

ECONOMY OF CULTURE OR CREATIVE ECONOMY: INTERSECTIONS AND CONCEPTUAL CHANGES IN BRAZILIAN CULTURAL PUBLIC ADMINISTRATION

*ECONOMIA DA CULTURA OU ECONOMIA CRIATIVA:
INTERSECÇÕES E MUDANÇAS CONCEITUAIS NA
ADMINISTRAÇÃO PÚBLICA CULTURAL BRASILEIRA*

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Abstract: The present paper aims to draw an outline contrasting the concepts of economy of culture and creative economy, examining the theoretical debate on the current importance of the economic value of cultural goods to guide the Brazilian Cultural Public Administration and the national plan of cultural policies. Therefore, it is necessary that the Government sets guidelines for their actions through qualitative and quantitative analyses of the creative industries, without which it would continue at the stage of timely, uncoordinated and unmonitored operation. With no data, it remains impossible to assess the effectiveness of any incentives and stimuli to the creative economy and its inclusion. That includes tariff plans, programs, and funding; as it also inefficient to justify its relevance within today's cultural Brazilian Public Administration. These are the justifications for the existence of an Information System and unified indicators, which encourage municipalities, along with the State and the Union, to establish parameters that can be assessed once they are properly fed.

Resumo: O presente trabalho tem como objetivo traçar um esboço contrastando os conceitos de economia da cultura e economia criativa, examinando o debate teórico sobre a importância atual do valor econômico dos bens culturais para nortear a Administração Pública Cultural Brasileira e o plano nacional de políticas culturais. Portanto, é necessário que o governo estabeleça diretrizes para suas ações por meio de análises qualitativas e quantitativas das indústrias criativas, sem as quais continuaria no estágio de operação oportuna, descoordenada e não monitorada. Sem dados, continua a ser impossível avaliar a eficácia de quaisquer incentivos e estímulos à economia criativa e sua inclusão. Isso inclui planos de tarifas, programas e financiamento; como também ineficiente para justificar sua relevância dentro da administração pública brasileira cultural de hoje. Essas são as justificativas para a existência de um Sistema de Informações e indicadores unificados, que incentivam os municípios, junto com o Estado e a União, a estabelecer parâmetros que possam ser avaliados, desde que devidamente alimentados.



Keywords: Economy of culture. Creative economy. Federal government. Information systems.

Palavras-chave: Economia da cultura. Economia criativa. Governo federal;. Sistemas de informação.

Sumário: 1 Introduction; 2 Economic dimension of culture; 3 The institutionalization of creative economy policies in Brazil, and the relevance of Information Systems and Cultural Indicators; 4 Conclusion; References.

1 Introduction

In general, when we refer to the category of cultural goods, we face conceptual imbroglios, as there is a usual confusion regarding its application to refer to distinctive yet very close phenomena. The claim that culture is “everything which relates to non-economic goods”¹ is rather usual, but one is aware that this is a partial view from an perspective that separates the cultural value from the use of value-exchange of cultural goods. This allows us to state that there are two meanings to cultural goods – a wide and a strict ones. At this point, there is no way to separate the symbolic character of the cultural good from its asset value; reason why it is different from other consumer goods.

Often relegated to a back position within the analytical frameworks of economists, the cultural assets in information systems, technology and digital society bases stand out due to their growing importance in a significant percentage of the gross domestic product of developed as well as developing countries. That is so not only because economists ignore the bases on which cultural assets move, but also because little or even nothing has been accumulated in terms of scientific knowledge about the properties, characteristics and behaviours of their supply chain. They correspond to a broad universe of creations, expressions, activities and services of cultural interest, though such a universe stands out for its commercial market value or for its use and exchange value, rather than for cultural aspects only. These elements are usually appropriate for productive clusters or for cultural industries. According to Paul Tolila² the following phases should be considered: creation, editing / production, manufacture, distribution and marketing.

1 MIRANDA, J. Notas sobre cultura, constituição e direitos culturais. In: GOMES, C. A.; RAMOS, J. L. B. (Ed.). *Direito da cultura e do patrimônio cultural*. Lisboa: AAFDL, 2011, 159.

2 TOLILA, P. *Cultura e economia*. São Paulo: Iluminuras and Itaú Cultural, 2007, p. 38-39.

To this last phase one should add consumption, but neither should one miss out that, as Allan Rocha de Souza³ puts it, without access and enjoyment this cycle of the chain cannot work regularly and in so balanced a manner that could produce innovations.

Today, this phenomenon is no longer unnoticed by cultural policies inserted in many countries around the globe; countries whose economic foundations have transformed the administrative organization of culture public agencies in order to change the way they operate in the cultural production or have at least played some influence on this sort of organization regardless the government model adopted. That is done so with the aim of making the access to goods supported and promoted by governmental actions and programs more effective. It also allows those who count on incentive and funding of a private enterprise to set up information systems that can be analyzed qualitatively and quantitatively as to the flow of such economy in a niche yet to be explored.

This paper discuss the distinction between economy of culture and creative economy and the situation in Brazil, by a deductive method, from two perspectives. The first perspective is theoretical, based upon bibliographic research, about the economic dimension of culture. The second perspective is legal-positivist, based upon legislation and public reports, over the federal administrative organization concerned with the economic vision of culture, and the relevance of the federal public actions on these matters.

2 Economic dimension of culture

Unlike what one might imagine *a priori*, the attention allocated to culture by the economy did not raise from the classical economists, whose theories could not see the place of cultural goods in the production process of wealth linked to human needs. That did not fulfil the basic foundational rules of production and consumption (supply, demand, costs, prices, labour, use value and exchange, etc.). They were often treated as belonging to the realm of superfluous or luxury and leisure items, whose importance was ignored and even questioned.

3 SOUZA, A. R. Os marcos legais da economia criativa. In: Ministério da Cultura, ed. *Plano da Secretaria da Economia Criativa: políticas, diretrizes e ações 2011 a 2014*. Brasília: MINC, 2011, p. 117.

