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To what extent can France continue to defend the cultural exception in the digital age?

An analysis of cultural diversity in the French
film industry

by

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the degree of

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Table of abbreviations

ACCÉS	Associations des Chaînes Conventiionnées éditrices de Services
ACSE	Agence nationale pour la cohésion sociale et l'égalité des chances
ADSL	asymmetric digital subscriber line
AFORM	Association française des Opérateurs de Réseaux Multiservices
l'ARP	Société civile des Auteurs Réalisateur Producteurs (the main association representing filmmakers)
CD	compact disc
CETA	The Comprehensive Trade and Economic Agreement between Canada and the EU
CNC	Centre national du cinéma et de l'image animée
CSA	Conseil supérieur de l'audiovisuel
CSP+	catégories socio-professionnelles favorisées
DSL	digital subscriber line
DVD	digital video disc
EOF	expression originale française
FIF	film d'initiative française
FraIM	Framework for Integrated Methodology
GAT/S	both the General Agreement on Tariffs and Trade and the General Agreement on Trade in Services
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GI	geographical indication
HHi	Herfindhal Hirschmann index

IFCIC	Institut pour le financement du cinéma et des industries culturelles
IMDb	Internet Movie Database
IPTV	internet protocol television (the technical format for television programmes and video delivered over ADSL)
ISP	internet service provider
MEDIA	Mesures pour Encourager le Développement de l'Industrie Audiovisuelle
MIBACT	Ministero dei Beni e delle Attività Culturali e del Turismo
MPAA	Motion Picture Association of America
MPEAA	Motion Picture Export Association of America
NATO	North Atlantic Treaty Organization
OECD	Organisation for Economic Co-operation and Development
ORTF	Office de Radiodiffusion Télévision Française
OTT	over the top (denotes delivery of content via the internet rather than through a closed system linked to a specific broadcaster or service provider)
PCF	Parti communiste français
RPCA	Registre Public du Cinéma et de l'Audiovisuel
SACD	Société des Auteurs et Compositeurs Dramatiques
SEVN	Syndicat de l'Édition Vidéo Numérique
SIMPP	Society of Independent Motion Picture Producers
SMAD	services de médias audiovisuels à la demande
SOFICA	société pour le financement du cinéma et de l'audiovisuel
SVoD	video-on-demand service sold on subscription
TNT	télévision numérique terrestre
TPS	Télévision par Satellite (France's second satellite television station, which has since merged with Canal+)

TSA	taxe spéciale additionnelle
TST	taxe sur les services de télévision
TTIP	Transatlantic Trade and Investment Partnership
UNESCO	United Nations Educational Scientific and Cultural Organization
UPF	Union des Producteurs de Films
VoD	video-on-demand service sold on a pay-as-you-go basis
WTO	World Trade Organization

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Declaration

I declare that the present thesis is the result of my own work. I would also like to confirm that neither thesis nor parts of it has ever been submitted before for a degree at another university.

Abstract

Since the first General Agreement on Tariffs and Trade in 1947, France has insisted that cultural products are different from other traded goods and should be exempted from ongoing liberalisation of international trade – a principle known as the ‘cultural exception’. This exclusion allows France to implement policies in favour of its cultural industries, particularly a highly complex system of quotas and subsidies for the film industry which it maintains is essential to counter US market dominance and maintain cultural diversity.

Over the past decade, the launch of video-on-demand services has revolutionised how films are delivered and consumed. Policy-makers have attempted to keep pace with these developments, expanding the scope of French support schemes accordingly.

Adopting a mixed methods approach, this thesis analyses cultural diversity in the French film industry in detail, incorporating for the first time both the cinema and video-on-demand sectors and combining qualitative and quantitative data to understand the impact of French policies on diversity.

Quantitative analysis reveals strong evidence of diversity in both sectors but that, while digital channels offer greater variety of choice, cinema is more balanced between films of different geographic origins. Employing a consistent approach to policy development in both channels, policy-makers have failed to take into account these and other differences, or to target measures at the emerging threats to diversity in the digital environment – potentially undermining the French defence of the cultural exception on diversity grounds.

There is a surprisingly superficial use of the term cultural diversity in trade circles, leading to the conclusion that a more sophisticated approach is needed. Refining French policy in line with empirical data and actively using that evidence to demonstrate policy success will be a necessary part of this more sophisticated approach if France is to successfully defend the cultural exception in future trade negotiations.

1. Introduction

The onrushing digital tide threatens to wash it away; looming talks on a new trade accord between the EU and the US could blow holes in it. But the determination in Paris to defend l'exception culturelle is unyielding.

Hugh Carney
*The Financial Times*¹

In 2013, the French government vowed to continue to 'défendre avec force, dans les négociations commerciales bilatérales et multilatérales, la spécificité du traitement des services culturels'² – a derogation that has become known as the cultural exception. Since the earliest days of cinema, France has sought to protect its audiovisual industry from being overwhelmed by US imports – what it terms 'un dumping culturel sans précédent'³ – employing a combination of quotas and subsidies at home, coupled with intensive lobbying on the international stage to retain the right to use those support measures. A healthy film industry is vital to maintaining the country's cultural diversity and national identity, government and trade negotiators have asserted regularly over the past 100 years. And they continue to do so, despite the fact that the media landscape is undergoing a dramatic shift. Digital technology has changed how films are delivered, introducing new players to the market, such as Apple and Amazon, giving consumers new choices about what they watch and when, and calling into question France's ability to maintain its defence of its film industry.

¹ Hugh Carney 'France to barricades to defend "l'exception culturelle"' *The Financial Times*, 13 May 2013

² All translations are the author's own unless otherwise stated: '...to defend vigorously in bilateral and multilateral trade negotiations, the special treatment extended to cultural products'. Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure «Acte II de l'exception culturelle à l'ère du numérique»*, 13 May 2013, p. 14

³ 'a cultural dumping on an unprecedented scale'. French industry petition entitled '*Appel des auteurs, artistes, interprètes et producteurs européens pour l'exception culturelle dans le GATT*', 28 September 1993, quoted in Laurent Burin des Roziers, *Du cinéma au multimédia: Une brève histoire de l'exception culturelle*, 1998, p. 55

The term 'cultural exception' was coined in the early 1990s during the Uruguay round of negotiations to update the General Agreement on Tariffs and Trade (GATT) and to create a sister framework, the General Agreement on Trade in Services (GATS), and a new body governing the implementation of both treaties, the World Trade Organization (WTO). Championed by the French, the cultural exception is the notion that cultural products are different from other traded goods and services and, thus, they should be exempted from the rules that govern international commerce.

Proponents of the cultural exception argue that it is a collective term for a series of provisions within both GATT and GATS (together known as GAT/S) that allow nations to maintain preferential programmes in support of their cultural industries⁴. The first of these is Article IV of the original GATT from 1947. It exempts cinema from what is known as the national treatment obligations, that is the principle that imported products should be treated in the same way as local ones. The exemption allows countries to maintain or introduce screen quotas, which were seen as the counterpart to tariffs in other economic sectors⁵. Television and radio are covered by GATS, which extended international trade agreements to services. In signing up to the agreement, countries were required to state the service sectors and sub-sectors in which they were willing to make commitments to liberalise market access in line with Articles I to XV of the agreement. They were also required to set out the scope of those commitments and whether there are any limitations to access, such as restrictions on the extent to which a local company might be owned by a foreign organisation⁶. France, as part of the EU, filed a specific exemption to cover the provisions of the Television without Frontiers

⁴ Frederick Scott Galt, 'Life, death and rebirth of the "cultural exception"', *Washington University Law Review*, Vol. 3, Issue 3 (2004), p. 912

⁵ Ivan Bernier, 'Local content requirements for film, radio and television as a means of protecting cultural diversity: Theory and reality (Section I)', (November-December 2003), p. 3

⁶ Mira Burri-Nenova, 'Trade versus Culture in the Digital Environment', *Journal of International Economic Law*, Vol. 1, Issue 8 (2008), p. 46 and Emmanuel Cocq and Patrick Messerlin, 'The French Audiovisual Policy: Impact and Compatibility with Trade Negotiations', *HWWA-Report*, Issue 233 (2003), pp. 5-6 and World Trade Organization 'Services: Rules for Growth and Investment'

Directive, which sets out the content quotas to be applied to television services across the continent.

Advocates of full-scale trade liberalisation – led principally by the US – argue that the cultural exception does not exist. They point out that there is no formal legal definition of the term in either agreement, nor any single clause or section that explicitly states that cultural products are excluded from the scope of trade regulation, nor any accepted treaty definition of the measures that a country could use to protect and promote its cultural industries. In fact, a note produced by the WTO Secretariat explicitly states there are no ‘specific exceptions in relation to culture or cultural policy’⁷. The treaty mechanisms on which France relies, such as listing the Television without Frontiers Directive under the exemptions to the most-favoured nation provisions, are general mechanisms allowing any country to refuse to make liberalisation commitments whatever the sector; they do not specifically relate to cultural products and, indeed, the US employs the same measures to protect its shipping industry. The cultural exception, opponents believe, is largely a foil that helps to protect French film and television producers from commercial reality and allows them to make more money at the expense of the Americans.

Complicating this legal debate is the fact that the term ‘cultural exception’ has acquired symbolic meaning. Over the past 20 years, it has become virtually synonymous with French cultural policy, largely because the French have been such vociferous campaigners for extending special treatment to the cultural industries. This is despite the fact that the phrase was deplored by former French President François Mitterrand when it was first coined in the early 1990s. He felt that it had overly economic connotations:

⁷ World Trade Organization, *Audiovisual services: Background note by the Secretariat*, 12 January 2010

Ce n'est pas un mot excellent, d'ailleurs, parce qu'après tout cela n'a pas à être une exception: car si c'est une exception, cela voudrait dire que ce serait donc un objet de commerce qui, simplement, ne subirait pas le sort des autres⁸.

In its 2011 study on the possible future direction for cultural policy, the French Ministère de la Culture et de la Communication described one approach as *L'exception continuée*. This would be founded on continued state intervention, and:

En particulier les logiques qui ont donné naissance à une «exception culturelle française», entendue comme modèle culturel et modèle de politique culturelle, constituent un objectif, certes difficile à atteindre, mais structurant pour l'avenir.⁹

This was reinforced by the ministry's decision to christen the 2013 review of French cultural policy in the digital age led by former head of Canal+, Pierre Lescure, as 'l'Acte II de l'exception culturelle'. His remit was to review the quotas and subsidies in place within France and the policies needed to tackle internet piracy and boost market development. However, the use of the term 'exception culturelle' suggests that even in official circles the exception has become a byword for cultural policy as implemented in France; it does not simply denote an ongoing campaign to exclude cultural industries from the scope of international trade negotiations, which has the result of allowing France and other nations to retain programmes aimed at cultural promotion.

The debate has also been dogged by a similarly fluid use of the term 'cultural diversity'. Regourd comments that in the aftermath of the Uruguay round of trade negotiations, talk of a

⁸ 'It is not a good term, by the way, because after all, it is not an exception; because if it were an exception, that would imply that it is a commodity, just one that is not subject to the same fate as all the others.' Presidential speech quoted in Juliette Courtois, *Frédéric Mitterrand: Une approche du 7^e art au petit écran*, (Bry-sur-Marne: INA Éditions, 2013), p. 22

⁹ 'In particular, the logic which gave rise to a 'French cultural exception', understood in terms of a specific cultural model and approach to cultural policy, forms an objective that is certainly difficult to achieve, but is fundamental for the future.' Ministère de la Culture et de la Communication: Département des études, de la prospective et des statistiques, *Culture & Médias 2030: Prospective de politiques culturelles*, (Paris: La Documentation française, 2011), p. 49

'cultural exception' was surreptitiously replaced by discussion of 'cultural diversity' via a 'glissement sémantique'¹⁰. This change in rhetoric was significant enough that in 2001 Jean-Marie Messier, another former Canal+ boss, declared 'L'exception culturelle française est morte'¹¹. Former culture minister Catherine Tasca believed that in the wake of the Uruguay round, the term became 'unsatisfactory' and 'misunderstood internationally'¹²; talk of cultural diversity was considered more acceptable, helping to rally other nations to the cause, including Canada and the developing economies¹³.

However, others see them as separate, but closely related, concepts that each have an important place in the trade and culture debate. Tasca's successor in the culture ministry, Catherine Trautmann, explained in a briefing document released to coincide with the launch of the Millennium round of world trade negotiations that:

La notion de diversité culturelle ne se substitue pas à celle d'exception. Il n'y a ni glissement sémantique dissimulant une réalité occulte, ni *a fortiori* abandon. Tout simplement, ces deux notions ne se placent pas sur le même plan. Par «diversité culturelle», il s'agit d'explicitier la finalité poursuivie dans la négociation. «L'exception culturelle» est le moyen, à mes yeux non négociable, d'atteindre l'objectif de diversité culturelle.¹⁴

The indiscriminate use of language results from the lack of an agreed definition for both terms and, according to Tardif, any consideration of 'à quoi tiennent la diversité culturelle et ce qui la

¹⁰ '...shift in meaning'

¹¹ Fabrice Rousselot, 'L'exception culturelle française est morte', *Libération*, 18 December 2001

¹² Catherine Tasca, Ministre de la Culture et de la Communication, 2000-2002 quoted in David Loosely, 'Back to the Future: Rethinking French cultural policy, 1997-2002', *International Journal of Cultural Policy* Vol. 9, Issue 2, 2003, p. 232

¹³ Serge Regourd, *L'Exception culturelle*, (Paris: Presses Universitaires de France, 2002), pp. 97-102

¹⁴ 'The notion of cultural diversity does not replace the cultural exception. There has not been a shift in meaning to conceal any shady reality, nor any abandonment of the term. Simply, these two terms are not on the same level. 'Cultural diversity' is the ultimate goal of the negotiations. The 'cultural exception' is the means, which in my eyes is non-negotiable, to achieve the objective of cultural diversity.' Ministère de la Culture et de la Communication, *Dossier: Diversité culturelle et exception culturelle*, 10 November 1999

menacerait'¹⁵. It has allowed stakeholders on all sides of the debate to co-opt the term in the way that best supports their position in broader discussions about the need for measures to protect cultural production in the face of globalisation. A more sophisticated definition of cultural diversity is needed to deconstruct these positions and advance debate on trade and culture.

Coupled with this indiscriminate use of the terms 'cultural exception' and 'cultural diversity' is a French tendency to assign greater symbolic meaning to objects than the Americans tend to do. Richard Kuisel points out that Disney, Coca-Cola and McDonald's have all inadvertently fallen foul of French fears about globalisation, 'because they misjudged how the French infused commercial products with cultural meaning'¹⁶; a hamburger is not simply a quick and convenient foodstuff, but an example of the mass production of food which is helping to put small French farmers out of business and endanger a traditional way of life.

This tendency has clouded debate during successive rounds of GAT/S negotiations, with the French arguing for formal recognition of the cultural exception on the basis of abstract notions of national identity and cultural diversity and the US couching its arguments in purely economic terms – a difference of approach which renders it difficult for each to understand the other's negotiating position. Differing opinions about the nature of French policies has further complicated discussions. The US believes France is acting purely to shore up an ailing French film industry, not to increase the choice of films available or retain the capability to express national identity through film; the French insist wide-reaching measures are essential to promote cultural diversity. This tension between French quotas and subsidies as industrial or cultural policy has regularly overshadowed discussions in the past and continues to do so.

¹⁵ 'what cultural diversity is and how it could be threatened'. Jean Tardif 'Mondialisation et culture: un nouvel écosystème symbolique', *Questions de communication*, Vol. 13, 2008, p. 199

¹⁶ Richard Kuisel, *The French Way: How France embraced and rejected American values and power*, (Princeton, NJ: Princeton University Press, 2012), pp. 203-4

In 1993, the Uruguay round of negotiations, ended with an agreement to disagree on the treatment of culture – a stalemate which persists to the present day despite the issue being revisited as part of the Doha round initiated in 2001, the talks to create a Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU, and the creation of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

While these debates have been raging, digital technology has begun to revolutionise the media landscape, particularly spawning a number of new platforms for the delivery of audiovisual products. The earliest of these, cable and satellite television, resulted in the delivery of more channels, typically in higher quality than analogue services. However, they did little to change how content is consumed; they still provide films and television programmes at set times according to a schedule. Since 2004 with the arrival in France of video-on-demand services, consumers have had the option to pick what they want to watch from a library of content and to begin watching it at a time that is convenient to them.

The Centre national du cinéma et de l'image animée (CNC) estimated that there were 90 video-on-demand services available in France by the end of 2014¹⁷; films make up all or part of the offering on 55 of them¹⁸, resulting in a choice of several thousand films. French consumers are beginning to embrace these services; by the end of 2014, one-third of French consumers polled by Harris Interactive had used a video-on-demand service to watch films or television programmes, compared with one in five just four years earlier¹⁹.

This new found flexibility for consumers to seek out the films that they want to watch places new pressures on France's cultural policy. It undermines the country's ability to impose effective quotas. Whereas it may be possible to mandate that French films are allocated a

¹⁷ CNC, *Le marché de la vidéo en 2014*, March 2015, pp. 37-8

¹⁸ Author's own estimates. For more detail, see Chapter 6

¹⁹ Harris Interactive poll of around 15,000 French internet users over the age of 15 years. The poll was commissioned by the CNC. CNC, *Le marché de la vidéo: Les dossiers du CNC N° 325*, p. 53 and *Le marché de la vidéo en 2014*, p. 49

certain amount of cinema screen time, or make up a defined percentage of films broadcast on television, this is no longer practical in the digital age and may no longer be needed to protect diversity. Just because a third of films on a French service are of French origin does not mean that a third of the content consumed is also French, or that consumers even choose to view their films from a French provider.

It also makes the French government's task of defending the cultural exception more challenging. It is difficult to argue for a measure designed to stop the French market being flooded by films from the US if, at the same time, French consumers are choosing to watch predominantly US films on demand – especially if they are choosing to buy those films from services operated by multinational companies which are based elsewhere in the EU, or even further afield. US trade negotiators have always pushed for free and unfettered access for US films to other national markets because Hollywood, they argue, makes the kinds of films that consumers want to watch. If French consumers are looking beyond their national video-on-demand providers to gain access to films, this would add fuel to that argument.

Moreover, only a fraction of the video-on-demand services now operating in France are run by traditional broadcasters. Others come from the telecommunications sector or are online only businesses, such as Netflix and Apple. These companies do not have the same heritage that French broadcasters do, where subsidising French film production and observing quotas is a prerequisite for securing a licence to operate. They may also serve French consumers from an operational base outside of France and, therefore, be unconstrained by the French regulatory regime. Even new French market entrants have resisted French government attempts to extend quotas and film funding commitments to them²⁰.

²⁰ French internet service provider Free has been accused of 'creative accounting' downplaying its television revenues in favour of fees for internet service provision to minimise its contributions to the French subsidy system to support film and television production. See Section 6.2 and also Rencontres Cinématographiques de Dijon, *Peut-on encore parler d'exception culturelle dans une Europe numérique? Compte-Rendu du Debat*, 19 October 2012, p. 2

Pierre Lescure's report on *L'Exception Culturelle – Acte II* has suggested that this disparity could 'conduire les contributeurs actuels à remettre en cause la légitimité des prélèvements dont ils s'acquittent'²¹. Put another way, if the internet service providers benefit from giving access to the content but do not have to fund its creation, why should television or video editing companies be obliged to support film production?

Given these new challenges to how France implements its cultural policy, it is a bold assertion to say it will continue to defend the cultural exception in international trade negotiations. It is no longer simply a case of arguing for the moral right to protect and promote its film industry; France also needs to consider the practical aspects of applying the policy in a digital era.

The fundamental question, therefore, is to what extent the French can continue to defend the cultural exception in the digital age. To answer this, it is necessary to explore the issue as it relates to film from three key angles. The first of these is why the cultural exception is so important to the French and their perceptions of national identity. It is important to understand what motivates them to lobby so vociferously for their film industry to be able to shed light on the defence strategy they have adopted to date – one founded on arguments about the need to protect cultural diversity. The second strand focuses on the development of digital technology, particularly the advent of video on demand, and why this is expected to have such a significant impact on France's ability to maintain existing policies in support of its cultural industries and to set new ones as the nature of diversity evolves with on-demand delivery of films. The third explores the notion of cultural diversity in greater depth and, through extensive analysis of industry statistics, assesses the extent to which French policies actually live up to claims to support diversity in cinemas and newer on-demand channels. Interviews with filmmakers, policy-makers and trade specialists will then help to show how these three aspects – national identity, cultural diversity and digital disruption – combine to

²¹ '...lead current contributors to question the validity of the contribution that they make' in Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 25

affect cultural policy debates in France and the approach to the ongoing TTIP trade negotiations on both sides of the Atlantic.

TTIP represents the latest in a long series of trade negotiations that have grappled with the issue of trade and culture. In each of these, the Americans have approached the issues from a predominantly economic stance; the French have tended to speak in more abstract terms. This has meant that each side has been inclined to underestimate the strength of feeling of the other. Proponents of a mixed methods approach to research suggest that the best way to gain an holistic view of an issue is through combining both qualitative and quantitative research. Blending analysis of industry statistics with commentary from stakeholders in the trade and culture debate should help to advance beyond these entrenched positions and provide a more complete assessment of French film policy and its impact on diversity, leading to options for future policy development.

France maintains a broad range of policies in support of all of its cultural industries, not just cinema, and the advent of digital technology affects each of these sectors to a greater or lesser degree. However, invented in France and predating television by almost 40 years, cinema is seen as ‘the senior service’ within the French audiovisual sector, such that new incumbents, from television to video and now video on demand, are obliged to support French cinema production in return for the right to transmit films. Thanks to its economic importance, a highly organised and unionised French film industry and the competition it faces from Hollywood, cinema has also taken centre stage in debates on trade and culture. As a result, film represents a good lens through which to view the challenges that digital disruption pose to France’s ongoing defence of the cultural exception.

Chapter 2 will explore issues of national identity in greater depth, focusing on the relationship between economic development and culture and how the impact of globalisation is perceived differently in different nations. For some, the influx of cultural products from abroad –

particularly from the US – is seen as cultural imperialism that represents a threat to their traditional culture; for others it opens up access to a broad range of experiences or results in the mixing of cultural forms to create interesting new hybrids. France sits in the former camp; it has had an uneasy relationship with globalisation, seeing it as having an impact on its core values. Sarah Waters isolates five reasons for this: globalisation is seen to undermine French republicanism and its *mission civilatrice* to export the Enlightenment values associated with republicanism, to threaten France’s social model, to result in a loss of power on the world stage and to challenge French national identity²². These challenges are felt across French society, but Chapter 2 will examine particularly how they resonate within the audiovisual industry, underpinning both the perceived need for support policies and motivating the country’s strident defence of those policies in the international arena. It will also explore why the French feel such a close affinity with cinema that it should achieve prominence in the debate on the protection and promotion of the creative industries and cultural diversity.

Having explored French motivation to defend the cultural exception, it is then necessary to look in more depth at the support policies the exception is designed to protect. Chapter 4 explores the structure of France’s film support programme and how it has been expanded and adapted as the media landscape changed with the advent first of television, then home video recorders, cable and satellite television.

In Chapter 5, the focus shifts to how France has defended the cultural exception in previous negotiations from the First World War to the present day, particularly the Uruguay round of trade talks. Not only were the negotiations the most high profile and contentious to date, it was during this round that the term ‘cultural exception’ was coined. The chapter will look at the arguments France employed to have culture exempted from the scope of international trade agreements and the US counter-arguments for it to be included. It will also examine the

²² Sarah Waters, *Between Republic and Market: Globalisation and Identity in Contemporary France*, (London & New York: Continuum, 2012)

provisions stretching across both GATT and GATS, which supporters claim make up the cultural exception, to gain a better understanding of why the status of the exception has proved so controversial.

As mentioned, the media landscape has changed significantly in the 20 years since the conclusion of the Uruguay round. Chapter 6 explores the arrival of digital technology in France in greater depth. It charts the market evolution since the arrival of the first video-on-demand provider in 2004 to understand which companies are now offering on-demand services, what films they are making available and how many consumers are choosing to download those films. France has attempted to update its cultural policy to accommodate these new digital services and the chapter will review how France has sought to expand its support schemes to digital channels.

Mira Burri-Nenova suggests that states intervene in markets to correct perceived structural failures, in the cultural sphere typically by employing quotas on the amount of content shown and subsidies to boost production²³. The advent of video-on-demand services presents new challenges for both approaches. Chapter 7 looks in more detail at the homogenising and heterogenising forces at play in the on-demand market and how there could be quite different threats to cultural diversity in the digital era that may need to be addressed via state intervention. Quotas are considered unnecessary once scheduling restrictions are removed and a wider choice of films can be made available; in fact, they may even limit the size of the market. But they are also pointless in an environment where consumers have a free a choice over the content they watch and could decide not to watch French films even if they make up the mandated share of the offering. The imposition of subsidies is complicated by the fact that content providers can serve the French market from anywhere; French companies – particularly television broadcasters – have to contribute heavily towards film production while competitors such as Apple and Netflix based elsewhere in Europe have no such requirements.

²³ Burri-Nenova, 'Trade versus Culture', p. 32

France's defence of the cultural exception turns on the importance of a healthy film industry to maintain cultural diversity. But how should diversity be defined and do the subsidies and quotas that are in place actually serve to promote a diverse offering within the French film sector? In its 2005 Convention, UNESCO defines 'cultural diversity' as 'the manifold ways in which the cultures of groups and societies find expression', adding that to ensure diversity artists, cultural professionals, practitioners and citizens worldwide should be able to 'create, produce, disseminate and enjoy a broad range of cultural goods, services and activities, including their own'²⁴. For those countries, like France, that feel that cultural diversity is under threat, securing a strong competitive position for their creative industries in domestic and international markets is paramount. The Convention supports the use of cultural policies to nurture creativity and ensure that local artists have the means for self-expression. However, UNESCO's definition of diversity also implies that national works should be part of the 'broad range' that is available to citizens, not that they should dominate supply. The US has typically argued that free and unfettered access to a large number of cultural products is the best way to ensure that citizens 'enjoy a broad range' and that if French, Indian or Chinese films are good and have public appeal, they will find their place within this range. Each is only focusing on half of the definition – France on the supply side; the US on demand. However, cultural diversity is made manifest when there is a broad range of cultural expressions both supplied and consumed and that those cultural expressions come from a range of different sources and take a variety of forms to reflect a broad spread of cultures and interests; the film industry should not be dominated by the output of one country or films of a particular genre, e.g. romantic comedies.

To dissect and be able to assess the issues around the range, style and spread of cultural expressions, cultural economists Moreau and Peltier have defined three aspects to diversity –

²⁴ UNESCO, 'III. Definitions', *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 2005

variety, balance and disparity²⁵. The greater the variety, balance and disparity, the higher the diversity. However, each aspect is 'individually insufficient', such that a market needs to score highly on all aspects to be considered diverse. Building on this model and using data published by France's CNC, Chapter 8 will examine the level of diversity within the video-on-demand sector compared with that for traditional cinema. From this, it will be possible to determine whether French claims that the country's policies promote diversity stand up to scrutiny. The results of this analysis will inform the debate on the future of the cultural exception. Empirical evidence of French policy successes could underpin a renewed defence, while proof of a negative impact on the market would fuel the argument for support mechanisms to be dismantled and for trade liberalisation. The comparison between the two sectors will also shed light on whether the approach that France is using to update its support policies for the digital age is appropriate, or whether it would be better to adopt a different strategy.

To date, cultural economists have only used the threefold test to assess cultural diversity within the French film industry at a given moment; this is the first time it has been applied over an extended period to assess how policies have shaped the market. The focus of previous assessments has been traditional cinema. Those opposed to regulating digital channels, including internet businesses like Google and American trade specialists, have suggested there is no need for policies to promote diversity online; fewer restrictions on bandwidth mean a much broader range of content can be made available and the offering is naturally more diverse. However, the truth of this assertion has not previously been tested with reference to video on demand.

Chapter 9 explores the views of those currently at the centre of the debate on trade and culture. Drawing on original interviews and testimony from more than 160 individuals involved in the Lescure policy review and the debates at the annual *Rencontres Cinématographiques de*

²⁵ François Moreau and Stéphanie Peltier, 'Cultural Diversity in the Movie Industry: A cross-national study', *Journal of Media Economics*, Vol. 17, Issue 2 (April 2004), pp. 123-43

Dijon, it explores each of the three strands identified above to understand the strength of the French negotiating position in the current TTIP negotiations. It seeks particularly to understand what both French and American stakeholders mean when they use the term 'cultural diversity' and whether they believe that French policy promotes diversity. It is also important to understand how closely their perception of optimum diversity aligns with the current state of the French market as established in the quantitative analysis to establish whether this assessment can provide a more concrete basis for debate on the future of the cultural exception.

French arguments in support of the cultural exception will be revisited in the final chapter in the light of what has been learned about the system's impact on diversity. The chapter will look at which aspects of the policy reinforce diversity and, therefore, could be defended in future rounds of trade negotiations, and which are less defensible, before exploring additional measures that France could consider in support of its film industry.

France maintains one of the most complex programmes of quotas and subsidies in support of its film industry of any nation. It is also one of the most active campaigners in international trade talks for the cultural industries to be subject to special treatment and exempted from the process of trade liberalisation being pursued in other industrial sectors. To understand why, it is important to start by exploring French views on globalisation.

2. French identity threatened: motivating France to defend cinema support schemes

...le français peut devenir une des langues dans lesquelles s'expriment la résistance à l'uniformité du monde, le refus de l'affadissement des identités, l'encouragement de la liberté de chacun de créer et de s'exprimer dans sa propre culture. C'est dans cet esprit que la France se veut le moteur de la diversité culturelle dans le monde. Ce combat est pour la France sa façon, moderne, d'être fidèle à l'universalisme qui est le sien depuis 1789.

Lionel Jospin
former French President²⁶

Globalisation is characterised by the 'stretching of social, political and economic activities across political frontiers', driven by the extension and expansion of worldwide systems such as transportation and telecommunications, and resulting in an increasing interconnectedness between nations²⁷. Its impact is perceived differently by different nations. For some it represents a threat to their traditional culture, encouraging them to protect and reconnect with their *roots*, for others it is the *route* to a new and more varied culture that opens up access to a broad range of experiences or results in the mixing of cultural forms to create interesting new hybrids²⁸. Where a nation sits on the continuum between roots and routes shapes its approach to both trade and cultural development. France has had an uneasy relationship with globalisation, seeing it as having an impact on its fundamental values and identity, which has shaped government action. It has led to the introduction and continually

²⁶ 'French can become one of the languages which expresses resistance against the forces of uniformity, the refusal to watch identities fade and encouragement for the freedom of everyone to express themselves in their own culture. It is in this spirit that France wants to become the driving force for cultural diversity within the world. This fight is the contemporary way in which France can faithfully fulfil the mission of universalism that has been its role since 1789.' Lionel Jospin, *Déclaration de M. Lionel Jospin, Premier ministre, sur l'importance de l'enseignement du français à l'étranger et sur la défense de la diversité culturelle*, 21 July 2000

²⁷ David Held, Anthony McGrew, David Goldblatt and Jonathan Perraton, 'What is globalization?' in *Global Transformations*, a repository dedicated to the study of globalisation set up by Polity Press

²⁸ See François Chaubet, *La Mondialisation Culturelle*, (Paris: Presses Universitaires de France, 2013), p. 63

updating of policies to protect and promote culture at home and stimulates the desire to champion diversity internationally²⁹. To understand the French approach to cultural policy and the cultural exception it is necessary to examine how the country perceives globalisation in greater detail.

Chaubet summarises the debate on the relationship between economic development and culture into five broad themes – clash of civilisations, cultural imperialism, convergence, hybridisation and glocalisation – and sites the first two towards the roots end of his spectrum, while the other three represent the new routes in which globalisation could lead culture³⁰.

Convergence describes a world that is increasingly uniform from one place to another. Clothing and luxury goods brands from Apple and Nike to L'Oréal and Louis Vuitton are present and considered equally desirable across the globe. But certain values are also increasingly upheld by communities the world over, such as an increased environmental consciousness or a shared sense of humanity which manifests itself most obviously in the wake of a natural disaster when nations rush to extend aid to the affected area. Similarly, there is a trend towards urbanisation and the growth of big cities. The consistent removal of trade barriers since the end of World War II, developments in technology and the emergence of a consumer and celebrity culture are, according to Chaubet, behind this convergence. And while the media, particularly transnational operators such as MTV and CNN (but also Korean, Indian, Chinese and Brazilian broadcasters in their regions) may help to promote the spread of consumerism, encouraging further technological and economic developments, there is no single force driving the process. He notes that some consider this process the 'Americanisation' of the world, pointing out that the US is perhaps the purest manifestation of the impact of convergence and the society most at ease with the process³¹. However, that

²⁹ Alain Lombard, *Politique culturelle internationale: Le modèle français face à la mondialisation*, (Paris: Babel Maison des cultures du monde, 2003), p. 319

³⁰ *Ibid.*, pp. 63-104

³¹ *Ibid.*, p. 71

does not mean that it is the US imposing its values on other nations; they are all converging at their own speed as they adapt to the rules of modern trade and consumerism.

Cultural imperialism, on the other hand, does suggest a more deliberate attempt by one culture to shape others. It describes the inequality of cultural exchanges between nations, whereby larger, more powerful ones – typically colonising forces – impose their culture, values and social structures on weaker nations. This is held in place, partly by the power of the media, which transmits and reinforces the values of the more powerful nation. However, cultural imperialism has increasingly been seen as too stark and limited a theory. It has been interpreted as an explanation of how Western colonial powers held sway over all other nations, as if those nations were a homogenous group in themselves and that there were no attempts by countries such as China and Japan, for example, to colonise their near neighbours. It also implies that economic power over another territory results in unquestioning assimilation of the dominant culture when, in fact, the dominated culture brings its own cultural references to bear in interpreting cultural products³². This limits the dominant culture's ability to impose a synthetic and alien culture in place of the authentic and the local and thus, Chaubet insists, the impact of cultural flows should be examined in distinct settings, as with the examination of the French film market in Chapter 8³³.

First put forward by Benjamin Barber and expanded upon by Samuel Huntington, the interpretation of globalisation as a cultural shock or clash, like cultural imperialism, also stands in contrast to the process of natural convergence described above. In fact, faced with the world increasingly coming together on the economic front, groups are deliberately trying to reconnect with distinct local roots and to define themselves in opposition to other cultural groups. At its most extreme, this can result in violent clashes between communities. These groups are described as closed and discrete and, usually, in religious terms – for example the

³² Peter Golding and Phil Harris (eds.), *Beyond Cultural Imperialism: Globalization, communication and the new international order*, (London & Thousand Oaks, CA; Sage Publications, 1997), p. 5

³³ Chaubet, *La Mondialisation Culturelle*, p. 89

Islamic world. However, this assumes that a religious identity is the only one that provides meaning for people faced with the sometimes alienating process of economic development and globalisation, that religions are single coherent groups free from sects with their own distinct interpretation of the tenets and scriptures, that cultures are constant and resistant to any outside influence, and that individuals do not identify with other groups. The people of northern Thailand are Muslim, but have more in common with the non-Islamic communities of South-East Asia than Muslims in the Arab world.

Hybridisation suggests that communities are neither closed and resistant to foreign influences, nor do they adopt them fully and unquestioningly as the cultural imperialism theory suggests. As individuals are increasingly exposed to different cultures through travel, the media and the internet, they adopt facets of those cultures, combining them with elements of their own to create new cultural forms and social practices. By blending American rap and North African music French artists, such as MC Solaar, have created a distinctive form of French hip hop. Meanwhile in parts of Francophone Africa and the Caribbean, French has combined with local languages to form distinct creoles³⁴. Chaubet points out, however, that while there are examples of hybrids being created, this is by no means a consistent process³⁵; just because individuals in a small village in India watch MTV via satellite does not mean that their own musical culture is changing and they will go on to create a new sitar-based dubstep, for example. There is little way of knowing which external influences will become accepted and which will not, but Cowen contests that adoption of any foreign practice is the result of tacit public agreement³⁶. Any influence that is perceived to erode the strength of an agreed pillar or 'common marker' of a nation's culture is resisted; practices that are not felt to define culture in the same way are open to transformation. In the example above, neither hip hop nor African

³⁴ Jean-Benoît Nadeau and Julie Barlow, *Plus ça change: The story of French from Charlemagne to the Cirque du Soleil*, (London: Robson Books, 2006), pp. 96-9

³⁵ Chaubet, *La Mondialisation Culturelle*, pp. 96-7

³⁶ Tyler Cowen, *Creative Destruction: How Globalization Is Changing the World's Cultures*, (Princeton, NJ: Princeton University Press, 2004), pp. 139

music were felt to define France, leaving the French free to experiment and create something unique and different. Individuals can now experience many more cultures than ever before, but the value they have assigned to their own culture means it is not abandoned entirely.

In fact, in many cases the global and the local sit alongside each other. The former may make some small concessions to the latter, such as the way McDonald's subtly adapts its menu to local tastes, a process known as glocalisation, but in essence both remain intact and uniquely identifiable. The similarity between branches of McDonald's across the world is far more striking than the variations. This interplay between local and global means that the process of globalisation is perceived differently by different nations and even by individuals within those nations – some French and some Americans have adopted social media and some have not; it is not as simple as America totally embracing the social media revolution and France fully rejecting it. As a result, the homogenising effect of globalisation is constantly splintered and diffracted by the local.

If globalisation is perceived differently from nation to nation, it seems appropriate to examine how it is experienced in France. The remainder of the chapter will explore French views on globalisation and how this has shaped public debate about Hollywood's dominance of the film sector, policy development and the country's approach to international trade negotiations.

First, it is worth noting that in French there is a key distinction between the terms 'mondialisation' and 'globalisation' which generally goes unrecognised in the Anglo-Saxon world because both translate into English as 'globalisation'³⁷. 'Globalisation' relates to the ever stronger economic connections between states as a result of the acceleration in international trade from the 19th century onwards. The pace of 'globalisation' can be controlled to an extent by the state; governments are in a position to deregulate markets, introduce new legislation or make liberalisation commitments as required by the economic conditions.

³⁷ Jean Tardif and Joëlle Farchy, *Les enjeux de la mondialisation culturelle*, (Lormont: Le Bord de l'Eau, 2011), pp. 84-95

‘Mondialisation’ is a much broader term. It incorporates economic ‘globalisation’, but also a growing web of social, cultural and political interactions. These exchanges are often unequal in nature, such as the flow of films and television products from West to East. ‘Mondialisation’ has removed traditional national boundaries. States are no longer closed entities, but their policies have an impact on other nations. Governments’ ability to act in the best interests of their citizens is restricted, particularly if the approach is seen to limit market forces and ‘compétition’ or ‘concurrence’ – both of which refer to ‘competition’ in English, but the former denotes a process that is uneven and unfair, while the latter suggests all players operate on a level playing field³⁸. When talking about the international spread of US films, the French generally refer to ‘compétition’ and ‘la mondialisation culturelle’ and, in discussing French reaction to globalisation, it is these definitions that are understood here.

2.1. French reaction to *mondialisation*: convergence or clash?

French society bears many of the hallmarks of convergence. Over three-quarters of French people live in urban areas and, after London, the Parisian metropolitan area has the largest population of any European city³⁹. It is one of the world’s most modern and globalised economies, home to more major multinational corporations than its European neighbours⁴⁰. It has embraced, and even fuels, consumerism via organisations such as supermarket retailer Carrefour and luxury goods manufacturers L’Oréal, Louis Vuitton and Chanel. Companies such as Orange, SFR and Bouygues have been a driving force in the technological development, resulting in growing interconnectedness between communities, both at home and abroad.

³⁸ Laurent Creton, *Cinéma et marché*, (Paris: Armand Colin, 1997), p. 91

³⁹ ‘Percentage of global population living in cities, by continent’, *The Guardian*, 24 August 2009

⁴⁰ The 2015 Fortune Global 500 list of the world’s largest companies features 31 French companies, compared with 29 for the UK, 28 for Germany, 14 for the Netherlands, 12 for Switzerland and less than 10 each for all other European nations. See <http://fortune.com/global500>

However, France has also seen some of the most defiant reaction against globalisation from blockades outside Disneyland Paris to a high profile backlash against McDonald's. It has also been one of the most prominent voices against unfettered economic liberalisation, insisting since the foundation of the GATT that three *lignes rouges* – defence, agriculture and culture – should be respected and that they should fall outside the boundaries of free trade⁴¹.

For economists, including Touraine, Smith and Arthuis, France finds globalisation challenging purely because of differences between its centralised political and economic tradition as a *dirigiste* state and the free-market approach espoused by neo-liberals⁴². They put French objections down to an innate corporatism – an intense self-interest to maintain the economic protections and social benefits that have been acquired. This is certainly how the Americans have interpreted French opposition to liberalisation of the audiovisual sector. French filmmakers would be strengthened by opening up to competition, the Americans believe; they would have to make better films to ensure commercial success and be able to raise funds to make the next film. However, they have little interest in dismantling the current cosy regime that assures funding and reduces the risk of failure.

French intellectuals such as Ignacio Ramonet, believe that globalisation is a form of cultural imperialism and that the Americans are attempting to replace France's republican ideals with a neo-liberal *pensée unique*, or single way of doing things. The intellectuals maintain that the neo-liberal economic model is founded on individual freedom and sacrifices equality to the vagaries of the financial markets⁴³ and, therefore, is fundamentally opposed to the French social model based on solidarity. An unregulated free-market economy is chaotic and barbaric and to embrace it would be to undo centuries of civilising progress and regress to an earlier form of society. The French point to the gap between the richest and poorest in American

⁴¹ 'Les trois «lignes rouges» de Paris face à Washington', *Le Figaro*, 12 June 2013

⁴² Waters, *Between Republic and Market*, p. 5

⁴³ *Ibid.*, p. 19

society and the lack of a state-funded healthcare system as examples of how unfettered economic liberalisation would lead to a decline in social benefits⁴⁴.

The French left-wing has come to view neo-liberalism as a coherent and totalitarian ideology, which the Anglo-Saxon community is imposing on the world in a calculated fashion. For sociologist Emmanuel Todd, pure economic liberalisation is a myth; reform acts as a smokescreen for more wide-reaching changes to French culture and society.

The free-market economy is not a benign, universal or stateless force, but a product of the American way of life and its cultural values. To pursue liberalisation is to espouse American ideals and give preference to the pursuit of profit and individual gain, over solidarity and mutual support and respect for fellow citizens. Thus, neo-liberalism represents cultural imperialism in its broadest sense – the imposition of US cultural values on all facets of France’s political and social life⁴⁵.

The film industry is perceived as playing a central role in this process. In the aftermath of World War II, there was a growing belief that ‘in order to conquer markets, the US needed to conquer the minds of consumers’⁴⁶. In other words, not only did American films provide a shop window for American goods, they portrayed the lifestyle that cinema-goers could enjoy if they subscribed to the neo-liberal consumerist society and bought those goods.

The French have characterised Hollywood’s dominance as cultural imperialism in debates over trade liberalisation. US domination of the flow of images and information around the world ‘diminishes indigenous production capacity and undermines the expressive potential of national cultures, imposing foreign values and contributing to cultural homogenization

⁴⁴ Ibid. p. 105

⁴⁵ Ibid. p. 104

⁴⁶ Bill Grantham, *Some Big Bourgeois Brothel: Contexts for France’s Culture Wars with Hollywood*, (Luton: University of Luton Press, 2000), p. 17

worldwide⁴⁷. If left unchecked then the culture – that is the system of ideas, beliefs and behaviours – in France, Japan and elsewhere would become undifferentiated from that of the US. France needs to protect its local film and television industry and its ability to portray its view of the world via the programmes it makes. Failure to do so, in the words of former French President François Mitterrand, would result in France becoming ‘an enslaved society’⁴⁸.

The modernisation of the French economy, which has resulted in the growth and international expansion of French corporations, as well as the privatisation of telecommunications and television companies in parallel with France’s European neighbours has been achieved by way of an elaborate balancing act. Waters comments that French politicians have adopted an elaborate ‘double talk’ by which, on the one hand, they promise staunch defence of French ideals, traditions and identity against the impact of globalisation and, on the other, they accept the need for globalisation and associated economic reform.

Political leaders tended to pursue a delicate balancing act that separated the political realm (seen as a repository for identity, tradition and collective values), from the economic realm, seen as purely material and contingent and therefore without deeper implications for national identity⁴⁹.

Kuisel believes the French have deliberately pursued economic modernisation in a way that learns from, but does not imitate, the American approach⁵⁰. He points to regulation of stock options, which dictates they should reward technological innovation rather than profit maximisation⁵¹.

⁴⁷ Michael Curtin, ‘Thinking Globally: From Media Imperialism to Media Capital’ in Jennifer Holt and Alisa Perren (eds.), *Media Industries: History, Theory and Method*, (Chichester: Wiley-Blackwell, 2011), p. 305

⁴⁸ Speech by François Mitterrand cited in David Puttnam, *The Undeclared War: The Struggle for Control of the World’s Film Industry*, (London: Harper Collins Publishers, 1997), p. 7

⁴⁹ Waters, *Between Republic and Market*, p. 67

⁵⁰ Kuisel, *The French Way*, pp. 276-80. See also Waters, *Between Republic and Market*, pp. 78-82

⁵¹ Kuisel, *The French Way*, p. 298

Waters argues that France's difficult relationship with globalisation is shaped not by cultural imperialism, but displays the profound civilisational aspects described by Huntington as a cultural clash or shock⁵². Though his arguments have proved controversial, particularly suggestions that conflict between communities is the inevitable outcome of globalisation, they highlight that 'in a globalised era, conflict increasingly transcended the economic sphere and concerned more fundamental questions of identity, tradition and belief'⁵³. Faced with external pressure, Huntington maintains, nations look for ways to reinforce and reassert their traditional identities. France rails against globalisation not because of its economic impact, but for more complex and deeply rooted reasons; it is viewed as an attack on its identity.

Certainly, 'identity' is a common French refrain in the debate on trade and culture. France's cinema constitutes "our identity", Gérard Depardieu proclaimed in 1993 during the Uruguay round of trade negotiations; to include film within the scope of GAT/S would result in that identity being eroded⁵⁴. The sentiment has emerged more recently over TTIP, with former culture minister Aurélie Filippetti declaring that thanks to the cultural exception 's'est développée en Europe une industrie cinématographique et audiovisuelle qui est au cœur de son identité culturelle'⁵⁵.

2.2. Globalisation: a threat to French identity

In *Between Republic and Market*, Waters examines why the French view globalisation as such a profound attack on their identity, isolating five key reasons⁵⁶. The creation of regional and global bodies from the EU to the WTO has denuded the French state of some of its powers,

⁵² Waters, 'French Intellectuals and Globalisation: A War of Words', *French Cultural Studies*, Vol. 22, Issue 4 (November 2011), p. 304

⁵³ Ibid., p. 304

⁵⁴ David Buchan, 'Lights, Camera – Reaction!', *The Financial Times*, 18 September 1993

⁵⁵ 'that a film and audiovisual industry in Europe has been able to develop which is at the heart of our cultural identity'. Agence France Presse 'Négociations UE-USA: l'exception culturelle menacée', 15 March 2013

⁵⁶ Waters, *Between Republic and Market*, pp. 17-23

undermining its central role in society. Secondly, she suggests, globalisation is seen as a challenge to France's republican values of liberty, fraternity and equality which, in turn, weakens a social model founded on solidarity and a state duty to protect and promote the rights of citizens. Finally, since the fall of the Berlin Wall and the collapse of the Soviet Union, the US has emerged as the only superpower, while France has seen its standing decline. And finally, globalisation has resulted in the increased Americanisation of French society.

None of these strands operates in isolation. For example, the transfer of powers from France to the EU not only limits the French government's ability to impose regulation at home undermining its role in society, the more France is subsumed within the EU, the more it fuels questions about France's standing in the world. However, to properly understand why globalisation represents such a challenge to France, it is important to examine each in turn, though, in practice, it is hard to separate France's republican values from the social model to which they have given rise and these shall be dealt with together.

2.2.1. Loss of power

The state is central to French society. The public sector is more extensive in France and working for the government or civil service carries significantly more kudos than in most other Western nations; the French state employs over one-third of the national workforce, compared with around 20 per cent in the UK and 15 per cent in the US⁵⁷. The French state also plays a core role in many aspects of society – like culture – which other Western governments manage at arm's length, if at all. The centrality of the French state, one of the four defining

⁵⁷ According to figures compiled by Citibank equity analyst Tobias Levkovich, reproduced in Joe Wiesenthal, 'Guess which country has the highest percentage of workers employed by the government', *Business Insider*, 28 November 2011. Robert Peston confirmed in his 2015 documentary on the French welfare system that one-third of French gross domestic product is spent on welfare, a greater proportion than for any other developed economy. See BBC, *This World: Quelle Catastrophe! France with Robert Peston*, broadcast 13 March 2015

factors of what Godin and Chafer term 'the French Exception'⁵⁸, is widely accepted within France as the lynchpin of the country's social structure. The fundamental republican values of 'democratic liberty, equality and fraternity can only be guaranteed by shared citizenship within the neutral space provided by the secular republic'⁵⁹. The 'Exception' comes to the fore when globalisation poses the greatest threat to the function of the French state.

The process of economic and political integration initiated following World War II has resulted in the creation of a range of supranational organisations, including the EU and the WTO. Greater powers have been transferred from the French state to these supranational bodies over the years impinging on increasingly sensitive areas politically; it was no longer a matter of customs tariffs on raw commodities, but issues of citizenship, employment law and social spending, limiting the French state's ability to maintain its social model⁶⁰.

France experiences the greatest anxiety about globalisation where it results in the transfer of power to unelected bodies, such as GATT and the WTO. These international organisations, it is argued, have the power to force representative governments to rescind laws in favour of the purely economic interests of multinational corporations, in turn investing more power in those organisations. Waters comments that former prime minister Lionel Jospin drew a distinction between European political integration that is controlled by the individual states and globalisation which entailed 'an abandonment of sovereignty to private interests'⁶¹.

The proposed liberalisation of the audiovisual sector under GATS is a prime example of how France's ability to regulate and protect an industry was threatened by the free trade interests of Hollywood corporations; not only would liberalisation have forced the government to

⁵⁸ The other three are a tendency to politicise issues and resolve problems by conflict not compromise; the centrality of Enlightenment values in French society and a mission to share them with the world; and a social structure that gives primacy to individuals rather than communities and minority groups. See Emmanuel Godin & Tony Chafer (eds.) *The French Exception* (New York & London: Berghahn Books, 2004), p. xv

⁵⁹ Cecil Jenkins, *A Brief History of France: People, History and Culture*, (London: Constable & Robinson, 2011), p. 271

⁶⁰ Waters, *Between Republic and Market*, p. 18

⁶¹ Lionel Jospin quoted in *ibid.* p. 18

dismantle the complex programme of quotas and subsidies, it would have had to accept a diminished role in the operation of an area that it deems culturally significant.

The advent of video on demand intensifies this challenge to French state control. It has resulted in even larger corporations entering the fray; Apple generated more revenue in the final quarter of 2012 than Time Warner – parent company of Warner Brothers, the largest Hollywood studio – generated in the entire year⁶². What is more, online delivery of content allows video-on-demand service providers to base their operations in whichever jurisdiction is commercially most favourable. If they are based outside France, then the French government's ability to tax or regulate their activities is severely limited. Any restrictions that are put on multinational organisations have to be devised and implemented with support from the international community, which does not sit comfortably with the French tradition of a *dirigiste* state.

2.2.2. *Republicanism and the social model*

From the outset, republican France was founded on the values of the Enlightenment. In the wake of the French Revolution, the state rebuilt its political and social institutions on the basis of equality, justice and solidarity – values that the French considered core to their identity and which shape attitudes towards American society⁶³.

The French welfare state, or *L'État providence*, established in the wake of World War II was built on these values and has a duty to protect its citizens from the vagaries of market forces and ensure equality. *The Economist's* France correspondent Sophie Pedder has suggested that

⁶² Based on company reports. Apple had sales in the three months to 30 September 2012 of \$36.0 billion, compared with full-year 2012 revenue of \$28.7 billion for Time Warner Group.

