Culture Industry: Selected Essays on Mass Culture* (London: Routledge, 1991) 107.
- Adorno, Th.W., *The Culture Industry: Selected Essays on Mass Culture* (London: Routledge, 1991).
- Albertson, A.C., *Creative Immortality: a Trinity Rule in Social and Political Economy. The Creative Element of Mankind, the Basis of All Wealth* (New York: Economic Publishing Co., 1912).
- Aman, Jr., A.C., “The Globalizing State: A Future-Oriented Perspective on the Public/Private Distinction, Federalism, and Democracy” (1998) 31 *Vand. J. Transnat’l L.* 769.
- Balassa, B., *The Theory of Economic Integration* (London: George Allen & Unwin Ltd, 1962).
- Benhamou, F., *L’économie de la culture* (Paris: La Découverte, 2001).
- Brandenburger, A.M. & Nalebuff, B.J., *Co-opetition: A Revolution Mindset That Combines Competition and Cooperation: The Game Theory Strategy That’s Changing the Game of Business* (New York: Doubleday, 1996).
- Chow, C.S.F., Tang, E.P. Y. & Fu, I.S.F., “Global Marketers’ Dilemma: Whether to Translate the Brand Name into Local Language” (2007) 20 *Journal of Global Marketing* 25.
- DeFillippi, R., Grabher, G. & Jones, C., “Introduction to Paradoxes of Creativity: Managerial and Organizational Challenges in the Cultural Economy” (2007) 28 *Journal of Organizational Behavior* 511.
- Delimatsis, P., “The Fragmentation of International Trade Law” (2011) 45 *Journal of World Trade* 87.
- Dupuy P.-M., “A Doctrinal Debate in the Globalisation Era: On the “Fragmentation” of International Law” (2007) 1 *European Journal of Legal Studies* 1.
- European Commission, *Stronger Community action in the cultural sector*, EC Bulletin Supp. 6/82.
- European Commission, *Unlocking the Potential of Cultural and Creative Industries (Green Paper)*, COM(2010) 183 final (April 27, 2010).
- G20, Leaders Statement, *The Pittsburgh Summit* (September 24-25, 2009).
- Handy, C., *The Age of Paradox* (Boston: Harvard Business School Press, 1994).
- Haque Khondker, H., “Glocalization as Globalization: Evolution of a Sociological Concept” (2004) 1 *Bangladesh e-Journal of Sociology* 1-9.
- Hesmondhalgh, D., *The Cultural Industries* (London: Sage, 2002).
- Howkins, J. & Valantin, R.L., *Development and the Information Age: Four Global Scenarios for the Future of Information and Communication Technology* (Ottawa: International Development Research Centre, 1997).
- Howkins, J., *Creative Ecologies: Where Thinking Is a Proper Job* (New Brunswick: Transaction Publishers, 2010).
- Howkins, J., *The Creative Economy: How People Make Money From Ideas* (London: Penguin, 2002).
- Johnson, M.L., “Mind, Metaphor, Law”, (2006) 58 *Mercer Law Review* 845.