John Meisel⁴ points out that in Canada the academic interest and the institutionalization of culture occurred as a consequence of post-industrial society that provided greater free time and leisure to people's lives, incremented by mass consumption. Thus, initially, the Canadian cultural policies have turned to a close bond with the leisure of the population.

It is clear that this notion is also bound with the aristocratic ideal of culture from the European Absolute Monarchy governments and the rising bourgeoisie, which served the intellectuals – the fathers of economics from the eighteenth and nineteenth centuries. But such a notion succumbed to the phenomenon of masses at the end of that period, during the Industrial Revolution⁵.

In the *Dialektik der Aufklärung* (Dialectic of Enlightenment), Adorno and Horkheimer⁶ coined the concept of “cultural industries”, on one hand to describe the production and consumption of symbolic character goods with the characteristics of the industrial society; and on the other hand to oppose the widely used term “culture of masses”, which veiled the functionalism of culture in the process of capitalist production because this idea wanted to refer to culture from a particular population or to the universal access to cultural goods, though not scaling its conversion into consuming merchandise. Members of The Frankfurt School were interested in understanding the effective means of domination of the human reason by employing modern techniques of serial industrial production applied to cultural products such as movies, radio programs, newspapers, books, pieces of music and television programs.

Herbert Marcuse⁷, another theorist of the Frankfurt School, warned that the technological rationality of the capitalist production mode, widely transformed the individual autonomy in a radical way, thus shaping human feelings and actions through technical mass standardization tastes, and anticipating the debate on the cultural

4 MEISEL, J. Political culture and the politics of culture. *Canadian Journal of Political Science* [online], v. 7, n. 4, dec. 1974, p. 604-605. Available from: <http://www.jstor.org/stable/3230568>. Accessed on: 2 jan. 2018.

5 TOLILA, *Cultura e economia*, 2007, p. 25-28; BENHAMOU, F. *A economia da cultura*. Cotia: Ateliê Editorial, 2007, p. 15-16.

6 ADORNO, T. W.; HORKHEIMER, M. *Dialética do esclarecimento*. Rio de Janeiro: Jorge Zahar, 1985, p. 113.

7 MARCUSE, H. *Tecnologia, guerra e fascismo*. São Paulo: UNESP, 1999, p. 99.

homogenization of globalization with its concept of standardization. He stated that:

[...] mechanized mass production is filling the spaces in which individuality could assert. The cultural standardization, quite paradoxically, points to the potential abundance, as well as the actual poverty. Standardization can indicate the degree to which individual creativity and originality become unnecessary.

Under the cover of its sociological determination and relying on the ideas and contributions of Adorno, Horkheimer, Herbert Marcuse and Walter Benjamin, the Frankfurt School influenced a generation of subsequent analyzes, which included those by Bourdieu, Elias, Edgar Morin, Bachelard, among others. The economic theories found themselves pressured not only by facts and historical circumstances, but also to cater to an increasingly organized and formalized sector that would require reliable information and data about costs, target public, tastes, consumption patterns and private investments, among other aspects.

This phenomenon became notorious due to globalization or, in the French vernacular, *le mondialization* (of markets), when referring to the same influence that cultural industries exerted on the tastes and standards of people around the globe. Renato Ortiz⁸ applies “the idea of globalization to the field of culture”. Thus, before one can consider any uniqueness or cultural homogenization, it seems more interesting for one to understand the relation between economic and globalization-culture, as well as what the autonomy of the latter field consists in.

The idea of cultural imperialism, very recurrent in debates and discourses of political activists nowadays, is still too entrenched with the notion that any place is hostage to the cultural reproduction of a global order dictated by international capital, which has no limits, no boundaries. Cultural production would reproduce only the imperialist relations of production and would worsen relations “of interdependence, alienation and antagonism” forming and legitimizing “structures of political domination and economic ownership”⁹.

Such a concept involves understanding culture as product and subject of economy; considering the *American way of life* as the culture of American exports or, in a broader western sense, the way to replace or relentlessly annihilate any other culture. Therefore, the

8 ORTIZ, R. *Mundialização e cultura*. São Paulo: Brasiliense, 2000, p. 29

9 IANNI, O. *Imperialismo e cultura*. 2. ed. Petrópolis: Vozes, 1976, p. 7.

concept of culture is, in fact, one concept of mass culture, which is no longer restricted to the domestic markets of nations, but accustomed to the signs from the interests of international economic institutions and financial markets, as well as from those of various types of cultural goods considered by cultural industries as representing development standards. Cherished values of the Universalist tradition of The Enlightenment, such as democracy and human rights, are offered as consumer goods; and if the citizen-consumer refuses to purchase them or consume them, they will suffer some sort of penalty, which includes the relativisation of their sovereignty and self-determination, and even the coexistence exile from the international society.

One can still take into consideration Huntington's¹⁰ *Clash of Civilizations*, which recognizes the existence of a multiplicity of cultures and civilizations but creates a notion of hierarchical superiority between them; this means that the culture of a group of dominant nations within the new world order will be in conflict with the other nations and will set social orders, values and forms of expression that are typically western. Nevertheless, one must bear in mind that a culture has its own ways of responding to external stimuli such as how to adapt, resist, repudiate or even incorporate and reinterpret these elements.

Since the 1960s, the economy of culture has been not only a reality but a necessity for measuring the particular characteristics of their supply chains, as well as a field of analysis that has allowed public authorities to formulate their cultural policies, according to the social demands that are encountered. And it does not matter what the process of expansion of cultural goods is like, coupled with new technologies and their social impacts, as well as relative autonomy with respect to its system of relation of production, circulation and consumption¹¹; though according to Celso Furtado¹², culture may not be included in the “economic calculation in its traditional version”.