⁶³ 71 per cent of French believe that the rights of man are a defining element of French identity, followed by language (68 per cent) and the social model (62 per cent). Jean-Pierre Rioux, 'Préface' in François Chaubet (ed.), *La culture française dans le monde 1980-2000: Les défis de la mondialisation*, (Paris: L'Harmattan, 2010)

the French view is that rights should accrue over time⁶⁴; the creation of *L'État providence* represented an improvement over what existed before the war, has been augmented since and should continue to get better. French citizens feel a strong sense of entitlement, such that all benefits – from healthcare and child support to French film funding – are a form of insurance; the individual has paid into the system and should be able to claim support when the time comes even if financially they have no need. But they also have a tendency towards conservatism, as any change to the system may erode acquired benefits⁶⁵. Attempts to make changes to the system usually provoke conflict. This conservatism has given rise to US perceptions of protectionism.

In French eyes, globalisation is associated with reduced state intervention, resulting in a decline in public spending and the dismantling of the *acquis*⁶⁶, which in turn results in rising inequality and 'the spectre of an American-style ghettoization of French society'⁶⁷; individuals will have to pay entirely for their own healthcare and save for their retirement where once the state would have provided. For the French, the neo-liberal economic model represents not economic freedom, but a requirement for each individual to fend for themselves. Against this backdrop, Dominique Strauss-Kahn has suggested that 'solidarité' is an inherently modern value and 'une composante essentielle d'une réponse efficace à la mondialisation'⁶⁸.

Thus, opposition to globalisation has come to be expressed in abstract ideological principles, which are considered to be valid for all citizens. Nowhere has this been more true than in international trade negotiations where even defence of agricultural subsidies has been

⁶⁴ BBC, *This World*

⁶⁵ Georges Salemohamed 'L'Exception française as Culture' in John Marks and Enda McCaffrey (eds.), *French Cultural Debates*, (Cranbury, NJ: University of Delaware Press, 2001), p. 41

⁶⁶ The raft of benefits and privileges that the French have amassed over time. See Sophie Pedder in BBC, *This World*

⁶⁷ Waters, *Between Republic and Market*, p. 180. See also Salemohamed 'L'Exception française as Culture', p. 38

⁶⁸ 'an essential component of an effective response to globalisation'. Dominique Strauss-Kahn 'Préface' in Anton Bender, *La France face à la mondialisation*, (Paris: La Découverte, 2004), pp. 5-6

couched in terms of national identity⁶⁹. French politicians have also steadfastly avoided using the extensive data collected by the CNC in their defence of the cultural exception, giving primacy to arguments based on cultural diversity, identity and self-expression.

2.2.3. Mission civilatrice

Republican ideals provide the foundation of French social and political institutions, which in itself is enough to explain why France views liberty, fraternity and equality as such defining national values. However, their importance is far wider; France considers the principles of the Enlightenment and republicanism as its gift to the world and that it has a duty to spread those values for the general good. This is its *mission civilatrice*, or civilising mission. Globalisation has undermined France's standing as a world power and, thus, its ability to fulfil this mission.

From as early as the 16th century, 'les sciences, les lettres et les arts constituent des préalables aux relations diplomatiques'⁷⁰; Richelieu and Mazarin selected ambassadors on the strength of their humanist beliefs and their ability to spread those values to the countries where they were posted. In the 19th century, education in French, on French history and ideals became compulsory across French colonies as a way to introduce local peoples to superior French culture and raise living standards⁷¹.

France has lost its political standing in the second half of the 20th century, as former French colonies gained independence one after the other and the Cold War came to an end. Historian Richard Kuisel suggests France felt the impact of the latter particularly keenly, as the collapse of the Soviet Union was argued to have sounded the death knell to the only major alternative economic model to neo-liberalism and brought Europe's mediating role between the US and

⁶⁹ Kuisel, *The French Way*, p. 182

⁷⁰ '...the arts and sciences were a prerequisite in diplomatic relations...'. Philippe Lane, *Présence française dans le monde: L'action culturelle et scientifique*, (Paris: La Documentation française, 2011), p. 20

⁷¹ Annabelle Sreberny-Mohammadi, 'The many faces of imperialism' in Golding and Harris (eds.) *Beyond Cultural Imperialism*

the USSR to an end; the US emerged as the world's only superpower⁷². Without such a prominent position on the world stage, France felt it was restricted in its ability to fulfil its global mission.

Kuisel asserts that the US is the only other country that is similarly convinced it has a special global mission – to encourage the global spread of democracy and free enterprise. As a result, rivalry between the two countries has always been fierce⁷³. France sees itself as 'the guardian of high culture and America as the peddler of mass culture'⁷⁴ and considers its approach to market regulation advances the common good, while US economic policy results in a return to a more barbaric and chaotic society⁷⁵. So for France's role on the world stage to be usurped by the rise of the US was particularly galling.

If the collapse of Communism was indeed a defining moment for the French, this may have had some bearing on the country's approach to the Uruguay round of trade negotiations. Lasting from 1986 to 1993, the talks spanned the final years of the Soviet Union and the emergence of the US as the dominant world power. Realising their political clout was waning, the French may have become more determined to protect their cultural influence.

France's sense of a *mission civilatrice* is still very important. Jenkins notes that France considers itself 'exceptional' not in the sense of being different, but rather as extraordinary and exemplary because of its universal values, but that brings with it a special and enduring responsibility⁷⁶. In his final speech as French president in March 2007, Jacques Chirac declared:

⁷² Kuisel, *The French Way*, pp. 99-150

⁷³ *Ibid.*, pp. 352-3

⁷⁴ *Ibid.*, p. 354

⁷⁵ Waters, *Between Republic and Market*, p. 79

⁷⁶ Jenkins, *A Brief History of France*, p. 266

La France n'est pas un pays comme les autres. Elle a des responsabilités particulières, héritées de son histoire et des valeurs universelles qu'elle a contribué à forger⁷⁷.

Later that same year, in the wake of the global financial crisis, the new president Nicolas Sarkozy reiterated the need for a *politique de la civilisation* that would 'faire rayonner les valeurs universelles qui sont les nôtres'⁷⁸. By introducing 'initiatives pour moraliser le capitalisme'⁷⁹, France would present the world with an alternative and more humane economic model and lead it out of recession. In the process, Waters suggests, France would create a new role for itself on the world stage.

2.2.4. Cultural identity

Finally, the French perceive globalisation as a threat to their cultural identity. Gordon and Meunier suggest this is because it breaks down both artificial and natural barriers between countries⁸⁰. Artificial barriers include the trade and investment restrictions that negotiations such as GATT and TTIP seek to remove. Natural barriers, such as geographic limitations on broadcasting, are increasingly being undermined by advances in communications technology. With the removal of these barriers, the perceived threat to French identity has widened from concern about the impact of trade liberalisation on cultural goods to a view that globalisation attacks all of the fundamental building blocks of national identity, including the French language, food and rural life.

⁷⁷ 'France is not like other countries. It has particular responsibilities inherited from its past and because of the universal values that it helped to create'. Speech by Jacques Chirac quoted in Marc Dambre and Richard J. Golsan, *L'exception et la France contemporaine: Histoire, imaginaire, littéraire*, (Paris: Presses Sorbonne Nouvelle, 2010), p. 20 and Jenkins, *A Brief History of France*, p. 266

⁷⁸ 'to spread our universal values'. Speech by Nicolas Sarkozy quoted in Waters, *Between Republic and Market*

⁷⁹ '...initiatives to moralise capitalism' Nicolas Sarkozy, *Déclaration et conférence de presse de M. Nicolas Sarkozy, Président de la République, sur les réformes nécessaires à la mise en oeuvre d'une "politique de civilisation", annonçant notamment un nouveau chapitre au préambule de la Constitution, un nouveau mode de calcul de la croissance ainsi qu'une réforme du financement de l'audiovisuel public, et décrivant sa politique étrangère comme une «diplomatie de la réconciliation»*, 8 January 2008

⁸⁰ Philip H. Gordon and Sophie Meunier, 'Globalization and French Cultural Identity', *French Politics, Culture and Society*, Vol. 19, Issue 1 (Spring 2001), p. 25

Waters notes that France has had a tendency to define its identity in opposition to an external 'Other'⁸¹. From 1870 until the end of World War II, that Other was Germany, but the role has since been reassigned to the US and globalisation equated with Americanisation. Globalisation is particularly challenging to the French because it allows an inferior, uncivilised and backward Anglo-Saxon Other to colonise its own highly developed island of civilisation.

This reaction manifests itself across society. Albert Camus famously declared 'oui j'ai une patrie, la langue française'⁸². The sentiment is shared by much of the French population, such that anything that undermines usage of the French language is perceived as an assault on France itself⁸³. Gordon and Meunier suggest that this is because the creation of a single French language is closely bound up with the political unification of a series of provinces and principalities each with its own dialect⁸⁴.

The abovementioned creolisation of the French language is resisted generally through the work of the Académie française, but special effort is reserved to prevent the influx of Anglicisms. The institution is internationally renowned for inventing French terms to replace the borrowed words that are increasingly flowing into French, such as *baladeur* for Walkman and *logiciel* for software, not all of which are adopted into common parlance. In its introduction to the ninth edition of *Le Dictionnaire*, the Académie has made several recommendations for alternatives to English words, while terms such as *méchoui* (Arabic), *knödel* (German) and *mousmé* (Japanese) have simply been transposed into French spelling⁸⁵.

⁸¹ Waters, *Between Republic and Market*, pp. 75-6

⁸² 'I have one homeland, the French language'. Albert Camus appears to have first declared his attachment to the French language during a press conference 'Ma patrie, c'est la langue française' in 1957. In the years that followed, he used the phrase regularly, though with slight variations.

⁸³ See Lucy Wadham's comments on the difficulties of integrating into French society as a non-native speaker because of French unwillingness to make efforts to understand pigeon French. This is because 'they love their language beyond all reason' and want to maintain its purity. Lucy Wadham, *The secret life of France*, (London: Faber and Faber, 2009), p. 77. Former French foreign minister Hubert Védrine has described the language as the country's genetic code, quoted in Gordon and Meunier, 'Globalization and French Cultural Identity', p. 33

⁸⁴ Gordon and Meunier, 'Globalization and French Cultural Identity', p. 34

⁸⁵ Académie française, 'Exemples de mots d'origine étrangère'

This is to do with how significant the number of borrowings from English has become due to film, television and the internet, as well as fears about the Americanisation of French society.

Globalisation is also seen as allowing companies such as McDonald's to enter the French market and peddle *la malbouffe*, or junk food. Not only does this undermine France's culinary tradition, it is perceived as industrialising food production, destroying the link between food and *terroir* (the place where it was grown) and endangering rural life and the French agricultural sector⁸⁶. Agriculture is still big business in France – the country ranks among the world's top five agricultural exporters, according to the Food and Agriculture Organization of the United Nations – but only a fraction of the workforce is now employed in agriculture. Globalisation is blamed for a reduction in jobs since the 1960s over and above the real cause, technological advancement and the mechanisation of production techniques.

Waters comments that, in the face of globalisation, rural France has been promoted as one of the symbols of French identity, alongside the Tricolore, the art of conversation and the Tour de France cycle race. And as part of their 'double talk' politicians have seized on these symbols to create a solid link with the past and reinforce the message that the French Republic is able to resist the economic challenges from abroad.

2.3. Cultural policy and the quest for diversity

France's defence of its film industry is not simply dictated by the need to resist any perceived threat to national cultural identity; it is also shaped by each of the other four trends identified by Waters. Particularly, Lombard has suggested the campaign to protect cultural diversity has

⁸⁶ Kuisel, *The French Way*, p. 182. France was one of the first countries to create a system of geographical indication (GI) for wine via its appellation d'origine contrôlée (AOC) label to emphasize the link between origin and product quality. This has become the model for the GI status awarded by the World Intellectual Property Organisation. France has close to 50 such designations for wine, cheese and Provençale lavender oil; more than any other EU nation. See European Commission, *Lists of Geographical Indications for Agricultural and Foodstuff Products, Wines, Spirit Drinks and Aromatised Wines*

become the core of its international cultural relations policy in part due to a renewed quest for international influence⁸⁷. While the country does not have the economic clout of the US, or even developing economies such as China and India, it can set the agenda in other areas.

As mentioned, cultural promotion has been an integral part of French diplomacy since the 16th century; its mission to spread republican ideals even influenced the US quest for liberty and its own Declaration of Independence. France's reputation abroad rendered the country a magnet for artists, most notably at the turn of the 20th century. The historic prominence of French culture has shaped French views about the superiority of its output – something that is not only worth protecting, but could help it to carve out a role internationally. As Lombard notes:

La culture est considérée comme l'un des principaux atouts de la France, dont il est légitime de tirer parti pour accroître l'influence de la France⁸⁸.

To be able to capitalise on its cultural attractions, French politicians have begun to invest the primary goal of the *mission civilatrice* – *rayonnement* – with a new meaning. Historically focused on the spread of French culture and cultural products, the aim now is to lead the debate on cultural diversity. Thus, in July 2000, French prime minister Lionel Jospin told cultural attachés:

Pour la France, s'il s'agit encore de «rayonner», il s'agit de le faire de façon nouvelle, en assumant une fonction de passeurs de rêves, de créateurs de liens, de médiateurs entre les cultures. (...) Vous devez être des éclaireurs de la diversité culturelle⁸⁹.

⁸⁷ Lombard, *Politique culturelle internationale*, pp. 207-9

⁸⁸ 'Culture is considered to be one of France's principal assets and it is valid to use it to increase France's level of influence.' Lombard, *Politique culturelle internationale*, p. 208

⁸⁹ 'For France, it is still a matter of "dissemination", but it is a case of going about it in a new way, by taking on a role of inspiring dreams, creating links and acting as intermediaries between cultures. [...] You should become guides for cultural diversity.' Lionel Jospin, *Déclaration de M. Lionel Jospin, Premier ministre, sur le rayonnement culturel de la France, le rôle des attachés culturels pour son développement dans le monde, l'enseignement du français, l'importance de la création artistique et celle de la diversité culturelle*, 17 July 2000

Graber has argued that the shift in French rhetoric – the *glissement sémantique* – over the past 20 years towards talk of cultural diversity is purely political; the term ‘cultural exception’ has a negative connotation implying an attack on US dominance in the film industry rather than broader cultural promotion. This served to limit French attempts to build international support within UNESCO for specific action to protect culture⁹⁰. Nadeau and Barlow have similarly suggested that the term ‘cultural diversity’ was adopted in the late 1990s at the request of Canada, France’s major ally on cultural issues, as it was likely to be a more palatable phrase for free trade proponents and make it easier to campaign for special measures to protect culture at an international level⁹¹. However, for French politicians, diversity is a logical extension of republican ideals. Ministers talk about ‘égalité entre les cultures’⁹² and that it is a right:

...de tous les citoyens à ne pas être dépossédés de leur culture, et de participer à son expression. Ce droit est universel, dans la filiation des droits de l’homme⁹³.

This makes cultural diversity the ultimate objective of the cultural exception, not a watered-down term to curry favour with political allies.

Promotion of diversity should not just be limited to the cultural industries, but extended to other sectors that could be considered ‘cultural’ in the broadest sense of the term, for example the food industry. Gordon and Meunier point out that the French generally back government efforts to support French artisan producers and limit the activities of multinational companies such as McDonald’s, even though they eat at McDonald’s in their millions. Diversity does not mean that McDonald’s should be forced to quit the French market;

⁹⁰ Christoph Beat Graber, ‘The new UNESCO convention on cultural diversity: A counterbalance to the WTO?’, *Journal of International Economic Law*, Vol. 9, Issue 3 (2006), p. 554. See also David Looseley, ‘Back to the future’, p. 232

⁹¹ Nadeau and Barlow, *Plus ça change*, p. 414

⁹² ‘equality between cultures’, Lombard, *Politique culturelle internationale*, p. 208

⁹³ ‘for no citizen to be stripped of their culture, or the opportunity to be involved in its expression. It is a universal right, a direct descendant of the rights of man.’, *ibid.*, p. 316

rather it should not be allowed to grow so large as to displace traditional French restaurants⁹⁴. Filmmakers have also suggested that French policies are not designed to stop US films being seen, but to ensure they are not the only ones in French cinemas (see Chapter 5).

The French cultural attachés charged with fulfilling the *mission civilatrice* are no longer charged just with promoting French cultural products abroad, but also with promoting dialogue between cultures and forging partnerships. These could be political – aimed at garnering support for initiatives such as the UNESCO Convention on Cultural Diversity – or practical in the form of coproduction agreements⁹⁵.

But in order for France to have an international role in promoting cultural diversity, like charity, cultural promotion must begin at home. Lombard notes that for any international activity to be effective, it is not sufficient for a distinctive French culture to exist; it has to be a culture of which the French are demonstrably proud. If the French do not value their own culture, then why should other nations value French products or believe them that cultural promotion is worthwhile? France needs to be open to the cultural output of other nations to ensure diversity within its own market and to appear to be practising what it preaches. France may not be exemplary when it comes to distributing world music or world cinema in France, but in this it acquits itself better than other nations, Lombard suggests⁹⁶. Jenkins agrees, describing the ‘French Exception’ as an aspiration, not a *fait accompli*⁹⁷. The extent to which France has achieved this ambition within the film industry will be examined in Chapter 8.

Exploring the themes identified by Waters in relation to culture, the French state plays a significant role within the film industry as elsewhere in society. Production is highly subsidised via a system administered by vast numbers of civil servants and founded on the egalitarian

⁹⁴ Philip H Gordon and Sophie Meunier, *The French Challenge: Adapting to Globalization*, (Washington DC: Brookings Institution Press, 2001), p. 55

⁹⁵ Lombard, *Politique culturelle internationale*, p. 178

⁹⁶ *Ibid.*, p. 218 and p. 272

⁹⁷ Jenkins, *A Brief History of France*, p. 274

principle that ‘tout acteur économique tirant bénéfice de la circulation des œuvres doit contribuer à leur financement’ (see Chapter 4)⁹⁸.

Increased European integration is undermining France’s ability to adapt its film policy. Amendments to the film funding system, such as the extension of the *taxe sur les services de télévision* (TST), increasingly require the approval of the European Commission (see Chapter 6). It has also forced France to change rules mandating the proportion of any subsidy that must be spent in France, maintaining that such limits are contrary to European competition law and to single market provisions. This is frustrating and a further sign of the loss of power that Waters talks about and also helps to explain why the country is so strident in its defence of its film industry.

2.4. France and cinema

If globalisation is seen as a threat to cultural diversity and France the self-appointed champion in the fight to stop diversity being further eroded, then it would be logical to expect France’s campaign to extend to all the cultural industries. However, for close to a century, each time debate has arisen on trade and culture, cinema has taken centre stage. But why has the film industry been awarded such a premium position?

In purely economic terms, the audiovisual sector is the smallest of France’s cultural industries; it is also the one where locally-produced products have the smallest share of their home market⁹⁹. So there is some logic to campaigning intensively in support of the industry which is deemed most fragile and where diversity is most threatened. However, France’s defence of the film industry dates back to the earliest days of the cinema when locally-made films

⁹⁸ Any party that derives benefit from the distribution of a work should also contribute to funding its creation. Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 24

⁹⁹ The audiovisual industry is smaller than both the publishing and music industries. See Lombard, *Politique culturelle internationale*, p. 244

dominated the market. Even at the time of the first GATT in 1947, the French film industry accounted for around 40 per cent of box office takings, yet the threat from Hollywood was considered significant enough to push for a special exception relating to film (see Chapter 4). This suggests that the defence is motivated not simply by an economic imbalance, but because cinema is considered an important marker of French cultural heritage and identity.

For Jean-Michel Frodon, there is a close link between cinema and nation resulting from a number of parallels¹⁰⁰. The first is historic; cinema was invented towards the end of the 19th century when the nation state was the dominant social and political model. Secondly, for both cinema and nation to exist, they rely on 'un même mécanisme: *la projection*'¹⁰¹. Film only becomes real when light casts it on to the silver screen, the nation takes shape when a series of values is shared across a group of people to create a common identity. Finally – and for him the most mundane, and yet fundamental, reason – cinema was invented at a time of industrial stabilisation after the innovation and upheaval of the previous century, thus the structure of the local industry came to reflect the dominant industrial model in each major cinema-producing nation¹⁰².

This, in turn, has shaped the style of filmmaking in individual nations, Frodon maintains, suggesting that the most successful early adopters were those countries in the throes of nation-building. When cinema was invented, the US was emerging from the ravages of the American Civil War. American independence may have been declared over 100 years earlier, but the country was only just beginning to establish its national identity and to bind together the various immigrant communities that had entered the US. Cinema proved the ideal medium to help forge its identity and disseminate it in an accessible way, regardless of cultural or linguistic background. Frodon comments that other young nations such as Germany and post-

¹⁰⁰ Jean-Michel Frodon, *La Projection Nationale: Cinéma et Nation*, (Paris: Éditions Odile Jacob, 1998), pp. 11-13

¹⁰¹ '...the same mechanism: projection'. Ibid. p. 12

¹⁰² Ibid. p. 24

revolutionary Russia also used cinema to create national myths, citing films such as *Battleship Potemkin* and *Metropolis*. Great Britain, on the other hand, was confident in its status as the dominant empire and trading power and, thus, did not have the same need for mythologising, as other nations did. France was in a slightly different position.

While France and the French state had existed for hundreds of years, until the Revolution of 1789 the state was synonymous with the kings of France; the nation was the birth child of Napoleon¹⁰³. It was the Napoleonic regime that put in place the administrative structure, the education system and the legal code that prevails to this day. By the time that cinema was invented, the establishing national myths of the French republic were already being disseminated through the theatre and the novels of Hugo, Flaubert, Stendhal and Zola.

The country saw its mission as the spread of revolutionary and Enlightenment ideals to the world and that it had really only scratched the surface in this respect. As a result, 'la France a inventé le cinéma afin de continuer la Révolution française, qui se veut universelle'¹⁰⁴. It was natural to build on the country's existing cultural and literary heritage, to help the spread of ideas. This exerted a fundamental impact on the film industry in France, which was quickly divorced from its early roots as a trivial fairground entertainment to provide films that were considered to offer more cultural value, earning cinema the reputation as the *septième art*. In doing so, Frodon maintains, the country failed to appropriate its own national heroes and saints for its cinema screens¹⁰⁵. He terms this '*le paradoxe français*' – that is the irony that France felt the need to invent cinema to continue the spread of universal ideals, but failed to seize on the big themes or *grands récits* needed to do so.

In his history of the film industry in France, Fabrice Montebello traces the development of this artistic strand of filmmaking from the early years of talking pictures to the late 1990s and how

¹⁰³ Ibid., p. 22

¹⁰⁴ 'France invented the cinema to continue the French Revolution, which saw itself as universal.' Ibid., p. 81

¹⁰⁵ Ibid., pp. 81-102

it has given rise not just to a distinctly French form of story-telling, but a unique film culture. He comments that the predominantly catholic and communist political élites of the 1920s and 1930s regarded cinema as powerfully educational. Through cinema clubs the Catholic Church actively highlighted films for their ‘moral value’, while the communist party used film to instruct the ‘*petits spectateurs*’ – workers, women and children – in how to benefit most from their French citizenship¹⁰⁶. Membership of these clubs grew steadily, reaching their peak in the 1950s when they focused on spreading appreciation of the great works of world cinema through retrospectives and programmes dedicated to specific genres or artists. The clubs spawned a series of magazines, including *Les Cahiers du cinéma*; many of its contributors, including Truffaut and Godard, went on to make films. Club membership declined with the arrival of television, but the educational approach continued well into the 1980s. In her study of Frédéric Mitterrand’s television career, Courtois documents how his film programmes adopted the same retrospective model and that he ‘n’a jamais considéré qu’une discussion était «trop cinéophile» pour être présentée au public’¹⁰⁷. As a result, a significant proportion of the French population has an extensive knowledge and passionate interest in film.

As Frodon comments, cinema is closely linked to national identity because it is a vehicle for the ideals and values of that nation. However, France has assigned film a particularly important position as a marker of cultural heritage and identity. This unique and wide-spread film culture, coupled with France’s status as the birthplace of film, are significant reasons why it has attained this role and part of what motivates the country to campaign so strongly for the right to maintain policies in support of film.

¹⁰⁶ Fabrice Montebello, *Le cinéma en France depuis les années 1930*, (Paris: Armand Colin, 2005), pp. 16-19

¹⁰⁷ ‘never considered a discussion to be “too geared towards the film specialist” for the public to have it presented to them’. Courtois, *Frédéric Mitterrand*, p. 139

2.5. Conclusion

Globalisation has been received differently by different nations, with some embracing it as a route to a richer more varied culture and others experiencing it as a threat which requires them to reconnect with their roots. Chaubet outlines five different theories of the impact of globalisation from a natural process of convergence to hybridisation, resulting in the creation of new cultural forms and social practices.

French society bears many of the hallmarks of convergence; it shares many similarities with its European neighbours and even with the US, in part through shared historical experiences such as the World Wars, but also common technological advances and the impact of trade liberalisation. However, its relationship with globalisation has not been straightforward.

For Waters, there is a fundamental civilisational aspect to the way the French experience globalisation as described by Huntington. This is because political and economic integration strikes at the very building blocks of French identity – the primacy of the French state, the country's republican values, its social model and its cultural heritage – and has undermined the country's standing on the world stage. This has restricted its ability to transmit those values globally.

However, France has been attempting to carve out a new international role for itself in recent years leading the debate on cultural diversity. French politicians increasingly view the cultural exception as the means for achieving this end. Chapter 4 will explore how France has sought to support its film industry, before examining the process of trade liberalisation that threatens its ability to maintain those policies (Chapter 5). But before that, a discussion of how the analysis is to be undertaken needs to be provided.

3. Exploring *exception-al* circumstances: a mixed methods approach

The mixed methods approach – that is, the use of both quantitative and qualitative research methods in a single project – emerged during the late 1990s as the ‘third methodological movement’ in research¹⁰⁸. It aims to reconcile approaches which purists view as incompatible, combining both numerical and narrative strategies, with the research question – rather than a philosophical paradigm – dictating the shape of the project. Proponents of the mixed methods approach believe that research questions are increasingly complex and a purely qualitative or solely quantitative approach is no longer sufficient. It is necessary to combine approaches to gain an holistic view of the issue.

Plano Clark *et al.* cite the parable of the three blind men asked to describe an elephant by feeling different parts of the animal’s body¹⁰⁹. The one that touches the elephant’s leg likens it to a pillar; the one that feels its tail, describes it as a rope; and the third that feels the trunk, says it is like the branch of a tree. None of these is an inaccurate description; the picture each paints is simply incomplete.

For mixed methods proponents, the same is true of using only one method to view many of the research problems studied by social scientists today. Plano Clark states that ‘...looking at a phenomenon from only one perspective can constrain our understanding of it’¹¹⁰.

This is particularly true of the cultural exception. The issue has been the subject of controversy for many years and debate clouded by national views on the need for state intervention to

¹⁰⁸ Abbas Tashakkori and Charles Teddlie cited in John W. Creswell and Vicki L. Plano Clark, ‘The Nature of Mixed Methods Research’, *Designing and Conducting Mixed Methods Research*, 2nd ed., (Thousand Oaks, California: Sage Publications, 2011), p. 1

¹⁰⁹ Vicki L. Plano Clark, John W. Creswell, Denise O’Neil and Ronald J. Shope, ‘Chapter 18: Mixing Quantitative and Qualitative Approaches’ in Sharlene Nagy Hesse-Biber and Patricia Leavy (eds.), *Handbook of Emergent Methods*, (New York & London: The Guildford Press, 2008), p. 365

¹¹⁰ *Ibid.*, p. 365

promote cultural diversity (see Chapter 5). It also stands at the nexus of cultural policy, law and economics and can be viewed differently depending on the academic discipline. Sociologists may look at how diversity is shaped qualitatively by various social, political and cultural factors, while cultural economists have attempted to develop a quantitative approach¹¹¹. On the surface, this makes study of the cultural exception an ideal candidate for a mixed methods approach. But there needs to be a strong rationale for combining the two approaches beyond the availability of differing sets of data.

3.1. Why combine qualitative and quantitative research?

As Bryman points out, it is tempting to assume that for any project more data is simply better¹¹². However, unless the datasets are combined in a way that they are mutually enlightening, a project involving qualitative and quantitative research is actually nothing more than two parallel projects – and may be two poorly conducted parallel projects at that. The first stage in any mixed methods project, then, is to understand the benefit of bringing the alternative approaches together.

From his review of published mixed methods research, Bryman suggested that there are 18 different reasons why researchers have decided to combine approaches¹¹³. Denscombe has condensed the list still further, creating five broad rationales. These are:

- to improve data accuracy. ‘Triangulating’ or combining results from two different methods helps to corroborate and strengthen the overall findings;
- to produce a more complete picture by examining the issue from multiple angles;

¹¹¹ See Tony Bennett, *Differing Diversities: Transversal study on the theme of cultural policy and cultural diversity*, (Strasbourg: Council of Europe Publishing, 2001), pp. 27-32 and Moreau and Peltier, ‘Cultural Diversity in the Movie Industry’, pp. 123-43

¹¹² Alan Bryman, *Social Research Methods*, 3rd ed. (Oxford: Oxford University Press, 2008), p. 624

¹¹³ *Ibid.*, pp. 608-609

- to mitigate the weaknesses of a mono-method approach. For example, a quantitative approach tends to generate a tightly defined set of results across a large population making generalisation more feasible, but detailed interpretation may be challenging;
- to build upon initial findings by incorporating additional datasets. This may particularly be useful where initial research has generated unusual or unexpected results; and
- to support sampling, e.g. to identify candidates for in-depth interviews based on the answers they provided in a quantitative survey¹¹⁴.

This research project will adopt the second of these strategies, that is to use different types and sources of data to build a more comprehensive picture of how digital technology is affecting France's ability to develop its film policies and to defend them in international trade negotiations.

3.2. How to combine qualitative and quantitative research

Having identified the reason for collecting both quantitative and qualitative data, the next stage is to determine how the various datasets should be combined. Just as there is a range of proposed rationales for conducting mixed methods research, methodologists have also advanced a number of approaches for combining the data, creating typologies of mixed methods research.

Creswell and Plano Clark summarise the main ones employed across different disciplines, coming up with a list of almost 80 different research designs¹¹⁵. However, most are variations on a theme, resulting in slightly different names for the same thing – 'concurrent' and 'simultaneous' being a case in point.

¹¹⁴ Martyn Denscombe, 'Communities of practice for the mixed methods approach', *Journal of Mixed Methods Research*, Vol. 2, Issue 3 (July 2008), pp. 270-283

¹¹⁵ Creswell and Plano Clark, *Designing and Conducting Mixed Methods Research*, pp. 56-9

The key to each typology, then, is to understand the choices to be made at each stage of the research project and their impact on the outcome to ensure that the research design is the most suitable to answer the research question. The issues to be considered are as follows:

- the type of research to be conducted. While mixed methods is generally taken to mean a combination of both qualitative and quantitative research, some methodologists also talk about multi-strand research, whereby two qualitative phases may be combined, for example a case study followed by in-depth interviews with selected participants¹¹⁶;
- the timing of the data collection. Qualitative and quantitative phases may be conducted at the same time – a ‘concurrent’ or ‘simultaneous’ design – or one phase may follow the other in a ‘sequential’ approach;
- the order in which the analysis is carried out. The analysis of each dataset may be carried out in parallel and the results only integrated in the concluding stages, or the results from one phase may be needed to inform the next. A qualitative phase which follows and informs a quantitative one is termed ‘explanatory’, as the narrative research generally helps to explain the numerical results. The reverse is an ‘exploratory’ approach whereby the quantitative phase supports the testing of a hypothesis developed in the qualitative phase;
- the priority given to each form of data. Qualitative and quantitative data may carry equal weight within a project, or one may take a supporting role to the other in a ‘nested’ or ‘embedded’ design; and
- the use of an overt theoretical or conceptual framework to structure research decisions, creating what methodologists term a ‘transformative’ design.

¹¹⁶ Abbas Tashakkori and Charles Teddlie, ‘The Past and Future of Mixed Methods Research’, in Abbas Tashakkori and Charles Teddlie (eds.), *Handbook of Mixed Methods in Social and Behavioral Research*, (Thousand Oaks, California: Sage Publications, 2003), pp. 685-91

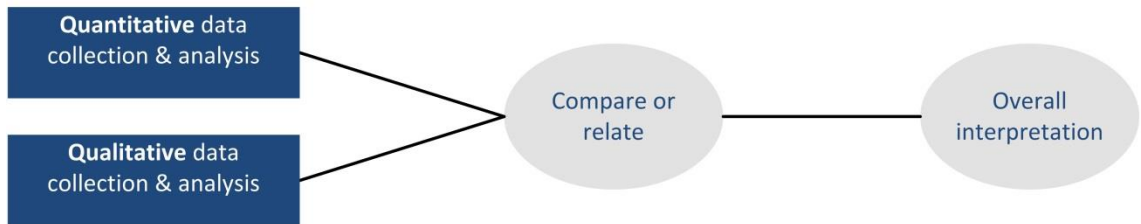
For Creswell and Plano Clark, these choices result in the six prototypical research designs represented in Figure 3.1. In the first – the triangulation or convergent parallel design – the qualitative and quantitative phases are conducted concurrently and the results integrated in the concluding phase. In the second – also a concurrent design – the quantitative stage takes priority and the qualitative phase becomes a supporting strand within the main quantitative research project or *vice versa*. Results from the minor strand are integrated during the analysis. The embedded phase enhances the overall project but, in most instances, is not significant enough to stand alone.

The remaining four designs are sequential in nature; the second phase cannot be initiated until the first has been completed and the results analysed as the one dictates the scope of the other. For example, the results from a series of in-depth interviews may be used to develop the questionnaire used in the quantitative phase; until the interviews have been completed, the questionnaire cannot be finalised.

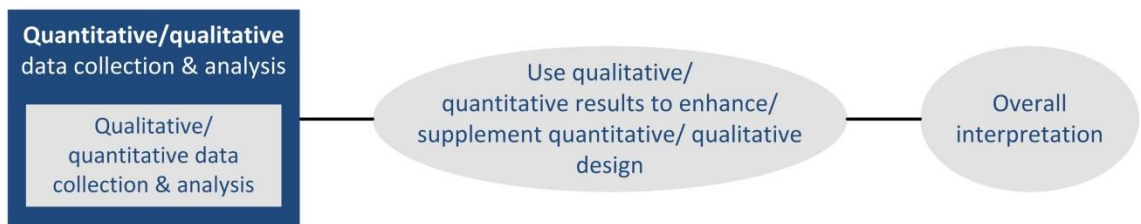
Applying the considerations about timing, weighting and mixing of methods to understand whether France can continue to defend the cultural exception suggests a parallel design. Analysis of the numerical data to assess diversity in the French film market needs to be conducted alongside both the primary interviews with film industry executives, policy-makers and trade negotiators and the analysis of secondary recorded data. This will establish to what extent France's main line of defence – the importance of cultural policy to promote cultural diversity – stands up to scrutiny. The results from both stages will then need to be combined to determine if and how France can lobby for the continuation of the cultural exception and whether it would need to update both its protection of the film industry and its negotiating tactics to achieve its aims.

Figure 3.1: Prototypical versions of the six major mixed methods research designs

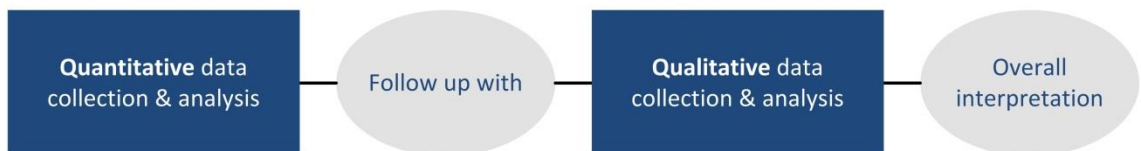
Triangulation or convergent parallel design



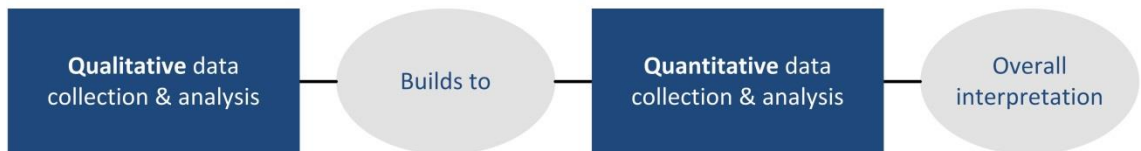
Embedded design



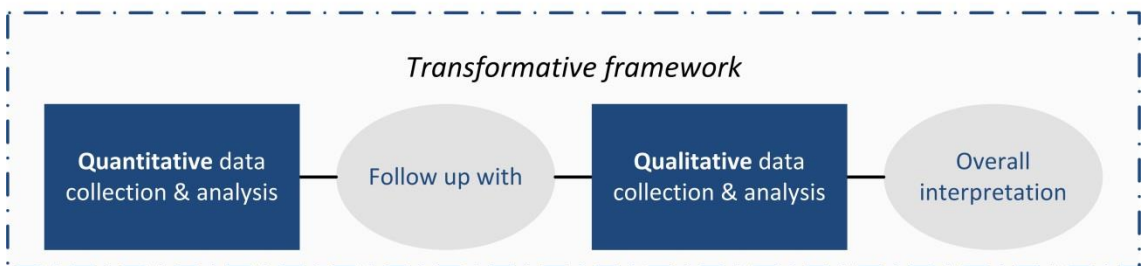
Explanatory sequential design



Exploratory sequential design



Transformative design



Multi-phase design



Source: Cresswell & Plano Clark, 2011

3.2.1. The quantitative aspect

Practically, conducting a mixed methods project is resource intensive. A concurrent design means that the researcher effectively has to run two projects in parallel with all the time commitments that such an undertaking entails. This is often only practical for professional research agencies boasting separate qualitative and quantitative teams; the scope is too broad for a small-scale research project. However, the quantitative aspect of this project is based on publicly available data, mainly that published by the CNC. The presence of a wealth of statistics on the French film industry eliminates the need to design the data collection tools and collect the data for the quantitative phase; the researcher can focus on analysis and interpretation of the public domain information to generate new insight.

As part of its mission to support and promote the French audiovisual industry, the CNC collects detailed figures on each segment of the market and publishes them annually via reports on the development of digital television, on the video market and on cinema attendance. French film producers are required to make detailed submissions to qualify for subsidies, while cinema owners, television companies and providers of video-on-demand services must file their accounts to prove they are respecting their film funding commitments.

Amalgamating the information provided by the CNC, it is possible to build up a picture of the film industry stretching back to 1996 for cinema and to 2007 in the case of video on demand. This includes how many films were released by country of origin; the share of the market occupied by France, the US and other countries; and the top 10 titles per year in each sector – data which can be used to assess market diversity.

While using public data renders the project more manageable, the task is not straightforward. The information is dispersed, requiring effort to collate it. The CNC tends to include slices of the data in each report; information on the size of the video-on-demand market is published in the organisation's annual report, but figures on the services used are covered in its review of

the video sector. Compiling the information requires understanding of the methods and definitions used to collect the data and constant cross comparison to ensure that consistent figures are taken from each source. The task is complicated further by the fact that the CNC may decide to publish the figures in different reports from one year to the next; it is not simply a case of looking at the same section of the annual report year after year.

Moreover, the CNC collects data to fulfil its mandate from the French government. As a result, the data have some limitations. For example, the CNC may not publish all the data points that are required for a full exploration of diversity in the French film industry. The agency provides a list of the top 50 films in cinemas in each year, but only the top 10 titles – both films and television programmes combined – downloaded from video-on-demand services. This limits the depth of the analysis that can be conducted on the latter. Both this and the dispersal of data across reports can be interpreted as a deliberate tactic; it allows the CNC to present the data in the way that best supports the case for its continuing existence.

Previous statistical analysis of the French film market was based on top-level figures on the number of films produced and their share of box office revenues, typically in a single year or over a short period¹¹⁷. This is the first time that the data has been mined more extensively to understand both the supply (the number of French films produced in total and as a proportion of the films released) and the demand side (what is consumed) in two different industry sectors – cinema and video on demand.

After compiling the data, the key challenge was to find a way to assess diversity and measure whether it exists to a greater or lesser degree, particularly such that it is possible to compare between sectors. In 2014, French films represented around 36 per cent of all video-on-demand

¹¹⁷ See Moreau and Peltier, 'Cultural Diversity in the Movie Industry', pp. 123-43, Jonathan Buchsbaum, "The *Exception Culturelle* is Dead" Long Live Cultural Diversity: French Cinema and the New Resistance", *Framework*, Issue 1 (Spring 2006), pp 5-21 and Diana Crane, 'Cultural globalization and the dominance of the American film industry: cultural policies, national film industries, and transnational film', *International Journal of Cultural Policy*, Vol. 20, Issue 4, (2014) pp. 365-382

sales, but enjoyed a 43 per cent share of box office revenue¹¹⁸. There is clearly a difference between the performance of French films in these two channels, but is it a statistically significant difference suggesting that the video-on-demand sector is less diverse? Cultural economists Peltier, Moreau and Benhamou have proposed a method for quantitatively assessing diversity which alleviates this problem of comparability; a detailed explanation of how it will be applied to the French film industry is included in Chapter 8¹¹⁹. Again, for the first time this advances discussion beyond a simple assertion of difference between the way French films perform in each sector.

3.2.2. Document analysis

The reports published by the CNC are not just a mine of statistics on the French film industry, they provide vast detail on the quotas and subsidies in place, the legislative framework underpinning France's film policy, the rise of the video-on-demand sector, and how the first two have been adapted and updated in light of the third. To date, discussion of France's support policies has typically been limited to an overview of the two approaches to subsidisation – the *aide sélective* and the *avance sur recettes* – the various contributors to the *compte de soutien* which funds the subsidies and the content quotas imposed on television companies¹²⁰. Collating legislative information released¹²⁰ by the CNC and the Conseil supérieur de l'audiovisuel (CSA) provides a more detailed view of the measures that France is so keen to protect.

A summary of the various support mechanisms in force is included in Appendix A. This provides the date the scheme was introduced, its legal foundation and an overview of its objectives, alongside any criteria that limit who benefits from the subsidy or how the quota is

¹¹⁸ CNC, *Fréquentation des salles de cinéma*, May 2015, and CNC, *Bilan 2014*, May 2015, p. 138

¹¹⁹ Moreau and Peltier, 'Cultural Diversity in the Movie Industry', pp. 123-43 and Stéphanie Peltier and Françoise Benhamou, 'How should cultural diversity be measured? An application using the French publishing industry', *Journal of Cultural Economics*, Vol. 31, Issue 2 (June 2007), pp. 85-107

¹²⁰ Regourd, *L'Exception culturelle*, pp. 32-58

applied. This detailed analysis of French policy underpins the explanation of how the French system works in Chapter 4. It is also fundamental to the quantitative analysis in Chapter 8. It establishes the definition of a 'French' film and, therefore, what qualifies for state support. It allows us to understand the basis on which the CNC has compiled its data and to draw appropriate conclusions – films classified as 'French' in its statistics will be those that qualify for funding under the support schemes it administers.

The findings from the quantitative phase support assessment of the impact of the various measures in place. With reference to the table of regulations, it will then be possible to isolate those schemes that are effective in promoting cultural diversity and should be maintained, and others which should perhaps be amended or abandoned. The quantitative results will also be used to assess recent proposals, such as those put forward by the 2013 Lescure review into film policy in the digital age and identify those that are likely to have a positive impact on the market and, therefore, should be pursued.

3.2.3. The qualitative aspect

The qualitative element of the project comprises interviews with government officials, trade negotiators and filmmakers, as well as analysis of publicly available interviews conducted as part of the Lescure review and recorded debates organised during the Rencontres Cinématographiques de Dijon.

Interviews provide an opportunity for 'the exploration of more complex and subtle phenomena'¹²¹. Terms such as 'cultural exception' and 'cultural diversity' have been interpreted differently by different people. American trade negotiators argue that the exception does not exist. Some French policy-makers regard the cultural exception as the

¹²¹ Martyn Denscombe, *The Good Research Guide: For small-scale social research projects*, 4th ed., (Maidenhead: Open University Press, 2010), p. 173

means to achieve the desired end of cultural diversity, while others use the term in a way that makes it practically synonymous with French cultural policy (see Chapter 1). Given this indiscriminate use, it is necessary to explore issues in some considerable depth, which is most effectively achieved via an interview.

The interviews support the collection of what Denscombe terms 'privileged information', that is insight coming from people who are in 'a special position "to know"'¹²². Both Pierre Lescure and French culture minister Fleur Pellerin may have publicly declared that it is of upmost importance to defend the cultural exception in international trade talks, but the latter is in a better position to comment on the government strategy adopted in pursuit of that aim.

However, by virtue of their special position and the privileged nature of the information, interview candidates may be limited in what they can say. Government officials are bound by rules on what they can and cannot disclose; filmmakers may be reluctant to be totally open about government policy in case it affects their ability to claim future subsidies. As a result, the scope and the format of the questions had to be carefully considered to ensure that they do not encroach on areas that interviewees considered too sensitive. It was also critical to offer them the right to review the final text and verify how their comments are represented. Anonymising comments has also been necessary in some cases as with the 'European Commission official' and the 'representative of the US business community'. The latter is a lobbyist and expert on European affairs working for a cross-industry trade association that represents the interests of US businesses from small independent retailers to major multinational organisations, including Hollywood studios. Part of the negotiating team in previous trade deals including the GATT Uruguay round and the North American Free Trade Agreement, she is now focused on securing a favourable outcome for US businesses from the TTIP negotiations and thus has a detailed overview of the issues covered in the research.

¹²² *Ibid.*, p. 174

The interviews also serve to expand on findings from the quantitative phase. While the film industry statistics provide a view on what is happening in the market, they do not offer any explanation why it is that way. The CNC data may show a marked rise in the number of French films being made, but is that growth the result of increased subsidies allowing more directors to make films, or a change to qualification criteria such that films that previously would not have been considered 'French' now fall within the definition?

The close to 100 interviews Lescure conducted between late September 2012 and January 2013 as part of his review of French film policy have been made publicly available via the commission's website¹²³. Of these, 43 hearings were selected as relevant to the current project, because they involve filmmakers, as well as the television companies, internet service providers and audiovisual equipment manufacturers that contribute – or the French government would like to contribute – to funding French film production. The remainder cover other aspects of the creative industries, including recorded music and publishing.

A further 15 debates were identified as relevant. These involve representatives from across the French audiovisual sector from policy-makers to trade associations, television companies and new market entrants such as Netflix. These were organised by the Société civile des Auteurs Réalisateur Producteurs (l'ARP) as part of its annual Rencontres Cinématographiques de Dijon. The sessions are posted to the association's Dailymotion channel. All debates organised between 2011-2014 were reviewed.

Combined, these two sources provided over 80 hours of recorded material and an opportunity to listen to the opinions of more than 160 stakeholders. Given the availability of such a large amount of material, it may be argued that there is no need to conduct further interviews; the debates and hearings represent a large enough body of comments on the issue. However, their core purpose was not to assess whether the cultural exception serves to promote

¹²³ www.culture-acte2.fr

diversity; the questions posed were not the ones the researcher would have asked given the opportunity to interview the same people directly. That said, the availability of the recordings provides an opportunity to incorporate a wider set of views, particularly from those unable or unwilling to take part in the current project. Google and Netflix were both approached but declined to be interviewed; the recorded interviews were essential to understand how these important new players regard French cultural policy.

Candidates for the direct interviews were recruited using a purposive sampling strategy, selecting them specifically because of their insight on French film policy and how it has served to promote cultural diversity or because of their involvement in current trade negotiations. Individuals were chosen on the basis of their professional role – both current and historic appointments – and their level of involvement in the debate on the cultural exception. It was important to include candidates who were not involved in the Lescure review in the sample, particularly a number of Americans, to ensure a spread of views from across the debate. French officials and filmmakers have been highly vocal in their defence of cultural diversity since the Uruguay round of trade negotiations, but the opposing arguments have been heard less regularly. The US trade negotiator, for example, is well placed to offer the current American view on the French stance on the cultural exception, how it is affecting the TTIP negotiations and whether it still represents a barrier to US trade interests.

A total of 10 interview candidates were recruited as this provided a good spread of opinion but remained manageable within the constraints of a small-scale mixed methods project. Consequently, it was important to pick candidates with a broad perspective on the issues. Individuals such as Bernard Miyet who have been campaigning for the cultural exception since the Uruguay round were chosen because of their ability to provide insight into how the French position has evolved. Miyet was the lead European negotiator on trade in services in the 1990s and has since served as the head of the French television regulatory authority, the CSA.

The semi-structured interviews were conducted by telephone in November and December 2014. They lasted between 30-60 minutes each and were conducted in French or English depending on the nationality of the candidate. A semi-structured format was chosen, as this provided a framework for discussion, but also allowed scope for unexpected, but important topics to be explored.

There were some standard questions put to all candidates, then each answered specific questions related to their area of expertise (see Appendix B). The initial questions focused on the individual's understanding of key terms used in the debate including 'cultural exception' and 'cultural diversity'. It was important to understand how they perceive these core principles, as it is likely to inform their views on the success of French cultural policy. Interviewees were then asked why they felt the French were such vocal defenders of the cultural exception, why film took centre stage in the debate and whether French and US negotiating positions on trade and culture had changed since the Uruguay round.

Tailored questions explored areas of particular relevance to the candidate. Marie-Sophie Lequerré, former Chargée de mission V&D at the CNC, was asked about new policies to support the video-on-demand sector, while the US trade negotiator was asked whether he felt it appropriate to subsidise development of video on demand.

The interviews were recorded with the permission of the candidates and then transcribed immediately afterwards to facilitate analysis. This ensured the questions asked were continually refined, particularly to ensure clarity, and allowed for any assertions made by one interviewee to be tested with other candidates. For example, Peter Chase of the US Chambers of Commerce suggested that the US film industry was more concerned by the imposition of Europe-wide quotas on digital channels than with subsidies – a statement that was put to and confirmed by all other US interviewees. A second statement that the more moderate stance of the US on trade and culture issues was due largely to the fact that Jack Valenti is no longer the

head of the MPAA was rejected by both French and American interviewees and, thus, has been treated as a personal opinion. This process of continually seeking corroboration particularly among interviewees from a different country or background (for example a filmmaker as opposed to a government official) was important in identifying the areas of consensus and thus the reliability of the findings.

The data from the interviews was collated into a table according to the topics discussed, setting French views on cultural diversity or the effectiveness of the country's film policies alongside American opinions. This helped to identify additional areas of common ground, as well as topics on which opinion diverged.

The table was also used as a framework to structure and identify relevant material from the recorded hearings and debates. Detailed notes were taken while listening to each session. These were reviewed after completion of the interviews to identify where contributors had talked about the same issues that were discussed with interview candidates. For example, where French culture minister Fleur Pellerin expressed why she felt the cultural exception was important at the 2014 Rencontres cinématographiques de Dijon her comments were added to the table alongside those of interviewees on the ongoing need for the exception; the same is true of views expressed by her predecessor Aurélie Filippetti at the 2012 event.

The analysis of the recorded material served several purposes. It helped to further validate findings from the interviews by corroborating what the individuals had said during the conversations. It also resulted in the identification of new issues which are of considerable concern across France; for example how even French internet service providers such as Free have been able to circumvent French film funding requirements (see Section 6.2). These have yet to be covered extensively in the literature and so were not picked up as important topics to be discussed within interviews. Without reviewing the recorded material, these issues could have been overlooked despite their importance. As mentioned above, the inclusion of this

material also ensured that views from other sectors, particularly television and new media, were incorporated even when they were unavailable for interview.

Finally, the qualitative data was integrated with the quantitative research to establish whether the opinions corroborate and explain the trends revealed in the data, or contradict them. Policy-makers may perceive the cultural exception as a major success in protecting the French film industry but, if it appears that the sector has lost ground to Hollywood over the study period, then that perception may be unfounded or the views expressed are the result of political spin.

3.3. A framework for integration

The discussion of mixed methods has been limited until now to discrete phases of the research project. Bryman set out a list of research purposes¹²⁴; Creswell and Plano Clark, among others, advanced a range of research designs summarising the order of research and the integration of data¹²⁵. Plowright has built on their work to create a framework for mixed methods research which, he claims, can be used to structure and support data integration regardless of the type (or types) of data used¹²⁶. Dubbed the Framework for Integrated Methodology, or FraIM, his model eschews the distinction between qualitative and quantitative data. At each stage of the project, research choices are shaped by the level of involvement or 'mediation' on the part of the researcher, which dictates both the methods used and the 'degree of structure' the researcher imposes on the data collected via that method, giving rise to numerical or narrative data.