- Jones, A., *Piracy: The Intellectual Property Wars from Gutenberg to Gates* (Chicago: University of Chicago Press, 2009).
- Kong, L. & O'Connor, J., *Creative Economies, Creative Cities: Asian-European Perspectives* (Dordrecht: Springer, 2009).
- Lane, R., "New Community competences under the Maastricht Treaty" (1993) 30 C.M.L.R. 939.
- Lang, A.T.F., "Reflecting on 'Linkage': Cognitive and Institutional Change in the International Trading System" (2007) 70 *The Modern Law Review* 523.
- Lao Tzu, *Tao Te Ching* (Ware: Wordsworth Classics, 1997).
- Machlup, F., *The Production and Distribution of Knowledge in the United States* (Princeton: Princeton University Press, 1962).
- Neuwirth, R.J., "A Constitutional Tribute to Global Governance: Overcoming the Chimera of the Developing-Developed Country Dichotomy", (2010) EUI WP LAW 2010/20.
- Neuwirth, R.J., "International Law and the Public/Private Law Distinction" (2000) 55 *Austrian J. Pub. & Int'l L. R.* 393.
- Neuwirth, R.J., "The 'Culture and Trade Debate' Continues: The UNESCO Convention in Light of the WTO Reports in China – Publications and Audiovisual Products: Between Amnesia or Déjà Vu?" (2010) 44 *Journal of World Trade* 1333.
- Neuwirth, R.J., *The Cultural Industries in International Trade Law: Insights from the NAFTA, the WTO, and the EU* (Hamburg: Dr. Kovač, 2006).
- Nora, P., "Between Memory and History: *Les lieux de Mémoire*" (1989) 26 *Representations* 7.
- Pine, J.B. & Gilmore, J.H., *The Experience Economy: Work is Theatre & Every Business a Stage* (Boston: Harvard Business School Press, 1999).
- Raustiala, K. & Sprigman, Ch., "The Piracy Paradox: Innovation and Intellectual Property in Fashion Design" (2006) 92 *Virginia Law Review* 1687.
- Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN GA Doc. A/59/2005 (March 21, 2005).
- Richter, F., ed., *Ciceros Reden gegen Catilina* (Liepzig: B.G. Teubner, 1869).
- Rifkin, J., *The Age of Access: How the Shift from Ownership to Access is Transforming Capitalism* (London: Penguin, 2000).
- Roco, M.C. & Bainbridge, W.S., *Converging Technologies for Improving Human Performance: Nanotechnology, Biotechnology, Information Technology and Cognitive Science*, NSF/DOC-sponsored report, National Science Foundation (June 2002).
- Romano, C.P.R., "The Proliferation of International Judicial Bodies: The Pieces of the Puzzle" (1999) 31 N.Y.U. J. Int'l L. & Pol. 709.
- Rooney, D., Hearn, G. & Ninan, A., *Handbook on the Knowledge Economy* (Cheltenham: Edward Elgar, 2005).
- Rudder, C.E., "Private Governance as Public Policy: A Paradigmatic Shift" (2008) 70 *The Journal of Politics* 899.
- Schumpeter, J.A., *Capitalism, Socialism, Democracy* (London: Routledge, 1976).
- Schwabach, A., "Intellectual Property Piracy: Perception and Reality in China, the United States, and Elsewhere" (2008) 2 *Journal of International Media & Entertainment Law* 65.
- Sen, A., *Development as Freedom* (Oxford University Press, Oxford 1999).
- Shankar Jha, P., *The Twilight of the Nation State: Globalisation, Chaos and War* (New Delhi: Vistaar, 2006).

- Sutherland, P. et al, eds., *The Future of the WTO: Addressing Institutional Challenges in the New Millennium* (Geneva: WTO, 2004).
- Throsby, D., *Economics and Culture* (Cambridge: Cambridge University Press, 2001).
- Trachtman, J.P., "Trade and ... Problems, Cost-Benefit Analysis and Subsidiarity" (1998) 9 E.J.I.L. 32.
- United Nations Conference on Trade and Development (UNCTAD), *World Creative Economy Report 2010: Creative Economy: A Feasible Development Option*, available at: http://www.unctad.org/en/docs/ditctab20103_en.pdf.
- United Nations Conference on Trade and Development (UNCTAD), *World Creative Economy Report 2008: The challenge of assessing the creative economy towards informed policy-making*, available at: http://www.unctad.org/en/docs/ditc20082cer_en.pdf.
- United Nations High Level Panel on Coherence, *Delivering as one: Report of the High-level Panel on United Nations System-wide Coherence in the Areas of Development, Humanitarian Assistance and the Environment*, (UN GA A/61/583 (20 November 2006).
- Wenzel, J.W., "The Rhetorical View of Argumentation: Exploring a Paradigm" (1987) 1 *Argumentation* 73.
- Young, A.A., "Economics and War: A Presidential Address" (1926) 16 *The American Economic Review* 1.
- Yu, P.K., "Four Common Misconceptions About Copyright Piracy", Michigan State University, DCL College of Law, Public Law & Legal Theory Working Paper Series, Research Paper No. 01-16.

Rostam J. Neuwirth

Mag. iur. (University of Graz), LL.M. (McGill), Ph.D. (EUI)
University of Macau, Faculty of Law
Av. Tomas Pereira S315, Taipa, MACAU
Tel.: +853 / 8397 4085
Email: rjn@umac.mo