In our times, the economy of culture is being replaced by the so-called creative economy, which is nothing more than a conceptual

10 HUNTINGTON, S. P. *O choque das civilizações e a ordem econômica mundial*. Rio de Janeiro: Objetiva, 1996.

11 BOURDIEU, P. *A economia das trocas simbólicas*. 6nd ed. São Paulo: Perspectiva, 2005, p. 99.

12 FURTADO, C. A economia da cultura. In: ÁLVAREZ, G. O. (Ed.). *Indústrias culturais no Mercosul*. Brasília: Instituto Brasileiro de Relações Internacionais, 2003, p. 11.

extension of the first. According to Paulo Miguez¹³, “[...] creative industries mean, particularly the expansion of the fields of studies and research dedicated to the arts, cultural industries and media from the perspective of incorporating sectors and typical dynamics of the new economy”.

The concept has an Anglophone origin (England, Australia, New Zealand) and gained notoriety from the English labour political propaganda, on the harbinger of what was to become Prime Minister Tony Blair’s government term in 1997. Indeed, just like the *New Labour Party*, the United Nations Educational, Scientific and Cultural Organization (UNESCO) was not unaware of this associative discourse between economy and culture as a development factor, but it always took the due care to avoid the determinism that might arise from such a relationship. Facing the viability of UK’s growth and also due to the realization that the old notion of cultural industries would not be enough to replace the economically declining areas, the British bet on creativity as a driving force for the production of goods and services. By escaping the order of symbolic, artistic and recreational values they would be able to move into the field of technical, practical and functional usefulness¹⁴.

In fact, there is no industrial sector that does not work from creativity, because creativity is nothing more than an inherent characteristic of the human being and it integrates what is known as intellectual capital, whose immediate association is linked to the capability of imagining, inventing, inspiring, having ideas and creating new and unique things, i.e., to produce and apply knowledge¹⁵. According to Paulo Miguez¹⁶, “creative economy deals with goods and services based on texts, symbols and images, and it refers to the distinct set of activities settled in creativity, talent or individual skill, whose products incorporate intellectual property, ranging from the traditional handicraft to the complex supply chains of cultural industries”.

13 MIGUEZ, P. Economia criativa: uma discussão preliminar. In: NUSSBAUMER, G. M. (Ed.). *Teorias e políticas da cultura: visões multidisciplinares*. Salvador: EDUFBA, 2007, p. 98

14 BOTELHO, I. Criatividade em pauta: alguns elementos para reflexão. In: MINISTÉRIO DA CULTURA. *Plano da Secretaria da Economia Criativa: políticas, diretrizes e ações 2011 a 2014*. Brasília: MINC, 2011, p. 83

15 UN [United Nations]. *Rapport sur l’économie créative 2008 – le défi d’évaluer l’économie créative: vers une politique éclairée*. Genebra: UNCTAD and DITC, 2008, p. 35-36

16 MIGUEZ, Economia criativa: ..., 2007, p. 96-97.

It can be seen that creative economy seeks to approach areas such as fashion, crafts, the universe of video games, sports and tourism, which were apparently disconnected from traditional cultural industries, in order to place them in the centre of debates and initiatives of what was appointed as the new economy of information and knowledge society. But what are the creative industries at the heart of this concept? According to the Report of the United Nations Conference on Trade and Development (UNCTAD) on Creative Economy¹⁷, the creative industries:

[...] can be defined as the cycles of creation, production and distribution of goods and services that use creativity and intellectual capital as primary input. They comprise a set of knowledge-based activities that produce goods and tangible intellectual or artistic and creative content, economic value and market objective services. The creative industries comprise a broad and heterogeneous field with the interaction between various creative activities from the traditional arts and crafts, media, music and the visual and dramatic art groups to technological and service-oriented activities such as the film industry, television and radio, new media and design.
[Translation from the Spanish version]

The problem that arises in this range is the same sort that is found in the vast anthropological dimension of culture, which disturbs not only the demarcation of powers in the administrative bodies and entities that are legally responsible for policy formulation in the sector, but also the policies themselves. It is undeniable, however, that many of these areas communicate among them, considering the increasing complexity of human relationships necessary to establish intersections and joint actions on certain spheres of life in society.

Moreover, within the capitalist industrial system that is currently driven by digital techniques in which the author-creator, the intellectual, the artist has emerged as a producer of culture¹⁸, not everything that is produced results from creativity as innovation. Walter Benjamin¹⁹ has attributed this era to the mechanical reproduction of works of art, in which cultural property lost its authenticity and aura because of the mechanisms of copy and reproduction on a large scale, which are able

17 UN, *Rapport sur l'économie creative 2008*, 2008, p. 63.

18 BENJAMIN, W. *Magia e técnica, arte e política: ensaios sobre literatura e história da cultura*. 3. ed. São Paulo: Brasiliense, 1987, p. 120, BUCK-MORSS, S. *Origen de la dialéctica negativa*: Theodor W. Adorno, Walter Benjamin y el Instituto de Frankfurt. Buenos Aires: Eterna Cadencia, 2009, p. 95-103

19 BENJAMIN, *Magia e técnica, arte e política: ...*, 1987, p. 165-170.

to both make individuals closer to the works of art and also affect the traditional ways of their perception and aesthetic values. Cultural industries feed the paradox between creation and standardization.

Edgar Morin²⁰ says that on one hand the industry itself creates filters through which it chooses the products and aesthetic standards able to reach the largest audience of potential consumers possible; and on the other hand the inner functioning manner of consumption requires that new transformations occur with these templates or that new, individualized and unique ones be created. The cycle returns to its beginning when the mutability of inventiveness takes place. What happens is that not everything in culture is hosted by the cultural industries and the technique of mass consumption; sometimes novelty opposes to the patterns considered dominant. If, somehow, freedom and autonomy are leading the creative process, they can oppose to the archetypes of serial logics and also create circuits or decentralized alternative economic niches that are beyond the monopolies and concentrations of cultural industries.