¹²⁴ Bryman, *Social Research Methods*, pp. 608-9

¹²⁵ Creswell and Plano Clark, 'Choosing a Mixed Methods Design', pp. 53-106

¹²⁶ David Plowright, *Using Mixed Methods: Frameworks for an Integrated Methodology*, (Thousand Oaks, California: Sage Publications, 2011)

He suggests that there are only three methods of data collection: observation; asking questions; and artefact analysis, or the study of documents, pictures, films etc. The 'level of mediation' supports the choice of method – the lower the level the more naturalistic the research setting. For example, a researcher may go unnoticed when they are observing a particular event, ensuring that it unfolds much as it would have done had the researcher not been present. Asking questions is highly mediated; outside of the research setting, it is unusual for people to indicate their answers to questions by ticking a series of boxes.

Once the broad research strategy has been chosen, the next stage is to consider the level of structure required, which dictates the data collection tools to be used. Researchers may ask questions in a number of ways – the most common in a research setting being a questionnaire or an interview. In the former, the researcher has imposed a significant degree of structure on the format of the questions in advance – particularly by dictating the possible answers to each question. The latter is less structured, as interview subjects are able to answer questions in their own words. Bryman has suggested that this structuring means that quantitative research tends to be driven by the researcher's concerns, while a qualitative approach 'takes the subject's perspective as the point of departure'; combining the two provides balance and is further justification for employing both approaches¹²⁷.

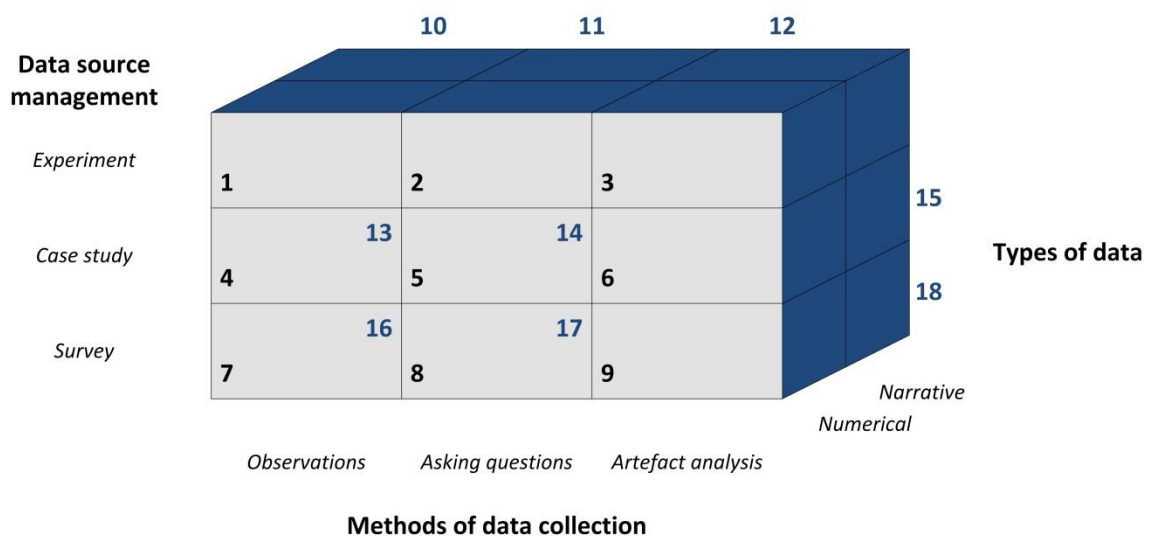
The degree of pre-structuring or pre-coding determines whether the data returned is numerical as with a questionnaire containing closed questions, or narrative as with interviews. The question may not be different, but how it is asked does vary, so too the results generated. It depends on the research question as to how structured, or not, the data collection should be. In this way, numerical and narrative data are seen as different points on a scale rather than as mutually exclusive elements not to be mixed. In this, Plowright is supported by Tashakkori who sets out a continuum for qualitative and quantitative data integration. All research

¹²⁷ Alan Bryman, 'Quantitative and Qualitative Research' in Clive Seale (ed.), *Social Research Methods: A reader*, (London: Routledge, 2004), pp. 507-8

includes qualities that can be counted and quantified by frequency, even if only in vague terms such as ‘some’, ‘few’ or ‘all’, while quantitative data is interpreted narratively¹²⁸.

This leads Plowright to suggest a three-dimensional model for integrated research, mapping the data collection approach against the strategies for ‘data source management’: experiment; case study; and survey. It indicates the types of data that will be generated depending on the case selection, sampling and structuring decisions and suggests how that data could be pulled together into a coherent whole. The model (Figure 3.2) comprises 18 options based on the choices made during the project. Options 8 and 17 both adopt a survey strategy and ask questions, but the former takes a structured approach to generate numerical data, while the latter uses semi-structured interview questions to generate narrative data.

Figure 3.2: Three-dimensional model of an integrated approach to designing research



Source: Plowright, 2011

Visualising the decisions made during research in this way presents a useful check for researchers on their research choices and the compatibility of the various types of data generated. Using the same data source management strategy and method of collection to

¹²⁸ See Figure 19.1 in Charles Teddlie, Abbas Tashakkori and Burke Johnson, ‘Emergent Techniques in the Gathering and Analysis of Mixed Methods Data’, in Nagy Hesse-Biber and Leavy (eds.) *Handbook of Emergent Methods*, p. 390 and also Denscombe, *The Good Research Guide: For small-scale social research projects*, 3rd ed., (Maidenhead: Open University Press, 2007), p. 119

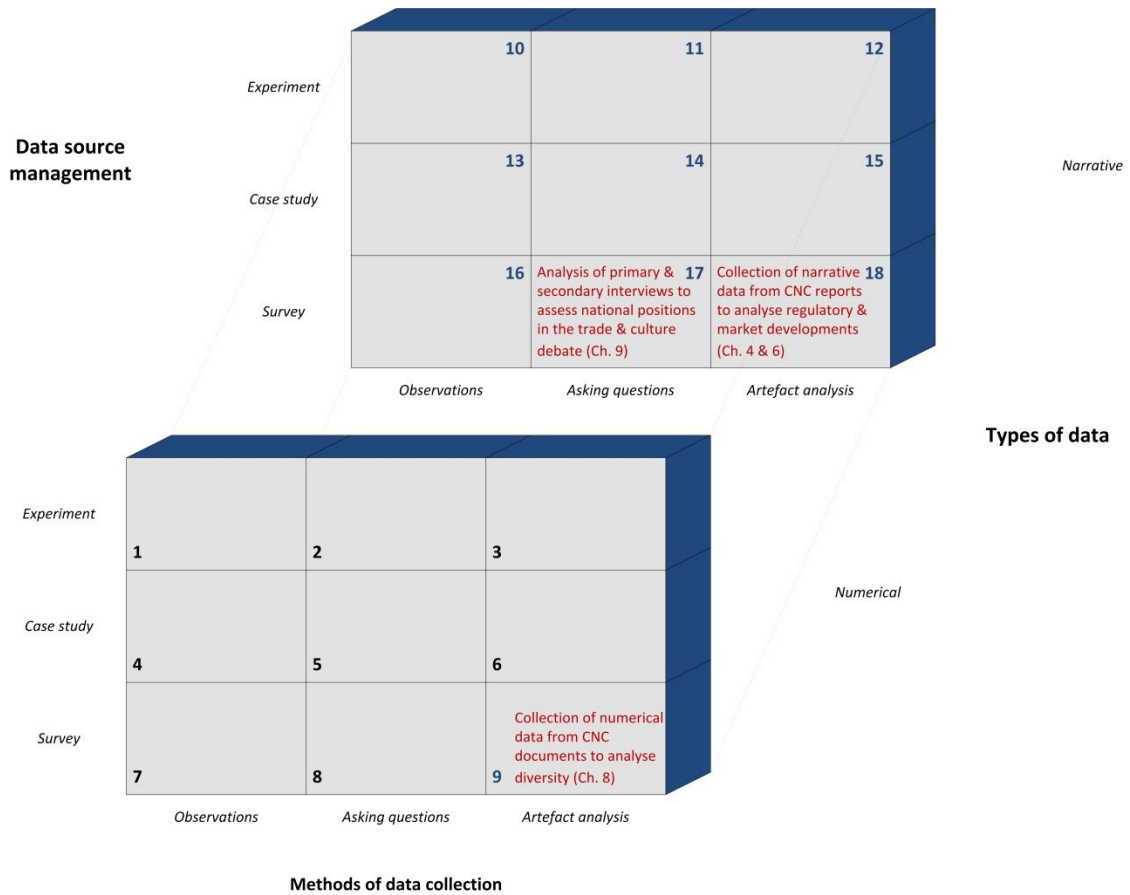
create both numerical and narrative data is likely to result in data that can be synthesized more easily than taking a narrative approach to artefact analysis in one part of the project and an experimental approach to generate numerical data elsewhere.

It is also more likely to generate what Plowright terms 'warrantable research'¹²⁹ – that is research, conducted in a credible and auditable way, such that any claims made or conclusions drawn stand up to scrutiny. The reason being that working through the project in a logical fashion from the original research question through case selection to data collection and analysis provides the support, or 'backing conditions', which can be used to justify the final conclusion. For example, explicit analysis of the theoretical and policy context means that the researcher is able to quote evidence from the literature that supports the arguments advanced. Similarly, the researcher can demonstrate that appropriate decisions have been made at each stage.

So how can the FraIM approach be applied to the current project on the cultural exception? As shown in Figure 3.3, the data being collected are all forms of survey data. In terms of the recorded interviews, the researcher may not have asked the questions personally, but questions were asked about French cultural policy and thus it will be possible to combine their review with analysis of the primary interviews. Similarly, the data collected for both the quantitative analysis of diversity and to understand the development of the video-on-demand market in France are derived from document analysis; it is simply that for the former numerical data was pulled from the CNC publications, and in the latter, narrative information was gathered. As long as the researcher understands the basis upon which the data have been generated, then these elements should be compatible. As mentioned, Creswell and Plano Clark provide us with the model for integrating the elements in a parallel research design, resulting in valid or warrantable conclusions.

¹²⁹ Plowright, *Using Mixed Methods*, pp. 134-48

Figure 3.3: Three-dimensional model applied to data collected on the cultural exception



Source: Plowright, 2011

3.4. Is it appropriate to mix qualitative and quantitative research?

This discussion has focused on the theory behind combining qualitative and quantitative data and how they can be successfully integrated. It has not looked at whether it is appropriate to combine the two types of data. Many would argue that it is not, since quantitative and qualitative research strategies start from two philosophically opposed ontological and epistemic positions.

The traditional view of research originating from the physical and natural sciences is based on the 'positivist' or 'postpositivist' philosophy. This postulates that there is one world or objective reality and knowledge about that world can only be gained through experience. That experience could be gained via a variety of methods, organised hierarchically according to their ability to access what are regarded as universal truths. Large-scale experiments

generating numbers that can be manipulated mathematically are considered the most valuable tools; the softer qualitative approaches are at the other end of the scale, with a case study strategy at the bottom of the pile because of the limited number of participants involved and, therefore, the inability to generalise from the single case to the wider population.

This view began to change in the second half of the 20th century with the rise of what is known as ‘constructivism’. Constructivists assert that there is no single, universal world ‘out there’, but that each of us perceives reality in a slightly different way based on our beliefs and experiences – that is, we each construct our view of reality. In this context, qualitative methods increase in value as they go to the heart of how the research subject perceives an issue; to move from what semioticians term the signifier to the signified, the object or experience behind the word.

This is where debate over the validity of mixing methods arises. It is logically impossible to have both a universal reality and multiple realities. If using quantitative methods implies a postpositive approach and conducting qualitative research suggests a constructivist stance, then, for methodological purists, it is impossible to combine the two approaches – a conclusion which resulted in the so-called ‘paradigm wars’¹³⁰.

However, as Tashakkori and Teddlie point out researchers have been combining both qualitative and quantitative approaches in their research for years¹³¹. And they have had many different reasons for doing so¹³², suggesting that the strategies are not as incompatible as the purists maintain and that there is a logical philosophical basis for mixed methods research; this philosophical foundation is pragmatism. The original pragmatists were a group of 19th century philosophers: Charles Peirce; William James; and John Dewey. They believed that ideas did not

¹³⁰ See Denscombe, ‘Communities of practice’, p. 271 and Tashakkori and Teddlie, ‘Preface’, in Tashakkori and Teddlie (eds.), *Handbook of Mixed Methods*, p. ix

¹³¹ Tashakkori and Teddlie, ‘Major issues and controversies in the use of mixed methods in the social and behavioral sciences’, in Tashakkori and Teddlie (eds.), *Handbook of Mixed Methods*, pp. 5-6

¹³² Bryman, *Social Research Methods*, p. 624

constitute a pre-existing 'foundation' which would allow us to arrive at knowledge about the world, as with the positivist and constructivist views – hence the term foundationalism, which is often used to describe pragmatism. Instead, ideas act as instruments and are only as good as their practical consequences.

As Plowright notes:

Pragmatists argue that if statements about the world do not lead to consequences or actions that are instrumental in enabling us to make appropriate decisions, take effective action and successfully get things done, then those statements or beliefs will not count as knowledge¹³³.

Other mixed methodologists caution that practicality alone cannot justify the choices that a researcher makes during research. In a government-sponsored project, a decision may be deemed practical because it suits the aims of the sponsor; it may not be in the best interests of the research subjects involved¹³⁴. Moreover, justifying decisions on practical grounds may limit appreciation of the complexity of the research problem which is the reason for choosing the mixed methods approach in the first place. Instead, the research project should be courting different theoretical perspectives to ensure a rounded view. As Mason points out, '...if the social world is multi-dimensional, then surely our explanations need to be likewise?'¹³⁵.

It is important for a researcher to acknowledge that those perspectives are social constructions in themselves. Our conclusions and our beliefs about what constitutes knowledge are reliant on how we investigate an issue; different methods reconstruct the same experience in

¹³³ Plowright, *Using Mixed Methods*, p. 184

¹³⁴ See House and Howe quoted in Donna M. Mertens, 'The Transformative-empiricist perspective', *The Handbook of Mixed Methods Research*, p. 137

¹³⁵ Jennifer Mason, 'Mixing methods in a qualitatively driven way', *Qualitative Research*, Vol. 6, Issue 9, 2006

different ways¹³⁶. For example, how successful we ultimately determine French film to be, relies on our definition of French film. Many would not view the films of Luc Besson as French because they provide Hollywood-style entertainment and are often shot in English with Hollywood actors in the main roles, but they qualify for subsidies on the basis that the director, the production team and much of the crew are French. Consequently, they will be classified as French in the CNC figures. If stricter criteria were used to define a film as French, the smaller the number of movies classified as French and the more likely we are to conclude that the industry is struggling.

For Greene and Caracelli, it is acceptable to mix paradigms along with methods to access the heart of an issue from a range of perspectives, so long as the researcher is explicit about the theoretical position adopted. In so doing, the researcher exposes any underlying assumptions to scrutiny, such that the end results themselves also stand up to inquiry and are not undermined because an initial statement was not tested¹³⁷.

In terms of the cultural exception, it makes sense to examine the issue from both a qualitative and a quantitative perspective because trade negotiators have employed abstract concepts and industry statistics to justify their point of view as and when it suits their defence, but not combined the approaches to provide a rounded view of the issue. To examine the extent to which France can continue to defend the cultural exception from only one or other approach would be to potentially miss some very important aspects. By way of an example, looking only at the proportion of French films available on demand may lead us to conclude that the French film industry is underrepresented. Exploring filmmakers' views on licensing their work for digital distribution may give us an entirely different view; there may be more than enough

¹³⁶ Sarah Irwin, 'Chapter 20: Data Analysis and Interpretation – Emergent Issues in Linking Qualitative and Quantitative Evidence', in Nagy Hesse-Biber and Leavy (eds.), *Handbook of Emergent Methods*, p. 418

¹³⁷ Jennifer C. Greene and Valerie J. Caracelli quoted in Creswell and Plano Clark, *Designing and conducting mixed methods research*, p. 45

content available to fill the channels, but filmmakers are reluctant to release their work that way because it facilitates illegal sharing of films.

3.5. The research question

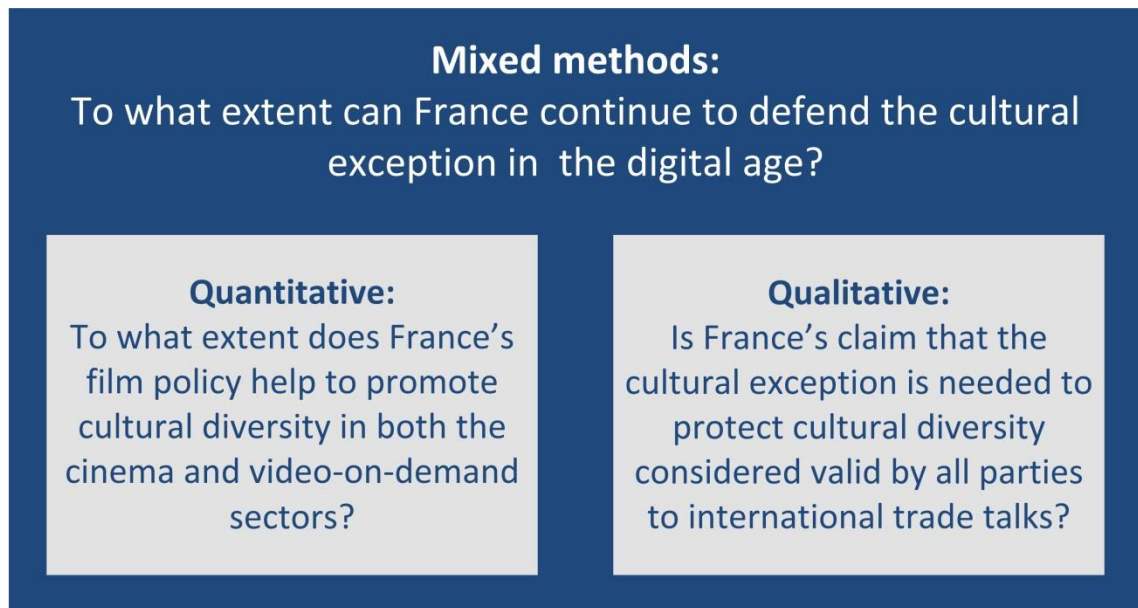
Regardless of whether mixed methodologists take a pragmatic approach or adopt a more nuanced, multi-dimensional view of the theory underpinning their work, almost all agree that the research should be led by the research question and then the theory should follow. For Plano Clark *et al.*, the complexity of modern research problems may even necessitate multiple research questions to ensure that the rationale for each strand and the reason for mixing approaches is 'explicit and clear' from the outset:

[...] we recommend that researchers state a mixed methods research question, in addition to quantitative and qualitative questions, within their mixed methods studies. These mixed methods questions foreshadow and direct the mixing that will occur within the selected design.¹³⁸

They go on to suggest that the various strands of the project are represented diagrammatically, explaining how the quantitative and qualitative sub-questions will combine in the final analysis. Figure 3.4 shows how the qualitative and quantitative strands are embedded within the wider mixed methods question on France's ability to continue to defend the cultural exception.

¹³⁸ Plano Clark, Creswell, O'Neil Green and Shope, 'Chapter 18: Mixing Quantitative and Qualitative Approaches', in Nagy Hesse-Biber and Leavy (eds.) *Handbook of Emergent Methods*, p. 380

Figure 3.4: Model of mixed methods approach to research into the cultural exception



3.6. Pitfalls and problems of combining qualitative and quantitative data

While the greatest criticism levelled against mixed methods research has been the paradigmatic incompatibility of qualitative and quantitative approaches, it is not the only one. Practical issues have also come under the spotlight.

The first of these is the question of data integration. As mentioned, the main rationale for employing a mixed methods strategy is that a combination of both numerical and narrative data allows the researcher to gain an insight that would not have been possible with a mono-method strategy, such as a fuller view of the issue, or to overcome an inherent weakness in one of the approaches. However, this can be quickly undermined if the two datasets are not properly integrated; in effect, they remain two parallel, but separate research projects.

This is one reason for adopting Plowright's approach to data integration. It provides validation that the data being used are of similar types; the numerical information gathered for the quantitative phase using artefact analysis is simply a more structured version of the qualitative data collected using the same approach. In both cases, it is important to pay close attention to

the scope of the data and how it was generated. It is also important to be aware of why the data were published; if the report was released for a specific reason, this may affect the information included, as well as how that information is presented. For example, the CNC may highlight the French film industry's share of cinema entrances, but its proportion of video-on-demand revenue, because using the share of volume in one sector and value in another presents the industry in the strongest light.

The other major criticism is that no researcher has the skills and resources to manage parallel qualitative and quantitative projects. Using publicly available data mitigates this issue. As mentioned, this avoids the need to design the data collection methods and to collect the data, which are very resource intensive, especially for a survey as extensive as the CNC's on the French film landscape; it has a team of statisticians compiling its reports. It also means that the skills required to analyse the information are the same as those for the qualitative analysis.

3.7. Conclusion

Over the past 20 years, the mixed methods approach has gained increasing prominence in research circles. Considered the 'third methodological movement', it has drawn fire from proponents of the legacy approaches particularly because of a perceived incompatibility between the postpositivist tradition that underpins quantitative research on the one hand and the constructivist tradition present in qualitative research on the other. This has been resolved by giving primacy in mixed methods circles to the research question, sometimes falling back on a pragmatist philosophy, but often on the basis that the theoretical tradition employed is irrelevant, so long as the researcher is explicit about the context in which they are conducting the research.

This has led methodologists including Bryman, Creswell and Plano Clark to create a typology of research purposes and project designs to encourage those using mixed methods to consider

why they want to combine the two types of data in their research and how that integration should be achieved.

Plowright has built on this leading to a FraIM, which offers researchers an approach for integration of qualitative and quantitative data. He suggests that all forms of data fall into just three categories – experiment, case study and survey – and it is the level of structure that dictates whether the data is qualitative or quantitative. He suggests that as long as the numerical and narrative data are of the same type and consistent data collection processes are used, then it is possible to successfully combine qualitative and quantitative data.

4. Supporting cinema: the film protection policies France seeks to defend

Il ne s'agit pas d'empêcher le cinéma américain d'être vu, mais de faire en sorte qu'il ne soit pas le seul. On parle souvent de pluralité de l'information, il faut également une pluralité culturelle: qu'on puisse voir d'autres civilisations, d'autres manières de filmer, de respirer, entendre d'autres langues. C'est très important.

Bertrand Tavernier
Director¹³⁹

There are two broad approaches a country can take to protect its film industry: imposing quotas to ensure that local films are not squeezed out of the market by foreign-made movies; and subsidies to support the production of new films. France has long employed both of these strategies to maintain its film industry in the face of a strong US challenge, adapting its approach over the years in response to evolution in the industry with the advent of television, video and, most recently, digital services, and to international policy-making particularly at the EU-level. Through a programme of selective subsidies, France has tried to ensure that films are made for their cultural merit, which would not have been funded if left to market forces. It also awards subsidies automatically. The resulting programme is complex and, while it may have facilitated the continued survival of the French film industry, critics both within and outside of France argue that it has done so at the expense of creating an industry reliant on aid. It may also be failing in its cultural objectives in that selective support is given to films appealing to the subsidy-awarding élite rather than supporting films that offer an important reflection on French culture, values and society.

¹³⁹ 'It is not about preventing American films from being shown, but ensuring that they are not the only ones. We often talk about plurality of information; cultural plurality is just as important so that one can see other civilisations, other ways of making films, of projection, hear other languages. It is very important.' Bertrand Tavernier 'L'importance de l'imaginaire' in Frédéric Sojcher (ed.), *Cinéma européen et identités culturelles*, (Brussels: Revue de l'Université de Bruxelles, 1995), p. 43

France's earliest attempts at support date back to the period immediately after World War I when the simultaneous release of all the Hollywood films that had been unable to enter the market during the previous four years threatened to swamp a local industry weakened by the conflict in terms of manpower, facilities and resources. Quotas were considered the most effective way to tackle the problem and, initially, were a simple numerical restriction on the number of US films that could be imported into France. This was replaced in 1927 by contingent quotas that Édouard Herriot, then Minister for Education and Fine Arts, claimed were essential 'to protect the manners, morals, and traditions of the French people'¹⁴⁰. They required the US to distribute a French film in the US in return for every seven import visas¹⁴¹. However, 60 per cent of US films were not restricted by any contingent arrangements, ensuring easy access to the market for many more US films than Hollywood expected to sell to France each year. Nonetheless, the quotas were greeted with consternation by the US film industry; it staged a six-month boycott of the French film industry, which came to an end following pressure from French cinema owners keen to be able to show popular US films. Pressure was brought to bear on other French industries, particularly exports of wine and cheese. A new deal was struck in 1936 as part of the Roosevelt administration's New Deal to boost the US post-Depression era economy, reducing restrictions on French products coming into the US in exchange for more generous quotas on US film exports to France¹⁴².

In the aftermath of World War II, France changed tack again, replacing the numerical quotas with ones based on screen time, which the government hoped would ensure French films would be shown in cinemas. The Blum-Byrnes Agreement – a two page annex to the Washington Agreement of May 1946 dealing specifically with film issues¹⁴³ – opened French

¹⁴⁰ Jens Ulff-Møller, *Hollywood's Film Wars with France: Film-Trade Diplomacy and the Emergence of the French Film Quota Policy*, (Rochester, NY: University of Rochester Press, 2001), p. 103

¹⁴¹ *Ibid.*, pp. 74-103

¹⁴² *Ibid.*, p. 47

¹⁴³ Jean-Pierre Jeancolas 'From the Blum-Byrnes Agreement to the GATT affair' in Geoffrey Nowell-Smith and Steven Ricci (eds.) *Hollywood and Europe: Economics, Culture, National Identity 1945-95*, (London: Bfi Publishing, 1998), p. 46

doors to US films blocked from the market by the Vichy government during the German Occupation in return for a proportion of France's war debt being cancelled. It also introduced measures to reserve four weeks in every quarter for French films; the remaining screen time was open to films from any country¹⁴⁴. The Motion Picture Association of America (MPAA), which represents Hollywood studios, was dissatisfied with the arrangements as it believed the quotas allocated a higher proportion of screen time to French films than they occupied before the war. However, more importantly, French producers, distributors and exhibitors and the PCF, the French communist party, also objected. They felt that the quotas under-represented the French film industry in terms of the volume of films required in future and argued that they would lead to mass-unemployment in the sector¹⁴⁵. Calculating the number of films needed to fill French cinemas and, therefore, the number of French films required to fill the local industry's four-week screen-time allocation, they estimated fewer films would need to be produced at a point when the French industry was looking to gear up filmmaking. Expansion would be impossible without squeezing French films into an ever smaller space¹⁴⁶.

This, in fact, happened, with French producers and exhibitors squeezing as many films as possible into the four-week slot, forcing films from screens after just a week at the box office to make way for other movies¹⁴⁷. This created a cycle that is still seen today, with many films shown in cinemas for only a few days and unable to make a profit within that time. Digital technology has exacerbated the problem; digital versions of films can be shown

¹⁴⁴ Ulf-Møller, *Hollywood's Film Wars with France*, p. 146 and Frédéric Gimello-Mesplomb, 'L'état français à la recherche d'une "politique culturelle" du cinéma: de son invention à sa dissolution gestionnaire', *Quaderni*, Vol. 54, 2004

¹⁴⁵ Maintaining film production jobs is an issue that would come up again in the Uruguay round of negotiations leading up to a revision of the General Agreement on Trades and Tariffs (GATT) in the early 1990s (see Chapter 5).

¹⁴⁶ Communist French assembly member Georges Sadoul commented that French production had dropped from 50 per cent of films shown in French cinemas to 31 per cent, resulting in studios working at around one-third of their potential capacity. See Ulf-Møller, *Hollywood's Film Wars with France*, p. 147 and Susan Hayward, *French National Cinema*, 2nd ed., (London: Routledge, 2005), p. 25

¹⁴⁷ Frédéric Gimello-Mesplomb, 'The economy of 1950s popular French cinema', *Studies in French Cinema Journal*, Vol. 6, Issue 2, 2006

simultaneously, allowing Hollywood blockbusters to be programmed on multiple screens on a Saturday evening while their French competitors are aired occasionally in off-peak hours¹⁴⁸.

Within months, negotiations on the quota system were reopened, eventually resulting in the Caffery-Schuman Agreement of September 1948, which increased the screen-time quota for French films to five weeks every quarter and reintroduced the numerical quota on film imports. Couched as a dubbing licence, it allowed the US to import a number of films that had already been dubbed into French; others could be dubbed by local companies.

In negotiating the Caffery-Schuman Agreement, France relied on the concession that it had secured the previous year during trade talks leading to creation of the first GATT. Article IV creates an exception to Article III, which stipulates that governments extend to imported goods the same treatment that is granted to national goods, including equivalent rates of taxation and regulation. The exception allows countries to maintain or introduce screen quotas, which were seen as the counterpart to tariffs in other economic sectors¹⁴⁹. All other forms of protection, such as contingent quotas, were banned. Under the GATT rules, quotas should be expressed as a percentage of total screen time available. That percentage could not exceed the proportion dedicated to films of national origin on 10 April 1947 or the national film industry's market share on the same date, in the case of new quotas¹⁵⁰. Significantly, a report by Georges Sadoul into the state of the film industry showed that although French films had seen a drop in share, the country's industry occupied 38 per cent of the market on the relevant date; more than the previous legal minimum of 31 per cent and equivalent to five weeks out of every quarter¹⁵¹.

¹⁴⁸ See Rencontres Cinématographiques de Dijon, *Exploitation de films en salles: Comment trouver les meilleurs conditions de distribution des œuvres?*, 17 October 2014

¹⁴⁹ Bernier, 'Local content requirements for film, radio and television', p. 3

¹⁵⁰ Tina W. Chao, 'GATT's Cultural Exemption of Audiovisual Trade: The United States may have lost the battle but not the war', *University of Pennsylvania Journal of International Economic Law*, Vol. 17, Issue 4, (1996), pp. 1,131-2

¹⁵¹ Hayward, *French National Cinema*, p. 25

In September 1948, the French government passed an emergency aid package designed to boost film production, the *Fonds spécial d'aide temporaire*. It would be extended and made permanent five years later as the *Fonds de soutien*, the foundation of France's film subsidy scheme (see below). The introduction of the *Fonds spécial* initiated the shift away from a system based purely on discriminating against US imports to creating measures in favour of domestic films, such as prizes, incentives, tax breaks and subsidies. These 'non-border' measures were not subject to GATT national treatment obligations because, France argued, the measures were not directed at imports¹⁵².

In principle, the screen-time quota secured as part of the Caffery-Schuman Agreement is still in place, but it is not actively enforced. Even when French cinema dropped below a 38 per cent share of cinema entrances, as it did every year between 1989-2000¹⁵³, there is no indication that France acted to redress the balance. Jeancolas suggests that the creation of France's film funding programme within a few years of the Blum-Byrnes Agreement rendered the provisions practically obsolete¹⁵⁴. It is widely believed in France that quotas no longer exist. Former CNC president Éric Garandau has commented publicly that the Chinese film industry is astonished that the French film industry has a 35-45 per cent share of its national market without the use of cinema quotas¹⁵⁵. But there is no sign that they have been repealed and the Americans certainly feel they still exist, listing them in their annual review of foreign trade barriers that they would like to see removed¹⁵⁶.

¹⁵² Ian Jarvie, 'Free trade as cultural threat: American film and TV exports in the post-war period' in Nowell-Smith and Ricci (eds.) *Hollywood and Europe*, p. 39

¹⁵³ This period is not unique. France has had a smaller than 38 per cent share in other years. See Centre national du cinéma et de l'image animée, 'Fréquentation des salles de cinéma'

¹⁵⁴ Jeancolas 'From the Blum-Byrnes Agreement to the GATT affair', p. 51

¹⁵⁵ Emmanuel Torregano, 'Éric Garandau, président du CNC: «La commission européenne veut nous ramener à l'acte zéro de l'exception culturelle», *Électron Libre*, 22 September 2011, reproduced in Rencontres Cinématographiques de Dijon, *Peut-on encore parler d'exception culturelle dans une Europe numérique? Compte-Rendu du Debat*, p. 19

¹⁵⁶ See the section on the European Union in United States Trade Representative, *2015 National Trade Estimate Report on Foreign Trade Barriers*, March 2015

France was also lax in its implementation of the dubbing quota. Under the Caffery-Schuman deal, the US secured 121 of the 186 import visas available – 110 for Hollywood studios and just 11 for independent producers. In 1950, the French government attempted to reduce the quota to 90 visas for the Hollywood majors, but was forced to add a further 20 permits to the following year's quota to compensate for the reduction. The 1953 quota was again 90 visas, but this time the French authorities unofficially awarded the US 15 'off-quota' and five 'merit' visas and by the end of the decade, the 70 official visas were accompanied by 40 'merit' visas, retaining the originally tally¹⁵⁷.

Again, quotas no longer appear to be actively enforced. Figures from the CNC show that since 1992, there has been only one year where the number of US releases has been as low as 121 films, while in some years it has been as high as 184 films. But in any case, the quota is now insignificant as far as Hollywood is concerned. As Susan Hayward mentions, US studios have circumvented the need for import visas by setting up local offices that are technically releasing local films¹⁵⁸. This also created a local production office that could claim a share of French film subsidies, a trend which will be examined in more detail below.

4.1. Shifting focus to the small screen

After the intense negotiations of the late 1940s and early 1950s, quotas received little attention for another 20 years. However, faced with declining audiences in cinemas and greater numbers of televisions in people's homes, in 1972 French filmmakers successfully lobbied the Office de Radiodiffusion Télévision Française (ORTF), which regulated France's public service broadcasters, to impose restrictions on the number and timing of films shown

¹⁵⁷ Uiff-Møller, *Hollywood's Film Wars with France*, p. 150

¹⁵⁸ Hayward, *French National Cinema*, p. 27

on French television; restrictions that were reproduced in the charters of TF1, Antenne 2 (now France 2) and France 3 when they were established two years later¹⁵⁹.

The aim of the restrictions was twofold: to reduce competition for cinema from the small screen; and to ensure that when films were broadcast, French films enjoyed at least their fair share of airtime. The regulations imposed a limit on the number of films that could be shown on television. In the 1970s, that level was 500 films across all five channels. Today, the five free-to-air channels may each show 192 mainstream and 52 arthouse films annually¹⁶⁰; specialist cinema channels including Canal+ have a more generous allowance of 500 films per year, to compensate for a more onerous commitment to fund film production. The free-to-air channels may only show 144 of the mainstream films within peak viewing hours, defined as 20:30-22:30; the remainder and all arthouse films must air outside of these times. No film – regardless of type – can be shown on a Friday evening, as this is when the French public is most likely to go to the cinema. Until recently, a similar restriction operated on a Wednesday, the day new films are released¹⁶¹, but this has been relaxed slightly allowing smaller channels such as France 4 to show films during peak hours. Restrictions on Saturdays and Sunday evenings were relaxed in 2008 in exchange for further commitments on film funding.

Quotas in place in the late 1970s and early 1980s stipulated that at least 50 per cent of films shown on television were French. These screen-time provisions were extended in 1986 to cover all television programmes, forming the basis of provisions in the 1989 European Television without Frontiers Directive, which was a major bone of contention with US negotiators during the Uruguay GAT/S talks.

¹⁵⁹ Ange-Dominique Bouzet, 'Un instrument efficace dans le cas du cinéma. Les quotas de diffusion imposés aux chaînes de télé ont sans doute sauvé l'industrie du film français', *Libération*, 4 January 1996

¹⁶⁰ This is the original three state channels – TF 1, Antenne 2 and France 3 – plus M6 and Arte.

¹⁶¹ Brigitte Rollet, 'Cultural Exception(s) in French Cinema', in Godin and Chafer (eds.), *The French Exception*, p. 172

The Directive states that ‘wherever possible’ national broadcasters should dedicate a minimum of 60 per cent of output to content of European origin, though France has decided not to include the caveat and make the content quota mandatory for all broadcasters. The French quota is slightly watered down from France’s earlier national rules, at 40 per cent of total output¹⁶². The quotas apply to both prime-time and total output – thus preventing broadcasters ‘burying’ French content at less popular times of the day – but exclude the time ‘appointed to news, sports events, games, advertising and teletext services’¹⁶³. A similar, but separate quota applies to the broadcast of films on both traditional free-to-air and specialist cinema channels¹⁶⁴.

The latter are categorised according to the number of new films they broadcast. Canal+ is classified as a ‘service de premières exclusivités’ because it shows more than 75 films a year that are less than three years old, many for the first time on television. The next rank down are ‘services de premières diffusions’ that show fewer new films and then the ‘services de patrimoine cinématographique’ specialising in back catalogue films and other cinema channels. The first two groups have some flexibility in applying the quotas, so long as the proportion of European works does not fall below 50 per cent; the equivalent for French films is 35 per cent. They also have a greater degree of flexibility in calculating compliance with the quotas: as a percentage of total broadcast time; or based on the overall number of films shown.

Compliance with television quotas has been monitored more closely than screen-time restrictions in cinema; it is a core function of the CSA. As a result, broadcasters have respected the stipulated levels since the earliest days of the scheme and continue to do, as is clear from Table 4.1. However, the headline numbers only tell half the story. Looking at television drama,

¹⁶² Ministère de la Culture et de la Communication, *Rapport au Parlement sur l'application de la loi du 4 août 1994 relative à l'emploi de la langue française*, 1999

¹⁶³ Chao, ‘GATT’s Cultural Exemption of Audiovisual Trade’, p. 1,133

¹⁶⁴ Ministère de la Culture et de la Communication, *Rapport au Parlement sur l'application de la loi du 4 août 1994*

French content made up 35 per cent of the total across the 13 free-to-air stations¹⁶⁵ monitored by the CSA in 2010 and European content a further 17%; series from the US made up the remainder. Television companies are compensating for the amount of drama they buy from the US by airing more locally-made documentaries and reality television programmes, such as *The Loft* (the French equivalent of *Big Brother*), which are cheap to produce¹⁶⁶. As a result half of the most popular dramas in France in 2010 were made in the US and half in France. Meanwhile in Germany, Italy, Spain and the UK, the most popular dramas were all local productions¹⁶⁷.

Table 4.1: Proportion of European content broadcast by the main French TV channels

	1997				2013			
	European works		French works		European works		French works	
	At any time	In peak hours	At any time	In peak hours	At any time	In peak hours	At any time	In peak hours
TF1	60.7%	60.4%	53.5%	53.0%	64.2%	69.0%	57.8%	67.2%
France 2	69.2%	68.9%	50.8%	57.7%	69.3%	64.9%	54.0%	52.6%
France 3	67.2%	82.6%	51.8%	57.9%	66.7%	62.1%	53.6%	56.1%
M6	63.4%	60.3%	46.4%	40.6%	64.9%	71.4%	56.2%	66.2%
Canal+	65.2%	61.7%	52.5%	50.2%	70.3%	76.4%	51.7%	58.2%

Source: CSA¹⁶⁸

4.2. The evolution of France's subsidy programme

While quotas were the preferred weapon used to protect French cinema from a US invasion until the early 1950s, subsidies also had a role to play. France first began providing financial

¹⁶⁵ This includes newer digital channels such as France 4, Direct 8, W9, TMC, NT1, NRJ 12, Directstar and Gulli

¹⁶⁶ CSA, *Les chiffres clés de la télévision gratuite 2010*, 26 December 2011

¹⁶⁷ CSA, *La fiction américaine dans les audiences des grands pays européens*, 12 October 2011

¹⁶⁸ Table based on figures from a 1999 review by the CSA for the French government on the implementation of the quotas by the free-to-air channels (Ministère de la Culture et de la Communication, *Rapport au Parlement sur l'application de la loi du 4 août 1994*) and the annual submissions made to the CSA by the television companies for 2013. In 2013, TF1, M6 and Canal+ provided an overall figure and then separate figures for film and other content. These figures are across all content, but in each case the quotas were respected for the specific types of content. For example, European films represented 62.9 per cent of all films broadcast by Canal+ and French films 41.5 per cent.

support to its film industry in the mid-1930s when it decided to funnel some of the tax levied on cinema owners and exhibitors back into the industry¹⁶⁹. Cinema owners had been taxed heavily since the earliest days of film, with entertainment tax rates of up to 30 per cent depending on the age of the film and the rental price. That revenue had originally been ploughed back into France's war effort and from 1918 into general government funds, before being allocated to cinemas¹⁷⁰.

By the mid-1930s, with Pathé and Gaumont in financial trouble, the French film industry was dominated by small production companies, many established for the purpose of making a single film and which struggled to compete with US studios on their home market¹⁷¹. To tackle this, Jean Zay, secretary of the Ministry of Education and Fine Arts between 1936-9, began campaigning for support for film production – a call not addressed until after World War II.

The creation of the CNC in 1946 signalled that the industry's plight was attracting some attention, though the organisation's early efforts were concentrated solely on the reconstruction of cinemas in the wake of World War II¹⁷². The real boost came two years later when the French government passed the *loi d'aide temporaire à l'industrie cinématographique* which introduced a tax on box office receipts for a period of three years. The revenue generated would be reinvested into film production in a bid to get the French film industry back on its feet. The impact of war had been compounded by the deleterious effects of the screen-time quota introduced as part of the Blum-Byrnes Agreement. The PCF had lobbied for a 25 per cent tax to be levied on all foreign films, but the country's need for US aid was so great as to rule out such an obvious attack on French cinema's traditional enemy. It would also have contravened the national treatment obligations in the newly created GATT. Instead, a tax

¹⁶⁹ Hayward, *French National Cinema*, p. 33

¹⁷⁰ *Ibid.*, p. 33

¹⁷¹ Uiff-Møller, *Hollywood's Film Wars with France*, p. 130

¹⁷² Hayward, *French National Cinema*, p. 38

of 10.9 per cent was levied on the ticket price on all films¹⁷³. The scheme was extended for a further two years in 1951 and then made permanent in August 1953.

The transfer of governance of the CNC from the Ministère de l'Industrie to the newly formed Ministère de la Culture in 1959 marked a turning point in French policies. Under the guidance of André Malraux, the new department was charged with developing and administering a subsidy scheme that not only stimulated film production as the earlier temporary programme had, but also promoted French culture with the creation of an arthouse film category and the introduction of the *avance sur recettes* to selectively support important and challenging films. The basic structure of the programme has remained unchanged since 1959, though amendments and extensions mean funding is now available for all stages of filmmaking from acquiring the film rights to a literary work and script-writing to dubbing the completed movie into a foreign language. Similarly, the sources of the department's funding have been adapted to maintain budgets as the industry evolved. These points will be examined in turn after a review of the basic structure.

France's support programme is divided into two parts: the *soutien automatique* which is paid to all French films; and the *aide sélective*, which is awarded on a discretionary basis to directors making their first film, or to films which are deemed to have particular artistic or cultural merit, or are considered 'difficult' to distribute. Funding for both programmes comes from the *compte de soutien*, a reserve generated initially from the tax on box office receipts, but now also from a levy on the sale of video cassettes and DVDs and a tax on television broadcasters' total revenues. Attempts to extend this further to encompass video-on-demand and internet service providers will be covered in Chapter 6.

The tax, though, is not the only way that these younger sectors of the audiovisual industry are required to support France's film industry. There is an additional requirement to invest a

¹⁷³ Gimello-Mesplomb, 'L'état français à la recherche d'une "politique culturelle" du cinéma'

proportion of their turnover back into film, either by financing new productions, or acquiring the rights to show films. The *chronologie des médias* acts as an incentive by granting an exclusive window during which each sector can show the films they funded without competition from other sectors, while restricting how soon after a film's release in cinemas that the exclusivity period falls. Where newer services such as video on demand should sit within this timetable to ensure development of the market without undermining the rights of existing players which fund film production most heavily has been the subject of intense industry debate in recent years (see Section 6.2.2).

Since the mid-1980s, the French government has offered tax incentives for private and institutional investors which put their money into filmmaking via a *Société pour le financement du cinéma et de l'audiovisuel*, or SOFICA – a company that is established with the express aim of providing finance to the film industry. This approach has been extended more recently with the creation of tax breaks for production companies provided that the films made meet the criteria allowing them to be considered French films and to qualify for the *soutien automatique* as outlined below and for non-French production companies that film in France.

Finally, the government itself provides guarantees to banks to encourage investment. Film is a risky business; the cost of production is high, but there is little guarantee that the film will be a success and make a profit. Against those odds, banks are reluctant to lend money to production companies for fear of losing all their stake. The government guarantees are designed to provide at least a minimum level of return – even if that is still less than the original stake – to encourage private investment¹⁷⁴.

Despite the many additions and amendments over the years, this support structure is still regulated by the *loi Léotard* from 1986 (1986-1067) – a law which the CNC admits needs to be

¹⁷⁴ The EU has introduced a similar guarantee facility in the latest incarnation of its MEDIA support programme (see Rosa Perez Monclus, 'Analysing policy change: The emergence of the new Creative Europe Guarantee Facility', July 2015)

updated between two or three times per year simply to keep pace with developments within the audiovisual industry¹⁷⁵. Since 2001, support policies also have to conform to European rules set out in the *Communication cinématographique*, which includes a requirement to seek authorisation for new schemes worth over €50 million annually¹⁷⁶. Before approval, proposals are particularly assessed for their potential impact on competition within the European internal market. Of primary concern are territorial requirements, stipulating a certain amount of a film's budget should be spent within the subsidy-awarding country as these are seen to skew the shape of the European industry¹⁷⁷.

The process of continual revision has resulted in a system that is complex and, in some instances, has unintended consequences – most notably encouraging creative budgeting among film producers to maximise the level of subsidy. The effect that quotas and subsidies have had on the French film industry will be discussed in Section 4.8, while the impact of digital developments and France's response will be explored in greater detail in Chapter 6. Before doing so, it would be appropriate to look at each part of the scheme and how it aims to support the industry.

4.3. *Soutien automatique*

The *soutien automatique* operates as a form of enforced saving scheme for France's film producers, with a proportion of the money made on their current film reserved by the CNC for investment in a future project – thus, it is closer to an industrial policy designed to maintain film production in general, than a cultural policy to support the production of particular films. At the heart of the scheme is the process of *agrément*, or accreditation. Once a film has been

¹⁷⁵ ACCÉS, *Guide des chaînes numériques – 10^e édition*, March 2012, p. 92

¹⁷⁶ European Commission, *Communication from the Commission on State aid for films and other audiovisual works – 2013/C 332/01*, 15 November 2013

¹⁷⁷ Caroline Pauwels, Sophie de Vinck and Ben van Rompuy 'Can state aid in the film sector stand the proof of EU and WTO liberalisation efforts?' in Katherine Sarikakis (ed.) *Media and Cultural Policy in the European Union* (Amsterdam & New York: Rodopi, 2007) p. 29

approved, it will qualify for funding, which most films do to a greater or lesser degree. As the level of funding is based on the commercial success of a project and cannot be calculated until a film has been released, the money is only available once the producer comes to invest in a subsequent film project, which itself has to pass the accreditation process.

Films can be assessed at one of two points by the CNC's *Commission d'agrément*, known as the *agrément des investissements* and the *agrément de production*¹⁷⁸. The former takes place early in a project when the screenplay has been written and the cast and crew appointed, but filming has not yet started. It is required for all coproductions and for any film seeking funding from a television company or SOFICA, or support from the programme of *aide sélective*, as well as in cases where the producer wants to reinvest money raised via the *soutien automatique*. The *agrément de production* is granted following completion of the film and is required for all films to begin to generate credits under the *soutien automatique* following release, or where the producer believes the nature of an earlier approval via the *agrément des investissements* would have changed and would now be in a position to raise more credits.

In both cases, *agrément* is based on a 100-point scale, with points awarded for everything from the nationality of the production company, the cast, director and crew to the locations used for filming and for post-production work such as editing, dubbing and special effects and, of course, for the language used in the film. Originally, primacy was given to French and to French nationals and companies, with more points awarded, the more of the cast were French. However, the accreditation criteria were changed in 1999 following a complaint about the exclusionary effects of French policy. The scope was broadened to include companies and

¹⁷⁸ CNC, 'L'agrément des films de long métrage'. This document sets out the criteria used to assess a film's suitability for funding and the level of the award. It is the main guidance document used by French filmmakers to understand whether a film will qualify for support. More detail is included in the summary of the *agrément* process (see Appendix A.II.ii).

individuals from the EU, as well as to place a limit on the level of the award, such that state aid could not exceed 50 per cent of the total film budget¹⁷⁹.

Any film that achieves more than 25 points out of 100 will have those points translated into a coefficient – a multiplier that determines the level of credits a film can generate. Between 25 and 70 points, the coefficient is in line with the score achieved, i.e. a score of 30 results in a coefficient of 30 per cent being applied, but above 70 points the coefficient is gradually ramped up, such that any film scoring 80 or more out of 100 would have a coefficient of 100.

Credits are a product of a film's coefficient and its contribution to the *compte de soutien*. Films can generate revenue in three ways – via box office sales within the first five years following release, the sale of television rights within the first eight years and the sale of videos and DVDs within six years of release. A series of complex calculations are then applied to the total revenue to gain an indication of how much that film contributed to the *compte de soutien*. A tax of just under 11 per cent is levied on all cinema tickets (see Section 4.5). A film's producer receives a proportion of the tax raised on tickets sales for his or her film; this proportion will be increased by 25 per cent for the lowest grossing films – those generating revenues of less than €3.1 million – but reduced to just 10 per cent of the total tax collected for films with revenues in excess of €30.8 million, as detailed in Appendix A. In the case of television rights revenue, the producer is credited with 10 per cent of the amount received from the broadcaster up to a limit of €30,500 based on a maximum rights acquisition price of €305,000. For DVD and video sales, the producer receives 4.5 per cent and the amount is uncapped. All of these amounts are then factored up or down by the coefficient.

Table 4.2 provides an example of how this system works in practice for a film that has achieved 74 points on the 100-point scale and, therefore, been awarded a coefficient of 82.

¹⁷⁹ Pauwels, de Vinck and van Rompuy 'Can state aid in the film sector stand the proof of EU and WTO liberalisation efforts?', pp. 27-8

Table 4.2: Example calculation showing a film's funding entitlement

Source of revenue	Total revenue	Contribution to the <i>compte de soutien</i>	Calculation	Funding amount
Box office sales	€5,000,000	Tax collected = €5,000,000 x 10.72%, or €536,000 Films generating total revenue of between €3.075-30.750m are allocated 95% of the tax collected. Contribution = €536,000 x 95%, or €509,200	€509,200 x 0.82	€417,544
Television rights sales	€200,000	Contribution = €200,000 x 10%, or €20,000	€20,000 x 0.82	€16,400
DVD and video sales	€400,000	Contribution = €400,000 x 4.5%, or €18,000	€18,000 x 0.82	€14,760
TOTAL	€5,600,000			€448,704

The amount generated according to these calculations is credited to a producer's 'deposit account' and is available for reinvestment in future projects once they have passed the *agrément des investissements* process, so long as those projects are initiated within five years of the funding award being made. However, funding from the *soutien automatique* may not account for more than 50 per cent of the film's budget. In the example above, if the budget for the subsequent film were €1 million or more, then the producer would be permitted to use the entire amount in their deposit account. However, if the planned budget were €800,000, then only €400,000 could be used and the remainder left on account for any future projects within the five-year funding window. In the case of a coproduction, the *soutien automatique* funding may not account for more than 50 per cent of the French share of the film's budget, i.e. 25 per cent of the total in the case of a 50:50 collaboration.

Further adjustments may be made at the point where the producer reinvests his or her credits. Films scoring particularly highly via the *agrément* process, gaining 64 or more of the 80 non-language-related points could have the amount increased by up to 15 per cent; they might equally be penalised by the *Commission d'agrément* for failing to meet other criteria.

But producers are not the only group to benefit from the *soutien automatique*, film distributors also qualify for support in much the same way as has been outlined above. Distributors accounts' are credited with up to 140 per cent of the tax collected on box office ticket sales of films they have distributed, provided that they also contributed to the production or promotion of the film. The funding must then be reinvested in the production or promotion of new projects initiated within four years following the date of the grant.

Meanwhile, cinema owners may receive up to 80 per cent of the tax they have collected on ticket sales to support the upgrade or refurbishment of their facilities. Again, these amounts are subject to a coefficient, but this time based on the number of screens within a complex, which can boost the amount allocated by up to a quarter for those with the most screens and, therefore, the highest potential refurbishment costs.