This concern is also shared by lawyers, particularly in the field of copyright in recent decades, with the change of focus of the debates about intellectual property from the World Intellectual Property Organization (WIPO) to the World Trade Organization (WTO); since the intellectual rights are increasingly seen only for their economic aspect, and not for their cultural value. In the words of José de Oliveira Ascensão²¹, “copyright itself has become a commodity”. To Paula Sibilla²², in the digital age, we do not already know what the boundaries, twilight zones, between the various forms of exposure of private life and creations of the mind that circulate in the world wide web are anymore. Users spent a passive attitude to the condition of creators, yet the narratives and records of their existence have become protected work of art yet lacking any originality or minimum contribution to be safeguarded.

The predominance of this situation has cheapened the concept of intellectual works, whose protection is afforded by domestic and

20 MORIN, E. *Cultura de massas no século XX: o espírito do tempo 1: neurose*. 7. ed. Rio de Janeiro: Forense, 1987, p. 24-29.

21 ASCENSÃO, J. O. Inovação, criatividade e acesso à cultura. In: GOMES, C. A.; RAMOS, J. L. B. (Ed.). *Direito da cultura e do patrimônio cultural*. Lisboa: AAFDL, 2011, p. 294.

22 SIBILLA, P. *La intimidad como espectáculo*. Buenos Aires: Fondo de Cultura Económica de Argentina, 2009, p. 35.

international laws that deal with copyright and with related matters, having their husbandry extended to objects that are strange to their basic characteristics. In these times, when culture has become business, creativity does not mean novelty or inventiveness; at most it can achieve innovation, but under the auspices of what the market understands as necessary. Still according to Ascensão²³:

[...] the effect of innovation is purely consumerist. The main value is marketing – it drives the system; but in itself it says nothing about the value of the innovation subject. So we can describe innovation as ‘the market perfume’. It makes the wheel spin, but to spin around itself; in a way that it is able to spin around high-end luxury products and around those of little usage. After some time one can note that an economy based on the empty stimulus to consumerism is one of the main causes of crisis. [...] [I]nnovation means difference; in the cultural sector, innovation does not represent creativity. Innovation is driven by the market; it is constantly necessary that new products are launched in the market in order to stir it. But whether such products are creative or not is something irrelevant. If the masses are satisfied with repetitive elements or if they are used to them, the market is served but creativity is dismissed.

In the current economic system, “a cultural good is not worth in itself (use value – which is preserved in a rather illusory way in the capitalist society), but for its social meaning (exchange value – which only factiously takes use value)”²⁴. But, unlike other types of goods, there are major factors that characterize them, such as subjectivity in the acts of creation and choice for consumption, and the fact that these goods would be non-exclusive and non-rival²⁵. As it is highlighted by Paul Tolila²⁶, there is “a relative disconnection between production costs and prices”, which Alain Herscovici²⁷ will detect in the phenomenon of the use of randomness and price, and a “logic of gifts” influenced by cultural policies and financial incentives to certain areas of the cultural sector. Nor can one deny that cultural goods have a public nature, since they are designed for collective enjoyment; therefore no matter their domain, they are indivisible.

23 ASCENSÃO, Inovação, criatividade e acesso à cultura, 2011, p. 293-300.

24 BARBALHO, A. *Textos nômades: política, cultura e mídia*. Fortaleza: BNB, 2008, p. 33

25 TOLILA, *Cultura e economia*, 2007, p. 29.

26 TOLILA, *Cultura e economia*, 2007, p. 32.

27 HERSCOVICI, A. *Economia da cultura e da comunicação*. Vitória: Fundação Ceciliano Abel de Almeida; UFES, 1995, p. 166-167.

What does that mean? Well, simply that the effects related to its consumption do matter much more as to the qualitative nature of the good than to quantity, in order to allow a diffuse set of people to enjoy them. Indeed, as it is known, access to culture in this country is asymmetric and unequal. According to Alain Herscovici²⁸:

[...] the character of indivisibility does not imply the equality of individual utilities. As these are essentially symbolic, considering cultural goods, they depend ultimately on the structuring of classes. This asymmetry, linked to social distances, raises the problem of consistency of selection criteria and the contents related to public policies.

According to these variables, public policies must arise, in order to promote cultural goods in the creative economy that stimulates artistic innovation and cultural tendencies, and also to socialize the economic and cultural outcomes by demanding public access to public cultural equipments.

3 The institutionalization of creative economy policies in Brazil, and the relevance of Information Systems and Cultural Indicators

From a constitutional perspective, it is possible to identify important foundations for the creative economy in Brazil, and to state's intervention at it. In the chapter of the fundamental rights, Article 5, item IX, of the 1988 Brazilian Constitution²⁹ establishes the free expression of the artistic activity. This means, first, that State must *prima facie* avoid imposing previous restrictions to the expression of art, and second, that the artist may work in a liberal economy of culture. The 1988 Brazilian Constitution states that the property of cultural works must remain with its author and it may be economically explored. This interpretation is reinforced by the provision of Article 5, item XXVII, of the 1988 Brazilian Constitution³⁰. As Silva³¹ states, this item entitles the authors

28 HERSCOVICI, *Economia da cultura e da comunicação*, 1995, p. 147.

29 Article 5. All persons are equal before the law, without any distinction whatsoever, Brazilians, and foreigners residing in the country being ensured of inviolability of the right of life, to liberty, to equality, to security and to property, on the following terms: [...] IX – the expression of intellectual, artistic, scientific, and communications activities is free, independently of censorship or license.

30 Article 5. [...] XXVII - the exclusive right of use, publication or reproduction of works rests upon their authors and is transmissible to their heirs for the time the law shall establish;

31 SILVA, J. A. *Comentário contextual à Constituição*. 6. ed. São Paulo: Malheiros, 2009, p. 119.

to the exclusive right to use, publish and reproduce its works. In other words, emphasizes that in Brazil the intellectual property rights pertain to its author.

Other provisions suggest the creation of a market of culture. Article 5, item XXIX, of the 1988 Brazilian Constitution³² demands legislation to entitle authors of industrial inventions the exclusivity of its use and to give protection for industrial creations according to social interest and technological and economic developments. Although the content of this item faces some criticism about its relevance as a fundamental right³³, it can be interpreted in a broader sense, including the creations of the various branches of the cultural industry – fashion, music, cinema etc. In advance, dealing with technology and innovation, Article 219 of 1988 Brazilian Constitution³⁴ states the relevance of actions that enforce cultural development inside the domestic market, assigned as a national patrimony. The market economy and the free competition system adopted by the Constitution must counterbalance with social well-being to establish a social market economy³⁵, and this must apply to creative economy.

On state's intervention, it is necessary to underline that, as cultural goods can be dealt as property rights, they must comply with the social function of property, also defined in Article 5, item XXIII, of the 1988 Brazilian Constitution³⁶. Hence, cultural works, depending on its relevance, must comply with social and environmental interests and regard its impacts to these branches. In this sense, these property rights have a deadline defined by law to enter the public domain. Also, they may also be subject to state's expropriation, as Article 5, item XXIV, of 1988 Brazilian Constitution³⁷ endorses. The 1941 Brazilian Law-Decree

32 Article 5. [...] XXIX - the law shall ensure the authors of industrial inventions of a temporary privilege for their use, as well as protection of industrial creations, property of trademarks, names of companies and other distinctive signs, viewing the social interest and the technological and economic development of the country.

33 SILVA, J. A. *Comentário contextual à Constituição*. 6. ed. São Paulo: Malheiros, 2009, p. 125.

34 Article 219. The domestic market comprises part of the national patrimony and shall be encouraged to make viable cultural and socio-economic development, the well-being of the population and the technological autonomy of Brazil, as provided by federal law.

35 SILVA, J. A. *Comentário contextual à Constituição*. 6. ed. São Paulo: Malheiros, 2009, p. 823.

36 Article 5 [...] XXIII – property shall observe its social function;

37 Article 5 [...] XXIV – the law shall establish the procedure for expropriation for

n. 3365 allows the expropriation procedure based on the public utility, but Silva³⁸ argues that it cannot be possible against the living author. The state's intervention on the economy, as well as the creative economy, is stated largely at Article 170 of 1988 Brazilian Constitution³⁹, which organize the economic order, including the different frameworks on state's intervention, especially a regulatory and normative function, as established in Article 174⁴⁰. In the chapter that handles with social communication, the 1988 Brazilian Constitution express some concerns over the mass media. Finally, Article 221⁴¹ establishes some principles that impose limits to radio and television stations, by demanding the promotion of national and regional culture and the regionalization of cultural production.

Specifically to cultural goods, three constitutional provisions must be considered. First, Article 215, in its paragraph 3, of the 1988 Brazilian Constitution⁴² demands the establishment by federal law of the National Culture Plan (PNC) with public initiatives to the

public necessity or use, or for social interest, with fair and previous pecuniary compensation, except for the cases provided in this Constitution;

- 38 SILVA, J. A. *Comentário contextual à Constituição*. 6. ed. São Paulo: Malheiros, 2009, p. 120.
- 39 Article 170. The economic order, founded on the appreciation of the value of human work and on free enterprise, is intended to ensure everyone a life with dignity, in accordance with the dictates of social justice, with due regard for the following principles:
- 40 Article 174. As the normative and regulating agent of the economic activity, the State shall, in the manner set forth by law, perform the functions of control, incentive and planning, the latter being binding for the public sector and indicative for the private sector.
- 41 Article 221. The production and programming of radio and television stations shall comply with the following principles: I – preference to educational, artistic, cultural and informative purposes; II – promotion of national and regional culture and fostering of independent productions aimed at their diffusion; III – regional differentiation of cultural, artistic and press production, according to percentages established in law; IV – respect for the ethical and social values of the person and the family.
- 42 Article 215. The state shall ensure to all people the full exercise of the cultural rights and access to the sources of national culture and shall support and foster the appreciation and diffusion of cultural expressions. [...] Paragraph 3 – The law shall establish the National Plan of Culture, with a multiannual duration, aiming at the cultural development of the country and at the integration of the public actions which lead to: I – defense and valorization of the Brazilian Cultural Heritage; II – production, promotion and diffusion of culture; III – formation of qualified personnel for the management of Culture in their multiple dimensions; IV – democratization of access to culture; V – valorization of ethnical and regional diversity. (Paragraph 3 added by Constitutional Amendment 48, enacted on August 10th 2005).

purpose of, *inter alia*, produce, promote and diffuse cultural goods and democratize its access. Second, while Article 216⁴³ defines what can be considered as the Brazilian cultural patrimony, its paragraph 3 demands law to foster the production and diffusion of cultural goods and values. Third, Article 216-A⁴⁴ creates the National System of Culture (SNC) in order to promote the full enjoyment of the cultural rights, and having, as its principles, the implementation of public policies for production, diffusion and circulation of cultural knowledge and goods.

State's intervention in Brazil is necessary for two major purposes: to drive the stakeholders of the culture market in order to promote, at certain level, the public interest over the quality and minimum content of cultural goods and services – thus promoting social development –, and to incentivate production and diffusion of cultural practices and assets which, although may not be valuable in the market or because of its higher social relevance, deserves to be collectively accessed. The lack of resources may be the biggest challenge for most of these cultural goods and services, and the state's intervention can use part of the economic outcomes of the culture market to foster other initiatives.