4.4. *Aide sélective*

The *soutien automatique* favours established players in the market; credits are only available to reinvest once a producer or distributor has at least one project under their belt. Moreover, as the credits are based on the commercial success of earlier films, it is those producers that have already established their name and, potentially, arrived at a 'formula' for success that generate the most funding for new projects. New producers have not yet opened a deposit account, while those specialising in challenging or artistic films that might be culturally important but commercially less appealing may have few credits to call upon. To address these issues, the CNC operates a second stream of funding, known as the *aide sélective*.

The original and the most well-known of the discretionary programmes is the *avance sur recettes*. First introduced in 1959, as part of a package of measures created by André Malraux, the programme was designed to support projects considered to have particular cultural merit to create, according to the CNC:

...un cinéma différent, indépendant, audacieux au regard des normes du marché, qui ne peut, sans aide publique, trouver son équilibre financier¹⁸⁰.

It operates as its name suggests as an advance paid prior to production, which is repayable once the project achieves a certain level of commercial return. In reality, few of the projects funded ever do meet those criteria; fewer than 10 per cent of the films funded between 1960 and 1990 returned all the money lent to them¹⁸¹. For the French, this is a sign that its policy is both necessary and effective, ensuring films are made that otherwise would not be. However, US detractors regard inability to repay the loan as a sign that France is funding the production of films that audiences do not really want to see; if those films had commercial merit, they would be able to secure industry funding, repay any advance and make a profit.

Producers looking to benefit from the *avance sur recettes* seek approval via the *agrément des investissements* process just as if they were applying for automatic funding. But in addition to the normal accreditation review, their application is assessed by the CNC's president and a specialist group of nine individuals nominated by the president for their 'skills and experience in assessing the artistic, technical and financial aspects of a film'. Having determined that a project is suitable for an advance, the president then determines the level of that payment and any conditions to be imposed on repayment¹⁸². Both these factors mean that, compared with the *soutien automatique*, discretionary awards are highly subjective. Consequently, the system is potentially open to abuse – a criticism that has been levelled at it on several occasions, as shall be seen later.

Directors who are making their first feature-length film have particularly limited access to funding because they have yet to make a film and, therefore, do not have a *soutien automatique* account. In addition, they have no proven track-record of commercial or artistic

¹⁸⁰ '...a cinema that is different, independent, daring by comparison with market norms, which would be unviable financially without public support.' CNC, *Guide du CNC*

¹⁸¹ Cocq and Messerlin, 'The French Audiovisual Policy', p. 19

¹⁸² CNC, 'Dossier de demande d'aide avant réalisation'

success and so are considered particularly risky by the other groups that typically invest in film production, such as distributors, television companies, banks and the SOFICAs. According to a study by Messerlin and Cocq, the *avance sur recettes* has proved particularly effective in periods of economic crisis for the industry, as in the early 1990s, maintaining or increasing the overall number of first films made. However, it is not acting as the project guarantee initially envisaged, providing a rubberstamp that would help producers to access the additional funds necessary to finance the project. Their analysis suggests alternative sources of funding are much less easy to come by for directors and producers making their first film in difficult periods for the industry¹⁸³.

In 1999, the CNC went further in its attempts to mitigate the risk of first films, offering an incentive to distributors that supported the release of projects from new directors that had already been funded via the *avance sur recettes*. It now incentivises distributors with at least €15,500 to support the release of a director's first film, though the sum might be significantly higher at the discretion of the assessment committee.

A separate subsidy scheme provides support for distributors which release a film or programme of films considered culturally important. Under that scheme, the distributor receives up to 50 per cent of the distribution and promotion costs of a single film, provided that expenses do not exceed €450,000, or an equivalent subsidy per film based on the average distribution amount for films in the programme. If one of the films is a first film, the distributor may apply in parallel for the first film distribution grant. If their application for support of the full programme is approved, then they would receive the same amount for the first film that has been agreed as an average for the wider programme of films, regardless of any other premium that might be applied to the film because of its first film status.

¹⁸³ Cocq and Messerlin, 'The French Audiovisual Policy', p. 20

The aim of the *aide sélective à la distribution* is to ensure the distribution of French or foreign films that are considered particularly ‘difficult’ to bring to market, to promote cultural diversity, to ensure that older films are not lost to obscurity and to see that films for younger audiences are not overlooked in favour of mass-market films that would appeal to a wider spread of ages. However, where producers may be able to get a project off the ground because of a grant, the discretionary support for distributors of up to €450,000 is only ever going to be a contribution; distribution and promotion costs can easily reach 50 per cent of the film’s production budget, or around €2 million based on the 2014 average budget of €4 million.

These subsidies are mirrored by grants to arthouse cinemas to support their maintenance and refurbishment to guarantee an outlet for any films that receive distribution backing. If distributors are prepared to take the risk of releasing films perceived as difficult or risky, then there need to be screens available on which to show those films.

That said, perhaps, the greatest risk in any film project is at the beginning of the process. Here too, the French discretionary aid programme plays a part. Authors, directors and production companies can apply for support to fund the writing or re-writing of the film script. Production companies can also apply for up to 50 per cent of the costs incurred in the development of the screenplay and for the acquisition of film rights to a novel or play¹⁸⁴. These various requests will be assessed by the president of the CNC and one of more than 20 specialist committees appointed specifically for the task.

4.5. The *compte de soutien*

The plethora of subsidies administered by the CNC does not come cheaply. According to the most recent CNC annual report, it awarded grants of €132 million towards the production of

¹⁸⁴ CNC, ‘aides et commissions – cinéma’. The detail of the various *aide au développement* and *soutien au scénario* programmes is included in Appendix A

French feature films via the *soutien automatique* and the *aide sélective* in 2014¹⁸⁵, while providing several tens of millions of euros more in indirect support to production via French distributors and close to €300 million to the French audiovisual sector to fund the creation of television programmes. So where does the funding for these activities come from?

Though part of a government department – the Ministère de la Culture et de la Communication – the CNC receives no funding from the national budget¹⁸⁶. Its main source of income is the *compte de soutien*, which is fed by taxes levied on the commercialisation of films and television programmes. This has proved such an effective revenue collection method that in recent years the CNC has been required to surrender up to €90 million of what it collected in a single year to support the government austerity programme introduced following the 2007 global financial crisis. From December 2014, the amount of tax collected from internet service providers, broadcasters and video-on-demand players the CNC can retain has been capped at €475 million, with the remainder going to the government¹⁸⁷.

Introduced in 1959, the *taxe spéciale additionnelle*, or TSA, is a duty raised on the sale of all tickets sold in cinemas in France, regardless of the origin of the film. Originally, it was levied alongside the entertainment taxes on cinema owners – one reason that the tax burden on exhibitors reached 50 per cent in the late 1950s and throughout the 1960s. However, other taxes have since been reduced and then replaced by VAT set at 5.5 per cent for cinemas.

¹⁸⁵ CNC, *Bilan 2014*, p. 181. These amounts are slightly different to the amounts that are invested each year because producers may not draw down on the credits and support awarded to them in the same year that the decision is announced.

¹⁸⁶ According to Robert Wangermée, the CNC was credited with just over 3 per cent of the Ministère de la Culture et de la Communication's budget of FF8.9 billion in 1987 (see Robert Wangermée, *Cultural Policy in France: Report by the panel of European experts*, (Strasbourg: Council of Europe Publishing and Documentation Service, 1991), p. 64), but from 2010 the CNC indicated in its annual budget statement that its activities were funded entirely by the *compte de soutien* (see CNC, *Bilan 2010*, May 2011, p. 157). This was confirmed at the ministerial budget conference by former culture minister Frédéric Mitterrand in September 2011 (see Ministère de la Culture et de la Communication, *Budget 2012 du Ministère de la Culture et de la Communication*).

¹⁸⁷ Elsa Keslassy, 'French Senate Votes To Cap CNC's Revenue', *Variety*, 1 December 2014

For most films the rate of TSA applied is 10.72 per cent, though there is a 50 per cent premium on X-rated films and some movies considered by the censors to be particularly violent, which raises the duty to 16.08 per cent.

Until the early 1980s, the TSA was more than adequate to fund the various programmes operated by the CNC. However, with cinema attendance falling to around half the level seen in the previous decade as a result of a decline in the standard of French cinemas and more people preferring to stay at home and watch television, the amount raised was no longer sufficient to support the industry. A tax on the revenues of both free-to-air broadcasters and pay-TV channels such as Canal+ was suggested by the French film industry as the most appropriate way to supplement the fund, particularly given the benefit that television companies derive from being able to show films, and the French government agreed. This established the principle that ‘ceux qui tirent profit des œuvres de création pour leur propre développement contribuent, comme cela a toujours été le cas, au financement de ces œuvres’, which prevails to this day¹⁸⁸.

From the 1960s, state-funded television stations had made a contribution to the *compte de soutien* – about 8 per cent of the total budget¹⁸⁹ – but obligations were ramped up markedly in 1984 with the introduction of the *taxe commune provenant de la télévision* (now the *taxe sur les services de télévision*, or TST). A rate of 4.5 per cent was initially levied on the channels’ new revenues (typically the gains which came from the simultaneous deregulation of television advertising). It was raised to 5.5 per cent and extended to all revenue streams in 1987, then modified again in 1997 such that television channels are only obliged to pay once their revenues reach €11 million to ensure that new cable and satellite channels do not need to

¹⁸⁸ ‘...those that profit from creative works and use them to further their own development should contribute, as has always been the case, to financing those works.’ Speech made by Aurélie Filippetti, former Ministre de la Culture et de la Communication quoted in *Rencontres Cinématographiques de Dijon, ‘Peut-on encore parler d’exception culturelle dans une Europe numérique’ Compte-Rendu Du Debat*, p. 13

¹⁸⁹ Hayward, *French National Cinema*, p. 35

contribute until they are financial stable. A further extension in 2007 applied a 0.1 per cent premium on revenue from mobile television services and a 0.2 per cent premium on high definition offerings, while other amendments expanded the base tax to those companies distributing television services, even if they do not operate television channels.

The tax on television company revenues has quickly overtaken the TSA to be the most important CNC revenue stream. By the early 1990s, television channels contributed as much to the *compte de soutien* as cinema owners, while in 2014 television's contribution of just under €500 million was worth around three times that of its cinema counterparts (see Figure 4.1). This is partly due to the financial success of the television companies during this period, though advertising revenues have since declined leading broadcasters to question the levels of taxation (see Chapter 9). Growth in the late 1990s and early 2000s also resulted from an explosion in the number of television channels.

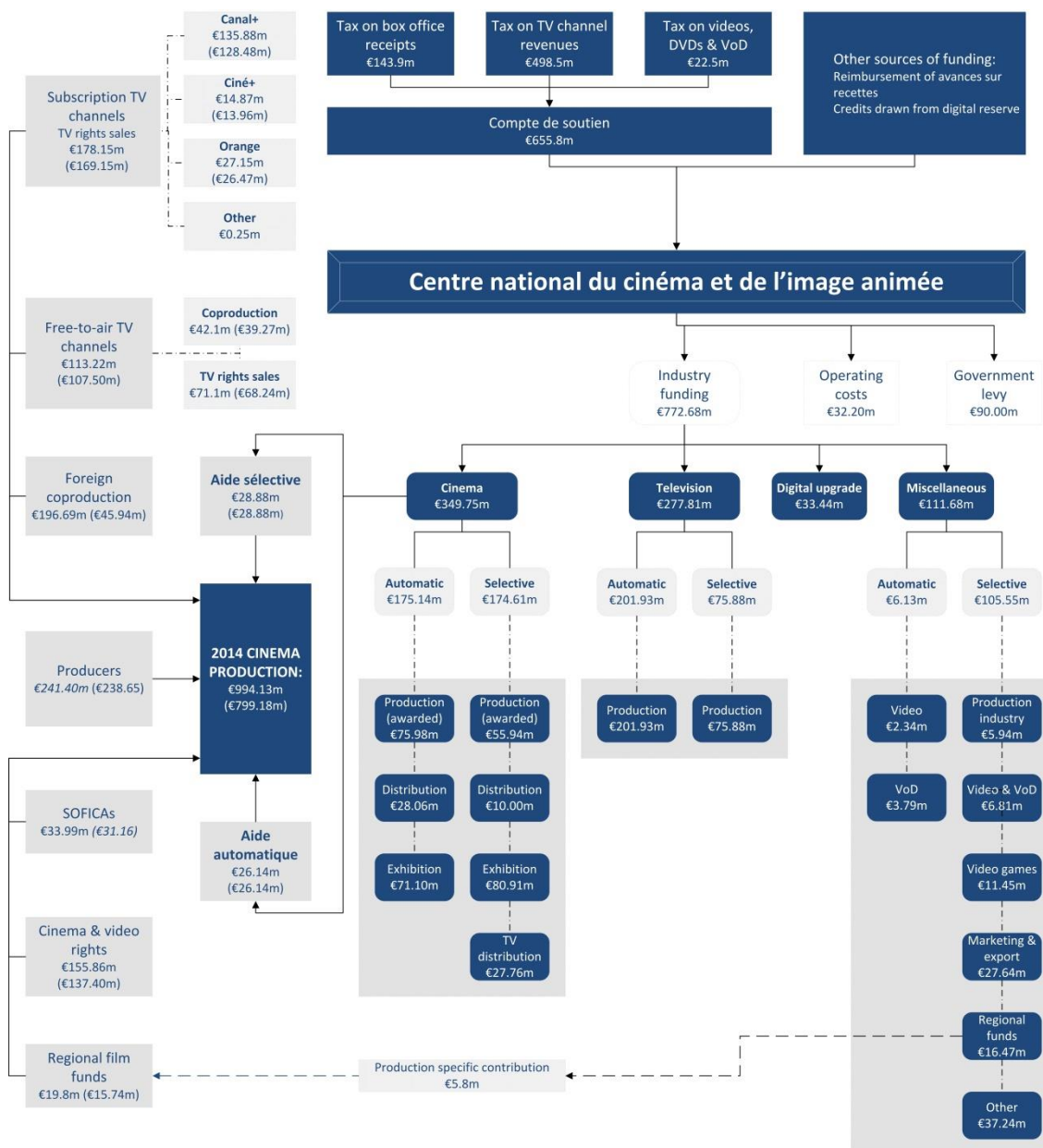
In 1995, the basket of contributors to the *compte de soutien* was broadened further to cover the sale of video cassettes reflecting the increased consumption of movies at home. The government introduced a tax of 2 per cent on the sale of videos by distributors to retailers. A 2003 amendment extended the tax to the sale of DVDs and Blu-ray discs, as well as stipulating that the tax should be levied on the retail price. More recently still, revenue generated by video-on-demand services has been taken into account (see Chapter 6).

The various taxes generated an income for the CNC in 2014 of over €650 million. In 1999, just over one-third – 36 per cent of the total – was designated by law to support cinema production, distribution and exhibition, with the remainder going to separate programmes for television and radio¹⁹⁰, though the most recent CNC annual report shows the proportion going to cinema in 2014 to be 45 per cent (see Figure 4.1)¹⁹¹.

¹⁹⁰ Regourd, *L'Exception culturelle*, p. 34

¹⁹¹ CNC, *Bilan 2014*, May 2015

Figure 4.1: The principal sources of French film funding, 2014¹⁹²



Source: CNC

¹⁹² CNC, *Bilan 2014*

1. Figures in boxes with rounded corners represent funding commitments in the year; the other boxes on the left are actual levels of investment.
2. Figures in brackets show investment in 'films d'initiative française' (FIFs), i.e. films that are made by a French production company or the French production company is the major partner in the coproduction and are thus considered 'French' by the CNC when it measures the size of the market.
3. The total amount producers spend (not just their investment in FIFs) is the author's own calculation. The figure relating to producers' spend on FIFs comes from the CNC's budget report. CNC notes that this is the minimum they would be required to invest themselves to secure the level of support they have requested from the CNC; they may in fact have invested much more.

4.6. Funding obligations placed on television companies

The creation of the TST has undoubtedly swelled the support money available to the film industry; the sum generated in box office taxes represented just 14 per cent of the total spent across the country on film production in 2014, compared with 50 per cent for the television tax¹⁹³. However, it is not the only way that television is required to help its more established cousin. In the 1980s, it was argued that the cinema represented a major source of content for the television channels – particularly Canal+ which was established to showcase French film – and, therefore, those organisations should contribute to funding this content stream – a commitment the French government positioned as a *quid pro quo* for privatisation¹⁹⁴.

Thus, since the mid-1980s, French broadcasters have been obliged to invest a proportion of their turnover in film production. For most broadcasters, that share is 3.2 per cent of the previous year's revenue though, since 2008, channels wanting to show films on a Saturday evening must commit 3.5 per cent of their revenue to support cinema. Canal+ is obliged to invest a higher amount – over 20 per cent of turnover – because it shows more films. The investment can be by way of a direct contribution to the film's production budget, or a commitment to buy the television rights for the project in advance of it entering production.

Broadcasters are obliged to invest in French and European films and to support independent and low-budget productions. For the free-to-air broadcasters, around 80 per cent of total investment should support films of French origin; for Canal+, the minimum is defined relative to the number of subscribers. Canal+ also has an obligation to allocate 17 per cent of its investment to films with a budget of less than €4 million to promote cultural diversity. It has been suggested that this commitment should be extended, obliging Canal+ to invest a set

¹⁹³ According to the CNC budget report published in May 2015, some €143.9 million was raised in box office taxes and €498.5 million from television companies, but a total of €994.1 million was spent on film production. This includes all sources of funding, including film production companies, the CNC, television companies, SOFICAs and foreign investment via coproductions (see Figure 4.1). CNC, *Bilan 2014*, p. 5

¹⁹⁴ Buchsbaum, “The *Exception Culturelle* is Dead”, p. 6

proportion of its annual budget in *films du milieu* – that is those with a budget of €4-10 million – but the broadcaster has resisted this, suggesting it would force the company to run its funding programme by spreadsheet¹⁹⁵.

France's major television companies have broadly complied with the obligations, manipulating the scheme to their advantage where possible to benefit from grants from the *soutien automatique* (this will be examined in more detail below). The stipulations do result in a larger pool of content available for broadcast. However, the subsidies have altered the market dynamic somewhat, resulting in further regulation to counter the effects.

The original 1986 regulations obliged television companies to set up dedicated film divisions to administer their film investments, but as these entities were effectively production companies in their own right they too could benefit from the available subsidies. The French government addressed this in 1999. *Le décret du 24 février 1999* (99-130) stopped French television companies from claiming a subsidy under the *soutien automatique* based on the sale of television rights, though independent producers involved on the same film could still claim their share of the subsidy. By *le décret du 11 mars 1999* (99-189), the government extended the obligations placed on broadcasters such that three-quarters of the investment should be allocated to independent productions. The change was to ensure that television companies made a genuine contribution to new filmmaking and did not simply support projects that would secure a subsidy for themselves via the *soutien automatique* at a later date, reducing their overall investment in film production below the stipulated 3.2 per cent of turnover.

The second impact is that films funded by broadcasters have tended to virtually bypass the cinema and go straight to television. This is partly a product of the changing competitive landscape in cinema where films are required to make a splash on their opening weekend, or

¹⁹⁵ Manuel Alduy, Directeur général de Canal+ OTT, speaking at Rencontres Cinématographiques de Dijon, *Le cinéma indépendant face à de nouvelles menaces - La concentration des financements, atteinte à la diversité du cinéma?*, 20 October 2012

be considered a flop; a dynamic that only the biggest budget – usually Hollywood films – can survive. But, France’s film industry claims, it is also a result of television channels’ investment practices. Television companies, they claim, support cinema largely for the prestige, and therefore the ratings boost, that it brings, pointing to the fact that the television audience for films is 200 times larger than that in cinemas. Making an investment in a film brings with it exclusive rights to show the film on television. Thus, television companies invest a little in a large number of films to secure as broad a portfolio of rights as possible¹⁹⁶. The films spend a week at the box office and are shown on television a matter of months later.

Since January 2010, Canal+ has had a commitment to invest over €4 million a year in cinema distribution to ensure that films receive a cinema release. Under this scheme, a distributor can receive up to 50 per cent of total film distribution costs up to a maximum of €61,000, but is required to reimburse Canal+ if the film makes a net profit within the first six months. The Orange group of channels was required to make a similar commitment to invest over €300,000 in distribution in 2013, but it appears this provision has not been renewed.

Both points will come up again in the examination of the impact of subsidies on the French market.

4.7. Tax relief and investment incentives

Though the subject of government regulation, the *compte de soutien*, which funds the CNC’s activities, and the investments made by the television channels are considered industry, and not state, support schemes. The funding raised is ploughed straight back into the film industry; it does not swell government coffers before being used, in turn, to support the industry. However, as the budget available via the *compte de soutien* has become increasingly unreliable, due to fluctuations not just in cinema attendance but also in the revenues of

¹⁹⁶ Hayward, *French National Cinema*, pp. 17-75

television companies reliant on advertising and, as the costs and risks associated with film production have increased, the French government has intervened more directly in film funding, offering financial guarantees and tax relief to investors.

The first move came in 1983 with the creation of the *Institut pour le financement du cinéma et des industries culturelles* (IFCIC). Operating as a public limited company in which the government – via both the Ministère de la Culture and the Ministère de l'Économie – holds a 20 per cent stake¹⁹⁷, the IFCIC provides guarantees to the banking sector to encourage it to lend money. It will reimburse the bank in the event of a loan recipient folding and being unable to make repayments. It is funded by both the CNC and the EU's MEDIA programme.

The IFCIC has a secondary role to provide technical advice to banks on the creative industries, helping them to assess projects in advance of any investment and to establish the risks involved. In terms of cinema, the CNC undertakes the review on the IFCIC's behalf.

In 2014, the IFCIC guaranteed against an average of 51.5 per cent of the production budget on close to 100 new film projects. That supported the provision of loans worth €214.6 million¹⁹⁸, a vast increase over the FF140 million (just over €21 million) of funding it secured for 59 projects across the cultural industries in its first three years of operation¹⁹⁹.

If the IFCIC encourages private investment from large financial institutions, the SOFICAs created in 1985, are designed to encourage investment from individuals and companies outside the financial services sector. A SOFICA is a limited liability company that operates as a syndicated investment vehicle. Investors buy shares in the SOFICA in return for tax deductions on their investment; this can be a tax-free allowance of up to €18,000 or 25 per cent of an individual's taxable income, whichever is the lower. For companies, the relief is equivalent to 50 per cent of the corporation tax that a company would have paid on its investment. The

¹⁹⁷ Serge Regourd, *L'Exception culturelle*, p. 52

¹⁹⁸ IFCIC, *Rapport d'activité exercice de 2014*, p. 9

¹⁹⁹ Wangermée, *Cultural Policy in France*, p. 67

SOFICA uses the money invested to fund the production of new films, with any profits made returned to the investors in the form of dividends, or reinvested in further projects by shareholder agreement.

The SOFICAs are required to invest in films that have received approval via the CNC's *agrément des investissements* process. The majority must be French-language films; only 20 per cent of the total investment may go towards films not made in French and in these instances the film must be a coproduction with another European Union partner²⁰⁰. Until recently, the SOFICAs also had an obligation to invest a minimum of 35 per cent of the capital raised in independent production. However, this proportion was increased to 50 per cent from the start of 2010 following a review of activities commissioned by former CNC president, Véronique Cayla. At the same time, new restrictions were introduced, meaning that the SOFICAs were obliged to invest a large part of their capital in films with budgets under €8 million and could not provide more than €3 million to any one producer. This was expected to increase diversity, as well as refocus the SOFICAs on their original goal to provide support for independent production²⁰¹.

Finally, production tax credits provide relief of up to 20 per cent on all production expenses incurred in France. The value of any claim is limited to €4 million or 80 per cent of the production budget for French films. International tax relief designed to encourage foreign companies to produce films in France is capped at €20 million.

4.8. Impact of the scheme in France

France has a long history of supporting its film industry, stretching back 80 years to the point where taxes imposed on cinema owners were first reinvested in the industry. The sustained nature of this support has fundamentally shaped the market. The French government,

²⁰⁰ Regourd, *L'Exception culturelle*, p. 52

²⁰¹ CNC, 'Le CNC réforme les SOFICA à fin de renforcer l'efficacité d'un dispositif essentiel au financement de la production', 12 June 2009

diplomats involved in the Uruguay round of world trade negotiations and the CNC point to the positive impact that quotas and subsidies have on the market. It is true that film production is more vibrant in France than in any other European nation; France released 343 new films in 2014 compared with 234 in Germany, 224 in Spain, 201 in Italy and 154 in the UK, which includes films made entirely by US companies in the country within its national production count²⁰². However, the same programmes have also had a distortionary effect on the market, resulting in the need for continuous adjustment.

A prime example is the extension of the *compte de soutien* to maintain the subsidy budget. In response to falling cinema revenues and, therefore to a drop in the tax collected on ticket sales and the value of the *compte de soutien*, France decided to levy a tax on television companies and then on sales of video cassettes, DVDs, subscription and pay-per-view revenue generated by video-on-demand services and, most recently, subscriptions for internet access (see Chapter 6).

Buchsbaum has suggested that maintaining the amount available for investment was not the only reason for the introduction of a tax on the sale of video cassettes and subsequently DVD sales. Unlike the introduction of the TST, this change added very little to the *compte de soutien* financially; it served, he believes, to address an unintended consequence of television funding. As television companies became the dominant source of funding – both via the *compte de soutien* and via their direct investment commitments – they began to wield an unhealthy influence over film production, insisting that films be formatted in line with television norms²⁰³. Hayward notes that many French films have adopted the faster pace of productions for the small screen and television conventions on the use of soundtracks featuring pre-recorded music rather than dedicated scores and that genres such as comedy that are popular

²⁰² CNC, 'Données internationales'

²⁰³ Buchsbaum, "'The *Exception Culturelle* is Dead'", p. 13

on television are very heavily represented within French film output²⁰⁴. Cowen has also suggested this reduces the export chances of French films because they tend too heavily towards formulaic and locally popular formats²⁰⁵.

Television companies have also been criticised by France's film industry for manipulating the various support programmes for their own benefit, which has necessitated further changes, particularly the establishment of investment quotas for both SOFICAs and television companies to divert funding towards the independent sector.

The government required television companies to set up a separate production company to manage their film investments; the most immediately recognisable is STUDIOCANAL – a subsidiary of Groupe Canal+ – but France 2 and France 3 also have their production arms in France 2 Cinéma and France 3 Cinéma, for example. Established initially as a vehicle to review the funding requests from producers pitching for a share of the 3.2 per cent of company turnover that broadcasters invest in production, the French government did not reckon with them beginning to operate as coproduction partners in their own right. Films must be *agrée* by the CNC to benefit from television funding but, of course, once they have been approved they are also eligible to build up credits via the *soutien automatique* which may be invested by the supporting production company in future projects, in this case by the television channel.

In this way, the broadcasters have been securing funding from the very system they help support, potentially at the expense of the smaller companies that France is trying to promote. They may also end up paying out less than the 3.2 per cent of revenue that they are legally mandated to invest in production, because the amount advanced to the *compte de soutien* is discounted by the money received via the *soutien automatique* for its share in a coproduction.

²⁰⁴ Hayward, *French National Cinema*, pp. 17-75

²⁰⁵ Cowen, *Creative Destruction*, pp. 78-9

As mentioned above, changes were made in 1999 to ensure money from television companies was diverted to independent companies. However, in a 2000 government report, Jean-Pierre Leclerc recommended closing this loophole, thus denying television companies any access to the *soutien automatique*. This would help to divert more television company spending to the acquisition of broadcast rights prior to production and prevent television companies from having an influence over the format of the films produced²⁰⁶. In fact, the share that broadcasters are obliged to invest in independent production has since been increased to 75 per cent of the total and additional requirements added to ensure television channels invest the bulk of the money in acquiring rights rather than funding production, which means that the scope to benefit from the *soutien automatique* is now limited.

Broadcasters are not the only major companies that have benefitted from France's subsidy programme despite no need of support. According to Cocq and Messerlin, two film production companies – Gaumont and Renn Productions (Pathé) – accounted for 14 of the 23 highest grossing French films between 1993 to 1999²⁰⁷. Their box office success would have translated into higher sales of DVDs and video cassettes and to higher television revenues – all of which would have turned into increased credits via the *soutien automatique*. The companies' commercial success puts them in a position to fund their own ongoing production requirements; they do not need financial support from the subsidy programme, but they are among the greatest beneficiaries.

Rewarding commercial success with increased funding for subsequent projects in this way has had other unintended consequences. Speaking at the Rencontres Cinématographiques de Dijon in 2013, director of photography Antoine Héberlé, said that he felt producers were compelled by the system to continually move on to the next film. Despite assuming much of the risk on a project, they were unlikely to reap the immediate financial rewards; those would

²⁰⁶ Jean-Pierre Leclerc, *Réflexions sur le dispositif français de soutien à la production cinématographique*, January 2003

²⁰⁷ Cocq and Messerlin, 'The French Audiovisual Policy', p. 15

go to the director that owned the rights. The only way producers received any form of payment was by cashing in credits from the CNC, but that required them to move on to the next film regardless of the merits of the project or whether the current project was at an end – both of which had an impact on the quality of films produced in France²⁰⁸. This continuous need to move on to the next project is compounded by time limits on the credits, which means they expire if they are unclaimed after a few years²⁰⁹.

It is also felt by some to encourage ‘Americanisation’ of the French film industry and potentially jeopardises cultural diversity. To ensure funding for the next film, the temptation is to make the kinds of films that are expected to appeal to very broad audiences, films that are also expected to be easily exportable, action films or romantic comedies, films made in English – in fact, the sort of films that people associate with Hollywood rather than with France, such as Luc Besson’s *La Cinquième Éléme* or Pierre Morel’s *Taken*.

The *avance sur recettes* was designed to address this issue, by providing discretionary funding to more difficult or unconventional films that would otherwise not be made. Any subjective process of this kind will always produce examples of films that were not funded, but should have been, or did receive a grant that is considered unjustified. The most high profile examples are for films that receive no support but go on to become surprise commercial successes, such as *La Haine*, a black and white film about three adolescents on a run-down estate made by a young director, Mathieu Kassovitz; it was refused support, but went on to win the César for best film at the 1995 Cannes film festival and generate 2 million cinema entries. That same year, *Le Hussard sur le toit* did receive an advance, even though it was backed by two major companies in Canal+ and Hachette, ensuring it had a budget of close to FFr200 million (around €30 million). It managed a cinema attendance of 2.5 million.

²⁰⁸ Rencontres Cinématographiques de Dijon, *Convention collective: comment pérenniser la diversité et l'émergence de nouveaux talents?*, 26 October 2013

²⁰⁹ Monique Dagnaud, ‘L’exception culturelle profite-t-elle vraiment à la création?’, *En temps réel*, Vol. 17, October 2004, p. 15

Social factors no doubt played a large part in both these decisions. The French outlook is governed by the ideals of the Enlightenment, favouring secularity and universalism above all²¹⁰. It does not recognise communities within the nation state, but sees them as potentially disruptive forces affecting France's national identity; one reason France has banned obvious religious symbols such as Muslim headscarves in schools²¹¹. Films that reflect a section of society rather than French values as a whole tend to face a tough time in front of the subsidy review panel. Brigitte Rollet notes it took four years for Abdel Kechiche to gain funding for *La Faute à Voltaire*²¹². Literary adaptations, meanwhile, are considered to reflect France's social and cultural history and, thus, are able to justify large production budgets. The success in the late 1980s and early 1990s of films such as *Germinal*, *Cyrano de Bergerac*, and *Jean de Florette* – both at home and abroad – were held up by the French film industry in support of this claim and ensured that Jean-Paul Rappenneau could claim support for his own adaptation of *Le Hussard sur le toit*²¹³.

Thomas Langmann, the director of the 2012 Oscar winner for best film, *The Artist*, and an unsuccessful applicant for an *avance sur recettes*, has, however, pinned the blame for the inconsistent funding decisions not on social issues, but firmly at the door of the awarding committee, saying:

‘C’est un comité de copinage qui pense devoir donner de l’argent à des films qui, sans eux, n’ont aucune chance de se faire.’²¹⁴.

²¹⁰ US society is founded on similar principles, also inspired by the French Revolution, but it has interpreted them differently; one reason for the intermittent clashes between France and the US over cultural issues. These different views are examined in more detail in Chapters 2 and 5.

²¹¹ Godin and Chafer, ‘Introduction’ in Godin and Chafer (eds.), *The French Exception*, p. XV and Georges Salemohamed, ‘L’exception française as Culture’, p. 37

²¹² Rollet, ‘Cultural exception(s) in French cinema’, in Godin and Chafer (eds.), *The French Exception*, p. 175

²¹³ Creton, *Cinéma et marché*, p. 124

²¹⁴ ‘It is an old-boys’ club that thinks it has to give money to films that, without them, have no chance of being made.’ Thomas Langmann cited in Danielle Attali, ‘On nous a dit qu’on ressemblait à un film bling-bling’, *Le Journal de dimanche*, 15 January 2012. Donald Morrison has also made a similar suggestion,

This implies that it does not seek out the culturally important films that deserve to be supported; it backs the ones that would otherwise simply not be made because of insufficient funding from all other sources. In many cases there is a reason that this funding is not available; it is that the project is not of a high enough quality.

Filmmaker Bruno Dumont has been equally outspoken in his criticism of the subsidy system, claiming that originality is actually penalised rather than prized by the CNC's assessment committee²¹⁵.

If that is the case, it places a major question mark over France's film policy. The *soutien automatique* by its nature is open to all who have previously released at least one film that has been approved by the CNC against criteria which give primacy to the nationality of the production company, cast and crew, the language in which the film was shot and the choice of filming location and not to any assessment of cultural merit. Consequently, it does not necessarily promote nationally and culturally important films; it simply underpins the industry as a whole. If the *aide sélective* also fails to support innovative production because it is subject to the whims and tastes of a small group of individuals assessing the projects, then the country's support programme appears to be more of an industrial crutch than a policy to promote cultural diversity. That would fuel US claims that the measures are purely protectionist, rendering it difficult to defend in future trade negotiations. The validity of this assertion will be tested as part of the assessment of cultural diversity in Chapter 8.

Not only is France's subsidy programme supporting the film industry, it can be accused of spawning an industry in and of itself due to the breadth and complexity of the subsidies available. The CNC is a sizeable agency, with staff numbering in the hundreds; their primary role is to assess and administer the payments. The question has to be asked whether such a

describing the subsidies as 'manna' for distribution to friends. See Donald Morrison and Antoine Compagnon, *The Death of French Culture*, (Cambridge, UK: Polity, 2010), p. 68.

²¹⁵ Jean-Marc Lalanne, 'Bruno Dumont: Mystique ou profane?', *Les InRocks*, 25 November 2009

structure would be needed if the support system were simplified. A lot of the work is currently in assessing films for the *agrément*, simply so that they can qualify for a share of the automatic aid pot that in itself is difficult to calculate because of the variety of funding sources, rates and coefficients that are applied to the moneys coming into the agency.

However, France accepts that a high degree of bureaucracy is necessary to deliver the benefits of *L'État providence*. Consequently, there is little desire to seek efficiencies within such bodies. In fact, there is still strong support for such public service; opinion polls show that more French students aspire to government jobs than to careers in business, while *Grandes Écoles*, such as l'École Nationale d'Administration specialising in the political sciences are still the most prestigious academic institutions²¹⁶.

Luc Moullet has suggested that CNC staff seeking to justify their existence are also partly to blame for the continual inflation of film budgets. He comments that, each time he approached the CNC with an application for funding, staff encouraged him to ensure that his next project was more 'ambitieux' than the last – and for 'ambitious', read 'expensive'²¹⁷. The civil servants working for the agency were judged on the levels of subsidies awarded and when Moullet approached one about the appropriate budget proposal for his next film, suggesting about FFr800,000 (€122,000), he was advised to increase it to FFr1 million. Anything less would be a subject of shame, the civil servant suggested, and that he would be the cause of derision for proposing such a low budget²¹⁸. The final cost was FFr298,000 (around €45,000)²¹⁹.

Even without any prompting, production companies have a tendency to inflate their film budgets to benefit from the maximum subsidy. As mentioned, producers can secure up to 50

²¹⁶ Morrison and Compagnon, *The Death of French Culture*, p. 63. See also comments made by a wine producer interviewed by Robert Peston about the level of paperwork required to secure agricultural subsidies in BBC, *This World*

²¹⁷ Luc Moullet, 'Les lois secrètes du cinémargent' in Laurent Creton (ed.), *Le Cinéma et l'argent* (Paris: Éditions Nathan, 1999), p. 49

²¹⁸ *Ibid.*, p. 50

²¹⁹ *Ibid.*, p. 50

per cent of the total film budget from the *soutien automatique*. However, if the company's previous project was particularly successful it may have a lot of credits stored up, accounting for more than 50 per cent of the budget of the new project. The solution, according to Moullet, is to increase the size of the budget submitted to the CNC to allow the maximum credits to be used.

Moullet goes on to suggest that the 'creative accounting' does not stop there²²⁰. Instead producers are constantly juggling with the structure and budget of the project to maximise funding. A film which has received more than 50 per cent of its funding from a broadcaster is considered a made-for-TV film and will probably bypass cinemas. This affects the film's chances of capitalising on DVD sales, which, of course, subsequently feed into credits via the *soutien automatique* – neither of which a producer wants to forego. But equally, if there is significant television money on the table, a producer would want to secure that too. Adjusting the percentages is seen as the way forward. Bonnell has suggested that 17.5 per cent of films are 'over-funded' because television companies have defined investment commitments, but require a set number of films to fill their schedule and, thus, may overpay on some films to meet funding targets²²¹. Thus films that in the CNC's records appear to have cost FFr5 million (€750,000), may have actually cost less than half that amount.

Producers also manipulate their own input to a film; they are obliged to commit at least 15 per cent of the total funding to the project, but can rarely do so. Most have to use the *avance sur recettes* to pay off debts from previous films²²².

Rules on international coproductions may also be exploited. Under French guidance, a film may claim support worth up to 50 per cent of the French contribution to the budget. If the French share of the project is 30 per cent of the total, then French subsidies may only make up

²²⁰ Ibid., p. 51

²²¹ René Bonnell, *Le financement de la production et de la distribution cinématographiques à l'heure du numérique*, December 2013, p. 33

²²² Hayward, *French National Cinema*, p. 38

15 per cent of total expenses. If the French share is higher, then so too is the subsidy. Under these circumstances, the French share of the project may be inflated to increase the amount of support available to the project. Feigelson comments that between 1993-1995, British records show six Anglo-French coproductions where the French were the main partner; French records reveal the French took the lead in 20 projects, suggesting that changes were made to the notional structure of the coproduction agreement when the producer filed for funding to maximise the value of the award²²³.

For some, notably Jean Cluzel, this practice of creative budgeting is a sign that French producers are addicted to state funding and will do whatever it takes to secure the largest grant possible²²⁴, even if securing that support could actually have a negative impact on a film. Laurent Creton notes that too much money can prevent the director from thinking creatively about a problem²²⁵. Finding ways to tackle a scene when the budget simply will not stretch to state-of-the-art technology often provides a more imaginative and satisfying result. Science-fiction fans will point to the second series of *Star Wars* films as evidence that big budgets and lots of special effects do not necessarily help, if the underlying story is weak.

Cluzel has coined the phrase ‘casino à la française’ as a description of how subsidies have shaped the French film industry. If filmmaking is risky, with odds similar to placing a bet at a roulette table, then subsidies shorten the odds substantially. There is little risk in making a film if all the costs are already covered by state aid. Against this backdrop, it does not matter whether the film is a commercial success, or not. Potentially, this means that a lot of substandard projects make it on to French cinema screens, because there is no need to ask

²²³ Kristian Feigelson, ‘Les enjeux de la délocalisation’ in Laurent Creton (ed.), *Le Cinéma et l’argent*, p. 145

²²⁴ Jonathan Buchsbaum, ‘After GATT: Has the Revival of French Cinema Ended?’, *French Politics, Culture & Society*, Vol. 23, Issue 3 (Winter 2005), p. 46

²²⁵ Laurent Creton, ‘Le cinéma et l’argent: l’emprise du paradigme budgétaire’ in Creton (ed.), *Le Cinéma et l’argent*, pp. 30-31

from the outset, 'Given the risks in making a film, is this film really good enough to justify the investment?'²²⁶.

Journalist Serge Siritzky has also suggested that prefinancing films has resulted in rampant inflation within the French film industry²²⁷. If a producer does not need to worry about recouping their investment at the box office, there is no incentive to keep production costs under control. Those funding production, including the television companies, claim they have no influence on costs; while Canal+ may fund around a quarter of all French film production and, therefore, be an important player in the industry as a whole, it contributes less than 20 per cent of the budget for any individual film. Manuel Alduy, Directeur général de Canal+ OTT, believes this gives the channel relatively little influence over how funding is spent²²⁸. This has resulted in actors commanding similar fees for a low-budget French production that would be common for a Hollywood blockbuster, even if their previous films have not been box office successes²²⁹. This was confirmed in René Bonnell's report for the French government on the profitability of French films, leading the CNC to introduce new restrictions²³⁰; from July 2015, if the director or any member of the cast earns more than a defined proportion of a film's budget ranging from 15 per cent for small films up to 5 per cent of bigger budget productions, then the film is automatically disqualified from claiming support²³¹.

4.9. International impact of France's support programme

The French cinema support programme has clearly had an impact on the shape of the French film industry. But it has also had an impact internationally. One of the strongest objections

²²⁶ See also Hayward, *French National Cinema*, p. 17-75

²²⁷ Director of *Écran Total* magazine Serge Siritzky speaking at Rencontres Cinématographiques de Dijon, *A-t-on le droit de parler de transparence et de rentabilité dans le cinéma?*, 26 October 2013

²²⁸ Manuel Alduy, Rencontres Cinématographiques de Dijon, *Le cinéma indépendant face à de nouvelles menaces*

²²⁹ John Lichfield, 'How bloated film stars ate French cinema', *The Independent*, 5 January 2013

²³⁰ René Bonnell, *Le financement de la production et de la distribution cinématographiques à l'heure du numérique*

²³¹ CNC, Mesure «maîtrise des coûts de production des œuvres cinématographiques de longue durée»

levelled against the French subsidy scheme over the years and which surfaced again in the latter stages of the Uruguay round of international trade talks is that taxes on box office receipts for US films are used to support French productions²³². The tax is levied on cinema owners based on their revenue with no consideration for the origin of the films shown; a cinema owner could show nothing but Hollywood blockbusters and still be required to pay close to 11 per cent of its revenue into the *compte de soutien* to support French film.

Hollywood – by virtue of its strong market share in France – is the largest contributor to the *compte de soutien*. It typically accounts for at least 45 per cent of the available subsidy money in any one year, but can easily account for 60 per cent when US output is at its strongest. In fact, the current system is structured in such a way that it is perversely in French film producers' interest for US films to do well. The stronger US films perform, the more 'new' money is paid into the pot. The tax is being levied on films that have not previously been funded, rather than on ones that have; these latter simply return the funding they have received into the *compte de soutien* via taxation. Moreover, generally when Hollywood is at its strongest, fewer French films are being made, so that 'new' money is being shared between fewer projects and each receives a proportionately larger grant²³³.

This structure, US negotiators argued during the Uruguay round, was anti-competitive and contravened the 'national treatment' provisions within GATT/S. These provisions prevent GATT members from operating any programme that would artificially improve the competitiveness of a domestic product at the expense of a product from another country, such as subsidies to support local film production. France argued the schemes were 'non-border discriminatory', that is they were not directed against imported products and, therefore, did not contravene national treatment of imports.

²³² Bob Davis and Bhushan Bahree, 'Trade Accord by US and EC runs into snags – GATT deal is still possible today, but problems persist on French issues', *The Wall Street Journal*, 6 December 1993

²³³ Buchsbaum, 'After GATT', pp. 41-2

Not only did the US object to being the major contributor to a scheme from which it drew no benefit, it was also smarting from the extension of tax to cover video cassettes – the US has an even higher share of this market than it occupies at the box office (just over 64 per cent in 2010, compared with 48 per cent for the box office). Finally, there was a strong belief that, if the French film industry made the sorts of films that audiences wanted to watch, then it would generate sufficient revenues to compete and to stand on its own two feet.

US negotiators called for the subsidies to be abolished or opened up to all, though in the latter stages of negotiations, the US were prepared to settle for a deal which limited the taxes imposed on its films²³⁴. In the end, neither concession was secured.

The reason France gave for not acceding to either request was that the subsidy programme is an industry- and not government-operated support scheme. Revenue collected via the tax on box office receipts, sales of video cassettes and DVDs and television company revenues is funnelled straight to the CNC, whose role it is to administer the *compte de soutien* and to assess requests for support. In this, then, the TSA is not a traditional tax; the amount collected is not absorbed into the government budget and then allocated to the relevant department²³⁵.

Jonathan Buchsbaum comments that:

Because those taxes do not enter general tax revenues but are instead diverted to the *compte de soutien*, the sums are not considered subsidies, for they do not cost the state anything.

He adds that because the money bypasses general government budgets, the French government has been known to argue that the country has one of the lowest direct support

²³⁴ Davis and Bahree, 'Trade Accord by US and EC runs into snags'

²³⁵ Daniel Sauvaget, 'L'argent de l'État et la filière cinématographique française' in Laurent Creton (ed.), *Le Cinéma et l'argent*, p. 63

programmes for cinema in Europe – second only to the UK²³⁶. Only the 2-3 per cent of the budget that the CNC had previously received – but no longer does – from the Ministère de la Culture was considered direct state subsidy.

This argument is somewhat disingenuous. As Serge Regourd points out, no professional scheme would ever achieve the scale that the French subsidy programme does²³⁷. The legal and medical professions both impose a levy on their members, which is used to provide compensation in the event of professional negligence, but they rarely cover all members of the profession and they are certainly not regulated by a multitude of government decrees, as the French cinema subsidy programme is. Secondly, while the CNC may not have the status of a government department, it is part of the Ministère de la Culture et de la Communication. It has many more of the hallmarks of a government department than of an industry association.

Though the US has always maintained a strong objection to the French subsidy scheme in public because taxes are universally collected but grants are selectively awarded, behind the scenes Hollywood has always found a way to benefit. Throughout the late 1980s and into the 1990s – the period leading up to and immediately following the signing of the Marrakesh Agreement concluding the Uruguay round – the US majors invested in French production companies to gain access to the subsidy schemes. This was greeted in 1999 with a change to the *agrément* criteria limiting support to those production companies where the directors and shareholders are French or EU nationals²³⁸.

The inclusion of EU nationals is in line with France's commitments under the Maastricht Treaty on the creation of a single European market, but potentially brings the scheme into conflict with GAT/S. The 'most-favoured nation' provisions within both agreements state that no country may operate a scheme creating more favourable conditions for a signatory, or group

²³⁶ Buchsbaum, 'After GATT', p. 47

²³⁷ Regourd, *L'Exception culturelle*, pp. 36-7

²³⁸ *Ibid.*, p. 35

of signatories, than those which are available to all WTO members – in this case providing subsidies to France’s European neighbours that are not available to the US and more widely²³⁹.

Interpretation of the *agrément* criteria has not always been straightforward. Films that to a lay person would qualify as ‘French’ have failed to make the grade, while others that appear to be American have received funding. The highest profile cases are Jean-Pierre Jeunet’s *Un long dimanche de fiançailles*, Oliver Stone’s *Alexander* and Luc Besson’s *La Cinquième Élément*. A court ruled that the first one could not qualify for funding, ‘despite the fact that the film was made by a French director, shot in France, with French actors, in the French language, adapted from a French novel, with French technicians and a French lab,...’²⁴⁰. The reason given was that Warner Brothers owned a 32 per cent share in the production company, 2003 Productions. *Alexander* did qualify despite its English cast and crew and the fact that it was filmed in Morocco, because the film was produced by French company Pathé. *La Cinquième Élément* scraped through *agrément* by an even narrower margin on the nationality of its director, Luc Besson, and one actress, some French locations and the fact that it was adapted from a French novel. That decision resulted in the process being referred to France’s Cour des Comptes; the subsequent investigation showed how extensively the process could be distorted²⁴¹.

4.10. Conclusion

France has a long history of state investment and intervention in its film industry. What was a relatively *ad hoc* programme at first took formal shape in the aftermath of World War II. The signature of the Blum-Byrnes agreement ushered in screen-time quotas for French film. They

²³⁹ EU members listed a specific exemption from the most-favoured nation provisions for the Television without Frontiers Directive. Under WTO rules, no exemption may last for longer than 10 years, but in practice they are not being challenged by the US because American production companies have found ways to benefit from the subsidies. The US trade negotiator, interviewed as part of this project, also made it clear he considered the filed exemptions still valid. For more on this see Section 9.3.

²⁴⁰ Buchsbaum, “‘The *Exception Culturelle* is Dead’”, pp. 16-7

²⁴¹ Cocq and Messerlin, ‘The French Audiovisual Policy’, p. 10

were followed by temporary subsidies under the *loi d'aide temporaire à l'industrie cinématographique*; within a few years these were made permanent and expanded to all aspects of filmmaking.

The subsidy programme is now the element that receives the greatest attention; cinema quotas began to fade from view as it became clear that the number of US films that could be imported would be unaffected. When it comes to the quotas relating to television, the US is aided and abetted by France's broadcasters, which have adjusted the balance of entertainment and factual programming to ensure that they can accommodate dramas and series from the US within their schedule and still observe the rules.

Subsidies undoubtedly maintained a more vibrant film industry within France than elsewhere in Europe, as mentioned above. France has a share of its home market consistently in excess of 30 per cent and touching 40 per cent in years when there is a major release such as *Taken* in 2008 and *The Artist* in 2011. It has also resulted in a wider range of films being available²⁴². Delacroix and Bornon have concluded that France's film protection measures do 'not appear to restrict the range of French cinema intake; [they] may, paradoxically, broaden it'²⁴³ in that the French are able to see all the best US movies, as well as French films of all qualities.

However, France can also boast a system that is complex and open to wide-spread abuse. Film director Luc Moullet, among others, reports that it is common practice to inflate the budget and manipulate the proportion of funding from different sources to secure the maximum grant. This may mean that the creativity that should be invested in filmmaking has been devoted instead to establishing the film's budget.

²⁴² This will be explored in more detail in Chapter 8.

²⁴³ Jacques Delacroix and Julien Bornon, 'Can protectionism ever be respectable?: A skeptic's case for the Cultural Exception, with special reference to French movies' *The Independent Review*, Vol. 9, Issue 3, 2005, p. 372

The subsidy programme is also beset by unintended consequences that regulators have attempted to fix via a series of tweaks and adjustments, which in turn have implications of their own. One example was the requirement for television companies to invest a proportion of their revenues in cinema production; this obliged broadcasters to set up independent production companies which, in turn, were able to claim support from the *soutien automatique*. Further changes were necessary to ensure that they were not able to shirk their funding obligations.

Critics of the subsidy programme point to this constant tweaking as a sign that the system is broken and should be abandoned. However, there is currently little sign that France is considering this, even with new pressures on the country's cultural policy with the arrival of digital media. In commissioning Pierre Lescure to conduct a review of French cultural policy in 2013, Aurélie Filippetti, former Ministre de la Culture et de la Communication, charged him with looking at the way that the mechanisms currently in place could be brought up to date 'dans une logique «d'exception culturelle»'²⁴⁴ – that is to tweak things further rather than rethink the system. Equally, there is no sign that the US – or any other nation – is launching a renewed assault on France's film policy in the context of international trade of the kind that characterised the final stages of the Uruguay round of negotiations. But if it were to, would France be able to defend its position?

²⁴⁴ Lettre de Mission reproduced in Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 47-8

5. *Exception Culturelle – Acte I: the previous case for the defence*

Ces accords mettent en question la survivance même de l'art dramatique. L'altération du goût serait irrémédiable et mortelle. Faits au vin de bordeaux, nos estomacs devront s'accoutumer au Coca-Cola. Cela revient en somme à proprement abdiquer sa qualité de Français.

Louis Jouvet
Actor²⁴⁵

In the second half of 1993, in the concluding negotiations on the GATT and on its new sister framework, GATS, a debate flared up about cultural products, and about the audiovisual industry in particular. The latest in a series of similar skirmishes between France and the US dating back almost to the birth of film itself, the conflict gave rise to the cultural exception, hailed by the French as a way to curb Hollywood domination of its film industry and to arrest the 'Americanisation' of French culture generally. However, as a basket of measures stretching across both agreements, the cultural exception and what it does or does not protect has proved controversial since its introduction.