In the jurisprudence of the Supreme Court, about the intervention in the economic domain to ensure access to culture, the case concerning the constitutionality of a law that guarantees half-price for admission as the right of students within the Direct Unconstitutionality Action (ADI) n. 1950-3, Minister Carlos Ayres Britto as well as other culture economists, argued that cultural goods and values are subject to appropriation by economic actors; but they are diffuse goods subject to state protection, leaving the fulfilment of its social function to ensure students, especially children and adolescents, the rights to education, culture and leisure by either a direct or an oblique path. Cultural goods are collective goods, in spite of their private domain; for instance, monopolies, an exclusive condition conferred by copyright to creators

43 Article 216. The Brazilian cultural heritage consists of the assets of a material and immaterial nature, taken individually or as a whole, which bear reference to the identity, action and memory of the various groups that form the Brazilian society, therein included: [...] Paragraph 3. The law shall establish incentives for the production and knowledge of cultural assets and values.

44 Article 216-A. The National Culture System, organized within a framework of cooperation, in a decentralized and participatory manner, institutes a process of joint management and promotion of cultural policies, which shall be democratic and permanent, and agreed upon by the units of the Federation and society, aiming at fostering human, social, and economic development, with full exercise of cultural rights.

of intellectual works, are subject to limitations on the fulfilment of the social function or even when one is facing an abuse of the exercise of those rights⁴⁵.

In accordance with this new global view of the cultural development as a factor of economic growth, creativity and knowledge as input to the inherent intellectual capital of individuals, and regarding the constitutional commitments, establishes in 2006 the Development Program of the Economy of Culture (PRODEC), the very first national cultural program in Brazil. The Program was organized in four action plans: collection and production of information, training of entrepreneurs, cooperatives, companies and mid-level technicians, business promotion and, finally, formulation of financial products⁴⁶.

Also, the 2010 Federal Law n. 12343, which approves the PNC, mentions in the Article 1, item XI, the collaboration of public and private stakeholders for the development of the economy of culture as one of its principles⁴⁷, and in Article 2, item IX, the development of the economy of culture and the domestic market as an objective of the PNC⁴⁸. Later, in 2012, the Ministry of Culture announced the creation of another organism in its internal structure: Secretariat of Creative Economy. The jurisdiction of the new department was established in Article 17 of the Annex I of 2012 Federal Decree n. 7743, which modified the internal structure of the Ministry of Culture to promote the creative economy market.

Ministry of Culture also launched the Plan for such an organism containing policies, guidelines and actions for the four-year period (2011-2014). In its Appendix I, there is a strategic matrix on the challenges of seven creative sectors, namely: a) patrimony (split between material and immaterial heritages, archives and museums), b) cultural expressions (including handicrafts, popular, indigenous

45 ASCENSÃO, J. O. O direito autoral numa perspectiva de reforma. In: M. Wachowicz and M. J. P. Santos, eds. *Estudos de direito do autor e a revisão da lei dos direitos autorais*. Florianópolis: Fundação Boiteux, 2010, p. 19.

46 PORTA, P. *Economia da cultura: um setor estratégico para o país*. Brasília: Ministério da Cultura, 2008, p. 6.

47 Article 1 The National Plan of Culture is approved, in accordance to Article 215, paragraph 3, of the Federal Constitution, contained in the Annex, with duration of 10 (ten) years and governed by the following principles: [...] XI - collaboration of public and private stakeholders for the development of the economy of culture;

48 Article 2. The objectives of the National Plan of Culture are: [...] IX - develop the economy of culture, the domestic market, the cultural consumption and the exportation of cultural goods, services and content;

and Afro-Brazilian cultures), c) performing arts (subdivided by circus, dance, theater and music), d) audio-visual (cinema), e) visual arts, f) publications and printed media (with books, reading and literature), and g) functional creations (the biggest genus, whose species are digital art, architecture, design, fashion and cultural management / production). All of these sectors are organized by five challenges: 1) data collection of creative economy; 2) articulation and incentives to creative enterprises; 3) education for creative competences; 4) production, circulation / distribution and consumption / fruition of creative goods and services; 5) creation / adequation of legal frameworks for creative sectors⁴⁹.

There is no convergence as to its coverage, and considering the absence of non-tangential regulatory frameworks in relation to other sectors already accommodated by traditional cultural industries, as well as the analysis of the cultural economy, one cannot deny that the fundamental purpose of such an organism is the Republic's pursuit of national development. Thus, products arising from intellectual property foster technological and economic transformations in the name of social interest, along with the actions of the government, regarding trade policies. Also, production cycles of cultural goods make up the Brazilian internal market, a national heritage, and creative industries can facilitate the cultural development of the country.

However, four years later, the Federal Government concludes in may 2016 a final report of a project in partnership between the Ministry of Culture and UNESCO on the development of the National Program of Economy of Culture (PNEC). As the final report points out, after the conclusion of the previous plan for creative economy in 2014, the former perspective of economy of culture, initiated between 2003 and 2010, based on the "need to operate policies related to the economic dimension of culture permeated by the whole Ministry, and not just restricted to a more finalistic unit"⁵⁰. Later in the same year, the 2016 Federal Decree n. 8837, signed by the new President of Brazil, former Vice-President Michel Temer, extinguished the Secretariat within the Ministry of Culture, replacing it with the Secretariat of the Economy of Culture, with similar jurisdiction stated at Article 16 of its Annex I.

49 BRASIL. Ministério da Cultura. *Plano da Secretaria da Economia da Cultura: políticas, diretrizes e ações 2011 a 2014*. 2. ed. Brasília: Ministério da Cultura, 2012, p. 145-154

50 BRASIL. Ministério da Cultura. *Desenvolvimento do Programa Nacional de Economia da Cultura: Relatório Final*. Brasília: Ministério da Cultura, 2016, p. 3.

But more recently, by 2018 Federal Decree n. 9411, the Secretariat of Creative Economy was reinstated, replacing the Secretariat of the Economy of Culture, asserting that the conception of creative economy is more suitable. The different jurisdictions of the secretariats through the decrees can be comparatively analyzed as shown in the Table 1.

Table 1 – Comparative analysis of the Secretariats' jurisdictions related to creative economy or to economy of culture

Article 17 of the Annex I of 2012 Federal Decree No. 7743	Article 16 of the Annex I of 2016 Federal Decree No. 8837	Article 15 of the Annex I of 2018 Federal Decree No. 9411
Article 17. The Secretariat of Creative Economy shall:	Article 16. The Secretariat of the Economy of Culture shall:	Art. 15. The Secretariat of the Creative Economy shall:
I - propose, conduct and subsidize the elaboration, implementation and evaluation of plans and public policies for the development of the Brazilian creative economy;	I - propose, conduct and subsidize the elaboration, implementation and evaluation of plans and public policies for the development of the culture economy in Brazil;	I - propose, conduct and subsidize the formulation, implementation, monitoring and evaluation of plans and public policies to strengthen the economic dimension of Brazilian culture;
II - plan, promote, implement and coordinate actions for the development of the Brazilian creative economy;	II - plan, promote, implement and coordinate actions for the development of the economy of culture in the country, in all segments of the production chain;	II - plan, promote, implement and manage actions necessary for the development of the Brazilian creative economy;
		V - articulate and propose the creation and adaptation of mechanisms directed to the institutional consolidation of legal frameworks in the field of creative economy;
III - formulate and support actions for the training of professionals and creative entrepreneurs and qualification of enterprises of the creative sectors;		VII - plan, propose, formulate and support actions aimed at the training of professionals and entrepreneurs of the cultural field and the qualification of enterprises of the productive sectors of culture;

IV - formulate, implement and articulate lines of financing of actions of the creative sectors to strengthen their productive chain;	III - formulate, implement and articulate lines of financing for cultural enterprises;	
V - formulate and implement business tools and models of creative enterprises, alone or in partnership with public or private organizations;	IV - contribute to the formulation and implementation of sustainable business tools and models for cultural enterprises;	VI - plan, propose, formulate and implement tools, business models and socio-economic technologies, alone or in partnership with public or private organizations, to boost competitiveness, innovation, sustainability and internationalization of the economic and cultural sectors;
VI - institute programs and projects to support actions of the creative sectors, their professionals and entrepreneurs, to articulate and strengthen micro and small creative enterprises;	V - institute and support actions to promote Brazilian cultural goods and services in Brazil and abroad;	
VII - subsidize actions to promote Brazilian creative goods and services in national and international events, in articulation with the International Relations Board;		VIII - subsidize actions to promote Brazilian creative goods and services in national and international events, in articulation with the other units of the Ministry and with other organs and entities of the public administration in the federal, state, district and municipal spheres;
VIII - monitor the elaboration of international treaties and conventions on creative economy, in articulation with other public and private bodies and organizations;	VI - monitor the elaboration of international treaties and conventions on subjects related to the economy of culture, in conjunction with the Ministry of Foreign Affairs and other public and private bodies and agencies;	IX - monitor and support the elaboration of international treaties and conventions on creative economy and technical exchange actions, in conjunction with the Department of International Affairs and in liaison with other public and private bodies and agencies;

IX - support actions to intensify technical and management exchanges of the creative sectors with foreign countries;		
X - promote the identification, creation and development of creative poles, cities and territories in order to generate and enhance new ventures, work and income in the creative sectors;		
XI - articulate and lead the mapping of Brazil's creative economy to identify vocations and opportunities for local and regional development;	VII - articulate and conduct the mapping of the Brazilian culture economy, with a view to identifying vocations, vulnerabilities, opportunities and challenges to the development of the sector and its full integration into the international market of cultural goods and services;	
XII - create mechanisms for the institutional consolidation of regulatory instruments in the creative economy sector;	VIII - coordinate the formulation and implementation of the Ministry of Culture policy on copyright and create mechanisms for the institutional consolidation of measures and instruments for regulating the culture economy;	X - create mechanisms of institutional consolidation of measures and instruments of regulation and incentive of the creative economy;
XIII - articulate with public agencies the insertion of the theme of the creative economy in its fields of activity;		III - articulate with federal, district, state and municipal public agencies the insertion of the theme of the creative economy in their scope of action;
XIV - subsidize the other organs of the Ministry and related entities in the formulation of policies for the promotion of the Brazilian creative economy;	IX - subsidize the other organs of the Ministry of Culture and their related entities in the formulation of policies for the promotion of the Brazilian culture economy; and	IV - subsidize the other units of the Ministry and its related entities in the process of formulating public policies related to the Brazilian creative economy;

		XI - formulate policies and guidelines for the production and broad access to books and reading and activities related to the promotion and dissemination of the book;
		XII - promote the National Reading Incentive Program established by Decree No. 519 of May 13, 1992, to implement the National Book and Reading Plan and to coordinate the National System of Public Libraries established by Decree No. 520 of May 13, 1992; and
	X - conclude and carry out the rendering of accounts and of covenants, agreements and similar instruments involving the transfer of funds from the General Budget of the Union within its area of activity.	XIII - plan and carry out actions related to the celebration, monitoring and accountability of covenants, agreements and other similar instruments, including those involving the transfer of financial resources, within its area of activity.

Font: elaborated by the authors.

From the comparative analysis, it allows one to infer some conclusions. Manily, that the vision of the economy of culture may not be the best approach to cultural public policies, because the same government went back on its decision just two years later. However, the claimed proposal of integration of the Secretariat with other departments, internal and external from the Ministry, was considered in the recent decree. Also, while some of the original jurisdiction maintained whrough decrees changes and others were recovered from the first model, issues regarding lines of financing, programs and projects for promotion of cultural goods and services, technical and management exchanges with foreign countries, creative centers and cities, and the mapping of the creative economy just disappeared. On the contrary movement, jurisdiction on institutional consolidation of legal frameworks, and on books, reading and public libraries, were added.