The first battle in the Franco-American war over culture erupted in the aftermath of World War I. As the birthplace of film and the producer of some of the most avant-garde films of the silent era, France initially had the upper hand. But the Great War had weakened its film industry. Meanwhile, Hollywood had had the opportunity to hone its craft, so that by 1919, when the European market was once again open to film imports, the US industry was in possession of many high quality movies which – to European eyes, at least – suddenly flooded

²⁴⁵ 'These agreements call the survival of dramatic art into question. The changes to taste will be fatal and irreversible. Raised on Bordeaux wine, our stomachs will have to get used to Coca-Cola. It amounts to a surrender of everything that makes us truly French.' Louis Jouvet commenting on the dangers of the 1946 Blum-Byrnes Agreement quoted in Burin des Roziers, 'Du cinéma au multimédia', p. 41

the market. As seen in the previous chapter, France – among others²⁴⁶ – introduced import quotas, though many of these programmes collapsed or were implemented only half-heartedly. In France, quotas also met local resistance from distributors and cinema owners which felt they would be starved of the most popular product²⁴⁷.

World War II generated a parallel set of circumstances. During the Nazi occupation, US films were blocked, again resulting in a backlog of US films being released at the end of hostilities. France's film industry was in tatters. The solution, once again, was to look to quotas to carve out a space in which the industry could rebuild, though this time a combination of visas and screen-time quotas were employed.

The quota regime was shaped by two factors: firstly US agreement on support for French post-war reconstruction; and secondly the negotiations to reach the first GATT (subsequently referred to as GATT 1947).

GATT was originally started as a project to deconstruct the web of measures that governments introduced in the 1920s to protect their national economies which were ultimately considered responsible for the depth of the economic crisis of the 1930s²⁴⁸. The overriding logic was one of liberalisation built around two core objectives, to reduce trade barriers and increase market access and to eliminate discrimination in the form of subsidies or preferential import and export arrangements that benefitted just one or a small group of nations²⁴⁹. In the early days, trading partners would settle on tariff reductions and, once signed, these bilateral contracts

²⁴⁶ Germany, Italy and the UK all introduced import quotas and limits on the amount of screen time that could be given over to foreign films in the period between 1920-27. See Richard Pells, 'Resistance and transformation: Europe's response to American mass culture' in Annemoon van Hemel, Hans Mommaas and Cas Smithuijsen (eds.) *Trading Culture: GATT, European cultural policies and the transatlantic market*, (Amsterdam: Boekman Foundation, 1996), p. 54 and Puttnam, *The Undeclared War*, pp. 150-4

²⁴⁷ Puttnam, *The Undeclared War*, p. 150

²⁴⁸ Hans Mommaas, 'The politics of culture and world trade' in van Hemel, Mommaas and Smithuijsen (eds.) *Trading Culture*, p. 12

²⁴⁹ Tania Voon, *Cultural Products and the World Trade Organization*, (Cambridge, UK: Cambridge University Press, 2007), pp. 5-6

would be extended as part of the GATT framework to all GATT members²⁵⁰. There was also an understanding that liberalisation should be progressive and ongoing; signature of the agreement was not seen as the end, but the start of the next round of negotiations leading to the next round of revisions, updates and concessions.

The US lobbied against quota restrictions in 1947, as they would continue to do so in each and every subsequent round of GATT negotiations. However, Europe – led by the French (as they would be on many other occasions) – resisted, resulting in the introduction of Article IV, which permitted screen quotas, but all other forms of protection, including contingent quotas, were banned. In the early 1980s, the US regarded the way cinema was handled within GATT as a model for how trade rules could be applied to the wider audiovisual services sector, but this changed with the introduction of the Television without Frontiers Directive²⁵¹.

When the service sector was brought into the scope of the international trade agreements during the eighth round of multilateral negotiations, known as the Uruguay round after the location of the initial summit in Punta del Este, Uruguay, discussions over the film industry were set to take a more explosive turn.

The service sector was by then a major contributor to the economies of the developed nations which were the driving force behind GATT; the trade framework should, therefore, be broadened to include service industries, they argued. The political rhetoric in many of these countries – particularly the US and the UK – had shifted towards one of greater *laissez-faire* market capitalism, characterised by increased privatisation to reverse the economic downturn of the 1970s²⁵². This stimulated the deregulation of the radio and television spectrum across

²⁵⁰ Kirsten Dawkins, *Global Governance: The Battle over Planetary Power*, (New York: Seven Stories Press, 2003), pp. 33-4

²⁵¹ Carol Balassa, 'An "economic" approach toward the trade and culture debate: the US position' in J.P. Singh (ed.) *International Cultural Policies and Power* (Basingstoke: Palgrave Macmillan, 2010), pp. 86-7

²⁵² see Paula Chakravartty and Katherine Sarikakis, *Media Policy and Globalization*, (Edinburgh: Edinburgh University Press, 2006), pp. 62-3 and Mommaas, 'The politics of culture and world trade', p. 13

Europe, allowing new entrants into the market. The French government under President Mitterrand privatised state broadcaster TF1 in 1986, suggesting that it was moving in the same direction as other developed nations in terms of liberalisation of the audiovisual sector.

The subsequent debate within the European community leading to the creation of the Television without Frontiers Directive clearly indicated otherwise. The Directive sought to impose quotas on the minimum level of European and national content that should be shown on Europe's television screens. The original proposal from the European Commission stipulated that 30 per cent of programming should be "Community works", rising to 60 per cent within three years of the Directive's implementation. The percentage was calculated on the basis of the total air time minus the time given over to news, sport, game shows and advertising²⁵³. Following discussion in the European Parliament, representatives suggested strengthening the provisions to 60 per cent European content from the outset and added a provision that two-thirds of this allocation, or 40 per cent of the total, should be nationally-produced content; the European Commission watered that amendment down with the inclusion of the caveat 'wherever practicable' to appease countries such as the UK and Germany opposed to restrictions on their national broadcast output. The French were a leading force in the Directive's creation and consistently argued for tougher quotas, eventually applying them locally without the 'where practicable' language and with an extra stipulation that quotas also applied to peak viewing hours to prevent broadcasters from using US content to fill the prime slots and burying national content in the early hours of the morning²⁵⁴.

Though the Television with Frontiers debate was taking place alongside the early stages of the Uruguay round of negotiations (the original Green Paper was published in 1986, the same year that the trade talks started), the television quota debate received very little attention from the US until it was almost approved. In January 1989 following the election of George Bush Snr. as

²⁵³ Grantham, *Some Big Bourgeois Brothel*, p. 97

²⁵⁴ *Ibid.* pp. 96-108

president, a new negotiating team was appointed, which interpreted the television quotas as the thin end of the wedge; a failure to oppose them would only pave the way for more quotas in other areas of trade. France's consistent lobbying for ever tougher restrictions was taken as proof. The new administration was also concerned that European expansion in the wake of the 1992 Treaty of Maastricht would mean that any quotas would soon be applied over a greater area. Finally, they argued that any restriction on content was 'inherently repugnant' because it represented a form of censorship²⁵⁵.

As Democrat Representative Sam Gibbons told a US advisory committee on trade:

But if the Europeans adopt their proposal for television without frontiers and we do not strongly object to it, they will analogize their television without frontiers to everything else that they are doing over there²⁵⁶.

He added that 'the Europeans are set upon a course of excluding American content and entering into censorship'²⁵⁷.

In October 1989, following approval of the Television without Frontiers Directive by European Community ministers, the US launched a new attack on quotas saying that they violated Article IV of GATT 1947; a claim that was quickly rejected by the European Commission as television programmes were services and not goods and, therefore, not subject to GATT. The response sparked a US campaign to have cinema reclassified as a service, meaning that any remaining protections under GATT would be abolished and all audiovisual products made subject to what they hoped would be a more stringent GATS regime. US negotiators were ready to call for a

²⁵⁵ Ibid. pp. 107-8

²⁵⁶ Speech by Sam Gibbons cited in *ibid.*, pp. 107-8

²⁵⁷ *Ibid.*, pp. 107-8

GATT adjudication if Europe was not prepared to enter bilateral talks on the quotas, or if those talks failed to resolve the dispute²⁵⁸.

According to Grantham, the apparently inflammatory tactics were a sign of an overstretched US administration with limited resources to help them understand the process of European integration in the run-up to 1992. Against that background, they preferred to seek the assistance of experienced GATT staff to review the issue. That said, they would have been aware of GATT's general bias in favour of liberalisation, which would have supported their case against television restrictions and for cinema reclassification²⁵⁹.

Europe, meanwhile, proceeded with the implementation of the Directive. In France, the Directive was implemented alongside changes to the film funding regime by the *décrets Tasca* (les décrets du 17 janvier 1990 (90-66 and 90-67) named after Catherine Tasca, Ministre de la Communication, 1988-91), which would serve to link maintenance of France's film funding regime with quotas in US minds. Decree 90-67 stipulated that television channels should commit a proportion of revenue to film funding. Part of the reason was to boost cinema production to ensure sufficient content to fulfil the Television without Frontiers quotas in response to complaints by Canal+ that there were not enough French films available for it to respect the quotas²⁶⁰.

While the debate rumbled on it did not truly reached a head until 1993 when a change in political administration in both France and the US brought fresh, but determined, perspectives. President Bill Clinton was elected in January 1993, following a campaign partly funded by Hollywood²⁶¹; head of the MPAA Jack Valenti quickly took advantage lobbying intensively to

²⁵⁸ *Ibid.*, pp. 110-2

²⁵⁹ *Ibid.*, p. 112

²⁶⁰ *Ibid.*, p. 114

²⁶¹ Jack Nicholson and Barbara Streisand are just two of the figures from the entertainment world which backed the Clinton election campaign (see Giselle Benatar, 'Party politicking', *Entertainment Week*, issue 138, 2 October 1992). A single fundraising dinner organised by Hollywood actor George Clooney raised

ensure Hollywood's' concerns over GATT were heard. The association feared a cultural exception would jeopardise Hollywood's ability to capture a sizeable share of the important European market.

France also had a new government under Édouard Balladur, which vowed to maintain the tough stance of its predecessor over GATT, especially as France had already been forced to make concessions on agricultural subsidies. It had determined that the most effective way to have the concessions overturned was to stand firm on all outstanding GATT issues, including television quotas and film support subsidies²⁶².

Presenting to the Lescure review, Alain Terzian, President of the Union des producteurs français (UPF), confirmed the strength of political feeling in the 1990s²⁶³. He claimed that François Mitterrand had met with French producers at the time to confirm he would not accept any form of GAT/S that did not contain a clear cultural exception and had instructed negotiators not to concede the point.

The US Congress had imposed a deadline of 15 December 1993 to reach a resolution on the issues surrounding telecommunications, financial services and the audiovisual sector; failure to do so would mean the negotiating mandate would have to be reviewed. At the eleventh hour, with no sign of a consensus on audiovisual issues, US president Bill Clinton decided not to sacrifice the hard fought concessions on agriculture and agreed to maintain the status quo on cultural products, subject to continued bilateral negotiations between the EU and the US in future. Government officials had calculated the worst-case impact of the quotas at \$80 million

\$15 million for the Obama re-election campaign in May 2012. (see CBS News, 'George Clooney aids Obama campaign with Geneva fundraiser', 27 August 2012)

²⁶² Grantham, *Some Big Bourgeois Brothel*, pp. 118-20

²⁶³ Culture Acte II, *Audition de l'UPF*, 25 October 2012

in lost Hollywood exports, a tiny amount compared with the multi-billion dollar benefits of a successful conclusion to the negotiations²⁶⁴.

The conclusion, which in US eyes, was simply an agreement for the time being to disagree rather than formal acceptance of the principle of cultural exclusion, may also have been a sign that the US was beginning to play a longer game. Vice-president Al Gore had already been commissioned to draft the administration's policy for development of the information superhighway. According to Robert Levine:

In Clinton's vision, the manufacturing jobs that would be lost to trade deals like the North American Free Trade Agreement would be replaced by better opportunities in the United States. Lehman²⁶⁵ and the administration assumed that many of those jobs would come from the rapidly expanding global market for American-made entertainment. Other countries would manufacture machines; the United States could make the music, movies, and video games they played²⁶⁶.

This vision would ultimately lead to the creation of the 1998 US Digital Millennium Copyright Act, extending intellectual property protection to the internet to encourage record labels and Hollywood studios to do business online. It aimed to introduce fundamental protections while ensuring that regulation would not hinder the growth of the internet, or burgeoning online businesses. The restrictions were particularly light in terms of fair use²⁶⁷. As discussed below,

²⁶⁴ Grantham, *Some Big Bourgeois Brothel*, p. 125

²⁶⁵ Bruce Lehman, United States Assistant Secretary of Commerce and Director of the US Patent and Trademark Office, 1993-98

²⁶⁶ Robert Levine, *Free Ride: How the Internet is Destroying the Culture Business and How the Culture Business can fight back*, (London: The Bodley Head, 2011), p. 21

²⁶⁷ The fair use provisions were originally intended to allow artists, journalists and academics to legitimately quote and parody the work of others. As a result of the limited restrictions that were placed on copyright in the online arena, fair use is now used by Google, YouTube and PirateBay, among others, as a primary defence to limit their liability for users illegally posting copyrighted content on their services and is a particular bone of contention with content owners. The author has experienced this in her professional life when attempting to have copyrighted content removed from file-sharing site Scribd.

the US has maintained a similar stance in trade negotiation when it comes to restrictions on digital content.

5.1. Changing political structures

The Uruguay round of GATT negotiations stretched over the best part of a decade, a period which saw two changes of administration in the US and, though François Mitterrand was president of France throughout, there were four different prime ministers. Despite the fact that each change could be expected to bring with it a perceptible policy shift, there was a delay on both sides in appreciating both the change and its implications. That delay, Grantham argues, resulted in both sides failing to appreciate the depth of feeling underpinning the position of the other. France, for example, interpreted the US delay in raising objections against the Television without Frontiers Directive as an indication that its concerns were minimal; if the US had been truly alarmed by the quotas then it would have said so sooner²⁶⁸. The US for its part was slow to understand the implications of European enlargement and France's changing perception of where it stood in that process.

Throughout the 1970s and 1980s, the tide – even within France – was firmly in the direction of trade liberalisation. As mentioned above, France was one of a number of European countries to make changes in the audiovisual sector, abolishing the state monopoly on television broadcasting and even privatising TF1²⁶⁹. However, with the deadline on the Uruguay round of negotiations looming, the country seemed suddenly to realise that it was on the 'verge of a new era of trade liberalisation' that would fundamentally undermine its audiovisual industry²⁷⁰. The steady stream of US content into the country would become unstoppable,

²⁶⁸ Grantham, *Some Big Bourgeois Brothel*, p. 110

²⁶⁹ Raymond Kuhn, 'The Myth of Exceptionalism? French Television in a West European Context', in Godin and Chafer (eds.), *The French Exception*, p. 159

²⁷⁰ Patrick A. Messerlin, 'France and trade policy: is the "French exception" passée?', *International Affairs*, Vol. 72, Issue 2 (1996), p. 294

overwhelming local production, limiting the country's opportunity for self-expression through film and television programmes and ultimately undermining its national identity.

Messerlin argues that the apparent *volte-face* is the result both of France's attitude to the EU and of its government structure. He argues that France's determination to occupy a central role in the European project:

induced France to follow a policy of world trade liberalization 'by proxy'. It accepted GATT Rounds as the unavoidable price to be paid for its 'great' role in the Community, and the price was small enough not to generate any debate in France²⁷¹.

This was acceptable while discussion was confined to goods, as it was up until the Uruguay round, and international trade rules were similar to those in operation within the European Community which France had helped to draft. But the expansion of trade negotiations to cover services meant that France's audiovisual sector would be affected. Europe's own internal trade rules in this area were less established to represent a proxy for wider trade rules, with the result that any concessions would have a more immediate impact; the political price to be paid at home for a failure to support the country's cultural industries internationally was considered too steep – as is still the case (see Section 9.3.1)²⁷².

There were also shifting priorities within the various European institutions. Up until the mid-1980s, the EU and its predecessor entities – the European Community and the European Economic Community – focused on promoting economic development and policies were only targeted at the cultural industries where they would help to further growth. The Treaty of Rome provides no cultural mandate, only an economic one; a cultural mandate was only formalised in the 1992 Maastricht Treaty. Thus early intervention in the creative industries was confined to issues such as the harmonisation of copyright protection. The Council of Europe

²⁷¹ *Ibid.*, pp. 296-7

²⁷² *Ibid.*, p. 298

regarded cultural policy as a way to increase European integration, which may or may not promote economic development, but could have important social benefits. The gap between these two organisations began to close in the late 1970s when the European Parliament decided that economic expansion was not an isolated aim, but that economic expansion should lead to improvements in living standards.

This sparked a review of the audiovisual agenda which ultimately led to the Television without Frontiers Directive, the MEDIA programmes to support film production and the 1992 European Convention on Cinematographic Co-Production, a framework for pan-European coproduction deals which helped filmmakers secure funding from organisations in other countries²⁷³.

So while European negotiators may have overlooked any US call for increased liberalisation of audiovisual trade in GATT revisions from the Annecy round (1949) to the Tokyo round (1973), the mood had shifted by the time of the Uruguay round making them more receptive to French arguments about the need to protect the European audiovisual sector²⁷⁴.

The second factor Messerlin credits for France's apparent change of direction relates to the country's political and bureaucratic structure. The country's civil service focuses on implementation rather than development of policy and so is poorly placed to advise on international issues. The government comprised a large number of sector-specific ministries from agriculture to transport, each with some involvement in international issues, but with quite narrow remits and lacking an overview of wider trade issues; there are only a few 'horizontal', or functional, ministries such as defence or the finance ministry that operate across industrial disciplines. The Ministère de la Culture et de la Communication is a sector-

²⁷³ The first scheme dubbed MEDIA I was introduced in 1991 and ran for a five-year period from 1991-95. It was succeeded in 1996 by MEDIA II and in 2001 by MEDIA Plus.

²⁷⁴ For more discussion on the role of the various European bodies in cultural policy, see Annemoon van Hemel, 'The complex debate on audiovisual policy' in van Hemel, Mommaas and Smithuijsen (eds.) *Trading Culture*, pp. 84-7

specific ministry with responsibility for music, film, theatre, broadcasting and the arts, rather than broader issues of education, social and cultural development.

Messerlin argues that the high number of ministries makes it difficult to obtain consensus at an early stage in any talks; beyond the prime minister and the finance ministry, there is no central department which has a view across the concerns of all ministries and can prioritise how they are handled in negotiations.

Prior to 1993, the interests of the agriculture ministry generally took precedence, due to the political imperative to retain the support of a stable rural electorate to offset more fluid urban voters. But as agriculture dwindled to just 0.2 per cent of French exports, the need to give primacy to agriculture waned and gave rise to a competition between different sectoral interests, allowing other ministries to come to the fore²⁷⁵.

Socialist president François Mitterrand had strong intellectual leanings and attached a greater importance to cultural issues. This meant that in the 1980s and early 1990s culture minister Jack Lang had the president's ear which allowed culture to take on a higher profile under the slogan 'Tout est culturel'²⁷⁶. The ministry's remit encompassed not just the traditional spheres of cultural activity such as music, theatre, the fine arts and cinema, but extended to all areas of society from cooking, to the use of industrial buildings and the French way of life.

These tensions within the French political system meant that France tended to adopt a sector-by-sector approach to trade liberalisation, partly explaining its inconsistent stance in negotiations. US negotiators interpreted this as a sign that the sentiment in individual areas like culture did not run as deep as the political rhetoric would have them believe.

²⁷⁵ Messerlin, 'France and trade policy', p. 294

²⁷⁶ 'Everything is cultural.' Open letter to the French people written by François Mitterrand in Courtois, *Frédéric Mitterrand*, p. 15

5.2. Negotiating positions

In debating any extension to GATT and the creation of GATS, trade negotiators on both sides employed a range of arguments in support of their respective positions. The US position was a predominantly commercial one, though it did also invoke some ideological arguments based on the need to remove content quotas to protect free speech. The French stance relied on abstract notions of cultural diversity and national identity, but also incorporated commercial considerations when convenient. Many of these same arguments are employed today, so it is worth taking time to dissect the various positions.

5.2.1. Economic arguments

The US position was founded on what it saw as three ‘fundamental truths’. The first is that free trade is always preferable to a market shaped by protectionism and, as a result, it has a duty to campaign for the removal of subsidies and quotas across all sectors. The imperative was particularly strong in the audiovisual sector because film was America’s second largest exporting industry and, when manufacturing jobs were being lost to the Far East, it became critical to hang on to market leading positions in other sectors²⁷⁷. Finally, US films were finding it increasingly difficult to break even at home due to rising budgets, so access to international markets was becoming essential.

Countering this position, France argued that its programme of quotas and subsidies was justified because of the massive trade imbalance that existed in audiovisual products. While Hollywood films held a 60 per cent share of the French market, French films only accounted for 0.5 per cent of the US market²⁷⁸. This was partly, the French contended, because the US itself was ‘very protectionist about the cinema and audiovisual matters’. Its distributors only

²⁷⁷ Geoffrey Nowell-Smith, ‘Introduction’ in in Nowell-Smith and Ricci (eds.) *Hollywood and Europe*, p. 1

²⁷⁸ Chambre syndicale des exportateurs de films, Association française des producteurs de films, Bureau de liaison des industries cinématographique and Associations des auteurs, réalisateurs et producteurs cited in Michael Palmer, ‘GATT and culture: A view from France’ in van Hemel, Mommaas and Smithuijsen (eds.) *Trading Culture*, p. 29

released a handful of foreign films in the US, claiming that the American public would not tolerate films dubbed or subtitled into English²⁷⁹.

If the US found it hard to make a profit in cinemas without access to the world market, then the French found it impossible, despite generally lower production budgets. The trade imbalance left France cut off from international markets. Consequently, without government support, independent French producers would be unable to survive, taking with them 50,000 jobs and FFr50bn (approximately €7.5bn) in revenue generated for the French economy. The European Television without Frontiers Directive – to which the US was also opposed – was aimed at protecting and stimulating television production in Europe and the French through GATT wanted to extend that to the wider audiovisual industry, putting it on a footing ‘that would allow us to compete with the Americans’²⁸⁰.

The MPAA and its overseas distribution arm, the Motion Picture Export Association of America (MPEAA), contended that increased liberalisation would strengthen Hollywood’s already considerable contribution to the European economy, protecting rather than destroying these jobs. MPEAA president Myron Karlin pointed out that the Hollywood majors all had bases in Europe contributing nearly \$9bn to the local economy and creating jobs for 9,000 people who all paid local taxes²⁸¹.

If these were the only considerations, then the debate over the audiovisual industry may have been contentious but it would not have been very different from that in other sectors. Similar arguments are employed by both sides when discussing liberalisation in agriculture, shipping,

²⁷⁹ Jacques Toubon cited in Michael Palmer, ‘GATT and culture’, p. 34

²⁸⁰ *Ibid* p. 34

²⁸¹ *Ibid* p. 33

financial services and other economically important sectors. However the negotiations were clouded by a range of more abstract issues²⁸².

5.2.2. Ideological issues

During the Uruguay negotiations, President Mitterrand stressed the need 'to create and choose our own images', as a fundamental freedom²⁸³ and was not alone this view:

These sentiments were echoed by Bertrand Tavernier, 'pictures have an enormous influence on people's lives' and Jean-Claude Carrière, 'A race which no longer creates its own images is certain to die out'²⁸⁴.

For France, preservation of the country's national identity and the ability to continue to make films that reflect and transmit that identity was paramount. The US largely dismissed concerns about a loss of identity, interpreting the concerns as a guise to protect European film and television producers, allowing them to make more money at the expense of the Americans.

Those that did acknowledge there was a genuine concern were confused by the arguments about cultural protection. France took the lead in negotiations from the European side, but the talks were held in a European context. Europe, however, had no cohesive identity; it was a collection of states, each with its own history, language and political system. American negotiators failed to grasp that they were negotiating collectively to defend individual national identities. They were also bemused by European content quotas that seemed to suggest that

²⁸² See Arjo Klamer, 'Economic aspects of cultural exchange' in van Hemel, Mommaas and Smithuijsen (eds.), *Trading culture*, p. 41 and Rod Kedward, *La Vie en bleu: France and the French since 1900*, (London: Penguin Books, 2006), pp. 573-5

²⁸³ Speech by François Mitterrand cited in Puttnam, *The Undeclared War*, p. 7. See also comments about the potential for France to become 'an enslaved society' if the process were left unchecked (see Chapter 2).

²⁸⁴ Bertrand Tavernier and Jean-Claude Carrière cited by Ann Marie Condon 'Chapter 11: Cinema' in Sheila Perry (ed.), *Aspects of Contemporary France*, (London: Routledge, 1997), p. 208

Spanish identity would be reinforced more readily by showing German content in Spain than by broadcasting a Spanish film of Mexican origin²⁸⁵.

The US position, according to Grantham, was also shaped by a deep distrust of the French. He notes that the American middle class tend to view the French as ‘a fickle and unreliable people’²⁸⁶. The Americans may have had a revolution 200 years ago to gain independence, but the constitution and political institutions created in the aftermath have been consistently in force ever since. The French, meanwhile, have had a revolution, restored the monarchy and removed it again, created and abandoned two empires and are now on their fifth republic and the second since the end of World War II. This level of instability suggests that the French could change tack at any time and, therefore, are not to be trusted.

Beyond that, the Americans believed that European policies contravened the fundamental First Amendment right to free speech. Chao comments that many Americans believe that the guarantee of free speech implies ‘a guarantee of free access to information’²⁸⁷. By imposing quotas, the French were favouring access to some content and potentially restricting access to other films. This was not an argument that was rebutted with any great force at the time, but since then filmmakers have begun to regard French subsidy programmes, particularly the *avance sur recettes*, as providing the opportunity for a wider range of people to make films, within France and abroad, and therefore providing access to a greater range of opinions, not restricting it.

The French and the Americans also had differing perceptions of the value of film. For the French it is the *septième art*; for the Americans, movies are simply entertainment. This was reflected in the different terms the French and the Americans used during the Uruguay round. US negotiators talked of ‘cultural products’, representing movies as commodity items churned

²⁸⁵ Grantham, *Some Big Bourgeois Brothel*, pp. 110-2

²⁸⁶ *Ibid.*, pp. 8-9

²⁸⁷ Chao, ‘GATT’s cultural exemption of audiovisual trade’, p. 1,143

out by an ‘entertainment business’ and to be bought and sold like cars, shoes or bananas. French rhetoric was laden with references to ‘auteurs’ and ‘œuvres’, referring to the defining vision and artistry of the director and to his canon of work, just as with literary and artistic figures such as Molière or Monet. However, Regourd suggests that when the French did talk about culture as ‘pas une **marchandise** comme les autres’ the statements were overlooked, as negotiations related to services not goods²⁸⁸.

But as with the US stance, French arguments were moulded by their preconceptions and a deep-rooted strand of French anti-Americanism. From the early 20th century, the US became synonymous with modernity, efficiency, standardisation and commercialism. In the post-war years, while the young saw increased mobility, liberalism and opportunity in the ‘American dream’, their parents saw social breakdown. The older generation also resented the need for US financial support to rebuild the country after the war. For them, there was nothing altruistic about the US investment; the US was simply trying to create the ‘good consumers’ of tomorrow and a market for its products. This was an attitude perpetuated by the PCF, which has continued to hold sway even after the communists have fallen out of favour politically²⁸⁹. Richard Pells argues, this division was actually symptomatic of the age-old generation gap, which became more exaggerated from the 1960s because of the rapidly increasing pace of technological development²⁹⁰.

Regardless, anti-Americanism has continued into the present day with left-wing intellectuals representing America’s push for trade liberalisation as the imposition of a totalitarian *pensée unique* (Chapter 2). For the cultural (and political) élite, ensuring French films continue to be made helps to fight this process of indoctrination and to maintain traditional French values.

²⁸⁸ ‘not a **product** like any other’. Author’s own emphasis. Regourd, *L’Exception culturelle*, p. 78

²⁸⁹ Grantham, *Some Big Bourgeois Brothel*, p. 18

²⁹⁰ Pells, ‘Resistance and transformation’, p. 52

5.2.3. Legal considerations

As discussed, GATT, GATS and the WTO are governed by two core principles: to consistently reduce trade barriers and increase market access and to eliminate any national policies that are favourable to local organisations but discriminate against international suppliers.

The former objective translates into a general prohibition on import restrictions. At the time of the first GATT in 1947, any restrictions operated by GATT signatories were converted into tariffs or dismantled entirely. The customs duties were then set such that all GATT signatories benefited from the lowest level then in force and listed in a 'schedule of concessions'. Subsequent rounds of GATT negotiations were aimed at reducing the level of the concession, or removing it from the list entirely.

The second objective is split into what are known as the 'national treatment' and 'most favoured nation' provisions. National treatment guidelines prevent GATT members from operating any programme that would artificially improve the competitiveness of a domestic product at the expense of a product originating in another country. This could be anything from a subsidy that supports the production of the item to preferential tax regimes for local producers. The most favoured nation obligations prevent the creation of smaller preferential trading blocs among a few GATT member countries. For example, France is unable to create a more favourable trading arrangement for its European neighbours than it does for the US or Australia.

While GATT was the only agreement in existence, these objectives caused France little issue. GATT 1947 contained specific concessions relating to cinema which it had successfully retained in subsequent negotiations. GATT applies to physical products, such as the film reel on which a movie was recorded or a video cassette, as goods were the only things that tended to be traded internationally at the time of the initial agreement. It did not apply to radio or

television services which – in the post-war era – tended not to operate cross-border, and in the case of television, was in its infancy anyway and not considered cause for concern.

The French requirement for a foreign film to secure a dubbing licence was acceptable, as long as the stipulation was applied to all films regardless of origin. Screen-time quotas were also explicitly covered via Article IV and were acceptable because they were regarded as equivalent to tariffs and affected all non-French films equally. France stipulated that its films should be shown in cinemas for four (later five) weeks every quarter. It did not dictate other countries' share of the remaining airtime; that was left to market forces to determine.

The extension of the GATT framework to services as part of the Uruguay round broadened the scope of international trade agreements considerably. Guidance published by the GATT Secretariat, defined audiovisual or communication services as including, but not limited to:

- motion picture and video production and distribution;
- motion picture projection services;
- radio and television services;
- radio and television transmission services; and
- sound recording²⁹¹.

Not only did this guidance mean that film should be covered by the new GATS framework, potentially forcing France and other nations to have to renegotiate concessions on screen-time quotas that had been in place for over 40 years, even if those quotas were not actively enforced (see Chapter 4), it also opened up other French cultural policies to scrutiny, most notably the *compte de soutien* and the programme of aid that it supports which had evolved relatively unchallenged since GATT 1947.

²⁹¹ World Trade Organization, 'Services Sectoral Classification List', MTN.GNS/W/120, 10 July 1991

The US argued that the programme contravenes the national treatment provisions in GATS, in that support is only open to French films. The growth since the 1980s of bilateral coproduction agreements, particularly across Europe, also brought the *compte de soutien* into the firing line of the most favoured nation provisions. Films produced under these arrangements by European companies and with a predominantly foreign cast and crew could still gain support from France by virtue of hiring a French director. Others that on paper had the same make-up of cast and crew save for the director would not be subsidised. This discriminated between films from different countries.

The Television without Frontiers Directive was also considered contrary to the most favoured nations principle. The quotas created an environment which favours European companies over US ones, which would have had to have been dismantled if the French were unable to succeed in excluding audiovisual products from both GATT and GATS.

5.3. The cultural exception

Relying interchangeably on the legal, cultural and commercial arguments outlined above, French ministers reasoned that the US had accepted in 1947 that cultural products were different and that this exemption should be maintained. This would mean that all cultural products would be excluded from GAT/S. While the US agreed in 1993 to park the argument for the time being, it did not allow a formal exclusion. The Marrakesh Agreement, signed in April 1994, concluding the Uruguay round was simply structured to reflect the stalemate and provide sufficient latitude for countries to retain their audiovisual policies.

Film retained its protection under Article IV of GATT, but no other exclusions or sectors were added to the agreement. From the outset, all traded goods were considered included within GATT unless, like cinema, they benefit from a specific exclusion listed in the schedule of concessions.

The other audiovisual categories listed above were considered to fall under GATS. The services agreement takes an opposing positive list approach, whereby nations choose the service sectors and sub-sectors in which they are willing to make commitments to liberalise market access in line with Articles I to XV of the agreement. They must also set out the scope of those commitments and whether there are any limitations to access, such as restrictions on the extent to which a local company might be owned by a foreign organisation²⁹². Commitments could be withdrawn at a later date, but only if a country provides monetary compensation to all other GATT members or makes concessions in a different sector²⁹³.

Only 19 of the 128 countries that signed the Marrakesh Agreement made specific liberalisation commitments under GATS in relation to audiovisual services. Nations proved reluctant to make even small commitments that might prove detrimental to the country's audiovisual industry later on. As Mira Burri-Nenova points out:

if Members do make unlimited commitments under GATS, they may in fact be more restricted than under GATT since within the fairly new construct of the agreement on services no rules on subsidies, safeguards or an equivalent to GATT Article IV for screen quotas exist²⁹⁴.

Under the Annex to Article II, GATS signatories are also allowed to specifically exempt some services from the most favoured nation provisions. In filing an exemption, a country is required to describe the nature of the provision and the member or members of the WTO community which benefit from the preferential arrangement. In principle, no exemption may last for more than 10 years.

²⁹² Burri-Nenova, 'Trade versus Culture in the Digital Environment', p. 46 and Cocq and Messerlin, 'The French Audiovisual Policy', pp. 5-6 and World Trade Organization *Services: Rules for Growth and Investment*

²⁹³ Christoph Scherrer 'The role of GATS in the commodification of education' in Bernd Hamm and Russell Smandych (eds.), *Cultural imperialism: Essays on the Political Economy of Cultural Domination*, (Toronto: Broadview Press, 2005), p. 169

²⁹⁴ Burri-Nenova, 'Trade versus Culture in the Digital Environment', p. 46

The EU has filed an exemption to protect the Television without Frontiers Directive, as well as some other internal arrangements for services such as water, road and air transport, press agencies and financial services. According to Cocq and Messerlin, it is this exemption that has resulted in the ‘erroneous impression of a “cultural exception”’²⁹⁵. Many of the European exemptions are carefully worded as ‘indefinite’ in order to extend their validity beyond the 10 years allowed and, indeed, the US trade negotiator interviewed considered them still valid (see Chapter 9).

The process of making commitments and exemptions is complicated still further by the definition of goods and services within the trade framework. As Cocq and Messerlin point out ‘the line between what constitutes an audiovisual good and an audiovisual service has been left largely unclear by the GATS text and by the schedules of commitments’²⁹⁶. This lack of clarity received little attention at the time of the Marrakesh Agreement. However, in more recent years, it has become a key sticking point.

5.4. The digital exception

Film, like most other cultural products, may take a physical form such as a movie reel, DVD or video cassette, or may be enjoyed via a more transient format, such as a cinema screening or television broadcast. The former are ‘cultural products’ under GATT 1994. Within GATS, the definition of ‘cultural product’ covers printing and publishing services, as well as film and television production and transmission as outlined above. What the consumer experiences might be the same, but they may be treated differently under international trade law. Is *Titanic* when viewed at the cinema or on television any different from the film bought on DVD? However, because of the ‘agreement to disagree’ over audiovisual services at the end of the

²⁹⁵ Cocq and Messerlin, ‘The French Audiovisual Policy’, p. 6

²⁹⁶ *Ibid.* pp. 6-7

Uruguay round, the same film may be covered by GATT 1994 when shown at the cinema, but by GATS when aired on television, with far-reaching implications, as outlined below.

The picture is further complicated by the convergence of the audiovisual and telecommunications sectors. GATS states that there should be no restriction on access to telecommunications infrastructure, as this is a fundamental requirement for economic growth now and in the future²⁹⁷. Telecommunications includes, among other services, ‘online information and database retrieval’, which in a multimedia environment could cover video-on-demand services²⁹⁸. Again, this would result in different levels of cover for the same content. France could insist that national broadcasters dedicate a proportion of their output to local content on television, but might be restricted from doing so for the online services offered by the same broadcasters, because of the GATS provision on free access to telecommunications services.

Providing clarity on this issue of goods and services was a primary goal of the ninth round of trade negotiations, which were launched in Doha, Qatar in November 2001, particularly given the rise of the internet and internet-enabled offerings, such as e-commerce and video on demand. However, it is also one of the reasons why the negotiations have stalled.

The European – and French – view is that digital services should fall within GATS²⁹⁹. That would maintain a consistent approach across most forms of content delivery; cinema being the exception while film quotas are covered by GATT. The French are particularly concerned about technical neutrality and that the same rules are applied regardless of delivery mechanism. A public affairs specialist from the CNC commented that the industry was particularly wary of terms like ‘new media’ being used to describe catch-up or video-on-demand services because it implies that there is something distinctive about them and that different rules should apply.

²⁹⁷ Chakravartty and Sarikakis, *Media Policy and Globalization*, p. 55

²⁹⁸ Voon, *Cultural Products and the World Trade Organization*, pp. 72-3

²⁹⁹ *Ibid.*, p. 73

‘On parle toujours de services audiovisuels’, she noted ‘mais c’est le mode de diffusion qui change, qui peut être en ligne, hors ligne... ça change de support, mais ça reste de service audiovisuel’³⁰⁰.

However, more importantly, classifying all audiovisual services under GATS would allow countries to control the speed and degree of liberalisation. GATS operates on a ‘positive list’ approach, requiring nations to make a specific pledge to liberalise the sector, which is then listed in the schedule of commitments.

The US, unsurprisingly, takes the opposing view. It believes that digital products should be governed under GATT, not least because GATT stipulates that trade in all goods is covered except where there is a specific exemption such as cinema quotas. A GATT classification would result in all audiovisual sectors – traditional and digital – being fully liberalised. It suggests audiovisual services fall within the WTO Secretariat’s definitions of ‘services embodied in exported goods’, that is services such as software supplied via computer diskette. These are included within the scope of GATT³⁰¹.

In the absence of consensus on this point, WTO members have reached an informal agreement not to impose customs duties on e-commerce and electronic distribution of cultural products³⁰². However, Tania Voon comments that this is problematic, because the agreement is both informal, temporary and non-binding, making it difficult to police. She also notes that it is rare to impose customs duties on services so, given the European interpretation of the status of online distribution as a service, it is unlikely European nations would have adopted the customs duty approach anyway. However, there would be nothing within this approach to

³⁰⁰ ‘We are still talking about audiovisual services; it is the distribution method that has changed, it could be online or offline... the platform has changed, but it is still an audiovisual service.’ Public affairs specialist from the CNC, interviewed for the current project.

³⁰¹ 2001 Scheduling Guidelines cited in Voon, *Cultural Products and the World Trade Organization*, p. 74

³⁰² *Ibid.*, p. 74

prevent them from turning to other protectionist measures, such as subsidies if they were to so choose, which is partly why they agreed to it as an informal arrangement.

Voon does not consider either the US or the European position on the issue to be exactly right. Classifying digital cultural products as goods when they are delivered via video on demand or other intangible form not recognised within the WTO Harmonised System of product codes is as artificial as determining that they are all services even when the content is delivered in physical form such as a DVD. She thus advocates a hybrid approach whereby products in physical form are covered by GATT and those in intangible form under GATS. She argues that this has the merit of giving the international trading community the flexibility to determine the rules of trade in these new electronic formats as the business models evolve³⁰³.

While this may be a pragmatic suggestion, it is unlikely to find favour with either party unless agreement is reached on the protections that are afforded under both agreements. The level of protection for cinema under GATT is relatively weak, permitting France to maintain its screen-time quotas so long as the percentage of time allocated to French film does not exceed its market share in 1947. Protection under GATS is high – Cocq and Messerlin believe often prohibitively so³⁰⁴ – as countries can restrict any access until they believe there is a case for liberalisation and even then can determine the speed and the extent of that liberalisation. As a result, a US film might not make it on to French television, even though it had been released at the cinema, because the screen-time quotas on French and European content are higher for television. Yet at the same time, it could be the most downloaded film from a foreign video-on-demand service, since there is no practical way to impose percentage limits on what is viewed via such services (this will be covered in more depth in Chapter 7). And theoretically, at least, it seems odd that the same piece of content is treated differently in different channels simply by virtue of the platform on which it is delivered.

³⁰³ Ibid., pp. 223-4

³⁰⁴ Cocq and Messerlin, 'The French Audiovisual Policy', pp. 6-7

However, the likelihood of a consensus appears to be slim. Negotiations since the early days of GATT show that the US is unwilling to agree to a strengthening of protection on cinema, even if that did result in liberalisation of the television or online regime. France is equally unlikely to give ground in the digital arena, without gaining additional protections for cinema that allow it to nurture and grow its local production industry.

5.5. Conclusion

Debate over international trade in audiovisual products goes back to the earliest days of cinema with the creation of quotas in the aftermath of World War I. As the number and variety of media has grown, this debate has become increasingly complex, and heated. It reached a pinnacle in 1993 in the closing stages of the Uruguay round over the inclusion of services – including radio and television – within the world trade remit.

The dispute saw the US and the EU go head to head, arguing over the nature of cultural products as goods to be traded as any others or works of special significance to the nation to be nurtured and protected. The conclusion was an agreement to disagree. Existing measures under GATT protecting cinema remained intact, while nations were left to make specific liberalisation commitments under GATS for other sectors of the audiovisual industries. Both sides heralded this as a victory, with the French claiming a cultural exception and the US celebrating that no additional concessions were made.

In fact, the result is a fluid legal situation whereby cultural products are neither explicitly included or excluded – a situation that has become increasingly tricky with the advent of digital media. France favours treating the digital sphere as a service, meaning that it would only have to make trade concessions when ready; the US favours including digital content within GATT resulting in full liberalisation. The two nations have been locked in debate on this point for over a decade – something that has resulted in the Doha negotiations reaching stalemate.

Meanwhile, they have agreed that no customs duties be imposed on digital trade until a broader framework is finalised.

Protection for content delivered via the traditional channels of cinema and terrestrial television may be patchy and subject to debate but, for the time being, the GAT/S regime does provide some form of defence. This is not so within the digital arena. Even if France maintains its position and chooses not to liberalise its audiovisual services sector under GATS, short of using technical means to block services such as Google, there is nothing to stop consumers choosing to access US content delivered by video-on-demand services based outside France. Consumers are free to choose the films they wish to see online rather than the ones that gain a place on television and cinema screens because of the quotas. This then undermines those protection efforts, as well as a subsidy system based on French television channels and other content distributors reinvesting a proportion of revenue in film production when direct competitors overseas have no such obligations. The next chapter will explore the rise of digital services in France and whether, in fact, consumers are using their new-found flexibility to circumvent these protections.

6. Digital evolution: accommodating video on demand within French film policy

Et fidèle à sa tradition, la France continue de croire que l'on peut régler chaque problème par une nouvelle taxe

David Barroux
*Les Échos*³⁰⁵

In the first decade of the 21st century, France witnessed an explosion in the number of ways individuals could watch films. When the *loi Létard* governing the audiovisual sector was first passed in 1986, French consumers could see a film at the cinema, on terrestrial television, or a limited number of pay-TV channels, most notably Canal+, or they could buy or rent the film on video. By the end of 2014, consumers were able to choose from a selection of more than 13,000 films to buy or rent across more than 50 different on-demand services, as well as many more terrestrial and specialist cinema channels. This has altered the French audiovisual landscape significantly, but the French approach to regulation has remained consistent.

The launch of satellite distribution in the 1990s unleashed a rapid increase in the number of television channels available, both general interest and specialist services. While significant in number, these services differed little from the traditional channels, in that they offered programmes at scheduled times. The landscape began to change noticeably with the launch of the first video-on-demand service, Zooloo Kids, in 2004³⁰⁶. Video on demand offered a library of films and television programmes, which viewers could 'pull down from the shelf' at a time of their choosing. In this it acted like a video shop, but one accessible from their own home.

³⁰⁵ 'And true to its tradition, France continues to believe that it is possible to solve each problem with a new tax'. David Barroux, 'Casse-tête numérique', *Les Échos*, 14 May 2013

³⁰⁶ 'Création de Zooloo Kids, le meilleur de l'animation française en vidéo à la demande', *Stratégies*, 23 September 2004

Simultaneously, technological advances have meant that these services could be distributed via multiple platforms and devices. Incumbents, such as Numéricâble, offered video-on-demand services as part of their cable or satellite package, accessible from the viewer's television by means of a receiver. Other services, dubbed over the top (OTT), were available on the internet, with programmes typically being viewed on an individual's computer. The launch of ADSL services by internet service providers, including France Télécom (now Orange), Free, Bouygues and SFR, resulted in faster internet access, making the downloading of content from OTT services more feasible. Consumers could connect their television set to the internet, initially via a set-top box then directly following the launch of smart televisions, allowing access to OTT services direct from their living room. Most ADSL providers also offer a selection of video-on-demand channels as part of their core television package. Meanwhile, the development of tablets and smartphones has allowed individuals to connect to the internet wherever they happen to be, giving further options for watching films on demand.

Before exploring how policy-makers in France have attempted to deal with the arrival of so many different services and delivery formats, it is worth looking at the development of the market in more detail and its impact on French consumers' viewing habits.

6.1. Market evolution

The launch of so many different ways to access content has, unsurprisingly, resulted in changes to where and how the French public watch films and television programmes. Fuelled by government initiatives to promote internet connectivity, adoption of ADSL has been rapid, such that penetration of ADSL television in France is now the highest in the world, and by quite

some distance, which in turn has helped to boost the take-up of video-on-demand services both via smart televisions and online³⁰⁷.

Figure 6.1 is based on information compiled by the CSA and the CNC from reports filed by distributors of pay-TV services and the professional organisations that represent them. It shows the number of French households that watch television via each platform – terrestrial, cable, satellite and ADSL. AFORM, the association that represented cable companies, ceased operating in 2006 when consolidation meant there was only one national provider, Numéricâble, and a few local providers left in France. From this point on, figures provided for the cable sector have been patchy; the details published vary from year to year between the total number of households receiving any television channels via cable, those subscribing to a multichannel service, and the total of those receiving a digital service. This inconsistency has been most marked with regards to multichannel subscriptions, hence it is shown as a dotted line for part of the period.

Accurately assessing penetration of television services via ADSL was beset by problems in the early years. As mentioned, to receive the television package, consumers had to connect their television set to the ADSL network via a set-top box and figures are based on the number of households taking this step. However, it was possible for consumers to use the fast internet connection offered by ADSL to watch the programmes via their computer, meaning that households that had not subscribed to a pay-TV package may still be using their ADSL connection for watching content, especially if they did not have a television. This question whether consumers were watching films online also has implications for the extension of film funding obligations to ISPs (see Section 6.2).

³⁰⁷ Ofcom, 'Television and audiovisual', *International Communications Market Report 2012* and Association des Chaînes Conventiionnées éditrices de Services, *Guide des chaînes thématiques*, January 2013, p. 135

France was relatively slow to embrace the internet. There was a suspicion that the internet was an 'electronic Trojan horse' that would further spread American ideas in France³⁰⁸. Use of France Télécom's proprietary connected terminals known as Minitel was also wide-spread. Revolutionary in its day, Minitel offered online banking, holiday booking and interactive television long before similar services were available via the internet in other countries. But by the early 2000s, it was decidedly outmoded, such that the government instigated plans to switch the service off³⁰⁹. It was only after this point, that adoption of broadband services, typically delivered via ADSL, began to rise, eventually surpassing the average of OECD countries in December 2005. ADSL then began to take root as the primary way to access television services in France.

A report by UK broadcast regulator Ofcom estimates that 28 per cent of French households watch television via an ADSL service, compared with 11 per cent in the US and Germany. In no other country is penetration above 10 per cent of households³¹⁰. Ofcom puts the high adoption rate down to earlier introduction of ADSL services in France compared with other nations and to limited competition from cable.

The high levels of ADSL penetration also explain why France reports some of the highest rates of connected, or internet-enabled, televisions. Some 15% of French households own a connected television, the same as in the UK, but elsewhere the rates are still below 10 per cent. The good connection to the internet that ADSL providers offer makes it feasible to watch content online; at slower connection speeds watching a film or television programme can be intensely frustrating, as the download is regularly interrupted³¹¹.

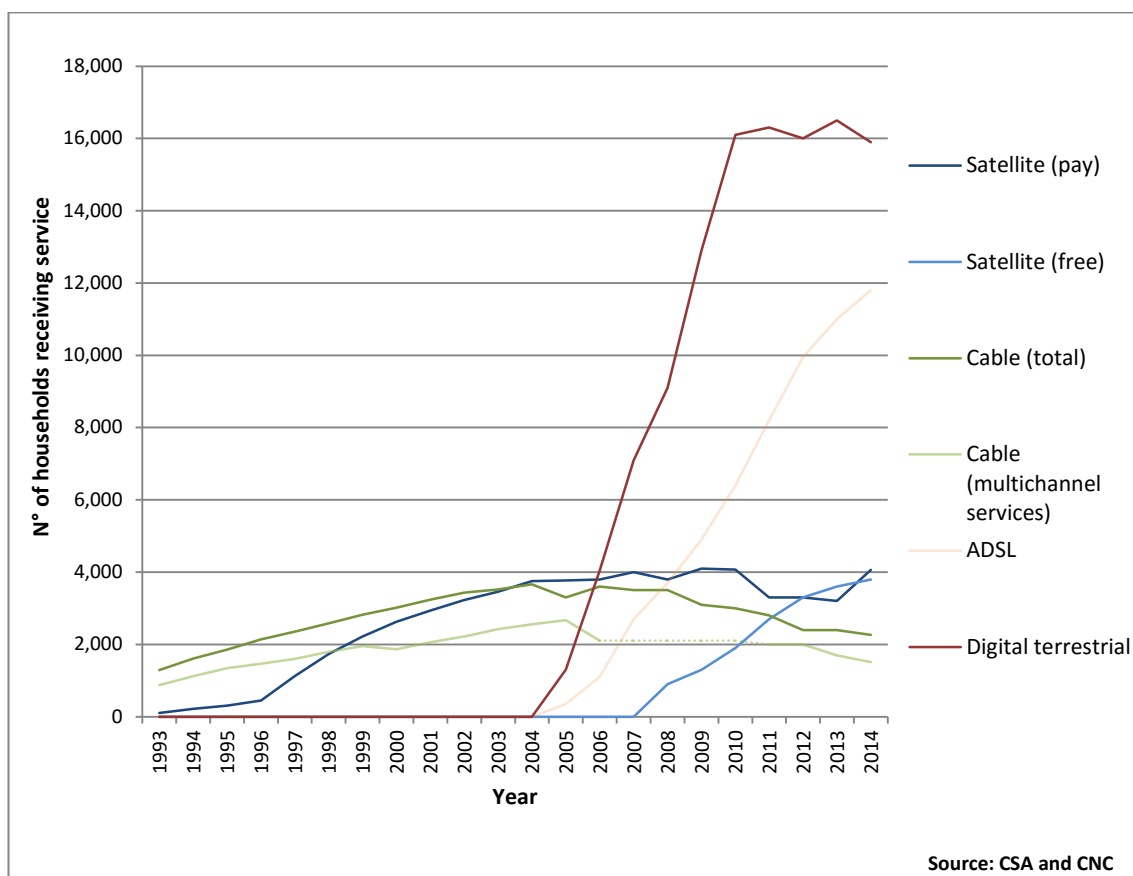
³⁰⁸ William Kidd and Sian Reynolds, *Contemporary French Cultural Studies*, (London: Hodder Arnold, 2000)

³⁰⁹ Hugh Schofield, 'Minitel: The rise and fall of the France-wide web', *BBC News*, 28 June 2012

³¹⁰ Ofcom, 'Television and audiovisual', *International Communications Market Report 2012*, p. 135

³¹¹ Around 2.4 million or 9 per cent of French households are connected to *très haut débit* services running at a minimum of 30 megabytes per second. See ACCÉS, *Guide des chaînes numériques 13^e*

Figure 6.1: Rate of adoption of TV platforms in France, 1993-2014³¹²



6.1.1. Arrival of video on demand

The rise of ADSL services has stimulated development of the video-on-demand market. The first video-on-demand service was launched in France in September 2004, but it was not until late the following year that films became available on demand when Canal+ launched its Canalplay service. Since then, the number of services has grown consistently, such that by the start of 2015, there were 90 providers excluding services offering pornographic content and the catch-up services offered by broadcasters free of charge to allow consumers to view programmes that they may have missed in the previous week³¹³. Cinema is an important part

édition, March 2015. According to Ofcom, 19 per cent of UK households had access to an equivalent service in May 2013 (see Ofcom, *Average UK broadband speed continues to rise*, 9 August 2013).