It must be noted that the 2012 Secretariat of Creative Economy had two divisions: the Board of Development and Monitoring and the Board of Entrepreneurship, Management and Innovation; the 2016

Secretariat of Economy of Culture, instead, had a threefold subdivision: the Department of Sustainability and Innovation, the Department of Productive Strategy and the Department of Intellectual Rights; at last, the new 2018 Secretariat of Creative Economy came back with a couple of bodies: the Department of Cultural Entrepreneurship and the Department of Book, Reading, Literature and Libraries.

The complexity of culture, at first glance, may lead to the assertion that culture is something immeasurable. However, when it comes to cultural management, there is no way to formulate, plan and implement public policies without information and indicators of what culture is and how it works. Therefore, it is necessary that the Public Power follows guidelines for their actions through qualitative and quantitative analyses, as without them we would continue at the stage of timely, uncoordinated and unmonitored operations. With no proper data, it becomes impossible to assess the effectiveness of plans, programs, funding and administrative organization. These are the justifications for the existence of a Unified Information System and indicators that can encourage states and municipalities to create their assessment parameters. By feeding such a system, the weaknesses of the cultural administration can be identified, as well as criteria for resource allocation between the segments within the National Culture System can be created.

A partnership between the Brazilian Institute of Geography and Statistics (IBGE) and the Ministry of Culture implemented in 2004 the System of Information and Cultural Indicators (SIIC), to collect data on the production of cultural goods and services, government and family spendings on culture. As a result, three reports were elaborated, covering data from 2003 to 2010. The latest one published in 2013, regarding the 2007-2010 period, highlights the increasing of public spending in the cultural sector, not only from the federal government, but also from state governments⁵¹.

Considering the relevance of the SIIC for the formulation of cultural public policies, the 2010 Federal Law n. 12343 created the National System of Information and Cultural Indicators (SNIIC), a tool for the Ministry of Culture to monitor and periodically evaluate the guidelines and targets of the PNC, characterized by mandatory filling by the federative entities, declaratory nature, computerized processes,

51 IBGE. *Sistema de Informações e indicadores culturais: 2007-2010*. Rio de Janeiro: IBGE, 2013, p. 125. (Estudos e Pesquisas, 31)

and publicity and transparency (Article 10⁵²). According to Article 9⁵³ of the legal bill that established it, the objectives of this subsystem of the SNC include:

a) collection, systematization and interpretation of data, the provision of methodologies and the setting of benchmarks to measure the activity of culture and the social needs for culture, thus enabling the formulation, monitoring, management and evaluation of culture public policies and cultural policies in general, checking and streamlining the implementation of the PNC and its revision on schedule;

b) the availability of statistics, indicators and other pieces of information that are relevant to characterize the offer and demand of cultural goods, aiming to build models of economics and sustainability of culture, to adopt mechanisms for induction and regulation of economic activity in the cultural field, and to support public and private cultural managers;

c) monitoring and evaluation of cultural policies, ensuring the public authorities and civil society to monitor the performance of the PNC.

Declarant authorities are responsible for entering data into the statement program and for the accuracy of the information entered in the database. The systematization of contents serves the monitoring and analysis programs of the National Culture Plan.

52 Article 10. The National System of Information and Cultural Indicators (SNIIC) shall have the following characteristics: I - mandatory insertion and permanent updating of data by the Federal Government and the States, Federal District and Municipalities that have joined the Plan; II - declaratory character; III - computerized processes of declaration, data storage and extraction; IV - wide publicity and transparency for the information declared and systematized, preferably in digital means, updated technologically and available on the World Wide Web.

53 Article 9. The National System of Information and Cultural Indicators (SNIIC) is created with the following objectives: I – to collect, systematize and interpret data, to provide methodologies and to establish parameters for the measurement of the activity of the cultural field and the social needs for culture, that allow the formulation, monitoring, management and evaluation of public cultural policies and cultural policies in general, verifying and rationalizing the implementation of the PNC and its revision in the anticipated deadlines; II – to provide statistics, indicators and other relevant information to the characterization of demand and supply of cultural goods, for the construction of models of economy and sustainability of culture, for the adoption of induction and regulation mechanisms for the economic activity in the cultural field, giving support to public and private cultural managers; III - to exercise and facilitate the monitoring and evaluation of cultural public policies and cultural policies in general, assuring to the public power and to civil society the monitoring of PNC performance.

4 Conclusion

With its ups and downs, the Secretariat of Creative Economy cannot be turned into a spokesperson of the cultural industries, since its primary purpose must be to show sustainable economic and social alternatives to the multiple possibilities of those who operate outside the market or even to those seeking to overcome it from organizations whose pillars are solidarity, diversity and democratic access practices. Moreover, one cannot forget that not everything in culture needs to be economically viable and valued, once the symbolic dimension of culture for certain groups and individuals is valid for itself.

Therefore, it is necessary that the government have guidelines for their actions through qualitative and quantitative analyses of the creative industries, without which we would continue at the stage of timely, uncoordinated and unmonitored operation. With no data available, it remains impossible for one to assess the effectiveness of stimulus to the creative economy and its inclusion as subject matter of plans, programs and funding. It would also be innocuous to justify its relevance within today's Brazilian Public Administration of Culture. These are the justifications for the existence of an Information System and Unified Indicators able to encourage municipalities, along with the State and the Union, to establish assessment parameters. This is possible by feeding such a system, so it can find the weaknesses of the cultural administrative organization, create links and partnerships between different federal levels and economic areas involved with culture, or even create criteria for the distribution of resources between the parties of the National Culture System, leading to the opportunity of strengthening the less developed regions of the country and reducing the abysmal inequality that exists today.

What can be concluded about the situation in Brazil is that efforts were made in order to implement an agenda for the creative economy, but the variability of the conception of the Secretariat – sometimes as creative economy, sometimes as economy of culture – may have diffculted the accomplishments. Economic incentives were made, and the numbers apperared in the indicators of the information systems show that progress has been made, but by a very slow pace, unsuitable for the Brazilian potential.

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