³¹² Multichannel cable television subscriptions are defined as those services offering access to at least 15 pay-TV channels

³¹³ Some figures include these catch-up services within the calculation of the size of the video-on-demand market, because they are based on similar technologies, in that they are delivered online, via

of the video-on-demand offering, with just over half of providers carrying at least some films. Figure 6.2 depicts the expansion of the video-on-demand market, showing the services that have been launched year by year and some, like Acetrax movies, that have since shut down.

Service operators have originated from quite different backgrounds and, therefore, have different priorities. Providers such as UniversCiné operated by a collective of independent filmmakers are keen to secure the broadest distribution for their films particularly by raising the profile of niche services on all platforms. Television companies are looking to ensure exclusive access to the films they fund – at least for a defined period of time – to generate the maximum return on the rights they have bought. Video editing companies, such as Éditions Montparnasse, see video on demand as a way to protect their business in the face of declining DVD sales. There are also a number of dedicated start-up companies, including FilmoTV, which have acquired the rights to films with the specific aim of offering a video-on-demand service. Several of these have been supported by the EU's MEDIA programme, because they aim to increase the availability of French and European films, particularly arthouse and classic films.

These competing priorities have made it challenging to update French cultural policy, because what serves the interests of one provider may not be seen to support others' priorities. This has particularly complicated updating the *chronologie des médias*, which is the subject of interprofessional agreements between filmmakers and distributors.

Video-on-demand providers have adopted one of two business models: a pay-as-you-go model offering films for sale or rent referred to as VoD; and a subscription model termed SVoD. The former is a combination of traditional video rental and retail sales. Films are rented individually

ADSL or as part of an interactive service on cable or satellite television. With the advent of internet-connected televisions, such as those produced by Sony, the distinction between on-demand and catch-up services is blurring still further in that those services only available online can be accessed from a television set. In France many companies also operate both models under similar names; an example is France Télévisions which offers catch-up services branded as FranceTV Pluzz and makes its catalogue of film and television rights available on demand as FranceTV PluzzVad. See CNC, *Le marché de la vidéo: Les dossiers du CNC N° 329*, p. 47-8

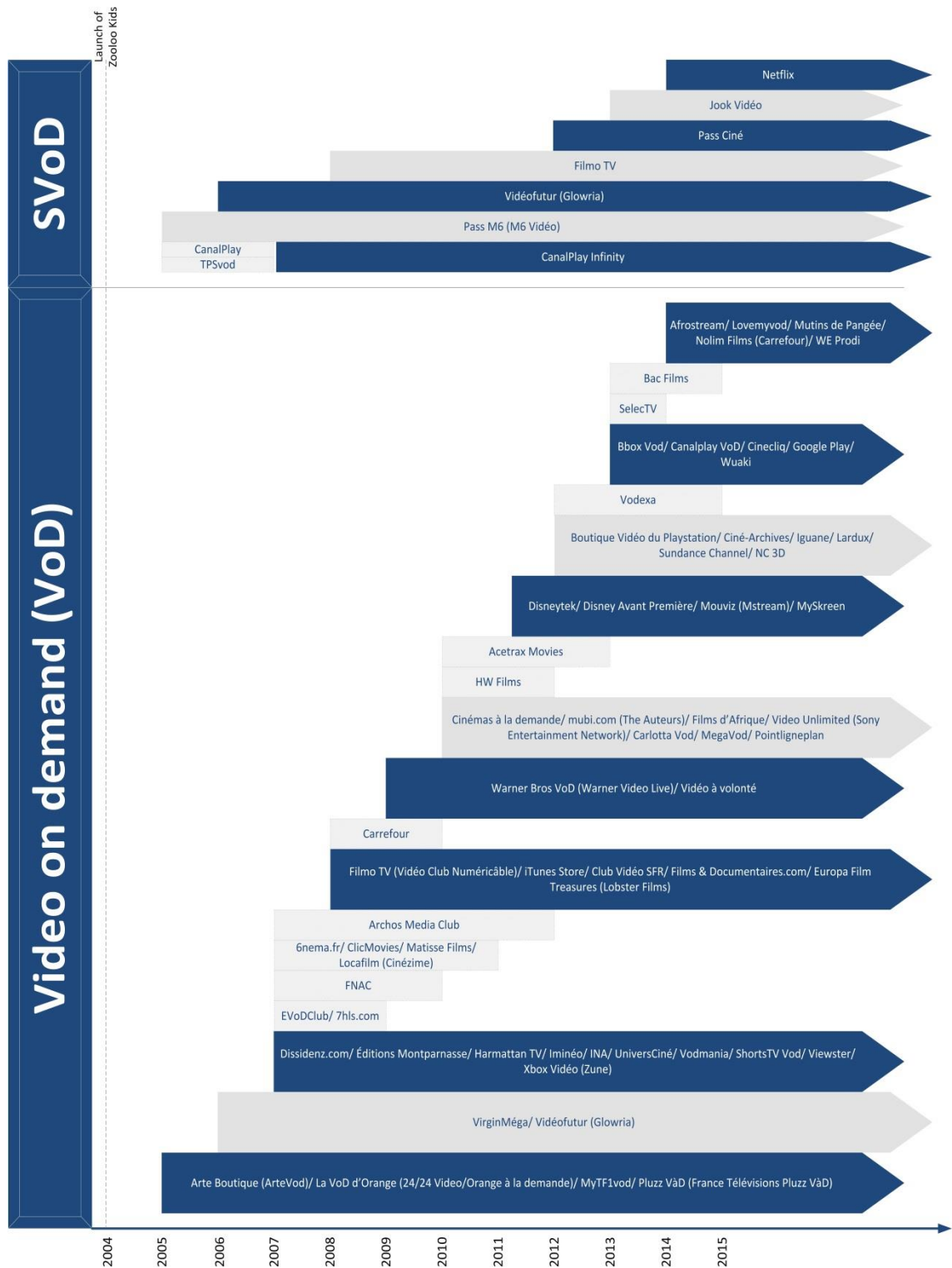
for a short period – typically 24-48 hours – at an average cost in 2014 of €4.38, though the price can be as low as €1 for a back catalogue film. For a higher charge, some services offer the chance to buy the film outright and transfer a copy to DVD or a hard-drive recorder. VoD services offer access to the most recent films, some within four months of their cinema release. For a monthly subscription of around €10, SVoD providers allow unlimited access to all films within the library, but under French rules these films must be at least three years old. It is possible to make films over four years old available free of charge, but only a few services like Europa Film Treasures make any use of this provision to promote silent films to a wider audience; most rightsholders see video on demand as a means to generate an ongoing revenue from their back catalogue. Figure 6.2 splits video-on-demand providers according to their main business model.

Hengameh Panahi, founder of arthouse film service mubi.com believes that free delivery will become the dominant model, with services deriving funding from advertising; this will require a high and sustainable level of traffic³¹⁴. The main reason is that consumers are already freely accessing films. If the industry were to make content available for free in a controlled fashion, it would drive consumers away from illegal sites. However, the predominant industry view is that a broader legal offering, coupled with sanctions for those that persistently download illegal content, represents a more effective way to tackle piracy. Increasing use of ad-blocking software – particularly now that it is incorporated in popular operating systems, such as Apple's iOS 9 – may also make advertising-driven content distribution economically unviable³¹⁵.

³¹⁴ MEDIA report compiled by Christine Mazereau and Gilda Fougeron, *Focus sur la Vidéo à la Demande*, p. 19

³¹⁵ John Naughton, 'The rise of ad-blocking could herald the end of the free internet', *The Guardian*, 27 September 2015

Figure 6.2: The development of video-on-demand services in France, 2004-2015³¹⁶



Source: CNC, CSA and company websites

³¹⁶ Diagram only features those video-on-demand services which make films available. There are a number of services that specialise in documentaries, children's programmes or other genres; these have been excluded. The launch of Zooloo Kids is marked to signal the start of development in the video-on-demand sector in France, even though it does not make films available. Services coloured mid blue have since ceased operating.

6.1.2. Adoption of video on demand

Though video on demand is still relatively new, growing numbers of French consumers are changing the way they watch films, particularly renting movies on a pay-as-you-go basis. The CNC has commissioned Harris Interactive to conduct an annual poll of consumption patterns. This is the only audiovisual sector tracked via survey; the presence of foreign providers such as Apple's iTunes means that the organisation cannot build a complete picture from financial returns filed to demonstrate compliance with financing and quota commitments as it can with television.

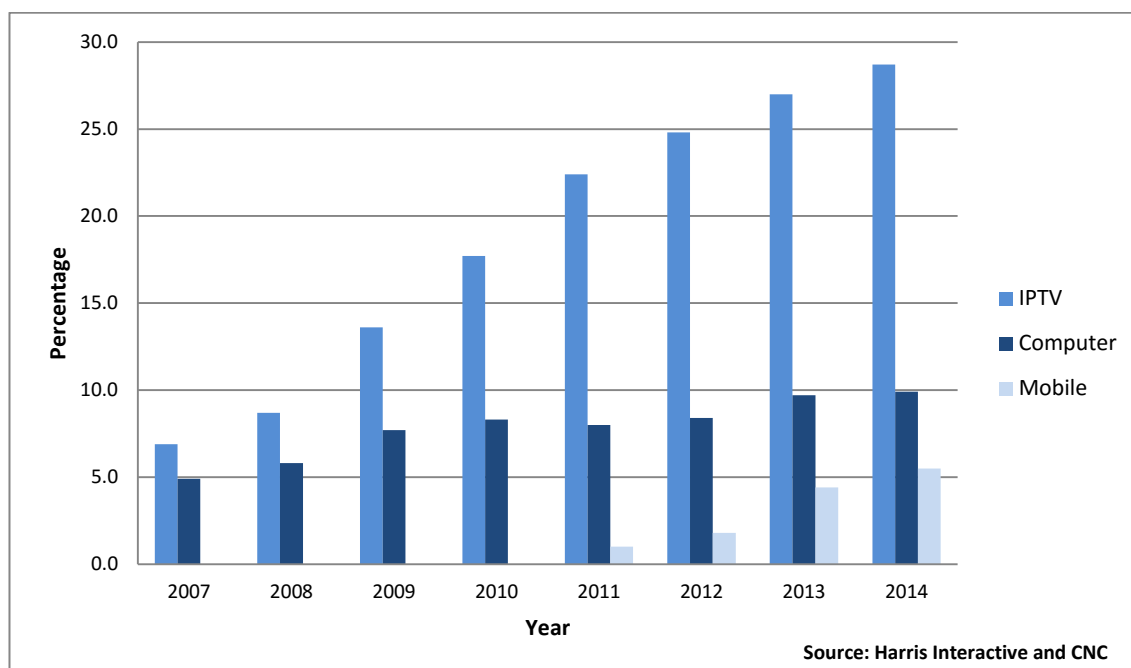
By 2014 one-third of French internet users aged 15 years and over reported having used a video-on-demand service, the vast majority through a television connected to the internet via ADSL (known as IPTV) (see Figure 6.3). As the various ADSL providers incorporate more and more video-on-demand offerings into their service and the number of connected televisions grows, then the gap between IPTV and online access via computer is widening; it was just 2 percentage points in 2007, compared with nearly 20 points six years later. Mobile platforms are also becoming a feature of the market, with 3.6 per cent of those surveyed reporting that they had watched videos via their mobile at least once³¹⁷.

The Harris poll also provides some detail on the early adopters of video on demand. Rates of adoption are slightly higher among men, with 34.1 per cent of men questioned saying that they had paid for programmes on demand, compared with 32.0 per cent of women. They are most likely to be 25-34 years old, though rates of adoption are above average among those 15-24 years old and those 35-49 years old, but drop off markedly among individuals over 50 years

³¹⁷ CNC, *Le marché de la vidéo 2008: Les dossiers du CNC N° 305*, March 2008, *Le marché de la vidéo 2010: Les dossiers du CNC N° 313*, March 2010 and *Le marché de la vidéo 2012: Les dossiers du CNC N° 321*, March 2012

old. Take-up is also much higher among those living in the Parisian basin and among higher socioeconomic groups³¹⁸.

Figure 6.3: Penetration of video-on-demand services in France, 2007-2014³¹⁹



Use of video-on-demand services is still far from habitual. The bulk of those surveyed (71.7 per cent) were classified as occasional users, which means that they download films or television programmes on a monthly basis at best. Only 11.8 per cent fell into the most active category watching content on demand at least once a week.

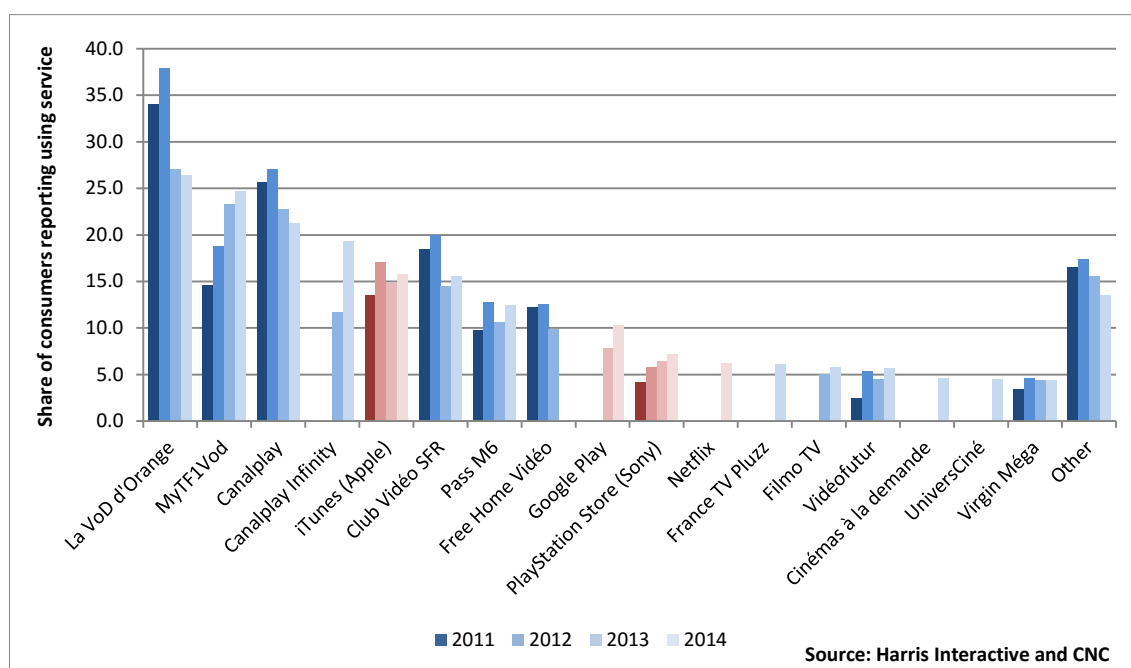
The poll reveals a close correlation between those who are regular cinema-goers and adoption of video on demand. Over 80 per cent of those that have used video on demand have also been to the cinema at least once over the previous 12 months. Close to half of very regular cinema-goers declared having paid for content on demand compared with the average of 33.1 per cent across the entire population.

³¹⁸ Those classified as CSP+ or *catégories socio-professionnelles favorisées*, which represents the higher professional class in France’s demographic classification system. CNC, *Le marché de la vidéo en 2014*, pp. 57-8

³¹⁹ Chart denotes the percentage of respondents that reported they had accessed a video-on-demand service via each route. Individuals were given the option to select more than one, e.g. if they had watched a film or television programme online and through a smart television they would be counted twice.

Orange's video-on-demand service, which is available from a range of different ADSL providers, including Free, SFR and Orange's own service, as well as on cable and online, was the most used service in 2014 (see Figure 6.4). La VoD d'Orange has topped the rankings since Harris Interactive started about which services consumers use asking in their survey. However, other service providers are beginning to catch up.

Figure 6.4: Most commonly visited video-on-demand services, 2011-14³²⁰



Looking at the most popular services, many are new-comers to the French audiovisual landscape. Only three – TF1, Canal+ and M6 – have been active in the sector for more than a decade, evolving their operations within the context of France's film policy. Orange launched a suite of subscription cinema channels in 2007 and now invests heavily in cinema production. However, the other major players do not have a heritage of film funding and, as explained below, have resisted French proposals to extend funding obligations to ISPs according to the

³²⁰ Respondents were asked to list all the services they had used to download films and/or television programmes, not just the one that they use most regularly, nor the ones specifically visited to download films.

established principle of 'solidarité entre la création en amont et ses modes de diffusion en aval'³²¹.

6.2. Broadening the scope of French policy

Since the conclusion of the Uruguay round, France has continually adapted its film policy to accommodate developments in the audiovisual market. Its approach has been consistent with the existing policy framework outlined in Chapter 4, with the extension of quotas and subsidies to the video-on-demand sector. Its ability to implement the changes has been hampered somewhat by its obligations as a member of the EU, with proposed amendments being delayed for years while awaiting for European Commission review and approval, but in essence it has continued along the same path. This approach may no longer be feasible if France is to continue to promote cultural diversity in light of digital developments. Before examining in Chapter 7 why the approach may need to be updated, it is worth exploring the changes to its quota and subsidy regime that France has made in recent years.

The principle that those generating revenue from the sale of content should contribute to its creation has remained a pillar of the French approach to film funding in the 21st century. If television companies are obliged to acknowledge the benefit they derive from airing French films and reinvest in production, then so too, French regulators believe, should digital media organisations. In this they are supported by French filmmakers. The scope of the TST, the tax levied on television company revenues, was extended to providers of video-on-demand services based in France in 2004 and to all companies providing access to films and television programmes via their service, including the ISPs, in 2008. In the latter case, this applied to revenues from the sale of television services only.

³²¹ '...solidarity between creation upstream and the means of distribution downstream' Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 3

The inclusion of ISPs has proved controversial. Free, Bouygues, SFR and other ADSL providers offer a variety of packages, which variously comprise a landline, a mobile telephone contract, internet access and a package of television channels and video-on-demand services. Those which include television are known as ‘triple play’ or ‘quadruple play’. The packages are charged at a flat rate, so it is difficult to say what proportion of revenue comes directly from providing access to content as opposed to the internet or telephone services. It is also possible that those on mobile or internet only packages are watching films and television programmes online through their computer, tablet, smartphone, or connected television.

When the TST extension was first implemented, French filmmakers accused Free of ‘creative accounting’. It was suggested Free was trying to minimise its television revenues and, with it, the level of contributions it would have to make³²². According to the French Sénat amendments were needed to the structure of the TST, because ‘un opérateur important’ had chosen to separate out television services and offer them for a supplement of €1.99 on top of the price of an internet and phone subscription – an amount which significantly undervalued the cost of television access³²³. It also meant that the tax payable was based on the revenue generated from the supplement, rather than on the full package cost of €30.

In its defence, Free argued that its over €3 billion revenues come from the provision of mobile phone and high-speed internet contracts which happen to allow consumers to access films, not from the provision of content itself. Therefore, it should not be subject to a tax to fund production. And, indeed, the seven video-on-demand services offered by Free are all edited by other providers, including Groupe Canal+ and TF1³²⁴. French filmmakers were worried that to concede Free’s point would allow other companies, such as cable operator Numéricâble, scope

³²² Rencontres Cinématographiques de Dijon, *Peut-on encore parler d’exception culturelle dans une Europe numérique? Compte-Rendu du Debat*, p. 2

³²³ Sénat, ‘Projet de loi de finances rectificative pour 2012 : Rapport’, 12 December 2012

³²⁴ Based on the services listed on the Free website on 1 June 2013

to make a similar argument and avoid funding commitments, undermining the validity of the taxation system.

To address this issue, the French government proposed a revision to the TST defining a distributor as an entity that provides access to audiovisual services by any means. This would mean that revenues generated from the provision of internet access would be subject to taxation, because such access could potentially allow consumers to watch content online. It was acknowledged that individuals did not only use the internet to access content and packages comprised other elements, including a telephone line, which were not related to television services. Consequently, it was suggested the tax should be charged on 45 per cent of the turnover generated from the sale of 'triple play' and 'quadruple play' packages plus 90 per cent of the revenue from the sale of channel bundles, for example if a consumer upgrades their subscription to include the sports channels. Tax would be charged on a sliding scale on all eligible revenues over €10 million reaching 4.5 per cent for all revenues over €530 million.

The proposal needed the approval of the European Commission, as it represented a change to cultural policy and also had an impact on the telecommunications sector, where regulatory restrictions are being consistently lifted to support the growth of the knowledge economy and economic development in general. If the Commission failed to grant approval by 21 November 2012, then the proposal would have to be reviewed by the European courts – a process that was anticipated to be much tougher than the Commission review. At the *Rencontres Cinématographiques de Dijon* in 2012, former culture minister Aurélie Filippetti revealed that because no approval was forthcoming the government had discussed further revisions to simplify the rules. She added that the French government would be withdrawing the previous request and submitting a new proposal to the Commission before the November deadline³²⁵.

³²⁵ *Rencontres Cinématographiques de Dijon, Peut-on parler d'exception culturelle dans une Europe numérique?*, 19 October 2012

Presenting to the Lescure commission in December 2012, Free's director general Maxime Lombardini indicated that the group was increasingly opposed to the extension of the TST to online services, following a significant rise in the applicable rate of VAT at the end of 2011. The organisation paid TST on its television revenues, a 0.9 per cent levy to fund the operations of public service broadcaster France Télévisions and a contribution based on its video-on-demand revenues; with the extra VAT, the tax burden had become unreasonable³²⁶.

Former CNC president, Éric Garandeau, felt that a failure to push through the TST extension would mean:

Il y a un véritable risque de remise en cause de tout le système, car si un acteur peut y échapper, on pourrait déclencher un effet en cascade³²⁷.

In his report on the future of film funding, Pierre Lescure agreed, adding that it could 'conduire les contributeurs actuels à remettre en cause la légitimité des prélèvements dont ils s'acquittent'³²⁸. Put another way, if the internet service providers benefit from providing access to content but do not have to fund its creation, why should television or video editing companies have to make a contribution? Television companies are beginning to raise such questions in the face of declining advertising revenues (see Chapter 9).

Part of the European Commission's reluctance to ratify the changes to the TST stemmed, at least in French eyes, from the fact that the Commission does not regard 'les aides aux services culturels numériques comme des aides à la «promotion de la culture» autorisées par le droit communautaire'³²⁹. However, approval eventually came on 20 November 2013, followed by a

³²⁶ Culture Acte II, *Audition du Groupe Iliad*, 14 November 2011

³²⁷ 'There's a real risk that the whole system will be called into question, because if one player can escape, then it could release a domino effect.' Éric Garandeau interviewed by ElectronLibre reproduced in *Rencontres Cinématographiques de Dijon, Peut-on parler d'exception culturelle dans une Europe numérique? Background to the debate*, 19 October 2012, p. 24

³²⁸ '...lead current contributors to question the validity of the contribution that they currently make' in Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 25

³²⁹ '...aid in support of digital cultural services as "cultural promotion" as authorised under community law' in Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 12

hastily compiled amendment to the budget to implement the new rules from 1 January 2014. The definition of television revenues has been retained, but the top rate of taxation has been lowered from 4.5 per cent to 3.5 per cent and is applied to eligible revenues over €750 million.

This five-year battle over extension of the TST is indicative of the challenges that France is likely to face if it wants to extend funding commitments to new players in the video-on-demand market, especially multinational organisations such as Netflix, Amazon and Google that are adept at navigating regulatory regimes in different countries to minimise their tax burden.

6.2.1. A new directive

Providers of video-on-demand services have been subject to the TST since 2004. Following ratification in 2011 of the European Audiovisual Media Services Directive, the successor to the Television without Frontiers Directive, regulations governing video-on-demand services were brought into line with those in place for television broadcasters in other areas.

The new Directive extended the provisions of the earlier Directive to non-linear and on-demand television services, particularly the obligations to protect minors, observe levels of decency and respect advertising laws on tobacco, alcohol and product placement. It also stipulates that on-demand services have an obligation to promote ‘access to European works’. In the European Directive, promotion has been loosely defined covering a financial contribution to production, the acquisition of film and programme rights, or simply giving ‘prominence’ to European works within the on-demand service’s catalogue with no definition of what would constitute prominence³³⁰.

When the Directive was implemented in France, as another amendment to the *loi Léotard*, the requirements were strengthened. It ushered in new obligations for video-on-demand

³³⁰ Article 3i.1, Audiovisual Media Services Directive

providers to subsidise the production of films and television programmes, to observe defined quotas of European and French content, and to present European works in an attractive and prominent way in electronic programme guides³³¹. All French services offering at least 20 films were required to ensure that 60 per cent of all feature films in their library were of European origin; within this two-thirds – or 40 per cent of the total – should be French films. Contribution levels were subsequently fixed by *le décret du 12 novembre 2010* (2010-1379).

The legislation proved controversial, with the television regulator, the CSA, issuing a rare public condemnation of the government proposal. Its president, Michel Boyon, called for a radical rethink declaring that:

...le texte du décret ne répond pas à la réalité économique des SMAD³³² et fait peser un véritable risque de délocalisation de ces services si on leur impose des obligations excessives³³³.

He called for the proposals to be toned down to allow the sector to develop on an equal footing with non-French video-on-demand companies. He noted that iTunes and Google could sell films at prices up to 20 per cent lower than companies in France because of a favourable VAT regime in Luxembourg, adding:

Face à la rareté des instruments juridiques pour imposer des obligations à Apple ou Google, il revient au CSA de créer les conditions pour que les plateformes françaises puissent survivre³³⁴.

The decree was implemented, however, and the new rules came in to force on 1 January 2011.

It divided the sector into two parts – video-on-demand providers and catch-up services

³³¹ ACCÉS, *Guide des chaînes numériques 8^e édition*, March 2010, p. 89

³³² An abbreviation of 'services de médias audiovisuels à la demande'

³³³ '...the decree does not correspond to economic reality in the audiovisual media services sector and poses a real risk of companies off-shoring their activities because of the excessive obligations it imposes on them.' Enguérand Renault, 'Le CSA s'oppose aux obligations visant la VOD', *Le Figaro*, 7 October 2010

³³⁴ 'Given the rarity of any statutory tools allowing governments to impose obligations on Apple and Google, it is down to the CSA to create the right conditions to allow French platforms to survive.' Ibid.

associated with the main television broadcasters. The former sector was further subdivided into services operating on a subscription (SVoD) or a pay-as-you-go basis (VoD).

Pay-as-you-go providers are required to reinvest a minimum of 15 per cent of the revenue derived from content sales in the production of European film and television programmes once the service provides a 'non-negligible' content offering (defined as 10 or more films or television programmes)³³⁵ and it generates annual revenues of at least €10 million. A minimum of 12 per cent of total revenue should be spent on French content.

The French government argued that subscription providers are similar in nature to cinema channels such as Canal+ and therefore should be subject to equivalent obligations. Commitments range from 15 per cent of revenue for those services offering predominantly archive films (defined as three or more years old) up to 26 per cent for the most commercially successful services offering the most recent film releases. Investment in French films is set at 12, 17 or 22 per cent depending on the type of service. At least one-quarter of their contribution should be used to finance film production (rather than the acquisition of distribution rights) once annual revenues exceed €50 million. In practice, all services are obliged to reinvest 15 per cent of revenue, as the *chronologie des médias* currently prohibits films from being available via SVoD within the first 36 months following cinema release.

Finally, both VoD and SVoD operators must give a prominent position to a substantial number of French and European films on the service home page and within the electronic programme guide³³⁶.

The CSA has called for the obligations to be regularly reviewed to avoid a negative impact on market development. While this has not been formalised, the task would have fallen to the CSA as the television regulator in any case. In April 2013, it announced a public consultation on

³³⁵ ACCÉS, *Guide des chaînes numériques 9^e édition*, March 2011, p. 98

³³⁶ *Ibid.*, p. 99

the practical implementation of the new regulations. The subsequent report called for the regulations to be simplified, as monitoring compliance with the quotas proved particularly complex as discussed below³³⁷.

6.2.2. *The chronologie des médias*

Created in 1983 after consultation between filmmakers and broadcasters, the '*chronologie des médias*' sets out the rules governing how soon a film can be shown on television after its cinema release. It was updated following the launch of Canal+ to give the specialist channel exclusive rights to broadcast films in advance of the free-to-air channels in return for a commitment to fund the production of French films. It has been updated at regular points since as the French audiovisual sector has evolved, again setting exclusive rights off against film funding commitments³³⁸.

Video on demand was first incorporated into the framework in 2005 via an interprofessional agreement allowing films to be made available nine months after their cinema release³³⁹. The delay was increased the following year to 12 months, but shortened again in 2009 via *la loi Création et Internet* following concerns around the illegal use of content³⁴⁰; filmmakers worried that consumers were seeking out pirate copies online rather than waiting an excessive amount of time for a film to become available on demand. The 2009 amendment shortened the delay to four months for pay-as-you-go services, or three months by agreement with the film's production company. This aligned rules for video on demand with those for the DVD sector. Films could be made available via SVoD three years after cinema release (see Figure 6.5).

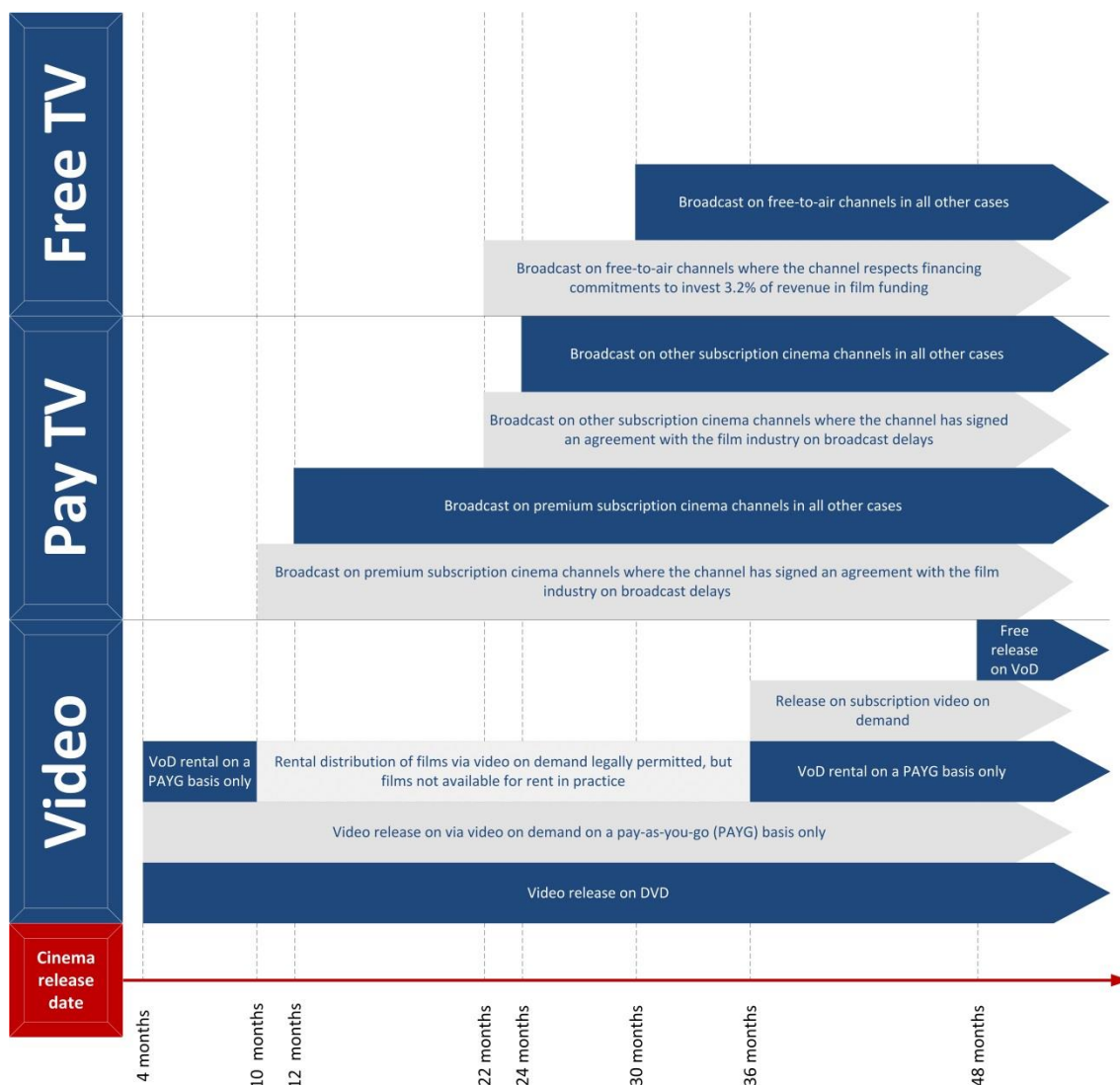
³³⁷ CSA, *Consultation publique portant sur l'application du décret du 12 novembre 2010 relatif aux SMAD*, April 2013 and CSA, *Rapport au Gouvernement sur l'application du décret N° 2010 – 1379 du 12 novembre 2010*, November 2013

³³⁸ Rodolphe Belmer, Directeur général of Canal+ speaking at Rencontres Cinématographiques de Dijon, *Peut-on parler d'exception culturelle dans une Europe numérique?*

³³⁹ CNC, *Evolution du cadre juridique de la chronologie des médias*, 16 October 2008, p. 2

³⁴⁰ *la loi du 12 juin 2009* (2009-669)

Figure 6.5: France's chronologie des médias dictating film release dates by channel



Source: CSA

Since then, the timing of video-on-demand release has been questioned at regular intervals. Jérôme Chung, the co-founder of Under the Milky Way that represents filmmakers trying to secure on-demand distribution including via iTunes and Google Play, has suggested that the three-year delay has hindered development of the SVoD sector. The films are too old to appeal to many consumers and have already been shown multiple times on television including on free-to-air channels³⁴¹. But to advance SVoD in the timetable would be to grant these services

³⁴¹ Rencontres Cinématographiques de Dijon 2012, 'Quelle place pour les plateformes VàD dans l'écosystème du cinéma européen?', 19 October 2012

preferential rights over the broadcasters that fund film production extensively. Filmmakers' suggestions that – at the request of the producer or director – movies should be released simultaneously in cinemas and on pay-as-you-go services to reach a broader audience are greeted with similar concern. Cinema owners are worried about their privileged position being eroded.

In his report to the French government, Lescure proposed further amendments to the *chronologie des médias*, describing the measures as:

l'un des mécanismes de l'exception culturelle qui ont contribué à assurer la vitalité du cinéma français; elles sont destinées à optimiser l'exploitation des oeuvres, à protéger les salles de la concurrence des autres canaux de diffusion et à garantir le système de préfinancement par les diffuseurs, qui fait la force du cinéma français³⁴².

Lescure suggested that the delay between a film's release in cinemas and its availability on SVoD should be halved, from the current 36 months to 18 months. He also suggested that the *services les plus vertueux* – that is those prepared to take on additional voluntary film funding commitments – should be allowed to release films on demand even sooner. He proposed experimenting with simultaneous release in both cinema and VoD and allowing low-budget movies or films that failed to achieve box office success to go straight to video on demand.

In his report, published in December 2013, René Bonnell suggested that the only outcome of implementing the Lescure proposals would be the arrival of Netflix and Amazon's Lovefilm.com on the French market sooner than anticipated, because they would be able to make much newer films available than they currently do³⁴³. Netflix has since launched its

³⁴² 'one of the mechanisms of the cultural exception which assures the vitality of the French cinema; it is designed to optimise the exploitation of works, protect cinemas from competition from the other channels of distribution and guarantee the system by which distributors pre-finance production which is what gives the French cinema industry its strength.' Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 9

³⁴³ René Bonnell, *Le financement de la production et de la distribution cinématographiques à l'heure du numérique*, p. 61

service in France. Operating from the Netherlands, it has no obligation to abide by the *chronologies des médias*, but currently appears to be respecting the rules³⁴⁴. The reasons for this are unclear, though some filmmakers have suggested the contractual delays that Hollywood studios impose on video-on-demand release are similar to the ones established in French regulation.

6.2.3. Subsidies and support

In parallel with the changes to the *chronologie des médias*, the French government has also extended its subsidy scheme to cover the video-on-demand sector. However, until December 2014, service providers could only apply for the discretionary *soutien sélectif*; the European Commission had not approved the extension of *soutien automatique* to the sector.

Discretionary subsidies to support the conversion of films for digital distribution were introduced in 2007 and the first subsidies paid in 2008. The scheme was amended in 2012 to bring it into line with support for physical videos, such that only ‘editorial’ costs are eligible. Editorial costs are defined as those related to the acquisition of film rights, or to the creation of bonus material – for example interviews and ‘making of’ documentaries.

The scheme is in two parts: the first provides subsidies to rightsholders to support the work needed to convert a single film; the second covers a group of between six and 30 films, typically films from a single director or all of the same genre, intended for presentation together (e.g. as a retrospective). Awards on the basis of a single film are typically in the region of €500. Marie-Sophie Lequerré, former Chargée de mission V&D at the CNC commented when interviewed that costs for converting a film are typically in the region of €1,200; European rules restrict the CNC from subsidising more than half of any project, hence the €500 average.

³⁴⁴ According to Manuel Alduy, Directeur général de Canal OTT, to date both Apple’s iTunes and Netflix have respected the *chronologie des médias*, but as they are not obliged to do so, this situation could change at any time. Rencontres Cinématographiques de Dijon 2014, *Netflix et après* 18 October 2014

Costs involved in converting a suite of films are more significant, but in line with the European Commission's *de minimis* principle, the CNC has been restricted from awarding any more than €200,000 to a single company within a three-year period. This has depressed the overall value of awards to date. However, approval was received in mid-2014 to lift this restriction, such that the limit is now 50 per cent of the project's budget in line with other forms of subsidy. Most projects are in the region of €200,000, so awards of €100,000 will become much more common, Lequerré believed.

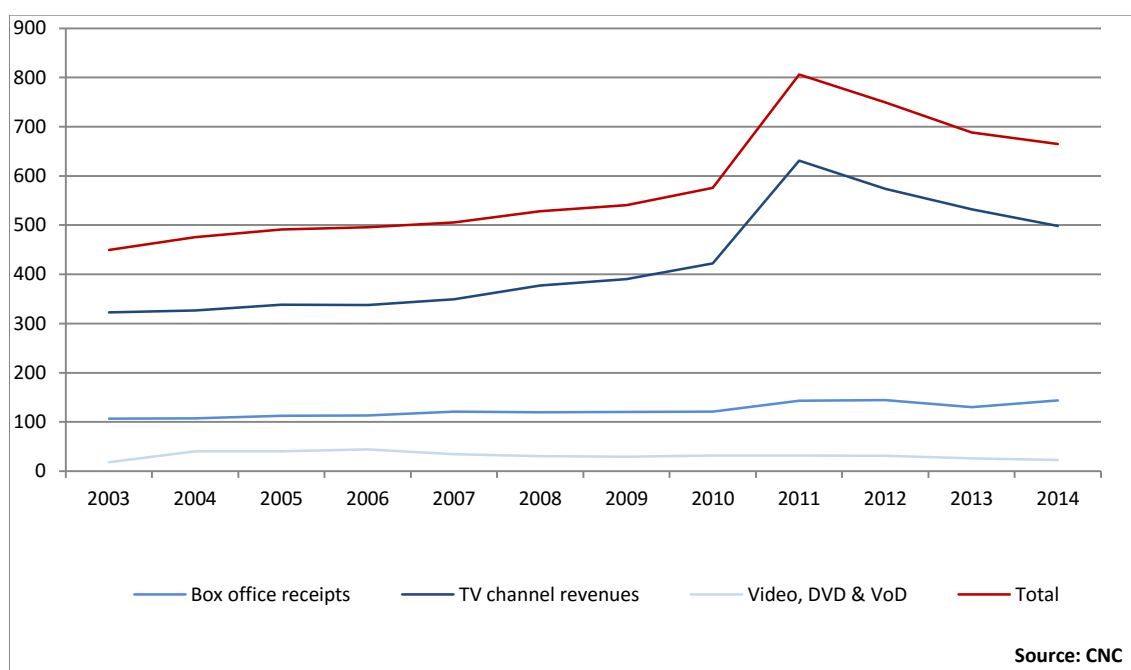
At the same time, the Commission gave approval for the *soutien automatique* to be extended to the video-on-demand sector, resulting in the launch of the new aid package on 1 December 2014. The news was particularly welcomed by service providers which had begun to question why they paid into a system from which they were unable to benefit. Under the new scheme, providers of pay-as-you-go services with annual revenues of less than €200 million generate credits on the sale or rental of films and audiovisual programmes that have been approved, or *agrée*, by the CNC. These credits can then be reinvested in the platform, for example to improve the user interface, or in the creation of bonus material that puts the library of films and television programmes into context.

6.3. Impact of regulatory changes

Chapter 4 demonstrated how France's support for the film industry has shaped the sector and the practice of the producers and production companies working within the French film industry. It is important therefore also to examine the impact of the most recent amendments to legislation. Has broadening the number of companies contributing to the *compte de soutien* resulted in a significant increase in CNC funds, or has extending subsidies to the sector resulted in more French films being made available on demand?

Figure 6.6 shows the CNC's income from taxation. Even with the '*optimisation fiscale*' practiced by Free and subsequently SFR to ensure that as small a proportion of their revenues as possible is attributed to the sale of audiovisual services, there was a marked increase in the amount generated in TST in 2011. It is unclear what impact the extension of the TST to online distribution will have, as this only took effect in 2014 and the amounts collected will augment the CNC's budget from 2015. However, the French Sénat, which compiles an annual review of French taxation in advance of the annual *loi des finances*, must be expecting a significant rise, hence its decision to cap the amount that can be collected from ISPs, broadcasters and video-on-demand providers (see Section 4.5).

Figure 6.6: CNC income from the tax on cinema, TV and video, 2003-2014³⁴⁵



In practice, it will be a cap on revenue from the first two sectors, as the contribution from video on demand is still small. The tax collected on the sale of videos, both physical recordings and on-demand services, increased slightly in 2004 when the scope was first extended to

³⁴⁵ Since 2011, the government has ordered the CNC to make an exceptional return of funds collected to the government, valued at up to €90 million per year (see Section 4.5). In 2011, the CNC took responsibility for collection of the tax on TV channel revenues, which appears to have resulted in a more efficient collection process; no other change was made to the system that could account for the spike in income in that year.

video-on-demand services, but has been declining steadily since; growth in the video-on-demand sector is insufficient to counter the decline in the sale of physical recordings. Based on the average price to buy a film or television programme via video on demand (€4.38 in 2014 compared with €8.86 for a DVD and €13.98 for a Blu-ray disc), VoD volumes would have to increase at a significantly faster pace than the rate of decline in the physical video market for the tax collected to begin to rise³⁴⁶. This currently seems unlikely, as the rate of video-on-demand growth slowed to around 15 per cent in 2012 and stagnated in 2013. Moreover, some of that growth is generated by international services such as iTunes and Google Play, which are not required to contribute.

To date, the extension of funding commitments to video on demand has resulted in little new money for film producers. The 2013 CSA report on the Directive's implementation found that only three services had generated sufficient revenues to be affected by the regulations. They were Canalplay, La VoD d'Orange and Club Vidéo SFR³⁴⁷. In 2011, these three organisations spent a combined €16.1 million on acquiring the rights to European films and television programmes, of which €10.9 million was spent on French content. SFR does not separate its investment in film and television programmes. The other two companies do, however, revealing that 75 per cent of the amount spent went towards the acquisition of film rights.

It is worth noting that two of the three companies subject to the new funding obligations – Groupe Canal+ and Orange – already invest heavily in the French film industry because they provide subscription cinema channels. Despite the fact that the arrival of video on demand has brought new players into the market, the changes to the rules have not served to broaden the pool of contributors. Instead, it has simply introduced different ways to approach the same group of companies for money.

³⁴⁶ CNC, *Le marché de la vidéo en 2014*, p. 141 and CNC, *Baromètre vidéo CNC-Gfk: Le marché de la vidéo physique en 2012*, pp. 11, 13 and 42

³⁴⁷ CSA, *Rapport au Gouvernement sur l'application du décret N° 2010*

The CSA review also revealed a general respect for the quota rules, but found a number of flaws in how the system operated. For seven out of 51 providers the rules are incompatible with their core remit; for example, Films d’Afrique is unable to include a substantial proportion of European films in its offering and stay true to its mission to promote African film.

With the exception of TF1, each of the 39 services that respected the limits reported difficulties in assessing compliance ‘à tout moment’ as required by law³⁴⁸. French broadcasters are judged on their compliance with quotas based on their scheduled output. The schedule is both linear and publicly available, so compliance on a given day can be easily assessed. Video-on-demand services are assessed on the proportion of French or European content at a given point in time. These services are constantly acquiring the rights to new titles – some for immediate inclusion, others only to be added after the requisite delay in the *chronologies des médias*. At the same time titles are being removed from the service, typically because they are about to be shown on television and the broadcaster has negotiated exclusive rights. The constant changes to the catalogue mean that on any given day, a service provider may fall below the mandated level, even though they were in full compliance with the regulations on the day before and the day after. For its report, the CSA asked for a breakdown of the number of films within each company’s library on two days in the year. It found that TF1 was the only company with the means to put in place the complex software required to measure compliance at regular intervals and therefore demonstrate compliance on the relevant days.

This is indicative of a general lack of ability to invest in platform development among video-on-demand providers. As mentioned, *soutien automatique* was only introduced at the beginning of December 2014; up until that point they were unable to claim support for technical developments despite contributing to the *compte de soutien*. Presenting to the Lescure commission, UniversCiné president Alain Rocca stressed how costly platform development is,

³⁴⁸ ‘at all times’, *Ibid.*, p. 21

especially to build an interface that is as user-friendly as iTunes³⁴⁹. He added that he was not surprised by the resistance that the main ISPs have mounted to the extension to the TST. They were unable to claim any support to develop their own content delivery platforms in return for paying into the *compte de soutien*; the tax they pay eats into their ability to fund the kind of technical improvements non-French operators are making to their services, widening the gap between French and international providers. The resistance may begin to subside as companies build up the means to reinvest in platform development via the *compte de soutien*.

The lack of automatic aid to the video-on-demand sector has had another unintended consequence. Recognising that most companies claiming *soutien sélectif* would have no other means of securing funding, the CNC has been ‘peut-être un petit peu moins sélectif qu’on risque de le devenir puisqu’on partait du principe qu’effectivement ces structures ne pouvaient pas s’autofinancer’, Lequerré commented when interviewed³⁵⁰. This is reinforced by Serge Bromberg of Lobster Films who told the Lescure commission that the CNC were considering a funding request every 15 minutes during the video-on-demand assessment days. He felt they were poorly scrutinised, but instead rubberstamped via a ‘copier-coller’ process³⁵¹. While the CNC may begin to tighten up assessment procedures now that there are alternative funding mechanisms, this is a dangerous admission, as it suggests the CNC has been awarding funding indiscriminately to shore up the sector, rather than to support diversity.

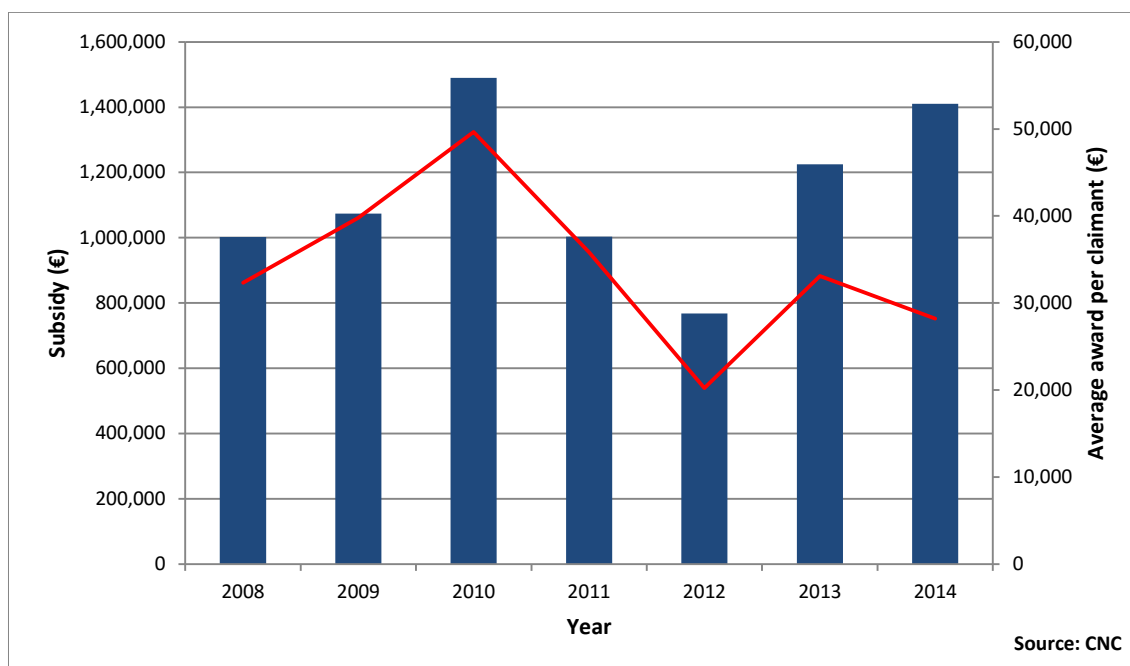
CNC data on the subsidies allocated reveals the impact of the European restrictions on the level of *aide sélective* awarded (Figure 6.7). Funding peaked in 2010, with the sector securing just under €1.5 million. This tailed off in 2011 and 2012, but has risen noticeably in 2014 when the European Commission agreed that funding could be judged on the basis of project costs, rather than being restricted to €200,000 in a three-year period.

³⁴⁹ Culture Acte II, *Audition du SEVAD*, 20 November 2012

³⁵⁰ ‘perhaps a little less selective than we would otherwise have been because we started from the assumption that these companies were unable to fund themselves.’

³⁵¹ ‘copy and paste’; Culture Acte II, *Audition de l’UNEVI*, 21 December 2012

Figure 6.7: French discretionary subsidies in support of video on demand, 2008-14³⁵²

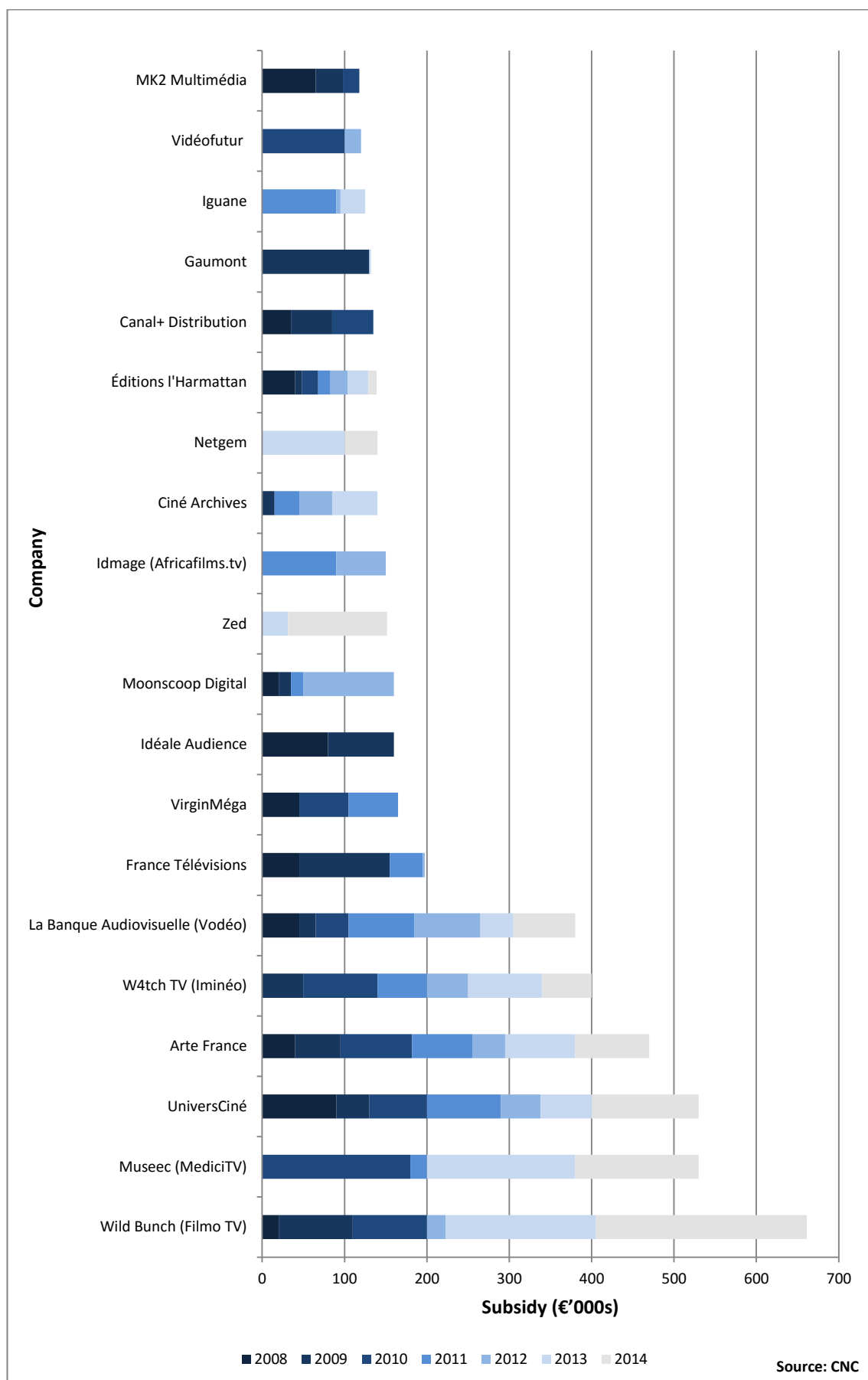


Until 2012, the funding committee only reviewed requests from companies owning the rights to a portfolio of films, supporting their conversion to digital. From June 2012, the CNC began awarding subsidies for the conversion of single films, which meant that even major rightsholders such as France Télévisions were granted bursaries of as little as €140 for a project, though most of the money went to small companies that may only own the rights to one or two films: there are many such companies.

The restrictions prior to 2012 have influenced the list of major beneficiaries; those companies that operate their own video-on-demand service, even if they happen to make film and television programmes as well, as TF1 and Canal+ do, fared well because they already had access to a portfolio of films. After that point, smaller filmmakers began to receive more significant amounts.

³⁵² The average is calculated on the basis of the number of companies claiming in any one year not the number of awards made; claimants may receive multiple small awards in a year.

Figure 6.8: Major beneficiaries of video-on-demand subsidies, 2008-14



The major beneficiary since the start of the decade has been Wild Bunch Distribution, which owns FilmoTV; it has been awarded over €650,000 since 2010 and in 2014 was the first company to secure an award for €250,000 in a single session. Arte, UniversCiné, La Banque Audiovisuelle (Vodéo), W4tchTV (Iminéo) and classical music and arts channel Museec (owned by MediciTV) have all received at least €300,000, with the result that these six companies account for almost 40 per cent of the funding awarded (Figure 6.8).

Each of the top 20 beneficiaries is home-grown, even VirginMéga, which as a licensee of the Virgin name would appear to be a multinational player ineligible for support. In fact, it is 80 per cent owned by local equity partners Butler Capital Group, with the remainder held by French multimedia giant Lagardère. It is considered sufficiently French that the 2013 demise of the Virgin Mégastore retail operation has been seen as the loss of a local player to foreign competition. Even former culture minister Aurélie Filippetti has blamed its passing on ‘concurrence déloyale’ from companies such as Amazon that are not ‘soumises à la même fiscalité que les entreprises localisées physiquement en France’³⁵³.

In the past, Hollywood majors have been accused of ‘infiltrating’ the French funding system, setting up production companies in France to be able to claim support³⁵⁴. Of the multinational organisations such as Apple, Microsoft and Sony, only the latter currently owns a portfolio of film rights via Sony Pictures Entertainment. As a result, it is the only one that could potentially have claimed support via the *aide sélective* programme, though it appears not to have derived any benefit from it. With the introduction of *soutien automatique*, it would be possible for these organisations if based in France to amass credits to reinvest in their technology platform. However, with €3.8 million allocated to the entire sector in automatic support in 2014 compared with €76 million invested in production (see Figure 4.1), it seems unlikely that the

³⁵³ ‘disloyal competition’ from those not ‘subject to the same tax rules as companies physically based in France’. Guillaume Champeau, ‘Non, Aurélie Filippetti, Amazon n’a pas tué Virgin Megastore!’, *Numerama*, 9 January 2013

³⁵⁴ Hayward, *French National Cinema*, pp. 26-7

awards will be sufficient to motivate these organisations to set up a discrete operation in France simply to access the subsidy, especially as this would bring with it additional tax and film funding commitments.

The Lescure review has proposed to make French policies more appealing, whereby:

...les acteurs vertueux, qui acceptent de prendre, au-delà de leurs obligations légales, des engagements en faveur de la diversité culturelle (financement de la création, exposition des œuvres de la diversité, tarifs sociaux, partenariats avec les institutions publiques de l'offre non marchande), se verraient reconnaître différents avantages, en termes d'accès aux aides publiques, aux œuvres et aux consommateurs³⁵⁵.

In particular, Lescure envisaged updating the *chronologie des médias* such that those that fund creation secure the rights to films on an exclusive basis at an earlier date. This may generate lucrative returns on a small number of blockbusters, but again it is doubtful that the returns will be sufficient to compensate for the increased taxation and funding commitments any 'virtuous' companies would face. The new timescale under the *chronologie des médias* may not be any shorter than what international companies can negotiate contractually with the studio that made the film if based outside of France.

The changes that have been made to the *chronologie des médias* were designed to make legal copies of films available sooner and reduce the temptation to seek out a pirated copy. However, this has not happened. Under the current timetable, a film can be made available on VoD four months after its cinema release at the same time as the DVD and Blu-ray discs are launched. Eight months later, when pay-TV channels gain the right to broadcast the film, the

³⁵⁵ '...virtuous players, which make additional commitments to support cultural diversity over and above what they are legally obliged to do (financing production, providing a platform for cultural diversity, preferential rates for customers in certain social groups, forging partnerships with public institutions to bring non-commercial works to the public) will be rewarded with additional advantages in terms of public aid, access to works and consumer reach.' Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 13

rental option is removed for video on demand, but remains for physical discs. This is to limit television companies facing competition during their broadcast window. SFR President Stéphane Roussel believes there is nothing in the *chronologie* that mandates the closure of the VoD window, it is simply a practice that has developed to protect vested interests³⁵⁶. It has also confused consumers because a film is launched on VoD, then disappears, and reappears three years after its original cinema release on both VoD and SVoD. The only option in the interim, filmmakers maintain, is for individuals to seek out an illegal copy.

Films may also not be benefiting from the maximum exposure during the initial VoD window. A study by the CNC found that at the end of October 2012, 63.1 per cent of the films released in France in the 12 months up until the end of June 2012 were already available on at least one VoD service. The June cut-off date was chosen because only films released before that date could legally be available on demand in October³⁵⁷. The vast majority of US films (90 per cent) had been converted, but only 57.7 per cent of French films, showing that the local industry is much less quick off the mark than Hollywood. The delay is probably the result of a lack of money for film conversion among French producers; many are small companies releasing a single film annually at best. Both Lequerré and Guillaume Prieur of SACD insisted during interview there was no lack of willingness among producers to license films to the on-demand sector for fear of piracy; in fact they are keen to boost the legal offering as much as possible, so this is not what is stalling conversion.

6.4. Conclusion

The French media landscape has changed markedly since the arrival of the first video-on-demand service a decade ago. While established French companies such as Groupe Canal+ and TF1 are still the major players, Apple's iTunes store is consistently gaining market share,

³⁵⁶ Culture Acte II, *Audition de SFR*, 11 January 2013

³⁵⁷ CNC, *Observatoire de la chronologie des médias*, February 2013, p. 13

meaning that an increasing proportion of the revenue generated from viewing content in France is going to a company that has no obligation to reinvest in French film production.

That is not to say that France has not attempted to update its policies to adapt to the changing environment; it has sought to broaden commitments to all those within France that generate revenue by providing access to French films, including ISPs such as Free. However, these companies have proved particularly resistant, arguing that they are excessively taxed and do not directly benefit from the sale of content. France has also extended its various quota and subsidy schemes to include video on demand. Despite the changes, the additional funds awarded have been limited. This is largely because France has been restricted by the European Commission in its ability to award grants.

The amendments to French film policy implemented to date are consistent with the existing French scheme. However, the changes ushered in by the arrival of video on demand are significant enough for some to call for a rethink of policy, especially if France is to maximise cultural diversity within this sector.

7. 21st century concerns: rethinking policy to protect cultural diversity

Il faut que tout change, pour que rien ne change.

Tancredi Falconeri
*Le Guépard*³⁵⁸

The arrival of video-on-demand has radically altered the French audiovisual landscape. Offering a broad library of films and television programmes, these services allow consumers to watch what they want at a time that is most convenient to them, rather than be restricted by the broadcast schedule or any content quotas. It has facilitated the creation of new players, some of which like Netflix are truly global, offering a standardised package in all markets. Meanwhile, new production techniques could make filmmaking cheaper and offer more individuals the chance of self-expression. Each of these developments has potentially far-reaching consequences for French film policy, particularly when it comes to boosting cultural diversity. Some approaches, such as content quotas, no longer appear relevant, while others are inappropriate to address the new challenges posed by services operating beyond French borders. Consequently, France may need to rethink its approach to maintain the desired outcome.

To understand how some existing policy approaches may not be optimised to promote cultural diversity in the digital age, it is important first to clarify what we mean by the term. ‘Cultural diversity’ evokes images of breadth, variety and choice, but there is little agreement about how that choice translates in reality, whether it is through marked differences between the cultures of particular countries or regions, the ethnic make-up of a society, the cultural output

³⁵⁸ ‘Everything must change for everything to stay the same.’ A statement that is often quoted in France made by the fictional character Tancredi Falconeri to his uncle in Giuseppe Tomasi di Lampedusa’s *Le Guépard*

of a nation, for example a large number of books published, or the actors – companies and individuals – involved in producing that output.

Cowen describes two concepts of diversity developed from what he terms a ‘gains from trade’ model: a collectivist concept; and an individualist position³⁵⁹. The model looks specifically at how commercial transactions and cross-cultural exchange serve to increase the menu of choice within a society, while minimising differences between nations. Consequently, this approach is particularly helpful when it comes to dissecting and understanding French and US positions within the trade and culture debate.

Collectivists link diversity with place, for example the nation state. They argue that the culture in one country should be perceptibly different from that in another. In Cowen’s words:

It also assumes that diversity takes the form of cultural differentiation across geographic space, and that this differentiation should be visible to the naked eye, such as when we cross the border between the United States and Mexico.

The individualist approach allows for more diversity within a society. Instead of identifying with some national archetype, individuals are free to pursue more diverse cultural paths, be that displaying a particular religious identity or regional allegiance such as Cornish or Breton, or aligning with global movements such as environmentalism.

To illustrate the difference between these two approaches, Cowen outlines the extremes of each case as expressed in the cultural forms they produce. The pinnacle of the collectivist approach is for a world of many different societies, each with its own clearly defined specialty, such that each culture is markedly different from any other, but internally homogenous. In practice, there are no pure collectivist societies, offering the world a single national cultural contribution unmarked by external influences, though many are clearly quite distinct; there

³⁵⁹ Cowen, *Creative Destruction*, pp. 12-3 and pp. 128-152

are noticeable differences between Japanese and US culture even if they are hybrids formed by assimilating a range of influences. At the other pole, the individualist approach would create a situation where the difference between nations is very low, but the diversity within each society is very large; individuals in New York, London or Paris could go to a Japanese restaurant, watch an Argentinian dance performance, or visit an exhibition of Italian art.

While the breadth of choice offered by the latter scenario may seem the most appealing, proponents of cultural diversity do not typically call for the greatest choice, Cowen maintains. In arguing to exclude culture from international trade liberalisation, France is adopting a collectivist approach. He notes that if the range of choices available at the individual level is already relatively broad, then the importance assigned to national distinctiveness increases at the expense of complete freedom of choice – the range of options is considered adequate, so the focus shifts to maintaining the production capabilities necessary to retain a local cultural output and, thus, the existing level of choice.

7.1. Diversity as a justification for intervention

State intervention in a market has typically been used to correct, or compensate for perceived market failures³⁶⁰. Tardif and Farchy isolate three areas where market forces are considered as a threat to cultural diversity and, therefore, intervention is warranted³⁶¹. The perceived benefit of a particular policy approach is then shaped by which of these three arguments chimes most closely with national concepts of diversity. The rise of digital media has meant that in some areas what was once perceived as a market failure is no longer an issue, removing any justification for intervention on any of these three grounds; in other areas, new market deficiencies have arisen.

³⁶⁰ Burri-Nenova, 'Trade versus Culture in the Digital Environment', p. 32

³⁶¹ Tardif and Farchy, *Les enjeux de la mondialisation culturelle*, pp. 106-9

The first argument is that consumer interest is best served by ensuring that there is a choice of products, allowing individuals to find the product that most closely meets their need – in this case the film that most closely reflects their desire of the moment. This, is an argument that closely reflects Cowen’s individualist approach, as well as American perceptions of diversity in terms of consumer choice at the level of individual works³⁶².

However, there are specific conditions within the film industry, Tardif and Farchy maintain, that provide a second justification for intervention. Organisations have an innate tendency towards product standardisation to increase economies of scale in production. Films may be produced using the same techniques and include many formulaic elements, but they are never carbon copies of each other, limiting this ability to wholly standardise production. Instead, the greatest production efficiencies can come from consolidation in the number of companies operating in the market, but this limits the pool of new ideas and increases the tendency towards a formulaic output. Consequently, intervention is justified on competition grounds to prevent a monopoly developing. As seen in Chapter 4, ensuring effective competition is a priority for the European Commission when reviewing cultural policy.

Finally, cultural diversity is bound up with the expression of national identity. In the same way that multiple production companies should be heard, so individual nations should have the right to express themselves. This is the collectivist position espoused by France and justifies defending what is unique about each culture, but also supporting the sectors that allow that uniqueness to be expressed. Collectivists also argue that it is difficult to offer consumers real choice if the cultural output of one country becomes the only or the dominate form available, which is what the French fear will happen in the film industry if the market is left unchecked.

³⁶² Nabuko Kawashima, ‘Are global media and entertainment conglomerates having an impact on cultural diversity? A critical assessment of the argument in the case of the film industry’, *International Journal of Cultural Policy*, Vol. 17, Issue 5 (2011), p. 477

The advent of video on demand could have implications for diversity in each of these three areas, creating new challenges for policy-makers. Greater availability of films significantly boosts consumer choice, but presents challenges for consumers in finding new films of interest within that abundance of content. To address this would require a different policy approach than the one adopted for cinema where choice is relatively contained. To understand why France may need to rethink its policy, it is worth looking at where new market failures may emerge. Without this, it will be impossible to ensure cultural diversity continues to be protected and, in turn, to defend the cultural exception on the basis of diversity.

7.1.1. Room on the shelf

France has gone from having just six terrestrial television channels to hundreds in the space of a few decades. In addition, the arrival of video on demand has made almost 13,000 films and over 25,000 television programmes readily available to consumers via their television set or computer³⁶³. For those who assess diversity at the level of product choice, this increased availability of content and the expansion of options for accessing it outlined in Chapter 6 are sufficient to ensure cultural diversity. The limitations of a linear schedule with a restricted number of slots per day in which films could be shown have been swept away, and with them, any need for intervention in the form of quotas.

Screen quotas – such as those introduced under the Caffery-Schuman agreement or in force under the Television without Frontiers Directive and its successor the Audiovisual Media Services Directive (see Chapter 4 and Section 6.2.1) – were designed to ensure that when space was limited, there was room ‘on the shelf’ for local or culturally distinct productions. Both cinemas and television broadcasters are constrained by their schedule. Without obligations to show French or European films at set times, the fear is that they would totally

³⁶³ CNC, *Le marché de la vidéo en 2014*, pp. 50-2

disappear from the offering in favour of more commercially-oriented American films. Space in a digital library is not limited to the same extent, such that inclusion of American films does not necessarily block out French ones. In an environment where consumers have a choice of several thousand films without ever leaving their sofa, opponents of quotas argue that there is no need to carve out a place for France's, or any other nation's, film industry.

They go on to suggest that continuing to apply quotas in a digital environment could actually have the reverse effect to the one originally intended. The US trade negotiator interviewed for this project indicated that the US now views content quotas as restricting access rather than ensuring a broad spread of content is available. An important issue for the Americans (see Section 9.3.4), this is not something that had been identified through background research: criticism of quotas has focused on the disconnect between mandating a certain level of supply and actual content consumption in digital channels as outlined below.

France insists that video-on-demand libraries comprise a minimum of 60 per cent European films (see Chapter 6). Within this, two-thirds – or 40 per cent of the total – should be French-made content. If we imagine that France had made 4,000 films since the birth of cinema, the US had made 8,000 and another 5,000 had been produced in other countries, then applying the 40 per cent quota on French film limits the selection that can be made available at 10,000 films – 4,000 French films and 6,000 drawn from the 13,000 films made outside of France, of which at least 2,000 would need to be from the EU. In that case, there are 7,000 films that cannot be included in the video-on-demand library. In purely numerical terms, this would cut consumer choice by 40 per cent and limit diversity. The Americans interviewed felt that in any competition for space, US films occupied a sufficiently strong market position that they would be included in services ahead of world cinema, limiting access to the full range of national cultural output.

Even without the potentially market-capping effect of quotas, there is a growing sense that their implementation will not help to promote French or European films as consumers move from a 'push' model of content consumption to a wholly 'pull' model. In the former, media organisations from cinema owners to television broadcasters serve up a fixed diet of content to a defined schedule and viewers tune in at those points, or miss the programme entirely; in the latter, consumers seek out the content that they want to view at a time and a place to suit them. In a 'push' environment, stipulating that 40 per cent of films shown are French increases the amount of French films viewed; if an individual chooses to watch television, then they have to watch what is scheduled, even if it is not to their taste. With the 'pull' model of video on demand they have a much greater choice. Just because 60 per cent of the content within a library is of European origin, does not mean that 60 per cent of what is watched will also be of European origin. Consumers could decide to watch one Hollywood movie to the exclusion of everything else on the service. Thus, basing the quota on the proportion of content available becomes meaningless as a form of cultural protection.

7.1.2. Broader access

The advent of video on demand changes the nature of access in other ways. Fewer than 50 copies are produced for more than half of French films released each year, while a release of fewer than 20 copies is increasingly common³⁶⁴. Under these circumstances, the film is shown only in the major metropolitan centres, with the result that an individual would have to travel on average 100km to see it. In practice, few people are motivated to travel that far to watch a new movie and the film is seen just by those living in the immediate vicinity of the cinemas that have a copy.

³⁶⁴ CNC, *Exposition de films français 2004-13*. Presentation made by Daniel Goudineau, Directeur général de France 3 Cinéma during Rencontres Cinématographiques de Dijon, *Exploitation des films en salles: Comment trouver les meilleures conditions de distributions des œuvres?*, 17 October 2014

Digital projection could go some way to resolving this issue. The cost of making and distributing digital copies to cinemas is significantly lower than making a physical print, allowing the film to be circulated more widely. However, it also facilitates simultaneous showings, with the result that multiplexes now have the flexibility to programme a popular film on more than one screen at the same time or to schedule the film to start every 15-30 minutes at peak times, maximising consumers' opportunity to view the movie. Other films are then consigned to off-peak hours.

For smaller films a simultaneous release in cinemas and via video on demand could be a possibility. It would allow those living too far from a cinema where the film is being shown to stream it at home. This is something that is being trialled in the US where the majority of the population lives outside the major metropolitan centres of New York, Chicago and Los Angeles where niche films are typically released, as well as in the UK by the Curzon cinema group. In these instances, pay-as-you-go access is charged at a premium rate – around £10 in the UK – to ensure that those living close to the cinema are not tempted to forego a trip out because they can see the film more cheaply at home on demand. For filmmakers and distributors, dual release holds significant appeal; it makes the film more widely available at the point when promotional activity and media interest are at their highest. However, it means that cinemas would lose their exclusive access to new films, something which is resisted by French cinema owners which view exclusivity as a *quid pro quo* for financing film production³⁶⁵.

7.1.3. Navigating abundance

The abundance of choice offered by video on demand has given rise to a new issue. For supporters of the national identity view of cultural diversity, the priority has shifted away from

³⁶⁵ President of the FNCF Richard Patry speaking at Rencontres Cinématographiques de Dijon *Exploitation des films en salles: comment retrouver les meilleures conditions de distribution des œuvres?*, 17 October 2014

safeguarding access to each nation's cultural output within a limited schedule towards ensuring that films are not lost within a wealth of content.

According to Marie-Sophie Lequerré, former Chargée de mission V&D at the CNC:

on a de plus en plus de films accessibles facilement par la vidéo à la demande, mais justement ils puissent être beaucoup plus noyer dans la masse³⁶⁶.

This requires a different approach from that employed to date; one focused on helping individuals find the films that are of most interest to them. Consumers can easily determine what they want to watch on the basis of cinema and television listings and reviews if there are only 12 new releases a week, but this is impossible with thousands of titles. Early adopters of the internet tackled this problem by spending hours online sifting through what is available, but most people do not have the time or the inclination to do this and look to tools such as search engines to help them cut through the mass of content³⁶⁷.

Bruno Delecour, the president of FilmoTV, believes that, at an average of €4.50 to rent a film via video on demand, consumers are reluctant to take a risk³⁶⁸. They do not want to pay for a film only to discover quickly that it is not what they had expected. They may be tempted to watch something a little bit different on television or via SVoD because it will not cost them any extra to stop the film halfway through and choose something else, but this is not the case with pay-as-you-go services.

The tendency then is to seek out those films on demand that individuals have already heard about through recommendation or because they have been box office successes. It is Hollywood films that perform most strongly at the box office. They also generate the most

³⁶⁶ '...there are more and more films easily accessible through video on demand, but they can drown in the mass much more easily.'

³⁶⁷ David Hesmondhalgh, *The Cultural Industries*, 1st ed. (London & Thousand Oaks, CA: Sage Publications, 2002), pp. 218-9

³⁶⁸ Rencontres Cinématographiques de Dijon, *Quelle place pour les plateformes V&D dans l'écosystème du cinéma européen?*, 19 October 2012

media attention. As Wright points out, the major media conglomerates own film studios, television channels and ensure that it is the stars of their films that appear on chat shows or make the network news on their television stations³⁶⁹.

Two solutions have emerged to address this problem and ensure that niche content can be brought to the fore. The first is the creation of channels serving the niche interests of small, targeted and geographically quite dispersed audience groups. The second is the use of algorithms on mainstream services to suggest other films or programmes of interest based on previous viewing habits. Both approaches have their flaws and are of concern to French filmmakers, but have not received much attention in academic circles.

Services such as Lovefilm.com and Netflix rely on tagging and metadata to ensure that consumers can find the type of film that they want to see. Each film is listed in the database by a range of attributes including the director, the actors it features and the genre. Lovefilm.com classifies *The Dark Knight* as 'Action/Adventure', but the viewer might consider it a 'Fantasy' film. If the viewer does not like action movies, they might never browse the category, or they may look for the Batman tale under a different classification. Both would mean they fail to find films that they would, in fact, enjoy. Both Lovefilm.com and Netflix make suggestions of other films that might be of interest to the individual. However, those recommendations are based on historic viewing habits and tend to relate to films that are quite similar to the ones the individual watched previously. This perpetuates existing patterns of consumption; it does not encourage individuals to try something new.

The creation of niche services provides the opportunity to put films in context. Presenting a tightly defined selection of films, these niche services are akin to a cinema club; bonus material presented alongside the film, including articles, reviews and interviews with the cast and crew, helps to educate the viewer about a film's importance within a particular director's oeuvre or

³⁶⁹ Claire Wright, 'Reconciling cultural diversity and free trade in the digital age: A cultural analysis of the international trade in content items', *Akron Law Review*, Vol. 41, Issue 2 (2009), pp. 438-9

as representative of a given genre. However, the number of films is limited. Consequently, individuals are only encouraged to develop their tastes within the boundaries of the niche service.

Predictions that growth in video on demand will result in growing fragmentation of the market to cater for niche interests may also be unfounded. The same prediction was made about the deregulation of the television market, allowing for the creation of a multitude of new channels focusing on different interests. Burri-Nenova argues that the reverse is, in fact, true and 'the availability of so many channels has not led to greater diversity'³⁷⁰.

Due to the dominant pursuit of maximization of profits and minimization of financial risks, the formats and content of TV programmes, films and shows have become increasingly homogeneous. The emergence of global media giants transcending national and sectorial boundaries, placing the same content in all available distribution channels, has only aggravated the situation³⁷¹.

Producers have increasingly sought out 'safe' formats to fill television schedules and cinema screens, including adaptations of popular novels such as the *Harry Potter* and *Lord of the Rings* series, sequels to successful films, for example the long line of *Batman* movies, or remakes of old or foreign films. The latter trend has seen a range of French films from *Le Retour de Martin Guerre* to *Trois Hommes et un Couffin* and *Neuf Mois* adapted by Hollywood as *Sommersby*, *Three Men and a Baby* and *Nine Months*.

Against this backdrop, film subsidies may have more of a role to play in the digital age. Messerlin and Cocq believe it is reasonable to retain 'subsidies for cultural reasons, while banning subsidies for mere industrial reasons'³⁷². Under this regime, arthouse films that are distinctly French in nature would continue to gain support to increase the range of film styles

³⁷⁰ Burri-Nenova, 'Trade versus culture', p. 34

³⁷¹ *Ibid.*, p. 34

³⁷² Cocq and Messerlin, 'The French Audiovisual Policy', p. 26

on offer, but subsidies simply to ensure that films of any type continued to be made in France or to support established directors would not be acceptable.

7.1.4. Enter the internet giants

The arrival of digital technologies has lowered the barriers to market entry in the audiovisual sector; basic platform development is quicker and cheaper, increasing the diversity of available services. Geographical barriers have also been removed, allowing consumers to access services based in other countries. Consumers have access to 90 video-on-demand services in France, including those from existing French media players such as Canal+ and TF1, small production houses such as Wild Bunch/FilmoTV or directors' collective UniversCiné. It has also given rise to a group of truly ubiquitous players, such as Amazon, iTunes, Google and Netflix. These organisations are driving the process of standardisation outlined above and could have a 'grave effect on cultural diversity'³⁷³. With no need to base their operations in the market they serve, they are also able to avoid the film funding obligations imposed on French services.

Those like the European Commission that believe diversity is best preserved through competition between operators feel there is no need for intervention within a market as well served as the French one; if market forces were not working effectively, then only a few video-on-demand players would have been able to establish themselves. However, for the French, the situation is not as simple as first appears and action may be needed to level the playing field and ensure the market is not dominated by the internet giants with a few French 'also rans'.

Incumbents in the French media landscape focus on their inability to compete effectively with the likes of Netflix and iTunes. Given a choice of services, consumers opt 'toutes choses égales

³⁷³ Mira Burri, 'Cultural diversity as a concept of global law: Origins, evolution and prospects', *Diversity*, Vol. 2, Issue 8 (August 2010), p. 1,074

par ailleurs, pour celui qui se compose du plus grand nombre de biens, car il lui confère une utilité supérieure³⁷⁴. This puts Apple's iTunes with its 85,000 films at a distinct advantage over Canalplay which has under 1,500 titles on its site³⁷⁵. Moreover, iTunes has already achieved a dominant position in the French recorded music market³⁷⁶; for many consumers, the convenience of accessing both music and films via the same service coupled with the larger audiovisual offering will make iTunes the platform of choice.

The international services are not subject to the same regulatory framework. By avoiding film taxation and funding commitments, the internet giants have vastly greater sums available to invest in technological developments to make their platforms easier to use and to buy rights to the most popular films, in many cases on an exclusive basis. As they are based outside France, they can include those films in their service in advance of the French companies which helped fund them because they are not restricted by the *chronologie des médias*.

For the niche services, the concern is that they will be overlooked in favour of the mainstream providers such as iTunes and Netflix, or even Canalplay. Most online services are set up to display the most popular items, be they films, books, or entire video-on-demand libraries, on the front page. Without a mechanism that obliges platform providers such as Free or Numéricâble to give prominence to smaller services, consumers may not come across anything other than the most popular video-on-demand services or bestselling films. This ensures that the latter continue to sell well, while niche products are given little attention and are confined to obscurity, niche players contend. Cable and ADSL service providers argue that they have an obligation to customers to put iTunes, TF1 and Canal+ at the top of their on-demand menu to make it easy for consumers to gain access to the most popular services.

³⁷⁴ 'all things being equal, for the one that offers the greatest number of goods, because it provides greater utility'. Françoise Benhamou, 'Diversité culturelle: Un concept trop rassembleur pour être honnête', *Mouvements*, Issue 37, 2005, p. 10

³⁷⁵ See Apple's promotional material for the iTunes video store available at: www.apple.com/uk/itunes/video/ and Pascal Lechevallier, 'Le comparatif de l'offre de programmes entre CANALPLAY et NETFLIX', *ZDNet*, 1 October 2014

³⁷⁶ Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 19

While French services are committed to making European and French content available and, under the Audiovisual Media Services Directive, are required to give those films and television programmes a prominent position, the internet giants do not have that obligation. Diversity could suffer if the French are unable to compete in terms of the number of services available on the market, but also the selection of films made available by the services that remain.

Janneke Slöetjes, Director Public Policy for Netflix Europe, told delegates at the 2014 Rencontres Cinématographiques de Dijon that the company had ambitions to capture up to 30 per cent of the French market in its bid to become ‘a global service with global content’³⁷⁷. She went on to say that the company did not have much French material in its library, but had commissioned an original French series to be made to test the appetite for French productions. The company had not ruled out licensing French films and television programmes if it decides there is an audience for that content but, by virtue of its global aspirations, that audience would need to be international not just French. As Wright points out in relation to Starbucks’ decision to stock the same coffee blends in all stores, multinational corporations are reluctant to tailor their offering too closely to the local market, because it undermines the cost and process efficiencies from standardisation³⁷⁸.

7.1.5. Greater freedom of expression

Countries like France that take a national or collectivist view of cultural diversity believe it is fundamental that individuals have the right to express themselves creatively. Historically, the costs involved in making a film have increased year-on-year, driven by wider promotion, more impressive production techniques and casting star actors with international appeal. Under

³⁷⁷ Rencontres Cinématographiques de Dijon, *Netflix, et après?*, 18 October 2014

³⁷⁸ Wright, ‘Reconciling cultural diversity and free trade’, p. 399. As seen in Section 2, this desire on the part of multinational corporations to provide a standard offering across all markets is interpreted by French left-wing intellectuals, particularly, as evidence of American cultural imperialism and fuels fears about the dangers of increased trade liberalisation.

these circumstances, France was obliged to subsidise production to ensure that its industry could continue to make films and to balance out the available supply of movies.

Messerlin and Cocq argue that this is set to change:

New technology will change this traditional balance between large and small-scale films. Digital equipment will reduce the cost of producing movies, while Internet connections will provide access to viewers worldwide at minimal costs – hence to reduce the threshold for the efficient scale of producing films and audio-visual works, a trend that will favour cultural movies³⁷⁹.

If film production becomes cheaper, then many more will have the chance to express themselves creatively and to do so without the support of subsidies. Given the wealth of channels, securing distribution may be simplified; film and television company executives may be clamouring for content to fill their online service.

While there are likely to be a lot of amateur, small-scale films made this way, professional filmmakers still favour a cinema release. Pager argues that cinema is the route to a film's success in the aftermarket – that is the market for DVD sales, rentals and online downloads³⁸⁰. In France, particularly, cinema also has a kudos that other channels do not have; films released in cinemas are considered more serious works than those shown on television only. Directors will want their work released in cinemas to benefit from this perception. Television executives will want to fill their schedules with the most popular content, including films that have already achieved significant profile in cinemas. As a result, the advent of digital technology and digital channels is unlikely to result in a true cost reduction, because the distribution costs and the need to retain high production standards will remain for those films looking to be released in cinemas and secure television deals.

³⁷⁹ Cocq and Messerlin, 'The French Audiovisual Policy', p. 25

³⁸⁰ Sean A. Pager 'Beyond Culture vs. Commerce: Decentralizing Cultural Protection to Promote Diversity Through Trade', (March 2010), pp. 21-22

7.2. Conclusion

The arrival of video on demand has stimulated renewed debate around cultural diversity and the best way to promote it. Cowen describes homogeneity and heterogeneity as ‘two sides of the same coin’ and this is manifest in debates around digital delivery³⁸¹. The number of films on offer has increased substantially, as has the choice of services, but there are wide-spread fears within France that this abundance could prove overwhelming, increasing the tendency to flock towards well-known films and video-on-demand services, a trend which could ultimately restrict diversity.

Cultural policy could be used to address any imbalance where there is an identifiable market failure as it has in the past. For example, quotas have been employed to mark out space for European and French films within limited television schedules. However, the nature of any market failure in the online sector is likely to be different from that seen in traditional channels and, therefore, the approach will also need to be different. Primarily effort should be focused on helping consumers to navigate and explore the wealth of content and services on offer, limiting market domination by a few ubiquitous players and stemming the tide towards the most high profile films.

As shown in Chapter 6, France’s approach to policy has altered very little despite the arrival of video on demand. Some existing policies may prove to be effective, but others may be poorly adapted to the demands of the digital world. To be able to judge properly which policies should remain in place and which abandoned, it is important to understand more about the nature of diversity in the video-on-demand sector and how the homogenising and heterogenising forces are playing out in reality. Chapter 8 provides a detailed evaluation of cultural diversity in the French film market to support this assessment.

³⁸¹ Cowen, *Creative Destruction*, p. 129

8. Deconstructing diversity: a quantitative assessment of the French film industry

Aujourd'hui la diversité, c'est l'internet

Giuseppe de Martino

Président, Association des Services Internet Communautaires³⁸²

The French have increasingly argued in international negotiations that liberalisation of trade in film and audiovisual products represents a threat to cultural diversity. To allow Hollywood unfettered access to the French market would ultimately lead to films from France and other nations being squeezed out, with the result that French consumers would only be presented with an American view of the world, would lose their ability to portray a distinctly French outlook through locally-made films and finally would adopt an American *Weltanschauung*³⁸³. However, in campaigning to protect and promote diversity, the French have neither defined what they mean by it, nor demonstrated that it is decreasing; they have simply pointed to America's share of the French film industry as evidence of Hollywood's dominance.

The term 'cultural diversity' implies variety and choice, but that selection is shaped by market forces, as shown in Chapter 7. An increase in supply may be undermined by corporations' efforts to standardise their offering and achieve economies of scale. There is also a tension between the collectivist position which views policy as essential to maintenance and expression of a distinct national identity and an individualist position favouring choice within countries, at the expense of national differences. Given this, how should the levels of diversity in a market be assessed to determine which policy approaches may be needed to promote it?

³⁸² 'Today, the internet is diversity.' Giuseppe de Martino, Président, Association des Services Internet Communautaires, Culture-Acte II, Audition de l'ASIC, 10 January 2013

³⁸³ 'outlook on life'

Diversity is best served when – in the words of the 2005 UNESCO Convention – artists, cultural professionals, practitioners and citizens worldwide are able to ‘create, produce, disseminate and enjoy a broad range of cultural goods, services and activities, including their own’ (see Chapter 1). For a market to be considered truly diverse, there should be a broad range of cultural products – in this case films – available which are made by an array of different artists and from different countries in a variety of different styles and consumption of those films should reflect this breadth of output.

Cultural economists Moreau and Peltier have proposed a ‘tool for the diagnosis of the condition and evolution of cultural diversity on a national and on an industry level’³⁸⁴, which may be applied to the film industry – both in traditional cinemas and online – and could provide evidence of the impact of Hollywood on the French market and of cultural policies to support French film helping to inform France’s ongoing defence of the cultural exception.

8.1. Why quantify diversity?

Before examining the approach to measuring diversity and, more importantly, applying it to the French film industry, it would be pertinent to examine the rationale for quantifying diversity and how it might help to advance debate on the cultural exception.

Hesmondhalgh has commented that academics have identified a trend towards cultural homogenisation, but have provided little real evidence of its existence; they tend to point to isolated examples of where it has occurred, such as Hollywood’s dominant share of national markets, without exploring its impact on the films available³⁸⁵. The dominant approach in the humanities is a qualitative, rather than quantitative one, which means that detailed analysis is

³⁸⁴ Moreau and Peltier, ‘Cultural Diversity in the Movie Industry’, p. 123

³⁸⁵ Hesmondhalgh, *The Cultural Industries*, p. 254. See also Hafez’s comments on the selective nature of evidence used to support suggestions of American dominance of national audiovisual markets. Kai Hafez, *The Myth of Media Globalization*, (Cambridge, UK: Polity, 2007), pp. 88-9

often ruled out on grounds of practicality. Conducting a textual analysis of the close to 400 films released in France in a single year would take too long; a researcher would need around four months to watch the films before starting to assess the breadth of styles used and themes treated! And that is without even trying to look at trends over time.

Despite measuring every aspect of its audiovisual industry, the French government relies on generic arguments about identity, diversity and the Americanisation of French society in its defence of the cultural exception and its policies to support film. This is largely to do with France's reluctance to reduce the cultural industries to purely economic terms³⁸⁶. However, in negotiating to have culture excluded from the scope of trade agreements, providing a quantitative assessment of the need for particular cultural policies may actually reinforce their case. As seen in Chapter 5, US negotiators laid out their position in broadly economic terms, dismissing French arguments based on notions of identity and diversity as simply a guise to protect French producers from economic realities. Demonstrating the impact of policy on diversity quantitatively, may lead to greater US understanding of French arguments, as well as provide French negotiators with evidence to support their case.

Where quantitative data has been employed to reinforce national positions on the cultural exception, it has taken the form of isolated statistics showing an increase in the number of films produced from one year to the next, or the market share of French movies at a given date³⁸⁷. Assessments of this kind provide no indication whether producing more films results in a broader range of subjects treated, or whether 'more' really only means 'more of the same'. Looking at market share at a given point does not reveal whether diversity is increasing or decreasing over time and can be misleading. Noting that French film occupied 36.5 per cent of

³⁸⁶ This is explored in more detail in the section on France's views on the need for cultural policy (see Chapter 2). See also François Mitterrand's reluctance to even use the term 'cultural exception' because of its overly economic connotations (see Chapter 1).

³⁸⁷ See Cocq and Messerlin, 'The French Audiovisual Policy', pp. 1-27 or Buchsbaum, "'The *Exception Culturelle* is Dead'", pp. 5-21

the market in 2007, but 45.4 per cent the following year, could suggest a major policy achievement rather than the phenomenal success of one film, Luc Besson's *Taken*.

As seen in Chapter 4, France has a long history of supporting its film industry. A more cohesive and longitudinal view of diversity within France's film industry could help to demonstrate whether film funding policies have had a positive impact since their inception, while still allowing American films fair access to the market.

The approach developed by Moreau and Peltier looks at many of the same data points used by other researchers, but analyses them in combination to understand whether more titles produced results in more films being viewed and, in turn, a higher share for national film and a broader choice of film genres. It also uses an index based on the market share of different categories, which evens out fluctuations resulting from the strong performance of a single film. This allows for a more cohesive and nuanced view of changes in the supply of and demand for cultural products and the impact of policy on production and consumption.

The approach has so far been used to evaluate the level of cultural diversity within the cinema sector in different nations. By isolating a range of standard measures Moreau and Peltier were able to make meaningful comparisons about the nature of diversity across countries rather than saying that eight out of ten films released in Mexico are American, but 40 per cent of films viewed in France are from the US, which confuses questions of supply and demand. Here, it is being used to produce like for like comparisons between different industry sectors within a single market – that is video on demand and traditional cinema.

The arrival of video on demand has given French consumers increased flexibility over what to watch, choosing a service based in another country over that from a local provider if the former happens to offer the most attractive selection of titles, the best price, or a superior customer experience. France is trying to boost development of local video-on-demand services with subsidies for the conversion of films to the relevant digital formats and quotas on the

proportion of French films available via these services – in the process hoping to stop consumers defecting to major multinational services such as Netflix and iTunes. The success of these initiatives can be judged by whether they ensure that the on-demand market is at least as diverse, if not more varied, than the traditional cinema sector. Lower levels of diversity would suggest that French cultural policy is no longer effective, weakening French arguments about the need for those policies and the cultural exception.

Isolated statistics are of limited use here. It is difficult to show in any statistically valid way that the video-on-demand sector is significantly more diverse than cinema because French film accounts for a 45 per cent share of the former, but a 40 per cent share of the latter. The more detailed approach adopted by Moreau and Peltier provides a comparable analysis of each sector, allowing us to draw conclusions about the relative levels of diversity in each.

8.2. Measuring diversity

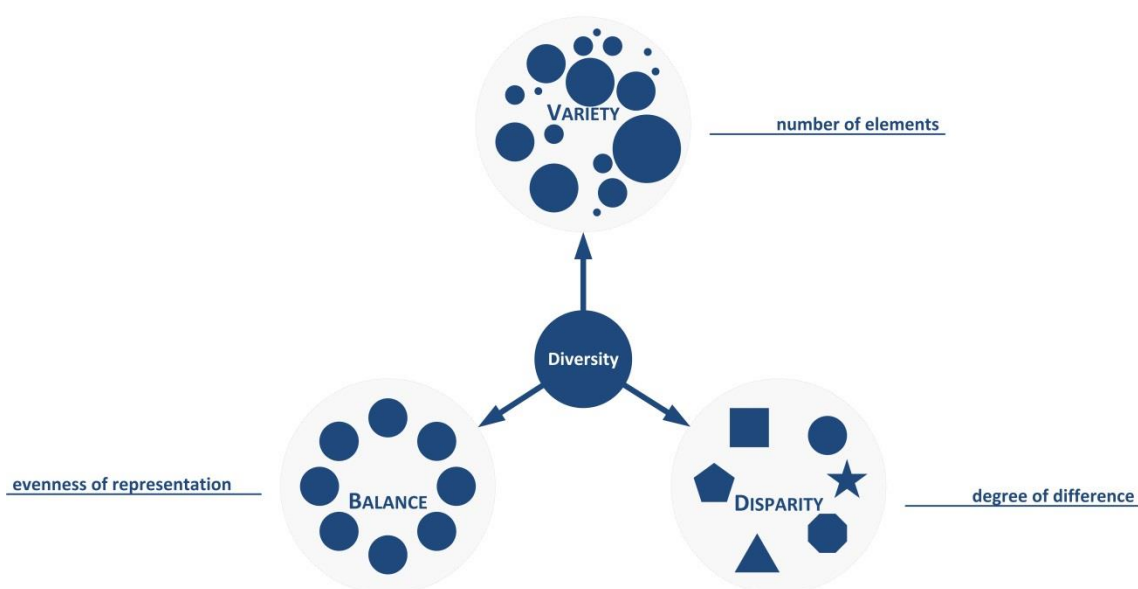
Taking inspiration from Weitzman's studies of biodiversity, Moreau and Peltier posit three dimensions to cultural diversity: variety, balance and disparity (Figure 8.1). Maximising each within the context of the other two gives rise to optimal diversity. This framework is applied to the films produced and consumed across a range of countries to give a sense of the diversity of supply and demand. In a second study on the French publishing sector, Benhamou and Peltier expand on the measures used to assess diversity more fully³⁸⁸.

Variety refers to the maximum number of categories into which a field can be divided. In the case of film, supplied variety could be assessed according to the number of movies released in cinemas in a single year, or the number of titles available on demand at a given point.

³⁸⁸ Peltier and Benhamou, 'How should cultural diversity be measured?', pp. 85-107

Consumed variety is more problematic. Moreau and Peltier analysed patterns of cinema-going to assess the average number of films an individual viewed each year. While this gives an indication whether consumers are more or less motivated to visit a cinema compared with previous or subsequent years, it is not equivalent to the way supplied diversity is measured. The corresponding metric would be how many of the films released in a year were actually viewed and how many times. This shows whether consumers are selecting what they watch from a more concentrated pool of movies.

Figure 8.1: The three aspects of cultural diversity



Source: Andrew Stirling³⁸⁹

Benhamou and Peltier's solution in their examination of the publishing sector was to examine the total number of copies sold each year and to compare whether the trend in copy sales matched that of title releases – that is whether sales rise in line with growth in the number of book titles. This is an approach that can easily be mirrored for the film industry. Looking at the proportion of the market occupied by the most successful titles will also help to understand whether consumers are watching just a handful of films, while ignoring others.

³⁸⁹ Diagram of diversity developed by Andrew Stirling and reproduced in Marcus Bourreau, François Moreau and Pierre Senellart, 'Cultural diversity in the French recorded music industry (2003-2008)', *Culture études*, October 20115, Vol. 5, p. 15

The second measure, balance, is a factor of market share, such that if there are 100 films released in a year, does each capture 1 per cent of sales, or do some dominate the market, while others are not viewed at all? For this, Moreau and Peltier use the Herfindhal Hirschmann index (HHi), a measure of industrial concentration used by antitrust authorities to assess the level of competition within a sector, particularly in light of a proposed merger or acquisition. They apply it to establish the balance between films of different geographical origins.

The HHi is the sum of the squares of the market share of each player on the market³⁹⁰. It gives a number between one and zero. A score of one indicates that the market is monopolised by just one player which accounts for 100 per cent of the market, while the nearer it tends to zero the more balanced the sector. However, the lowest possible value for the HHi is a factor of the number of competitors. If there are just two, the index cannot drop below a score of 0.5 (each player has a 50 per cent share); with three groups the lowest score is 0.33, or one-third each, with five 0.2 or 20 per cent each, and so on.

The CNC provides annual statistics on the films released in cinemas or available via video on demand and on the films viewed via both routes, splitting the market into 'French', 'American' and 'Other'. This allows us to calculate the geographical balance of the French film market and how the balance has changed over time.

While this gives a good indication of balance, it is not perfect. Calculating the HHi for French, American and Other films may give a score of close to 0.33, indicating the market is evenly split three ways. However, a diverse market would fully reflect the broad array of different cultural outputs available, such that French, US, British, German and Australian films etc. were equally well represented. For this to be the case, we would expect the HHi to be far lower than 0.33.

³⁹⁰ If there are four groups on the market, one with a share of 40 per cent, one with a share of 10 per cent and the remaining two with shares of 25 per cent each, then the HHi would be:
 $(0.4 \times 0.4) + (0.1 \times 0.1) + (0.25 \times 0.25) + (0.25 \times 0.25) = 0.16 + 0.01 + 0.0625 + 0.0625 = 0.295$
Balance would be achieved with a score of 0.25, indicating each group accounted for one-quarter of the market.

As each of these countries is a relatively minor player within the market, this is unlikely to happen. That said, France is most concerned about unfair competition from the US and its potential to dominate the market, so dividing the market into three categories makes most sense.

Consumed balance can also be assessed with reference to the market share of individual titles. In a market where 100 titles are released each year, 10 titles represents one-tenth of the supply. However, if these same 10 titles generate more than 10 per cent of cinema entries or video downloads, then they are being consumed disproportionately more than the other films available.

The final measure, disparity, is the level of perceivable difference between units. It requires a structured and 'ultra-metric' classification system – that is the degree of difference between categories A and B within the taxonomy is the same as that between categories B and C. While this is possible in the natural world where genomic analysis can establish the degree of difference between an elephant and a dog, or between a labrador and a poodle, it becomes problematic when applied to cultural products. As Moreau and Peltier point out, who is able to decide that 'the disparity between a comedy and a drama is identical to that between a cartoon and a thriller!'³⁹¹? Consequently, they shy away from attempting to analyse diversity in their study of the film industries of France, the US, the EU, Mexico, South Korea and Hungary.

In their study of the publishing sector, Benhamou and Peltier comment that evaluating the disparity between book titles would be purely subjective. However, they propose an alternative to assess consumed disparity, that is the propensity for consumers to buy titles written by a small set of authors, suggesting they stick with books that are very similar to those previously enjoyed, rather than reading a broad selection. Benhamou and Peltier assess this by counting the frequency with which individual authors appear in the best-seller list over a

³⁹¹ Moreau and Peltier, 'Cultural Diversity in the Movie Industry', p. 125

period of years. They use the best-seller list, because it limits the number of titles to be analysed to 15 per year. Supplied disparity is still not analysed, because evaluating and categorising over 20,000 titles per year would be too difficult.

This approach could be transposed to the film industry in a number of ways. The first is to replicate it directly and identify the directors behind the most popular films, to understand whether consumers go to the cinema to see a particular film, or simply the latest Spielberg film because they appreciate his work. The second is to identify the production companies behind those films to assess the extent to which the industry is dominated by a small number of major studios, which may have a tendency to commission future projects based on previous success rather than take a risk on a new format. A third way is to examine the number of sequels among the top 10 films, such as the *Harry Potter* or *Twilight* films. Studios try to minimise the risks associated with film production by releasing a sequel to an already successful film or by adapting a best-selling novel for the screen; if it has proved popular before, it will draw audiences again. However, producing sure-fire, 'bankable' hits is often at the expense of more risky, but original content, reducing diversity in the market. Finally, it is useful to look at the overlap between the French top 10 and the list of the highest-grossing films globally to ascertain whether the French are watching the same movies as consumers outside France.

Nobuko Kawashima suggests analysing production budgets as a way to assess diversity, as the budget often dictates the style of film that can be made; the special effects used in science fiction and action films are expensive, while more intimate arthouse films tend to have a lower budget³⁹². The CNC provides detail on the budget for French cinema releases, which can be used to evaluate disparity of supply in this section of the market and the ability of French film funding policies to ensure a range of films is produced. However, equivalent data is not available for films of other nationalities released within France. Exploring whether only big

³⁹² Kawashima, 'Are the global media and entertainment conglomerates having an impact on cultural diversity?', p. 292

budget films with large marketing budgets make the top 10 list will provide an equivalent measure of consumed disparity. It will be difficult to analyse production budgets for the video-on-demand market, which provides access to thousands of films from many different years. Consequently, supplied disparity will not be assessed for video on demand. However, budget analysis of the top 10 titles can be replicated for the video-on-demand sector.

Table 8.1 summarises the range of variables that will be used to evaluate diversity in the French film industry. The list of the top 10 titles for each year that supports the analysis is included in Appendix D.

Table 8.1: Variables used to measure diversity in the French film market

		Supplied	Consumed
Cinema	Variety	N° of films released	N° of cinema entries
	Balance	Distribution of films released by geographic origin	Distribution of films viewed by geographic origin Market share of top 10 films
	Disparity	Distribution of films by production budget	Production budgets of the top 10 films Production companies involved in making the top 10 films Presence of popular directors within the top 10 list Presence of sequels within the top 10 list Presence of the most popular films globally within the top 10 list
Video on demand	Variety	N° of titles available	Revenue generated
	Balance	Distribution of titles available by geographic origin	Distribution of titles downloaded by geographic origin Market share of most popular titles
	Disparity		Production budgets of the top 10 films Production companies involved in making the top 10 films Presence of popular directors within the top 10 list Presence of sequels within the top 10 list Presence of the most popular films globally within the top 10 list

8.3. Analysis of diversity in France's film industry

Diversity in the French film industry will be assessed primarily using data released by the CNC. It has long published annual statistics on film in cinemas, ranging from the number of films produced by nationality and their box office returns to a list of the most successful films in a given year and the production budget of French films.

Since 2007, it has collaborated with market research agencies GfK and NPA Conseil to study the video-on-demand sector. Originally covering just eight French services³⁹³, the methodology was changed in 2010 and the study now covers sales of the 'primary' generalist services and uses that data to extrapolate the overall size of the market. The CNC estimates that the actual data collected accounts for just over two-thirds of video-on-demand sales; 72.5 per cent when the pay-as-you-go market is reviewed in isolation. The change in methodology coincides with when Apple first made movies available via iTunes in France³⁹⁴. From that point, the CNC was no longer able to build a complete picture of the market from returns filed by video-on-demand providers³⁹⁵.

The major observable consequence of this change is a sharp increase in the number of films available via video on demand, resulting from the inclusion of more services within the sample as well as from growth in this dynamic sector. This has rendered interpretation of the data difficult at points. Any issues relating to the change in methodology will be highlighted in the analysis, which starts with a review of the cinema sector, before moving on to the video-on-demand segment and then making comparisons between the two parts of the market.

³⁹³ ArteVod, Canalplay, Club Vidéo SFR, France Télévisions, La VoD d'Orange, MyTF1Vod, UniversCiné and Virgin Méga

³⁹⁴ See Apple Corporation, *Apple Premieres Movies on the iTunes Store in France*, 30 April 2010

³⁹⁵ See also Section 6.1.2

8.3.1. *Variety in cinema*

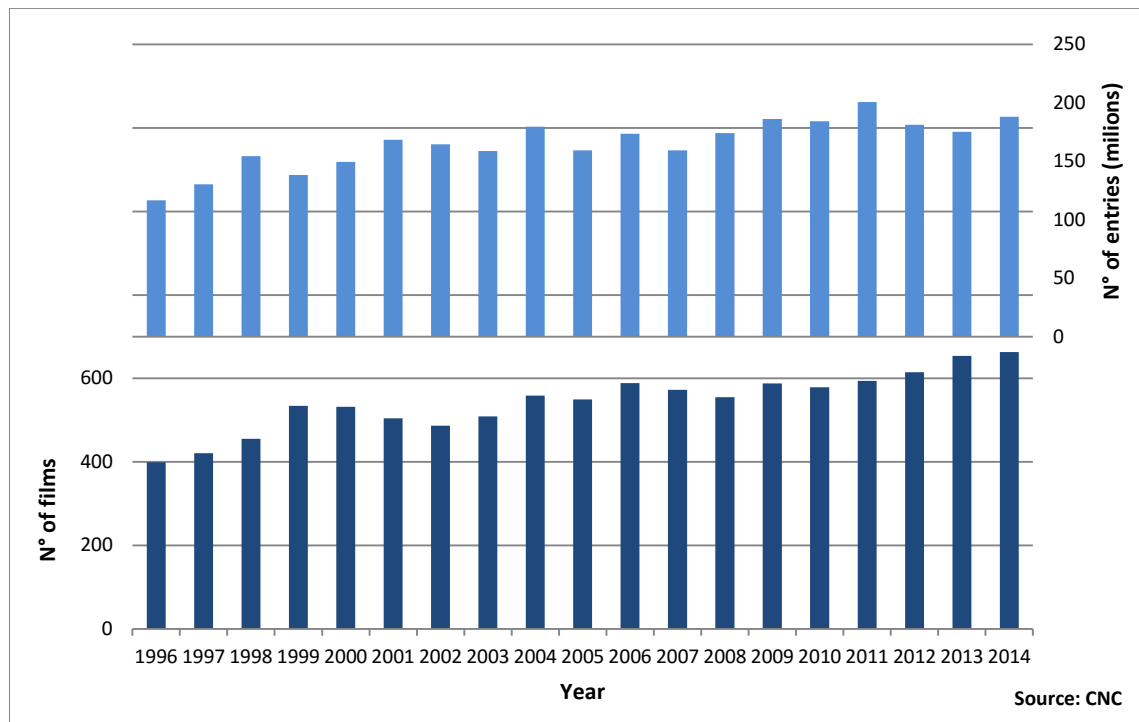
Between 1996 and 2014, there was an almost continual rise in the number of new films being released in French cinemas each year. At over 650 titles, the number of new films was 66.2 per cent higher in 2014 than in 1996. Cinema attendance also rose over the period, though at the slightly slower rate of 61.2 per cent. The CNC figures are for entries to films released in a given year, rather than attendance at all cinema showings including retrospectives and other special screenings. As a result, the figures provide a good basis upon which to assess the role of increased production in fuelling demand. While there is some difference in the rate of growth between production and attendance, both rates are of the same order, suggesting a relationship.

This is confirmed by looking at the patterns in the two datasets. Growth in the number of films released has been relatively smooth over the period, while changes in cinema attendance have been a little more erratic. Despite this, there is a close correlation between the number of films released and attendance³⁹⁶. This indicates that the increase in the variety of titles supplied has resulted in a corresponding rise in the variety of titles consumed.

This does not, however, provide any indication as to whether all films are driving consumption equally. It would be easy for US trade negotiators to suggest on the basis of top-level statistics that the growth in cinema attendance is thanks to the extreme popularity of films that the US exports to France. While French policies to support film production may be having an impact on the number of titles available and, therefore, increasing supplied variety, very few people may be watching those films, they could argue.

³⁹⁶ Comparing the number of titles with revenue using the Pearson Correlation Coefficient gives a value of 0.8016 ($p < 0.01$). The coefficient of determination (r^2) returns a value of 64.25 per cent, indicating that close to two-thirds of the rise in consumption can be explained by the increase in the number of films released.

Figure 8.2: Number of films released and cinema entries in France, 1996-2014



The French film industry released over 300 films in 2014, more than double the number in 1996 (see Table 8.2). Within this, 219 films (+154.7 per cent) were classified as 100 per cent French – that is made entirely by French film companies – 62 were coproductions where France was the major partner (+82.4 per cent) and the remainder were coproductions where French film companies had a minority involvement (+77.1 per cent). Attendance at all French films increased by 112.0 per cent; it was up by 128.2 per cent for those films considered entirely French. Over the same period, American film releases increased by just 6.4 per cent to 150 films. Attendance also increased, though this time by 25.1 per cent. Meanwhile, attendance at films from other nations increased by 120.5 per cent, despite the number of releases being just over one-and-a-half times the 1996-level.

Table 8.2: Growth in the number of films released and cinema entries in France by country of origin, 1996-2014

	Cinema releases			Cinema attendance		
	1996	2014	Growth (%)	1996	2014	Growth (%)
France	155	343	121.3	39.9	84.6	112.0
US	141	150	6.4	69.0	86.3	25.1
Other	103	170	65.0	7.8	17.2	120.5

Source: CNC

What is noticeable from Table 8.2 is that the growth in French film releases has been faster than the increase in consumption. The case is reversed when it comes to US films where the number of titles has remained consistent, but growth in cinema attendance has been more significant. The distinction is even more stark in terms of movies from other nations, where the recent popularity of the British *Harry Potter* films and *The Hobbit* films from New Zealand has helped attendance figures to rise. Given that growth in both supply and demand have kept pace with each other in the overall market, this suggests that French policies are doing more to grow the pool of films (supplied diversity), while films from other countries are boosting consumption.

Delving more deeply, it appears that films that are considered 100 per cent French may be doing slightly more to drive consumption; there is a closer relationship between supply and demand for the films that are 100 per cent French than for coproductions in which France has had an involvement³⁹⁷.

Over time, this trend could start to skew the shape of the market; that is, there are vastly more French films available than those from other nations, while consumers are viewing only a small pool of US Films. Looking at balance in cinema will indicate whether this is already beginning to happen.

³⁹⁷ Comparing the number of titles with revenue using the Pearson Correlation Coefficient gives a value of 0.6845 for all French films and 0.575 for coproductions ($p < 0.01$)

8.3.2. Balance in cinema

The lower the HHi score, the more balanced the market. With three groups in the sample, the index cannot drop below 0.33 (indicated by the dotted red line on Figure 8.3), while the nearer the score tends to 1.0 (the dashed red line), the more the market is dominated by a single player.

In terms of film releases, the French market comes very close to the lowest possible score throughout the period under review. However, the abovementioned growth in the number of French films produced is beginning to have an impact on the market, with supply becoming slightly less balanced from 2009 onwards as shown by the marked divergence from the dotted red line in Figure 8.3. By 2014 supplied balance registered an HHi score of 0.385, compared with 0.348 in 2008.

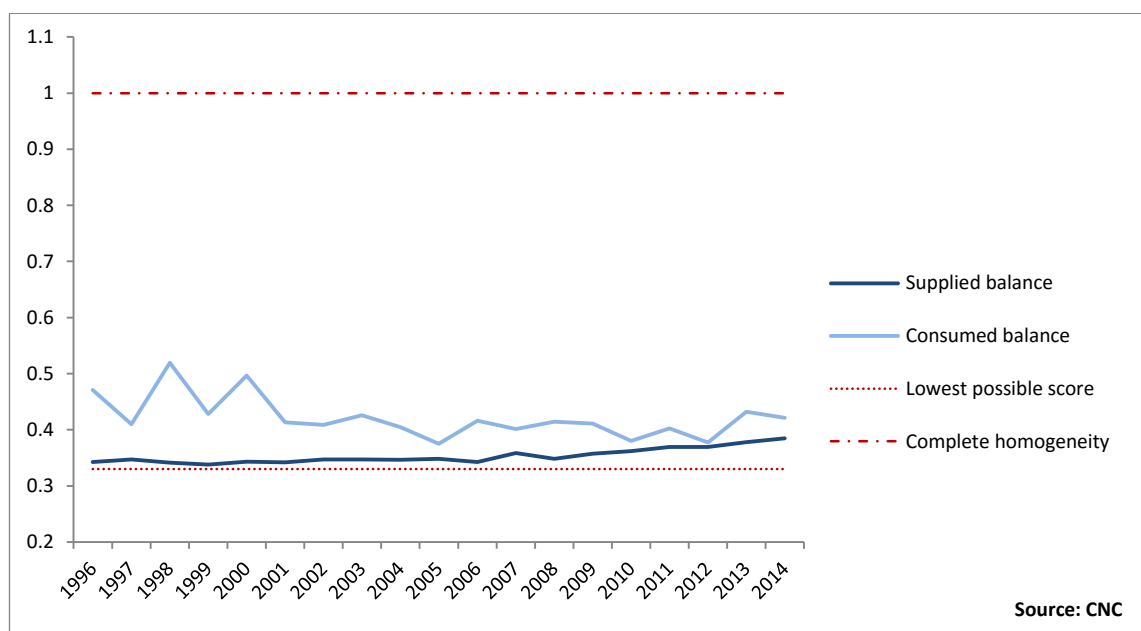
This raises an important question about French policy objectives. If it is to provide the broadest choice for French consumers, then the CNC should look to stabilise production at its current level, if not actually fund slightly fewer films and refocus on increasing the availability of films from countries other than France and the US. However, if the objective is for French film to dominate supply in its home market, then further production increases are necessary.

In terms of the films that consumers are watching at the cinema, there are signs of increasing balance over the period. American films have generally experienced a decline in share over the period, while both French films and movies from other nations have seen increases in attendance, such that the balance between these three groups is now more even. 2013 is a noticeable exception in the trend of recent years, with the HHi peaking at 0.432. There was no runaway success of any nationality; no film generated 5 million entries compared with three in 2014, of which one, *Qu'est-ce qu'on a fait au bon Dieu?*, exceeded the 12 million mark. The US share climbed in 2013 thanks to a larger number of average performers. This reveals an ongoing weakness in the French industry, in that it is starkly divided between a few major

successes and a mass of small films; its market share suffers when it is unable to produce any of the former.

Again, while greater balance is considered ideal in terms of market diversity, it may not be the intended consequence of French film policy; the French government may be looking for significant local box office success at the expense of all other nations, suggesting it needs to bolster the number of mid-tier films particularly.

Figure 8.3: Geographical balance of the French cinema sector, 1996-2014



Taking a more granular look at both supplied and consumed balance by splitting ‘Others’ into geographic regions or individual countries, to the extent that the CNC data allows gives the impression of a market that is slightly less balanced. The lowest possible score decreases with an increase in the number of groups (0.25 and 0.2 in the case of four and five groups respectively). However, the HHi score for the French film industry does not change significantly; the margin between the result and the lowest possible score simply widens. The same is true if the French film category is split into 100 per cent French, majority and minority coproductions, but the ‘American’ and ‘Others’ categories are retained. The consistency in the HHi despite a larger number of groups under consideration indicates that the market dynamic

is determined by French and American films. No other country is producing films in sufficient quantities to be anything other than an also-ran in a two horse race.

Turning attention to the top 30 films, these represented between 4.5-5.0 per cent of the films released each year between 2007-2014. However, they were responsible for almost half of all cinema visits, indicating that attendance is clustered around a small group of titles. While the market may be increasingly balanced geographically, it is quite skewed at the title level (Table 8.3).

There may be a combination of factors at work here: the network effect on film consumption, which means that consumers go to see the films that they have heard of; and the commercial strategy of the major film studios, which means that a few films are very heavily promoted³⁹⁸. However, there is little sign that concentration around the most popular titles has increased since the early 1990s and that these factors are exerting a greater influence on the market, compared with the period studied by Moreau and Peltier. CNC figures they obtained showed the top 10 titles accounting for a 24-31 per cent share of the market, with a significant spike in 1993 and 1998 when *Les Visiteurs* and *Titanic* were released. As can be seen from the table below, the top 10 still occupy around the same share of the market.

Table 8.3: Share of cinema attendance of the most popular films, 2007-2014

Year	Top 10	Top 20	Top 30
2007	27.9%	39.0%	47.1%
2008	29.2%	39.8%	47.4%
2009	24.8%	37.8%	46.8%
2010	24.0%	39.0%	49.0%
2011	26.8%	38.4%	46.4%
2012	23.2%	36.4%	45.7%
2013	19.8%	31.5%	40.9%
2014	22.8%	34.8%	44.0%

Source: CNC

³⁹⁸ Moreau and Peltier, 'Cultural Diversity in the Movie Industry', p. 131

8.3.3. Disparity in cinema

Analysis of the top 10 films in French cinemas between 2007-2014 reveals that 73 directors were involved in making the 79 films³⁹⁹. At first sight, this would suggest that there is relatively little clustering around favoured directors and the vast majority of films in the top 10 were made by different directors. However, 15 films credit more than one director, so there are, in fact, instances of the same director being responsible for several films on the list.

David Yates, director of the later *Harry Potter* films, makes the top 10 on a total of four occasions, while Christopher Nolan appears three times, thanks to various films in the *Batman* cycle, as do Peter Jackson (*The Hobbit* films) and France's Dany Boon. Another 11 directors garner two mentions each. This means that the remaining 79 per cent of directors are responsible for 62 per cent of the most popular films made.

Harry Potter and *Batman* were joined in the top 10 by several films in the *Ice Age*, *Shrek*, *Twilight*, *Pirates of the Caribbean* and *Lord of the Rings* franchises. In fact, 55.7 per cent of the films making the French cinema top 10 between 2007-2014 were part of a series; both producers and consumers are flocking to a few tried and tested formats, a sign of weak disparity.

The top 10 list also shows a bias towards US movies, with 47 out of the 79 films being of US origin (59.5 per cent). French films, meanwhile, accounted for just over one-quarter. Eleven films were classified as 'Other'. These were the *Harry Potter* (UK) and *Lord of the Rings* (New Zealand) films, indicating that what is considered 'world cinema' is poorly represented in the top 10. The US bias runs counter to the increasing geographic balance seen across the wider market, reinforcing the conclusion that America's share comes from a few highly lucrative films, while the French share results from one or two runaway successes and a long tail of far

³⁹⁹ James Cameron's *Avatar* was released towards the end of 2009 and enjoyed continued success in the early part of 2010 and, thus, appears in the top 10 for both years.

less popular titles. The spike in US market share in 2013 shows what happens when these successes fail to materialise (Figure 8.3).

Hollywood's strength is reconfirmed when the list of the most popular films in France is compared with the list of the most successful films worldwide compiled by IMDb⁴⁰⁰. Of the 80 films making the top 10 list in the period under review, 47 were in the French top 10 list, suggesting that for much of the time the French are watching the same films as consumers in every other country.

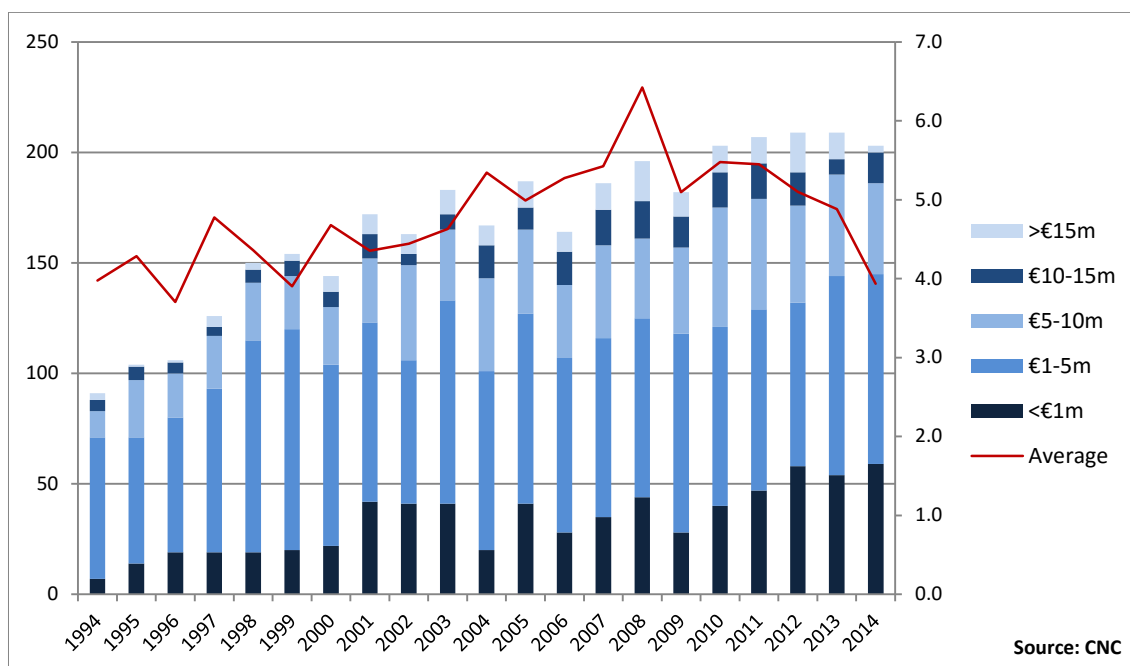
A total of 105 companies were involved in producing the 79 films making the French top 10 between 2007-2014, revealing that the support of multiple production companies is increasingly needed to amass sufficient budget for a film; two French films were backed by eight companies. Ten companies were involved in more than one film. These were principally the Hollywood majors including 20th Century Fox, Warner Bros. and Walt Disney Pictures. This is to be expected given US dominance of the market. However, TF1 Productions was involved in more films than any other company (15 in all), indicating the extent of its funding activities as a result of French regulation.

Big budget movies tend to be more heavily promoted, partly because there is a more generous budget for advertising, and partly due to the necessity of recouping investment in the film. Consequently, these films tend to dominate the top 10.

Details of French film budgets were sourced from the CNC's annual report; French films that have secured funding, including those that have cashed in their credits under the *aide automatique* scheme, are obliged to file accounts with the CNC on completion of filming. For other films, it was only possible to get hold of rough estimates from IMDb.

⁴⁰⁰ See www.boxofficemojo.com/yearly/?view2=worldwide&view=releasedate&p=.htm

Figure 8.4: Budget of French films funded by the CNC and released in cinemas, 1994-2014



On average, films making the top 10 between 2007-2014 cost \$124.8 million to make. However, this average was inflated by the *Harry Potter* films and the Hollywood blockbusters. The French films listed had an average budget of \$36.8 million. Excluding *Astérix aux Jeux Olympiques*, which cost \$107 million, the average would have been lower still, around \$33 million.

However, even that figure seems generous by comparison with the average for French films made during the period. Of the 1,595 French films tracked by the CNC between 2007-2014 (69.2 per cent of all French releases), only 98 had a budget in excess of €15 million. Over three times that number were made for less than €1 million. The lowest budget of any in the top 10 was *L'Arnacoeur* made for €9 million, suggesting that small-budget French films are not able to capture public attention.

However, these low-budget French films will be radically different in style from the expensive movies that Hollywood churns out. French funding policies increase market disparity in this respect, but restrict it in others. There may be little difference between the long tail of French films; working under similar financial constraints, French directors may make similar style

films. As France defines its industry in opposition to Hollywood, this may be acceptable, even if it does not serve diversity overall.

8.3.4. Variety in the video-on-demand sector

Since GfK and NPA Conseil first began tracking the video-on-demand sector for the CNC in 2007, there has been a consistent rise in the number of active references available on pay-as-you-go services, that is the number of films that are on offer and have been downloaded at least once. This means that the number of titles does not wholly reflect supplied variety; it is impossible to know how many dormant films above and beyond the 13,000 active references are available on France's video-on-demand services that consumers could watch if they wished, but choose not to. However, the sharp increases in active references since 2007 reflects the trend expected of a developing market and, thus, active references is likely to be a fairly good approximation of the number of available films.

Over the period, active references have increased at around 1,000 titles per year, with the exception of 2010 when the change in methodology resulted in more services being added to the sample and the market jumped by 3,000 titles.

Supply has quickly become much more varied in this sector than in cinemas. In 2014, a total of 663 new films were released at the cinema, while 941 new films were added to video on demand. As variety measures the number of groups into which a sector can be divided, the wealth of new video-on-demand releases in a single year automatically renders the market more varied than cinema. However, these new titles come on top of all those previously made available; cinema releases are shown for a few weeks and then disappear from screens.

While it would have been ideal to assess the volume of sales as was done for the cinema sector, it has not been possible to secure this data⁴⁰¹. Except at the highest level, the consumption data for the video-on-demand sector published by GfK and NPA Conseil is based on the revenue generated not the number of downloads; there were 34 million transactions in 2014, but there is no indication of how this breaks down by geographic origin of the films.

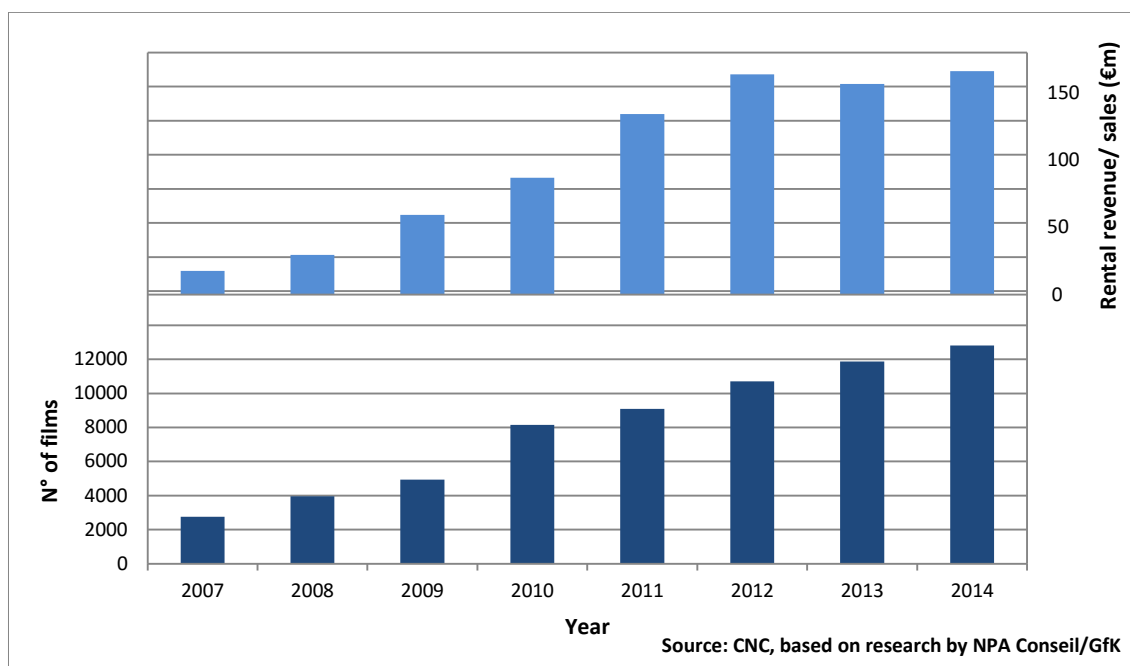
Consumption has followed a similar upward trajectory to supply. Revenue from pay-as-you-go access, that is from the sale or rental of on-demand films, increased by around €30 million a year until 2012, but the sector declined in 2013 before returning to its previous level in 2014⁴⁰².

The growing availability of titles is driving sales. However, while there were over four times as many films available in 2014 as there were in 2007, sales are over eight times higher. This suggests that increased consumption is as much a factor of the novelty of the market as of improved product supply. If supplied variety were the only driver for consumed variety, we would expect to see a consistent rise in each, rather than growth in one outstripping the other.

⁴⁰¹ According to data published by the CNC, the rental price has changed little however, moving from €3.99 in 2007 to €4.38 in 2014, so price rises are likely to have had little inflationary impact on the size of the market. In 2015, the CNC published a breakdown of consumption by volume for 2010-14, indicating that films accounted for 68.4 per cent of transactions in 2010, rising to 77.4 per cent at the end of the period. Comparing the profile of the graphs for revenue and the number of transactions confirms that the revenue figures represent a good proxy for measuring consumption (see CNC, *Le marché de la vidéo en 2014*, p. 47).

⁴⁰² Most French video-on-demand services offer a rental model, where consumers pay a one-off fee to view a single film (VoD). Subscription packages allowing consumers to watch as many titles as they like for a one-off fee are also available (SVoD) as seen in Chapter 6. However, as only 17 per cent of all titles available – films, television programmes and adult content – are included within subscription packages and, under the *chronologie des médias*, films on SVoD have to be a minimum of three years old, this is still a small part of the market, worth less than €30 million. As a result, subscription revenue has been excluded from the analysis throughout.

Figure 8.5: Number of films available and rented/sold via video on demand in France, 2007-2014



Breaking the market down by geographic origin, there has been a rise in supply across each of the three groups under examination. However, growth in the availability of French films has been slower than for those movies from other nations, including the US. The change in the methodology used by GfK and NPA Conseil may have some affect; the fastest increase in the availability of US titles was in 2010 when they broadened the scope of the study to the 'primary platforms' used by consumers. But this is unlikely to be the only reason.

The internet was adopted earlier and more quickly in the US than in France. From the outset, domestic services such as the iTunes Movie Store and Lovefilm.com worked with the major Hollywood studios to convert their films to a digital format for the US market. Historically, the US has produced more films than France, so it has a larger back catalogue of films and could make many more digital titles available than the 150-200 films released in French cinemas in any one year⁴⁰³. Thus, by the time iTunes and others launched in France, they already had the rights to distribute a vast catalogue of US material, generating a spike in US availability in 2010.

⁴⁰³ Motion Picture Association of America, *Theatrical Market Statistics 2012*, p. 20 and CNC, *Fréquentation des salles de cinéma*

But Hollywood has also been able to convert films at a faster rate compared with a French industry restricted by the *chronologie de médias* (see Section 6.3). Even after the mandated delay for on-demand release was shortened to four months in July 2009, it took until the end of 2011 for the French industry to adjust to the new timescale and ensure new releases were converted promptly.

However, budget is also a significant factor; almost all major French films released before October 2012 – that is those for which 200 or more copies were made for the cinema release – had been converted to a digital format by the end of the year, as were films backed by a television channel, because they had the funds available for conversion. Television stations may also have been keen for the film to be made rapidly available so that it could be included in their video-on-demand libraries. However, only around one-third of niche films – those for which fewer than 30 copies were made – were available on demand. These financial constraints are the reason why the CNC has focused its efforts to support digital conversion of low-budget films (see Section 6.3).

By 2014 there were over 47 per cent more American films available than French ones, despite both starting from a similar level in 2007. However growth in consumption of US films has been even more dramatic, with revenues rising by over 12 times compared with a sevenfold increase in French films. This suggests that – as was the case for cinema releases – US films have a more significant role to play in driving consumption, though market novelty and general availability of titles appear to be the most important factors⁴⁰⁴. A successful theatrical release has long been considered an essential ingredient for large video or DVD sales⁴⁰⁵, and the same is likely to be true for video on demand; consumers use video on demand as a means to watch their favourite films again, or to catch up on those films that they missed at the cinema. Films

⁴⁰⁴ Comparing the number of titles with revenue using the Pearson Correlation Coefficient for the entire market gives a value of 0.9773 ($p < 0.01$), but figures of 0.5060 and 0.5196 for French and US titles respectively. Neither result is statistically significant.

⁴⁰⁵ Pager 'Beyond Culture vs. Commerce', pp. 21-22

making the top 10 – many of which are Hollywood blockbusters – will have a head start in the on-demand market because they have already captured public attention.

Table 8.4: Growth in the number of films released on VoD in France and revenue generated by country of origin, 2007-2014

	VoD releases			Revenue generated		
	2007	2014	Growth (%)	2007 (€m)	2014 (€m)	Growth (%)
France	1,225	3,779	208.5	7.9	60.5	665.3
US	1,019	5,573	446.9	6.8	90.2	1,226.3
Other	509	3,459	579.6	3.3	15.4	368.1

Source: CNC

8.3.5. Balance in the video-on-demand sector

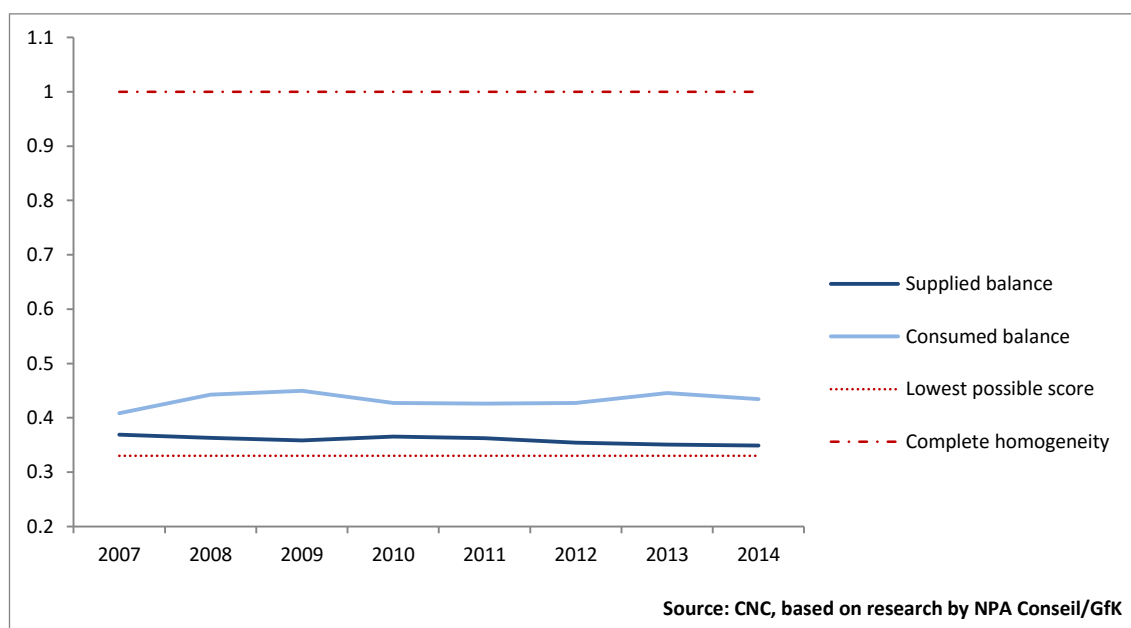
In 2007, the video-on-demand market achieved a similar level of balance to cinema, with an HHi score of 0.369 for supply and 0.409 for consumption (the indices for cinema were 0.348 and 0.400 respectively)⁴⁰⁶. However, while consumption of films in cinemas has tended towards becoming more balanced over the years, the reverse is true for the video-on-demand sector. This is to be expected, given the far stronger growth in US revenue seen in the analysis of consumed variety above.

US films have captured a growing share of film downloads, at the expense of films from all other nations, including France. The most marked increase in US market share was in 2009 before NPA Conseil and GfK expanded the number of services included in their sample. Since then, US films have accounted for around 56-58 per cent of all downloads. Consequently, consumed balance has remained consistent throughout the period, though with an average score of 0.435 at a level that is both higher than in cinemas (0.404) and far from ideal (Figure 8.6).

⁴⁰⁶ The HHi for consumption is based on the share of transactions for French, US and other films, rather than on share of revenue generated as with the calculation of consumed variety above.

Despite US films being added to video-on-demand services in huge numbers, supply has tended towards greater balance, achieving levels not seen in the cinema since 2007. In the early part of the period under review, there were similar numbers of French and US films available, while those from other nations lagged behind. As numbers of US films rose sharply, so too did those from other nations (see Table 8.4 above), resulting in parity between French and Other films and maintaining balance, despite increasing US strength; dividing the French video-on-demand sector into US films and those from all other nations, including France, reveals an almost perfectly balanced market with an HHi of 0.508 in 2014 (the lowest possible score would be 0.5 when only 2 groups are present). However, this is likely to be of little comfort to the French when they are losing ground to the US in their home market.

Figure 8.6: Geographical balance of the French video-on-demand sector, 2007-2014



With over 13,000 films available on demand by 2014, the top 30 films represent a fraction of film supply, but this group accounted for almost one-quarter of all sales (Table 8.5). As with cinema, a small collection of titles is disproportionately popular. However, this group of films does not dominate in quite the same way that it does in cinema (see Table 8.3); consumers are taking advantage of the greater supplied variety to watch a broader range of films and, thus, the video-on-demand sector is more balanced at a title level. This is common to most digital

markets; the cost of making old films or out-of-print books available digitally is significantly lower than creating a physical copy for release in cinemas, or sale in a bookshop, which means it is more viable economically to commercialise the long tail of content.

Table 8.5: Share of video-on-demand revenue of the most popular films, 2007-2014

Year	Top 10	Top 20	Top 30
2007	12.0%	19.3%	25.2%
2008	11.1%	18.4%	24.2%
2009	8.7%	14.0%	18.6%
2010	10.2%	17.9%	23.5%
2011	9.2%	15.5%	20.8%
2012	11.4%	19.3%	25.5%
2013	10.9%	19.7%	26.5%
2014	15.1%	24.1%	31.3%

Source: CNC

8.3.6. Disparity in the video-on-demand sector

It has only been possible to secure a list of the 10 most downloaded titles for the period between 2009-2014, rather than going back to 2007 as was done for the analysis of disparity in cinema; the CNC and its partners were not tracking the market in that level of detail in 2007-2008⁴⁰⁷. More significantly, the top 10 list compiled by NPA Conseil and GfK is based on all titles downloaded, not just films. Consequently, US television series such as *Grey's Anatomy*, *House* and *Lost* also appear on the list; six out of the 60 titles making the top 10 between 2009-2014 were television programmes, so have been excluded from the study.

Analysis of the films in the top 10 between 2009-2014 reveals that 57 directors were involved in making the 54 films; eight films were made by more than one director, resulting in more directors than films. Six directors were involved in making two films, but no director was involved in more than two movies. As a result, 78 per cent of the films were made by just under 90 per cent of the directors. This makes the video-on-demand market more disparate than the cinema sector in terms of the directors featured.

⁴⁰⁷ A request was made to the CNC's statistics department for data on the most downloaded films for the years for which published data was unavailable. The CNC kindly supplied information for 2013, but reported that they had not collected this data at the point where they first started tracking the market.

Original films were also better represented. Just one-quarter of the 54 films analysed formed part of a series, compared with over half of films in cinemas. Of the international series, many were the same as seen in the cinema top 10, including the *Twilight*, *Harry Potter*, *Pirates of the Caribbean* and *Batman* franchises. However, fewer of the French series to enjoy top 10 success in cinemas managed to repeat that performance in the video-on-demand market. Only 16 of the titles in the top 10 also featured in the global top 10 (29.6 per cent compared with 59.5 per cent for cinema).

It is generally unsurprising that there are fewer series and more original films in the video-on-demand top 10. Films forming part of a major franchise are considered less risky and so enjoy more significant budgets, allowing them to employ the level of special effects that would make them better suited to the big screen. Given that, one would expect the major US series to be affected more than French series. Why this is not the case warrants further investigation.

The shift away from series does favour France overall, however. A total of 31 or 57.4 per cent of films in the top 10 were of French origin; that compared with 16 or 29.6 per cent of US origin. This is the reverse of what is happening in the wider on-demand sector, suggesting that French consumers, at least in part, are watching French films on demand that may be more suited to the small screen, while favouring Hollywood action-adventures when they go to the cinema. It may also be that French television companies give greater prominence on their own video-on-demand services to the films they backed.

A total of 76 companies were involved in making the films in the top 10. Of these, TF1 Productions was again the most significant, involved in 18 out of the 54 films. A further four companies had invested in more than five films but, of these, only Warner Bros. is a Hollywood major; French companies M6 Films and Pathé were involved in seven and eight films respectively, reinforcing earlier findings relating to French films' strong video-on-demand performance.

Fewer series and a greater number of French films in the top 10 list also had an impact on average budgets. Films making the top 10 download list between 2009-2014 cost on average \$67.8 million to make, a little over half the average cinema budget. The French films on the list had an average budget of \$25.3 million, slightly less than that seen in cinemas, but it was the absence of big-budget productions such as *Avatar* in the top 10 list that had the greatest impact on the mean.

8.4. Comparison of cinema and video on demand

Assessing these two segments of the French film industry against the different measures of diversity is revealing. Benhamou and Peltier have noted that ‘diversity may increase in one dimension while decreasing in another’⁴⁰⁸ and this has proved to be the case; variety in the French cinema sector has increased consistently with the result that supply is gradually becoming less balanced. While consumed balance in cinema has tended to improve over time, the sector has been revealed to be not very disparate. In particular, the successful French films that are responsible for boosting the French share of the local film market – and with it consumed balance – are made by a handful of successful directors, such as Dany Boon. The French are also watching many of the same films as consumers worldwide; globally successful franchises such as *The Hobbit* films are well-represented in the top 10.

The analysis has also highlighted differences between sectors, with one performing strongly against some aspects of diversity, and the other performing well in other areas. But if France is to continue to defend the cultural exception, it will need to show that overall diversity is increasing.

While, in their analysis, Moreau and Peltier failed to assess the film industry on all three dimensions, they did evaluate supplied variety and balance (both supplied and consumed) in

⁴⁰⁸ Peltier and Benhamou, ‘How should culture be measured?’, p. 104

France, the US and four other markets. Their results provide a benchmark to assess the current findings. It can only be an approximation; it is impossible to verify that the data was collected and processed in exactly the same way. However, if the scores achieved on the HHi are of a similar order, it would suggest that the French market is as balanced now as it was then, while if there were a greater number of films released in France than elsewhere, it would indicate the market is more varied.

Between 1990-2000, Moreau and Peltier found that France had the lowest average score on the HHi of the countries assessed – a result of 0.342 for supplied balance and 0.446 for consumed balance. The US figures were 0.642 and 0.859 respectively⁴⁰⁹.

Comparing the current results for 2007-2014, supply appears fractionally less balanced, with an average score of 0.366 for cinema and 0.359 for video on demand. At 0.405, consumed balance has improved noticeably in cinema. Even though the video-on-demand market fared less well than cinema over the period reviewed, the HHi score of 0.433 shows that the sector is slightly more balanced than cinema was in the 1990s.

Moreau and Peltier's findings have been corroborated by others. Florence Lévy-Hartmann concludes that France is the most diverse of a basket of six European countries reviewed⁴¹⁰, while Benhamou and Peltier's study of close to 40 countries, places France in the top 10 and the US in the bottom tranche (ranks 31-38)⁴¹¹. This further reinforces the view that the French film market is more diverse than the US movie industry, putting France in a strong position to defend its policies in the international arena.

⁴⁰⁹ Moreau and Peltier, 'Cultural Diversity in the Movie Industry', p. 134

⁴¹⁰ Florence Lévy-Hartmann explored diversity in Denmark, France, Poland, Spain, Sweden and the UK. Florence Lévy-Hartmann, 'An evaluation of the diversity of the film market for cinema and video recordings in France and in Europe', *Culture méthodes*, October 2011, Issue 1

⁴¹¹ Françoise Benhamou and Stéphanie Peltier, *Measuring the Diversity of Cultural Expressions: Applying The Stirling Model of Diversity in Culture: Two case studies*, 2011, p. 40

Moreau and Peltier considered France and the US to be equally varied. They found that a similar number of films were released in France and in the US per year between 1990-2000, typically around 400-450 per year. This was significantly more than the 200 films available annually in other markets. At over 500, films a year, France enjoyed by far the most cinema releases of any that Lévy-Hartmann reviewed. Section 8.3.1 showed that variety has increased steadily in France to 663 film releases by 2014. While this falls short of the 700 films distributed in the US⁴¹², this indicates that variety in the French market has continually improved.

Despite this, the French should be wary of transferring a policy approach that has been successful in cinemas directly to the video-on-demand sector, as there is a different dynamic in each market. Table 8.6 summarises the relative performance, with the stronger sector marked with a '+'. There was little to separate the sectors in terms of consumed variety and these have been judged equal, while comparison of supplied disparity was impossible given the lack of an appropriate measure for the video-on-demand sector.

⁴¹² MPAA, *2014 Theatrical Market Statistics Report*, March 2015, p. 21

Table 8.6: Comparison of diversity in cinema and video on demand

Measure	Category	Cinema	VoD
Supplied variety	N° of titles available		+
Consumed variety	N° of cinema entries/downloads	=	=
Supplied balance	Distribution of available titles by geographic origin		+
Consumed balance	Distribution of films viewed by geographic origin	+	
Consumed balance	Market share of top 10 films		+
Supplied disparity	Distribution of films by production budget	-	-
Consumed disparity	Presence of popular directors within the top 10 films		+
Consumed disparity	Presence of sequels within the top 10 films		+
Consumed disparity	Presence of highest grossing films globally within the top 10 films		+
Consumed disparity	Presence of production companies within the top 10 films		+
Consumed disparity	Production budgets of the top 10 films	+	

In terms of supplied variety, the video-on-demand sector far outstrips cinema, with over 100 times more titles to choose from at any given point; the number of films showing in cinema on a given date is in the tens, not hundreds or thousands. However, consumed variety is less clear-cut. There were nearly 190 million cinema visits in 2014 compared with 34.1 million video-on-demand transactions. So based on the number of times each title was sold – equivalent to Benhamou and Peltier’s use of copies sold in the publishing industry – consumed variety is weaker in the on-demand segment. However, if variety is assessed on the number of titles viewed, then again video on demand trumps cinema, as over 13,000 titles were downloaded at least once in 2014, but just over 600 films were watched in cinemas.

Until recently cinema has been a more balanced market, with a clear convergence in supply and consumption towards the optimum level. However, there has recently been a marked decline in supply driven by growth in the number of French titles. The trend was reversed in

the video-on-demand sector, with an increase in the number of 'Other' films helping to maintain equilibrium of supply.

Consumed balance in the video-on-demand sector has remained consistent over the period, compared with a rather more erratic profile in cinema. This latter results from significant swings in national market share that can arise with the runaway success of a single film, underpinning the importance of taking a long-term view of market balance rather than looking at market share in isolated years. The long-term view reveals that consumed balance in cinemas has improved over time.

The greater variety of titles available on-demand has encouraged French consumers to watch a broader selection of films via video on demand, resulting in a generally more disparate market. Budgets for films in the cinema top 10 ranged from \$12-300 million compared with \$5-250 million for video on demand. As the scale of the budget typically dictates the style of film made, then the broader budgetary range of the cinema top 10 suggests that it is slightly more diverse in this regard.

The relative strengths of cinema and video on demand against the different properties of diversity are predictable in some cases, resulting from the inherent structure of the sector. Video on demand sets out to provide a broad choice. It is, therefore, not surprising that supplied variety is high. In other instances, the differences may stem from deliberate intervention. Supplied and consumed variety is closely linked in cinema, such that policies to increase the number of films produced have helped to boost attendance at French films and, in turn, improved balance. What is clear, however, is that each sector performs quite differently.

France is currently employing many of the same methods to support the video-on-demand sector that it created for the cinema sector. For example, it has imposed quotas on the proportion of French and European films that video-on-demand operators should include in

their service. Similarly, it has insisted that any organisation that benefits from the content – be that a video-on-demand service, ISP or search engine – should contribute to its creation.

As shown in Chapter 7, state intervention is generally justified when used to correct a market failure. The differing dynamics within the video-on-demand sector mean that the nature of any potential market failure is different from that in cinema. Increased supply, for example, brings greater challenges when it comes to giving prominence to individual titles and services.

The current analysis suggests that these trends are affecting diversity differently in cinema and video on demand. As a result, the French government should be looking at specific policies to support video on demand – ones more closely tailored to where and how diversity needs to be strengthened. For example, increased support for conversion of French films to digital would improve supplied variety, but also bolster supplied balance by countering the numbers of US films available. To do this, would add weight to French arguments that both policy and the cultural exception are fundamental in maintaining cultural diversity.

9. French film policy: re-examining the case for the defence

Il y a un côté dentelle de forteresses qui permet d'organiser une défense. Il y a des châteaux forts – on a bien l'intention de défense – mais la bataille, elle se livre aussi au-delà du château fort là où les continents se rejoignent, là où la mer arrive aux rivages de nos continents.

Pierre Louette
Directeur général adjoint, Orange⁴¹³

Neither the French nor the American stance on the issue of trade and culture has fundamentally altered in the 20 years since the conclusion of the Uruguay round of world trade negotiations; France still staunchly defends the need for a cultural exception to protect and promote cultural diversity, the US views it as a barrier to trade that limits consumer choice and, therefore, diversity. If the Americans are less vocal in their opposition than they once were, it is because they have found ways for their film industry to benefit from French policies that they regard as increasingly anachronistic. They also believe that any attempt to expand measures to digital channels will be held in check by France's European partners. The French similarly feel the battle has moved to Brussels where European competition rules are being used to stall French attempts to update cultural policies at the expense of local industry.

Traditionally, the debate on the cultural exception has been championed by filmmakers with support from political figures such as François Mitterrand and Bill Clinton. Little has been heard from those involved in the detailed negotiations towards any new trade agreement. Similarly, the French television industry has been largely absent from the debate, despite being the major backer of French film since the early 1980s (see Section 4.1). With the extension of

⁴¹³ 'There's a line of fortresses which allows us to defend ourselves. We have a number of defensive castles – and we do intend to defend them – but the battle is also taking place beyond the castle walls where continents meet and where the sea arrives at the shore of our continents.' Pierre Louette, Directeur général adjoint, Orange, talking during Rencontres Cinématographiques de Dijon 2013, *Rapport Lescure : espoirs ou craintes d'une réforme du système cinématographique?*, 25 October 2013

film funding mechanisms to cover digital channels many more companies are expected to contribute, though some of these new players, particularly the internet service providers, have not accepted these obligations unquestioningly, as seen in Chapter 6. To explore how views on the cultural exception are evolving with the advent of video on demand and what that means for the future shape of French film policy, it is necessary to canvass a broader set of opinions than has hitherto been the case. This will be achieved through a combination of original interviews and the review of publicly recorded hearings and debates.

The 10 candidates for the semi-structured interviews were drawn from the worlds of film and trade. The former included public affairs specialists working for the Société des Auteurs et Compositeurs Dramatiques (SACD), which represents content creators, and the CNC in France and for the MPAA in the US. The development of the trade talks was explored with the help of current and former negotiators specialising in issues surrounding the liberalisation of trade in services, as well as representatives of the US Chamber of Commerce which campaigns on issues affecting US businesses, including Hollywood film studios. To ensure a balance of views, half the sample was drawn from the US, the remainder from Europe; most were French, but as trade negotiations are handled by the European Commission on behalf of all EU member nations, the official interviewed was Spanish.

The interviews were supplemented with information from video and audio recordings of presentations to the Lescure review of French cultural policy, as well as debates organised as part of the annual Rencontres Cinématographiques de Dijon. These sessions involved a broad spectrum of stakeholders, including French and European politicians, filmmakers, television companies, cinema owners and new entrants to the video-on-demand market such as Amazon and Google.

More than 80 hours of recorded material incorporating the views of 161 people was reviewed for the project (see Appendix C). While each individual may have focused on the aspects of

France's film support programme which they feel is most detrimental to their interests and, therefore, in greatest need of reform, the sheer breadth of opinions covered has helped to build an holistic picture of how the cultural exception is viewed, and informs the analysis of how France's film funding policy is being adapted in the digital age.

9.1. The cultural exception: a 'piece of rhetoric' or legislative freedom?

As seen in Chapter 1, the term 'cultural exception' was coined in the early 1990s to express the idea that culture and the cultural industries should not be treated in the same way as other traded goods, but should be the subject of an exception. The French have always been the most vocal defenders of the concept, such that the term has become practically synonymous in some quarters with French cultural policy. Given the different ways the term has been employed, it was important to understand from the outset of each interview how individuals interpreted the phrase.

Current trade negotiators on both the US and European sides made it clear that there is no legal foundation for the cultural exception in international trade law, nor within the governing treaties of the EU as is the case for cultural diversity. They felt it described an approach to the cultural industries, which meant that the French, particularly, do not make any commitments on trade liberalisation in the audiovisual sector. The US negotiator described it as 'a piece of rhetoric', adding that despite US sensitivities about the shipping industry, it has not tried to claim a 'maritime exception'. He also stressed that the area of concern is not as broad as the term implies; it simply relates to the audiovisual sector.

This point was reinforced by Peter Chase, Vice President, Europe at the US Chamber of Commerce in Brussels. He noted 'the scope of the exception is narrower than the French political narrative would have it be painted'. While it is pitched as a 'wholesale carve-out [of the creative industries] from the obligations that an agreement between two parties might

create', it is really only designed to cover existing policies to support the audiovisual sector and reserve the right to create new subsidies and quotas as necessary in future. He compared it to the exception Canada negotiated in its new free trade agreement with the EU. Due to come into force in 2016, the Comprehensive Economic and Trade Agreement (CETA) includes a derogation for all cultural industries, not just the audiovisual sector.

Representatives of the US film industry described the exemption in a way more closely aligned with the traditional American view of the cultural exception. By refusing to make commitments related to the cultural industries, individual countries are looking for a way to give prominence to locally produced content while protecting the sector from external competition. One former US film executive noted 'most countries do this in various forms, but certainly the French were always extremely protective of their culture'.

Bernard Miyet, a former French diplomat and lead European negotiator at the time of the Uruguay round, reiterated that the cultural exception was about France's right to maintain current policies and introduce new policies in support of culture. There was an absolute consensus across the French political and cultural spectrum that France should not bind itself to any agreement restricting 'sa faculté de légiférer et de réglementer dans le domaine culturel'⁴¹⁴. He felt the exception covered cinema and television, but also book publishing, and that the defined scope was quite deliberate and shaped by the unfair nature of competition in the audiovisual sector. Filmmakers have a limited opportunity to amortise the costs of production in their own market, which naturally inflates the acquisition cost of local films for broadcasters. As a result, they were often side-lined in their native market by output from cheaper foreign competitors.

Il est évident que si vous êtes un radiodiffuseur ou une chaîne de télévision en France vous avez tout intérêt à acheter des séries américaines, dont le coût d'acquisition est

⁴¹⁴ '...the capacity to legislate or regulate in the cultural sector'

inférieur aux coûts de production d'une série française, pour maximiser vos profits. Vous n'allez pas perdre de téléspectateurs, même vous pouvez en gagner, parce que la qualité de production et l'investissement initial sont tels que même la série française, anglaise ou autre aurait de difficulté à atteindre le même niveau d'investissement à l'origine⁴¹⁵.

French interviewees agreed that the cultural exception existed to ensure that France and other states were not subject to restrictions born of trade law that prevented them from implementing their cultural policies. Guillaume Prieur, Directeur des Affaires Institutionnelles et Européennes for the SACD noted that discussion of cultural diversity predominated, but the concept of cultural exception has experienced a resurgence since the TTIP talks have come into view, stimulating a renewed imperative to exclude culture from the negotiating mandate.

Only Marie-Sophie Lequerré, former Chargée de mission V&D at the CNC referred to the cultural exception as 'quelque chose de purement français'⁴¹⁶. She felt the concept had become increasingly associated with French culture and heritage, because the French were the only ones to really defend it in Europe.

With a new set of trade talks in progress, there have been calls to avoid referring to the *exception culturelle française*, because it prevents France from rallying support across Europe. While the French may be the most vocal proponents of the concept, film director Dante Dessarthe commented during the 2014 Rencontres Cinématographiques de Dijon, the issue related to the right of all nations to support their creative industries and ensure films were still

⁴¹⁵ 'If you are a French radio or television broadcaster then it is obvious that to maximise your profits, it is in your interests to buy American series that have a lower acquisition cost than French series. You are unlikely to lose viewers, you may actually gain some, because the production quality and the initial investment is at such a level that the French, English or other series would be hard-pressed to match from the outset.'

⁴¹⁶ '...something purely French'

made in their native language. Consequently, people should be wary of referring to it in a way that makes the cultural exception sound specifically French⁴¹⁷.

This is proving challenging for the French political élite. During the same debate, Culture Minister Fleur Pellerin defined ‘notre exception culturelle’ as ‘la mise en valeur de la diversité culturelle et ce mécanisme vertueux de financement’ conflating the declared objective to protect cultural diversity with maintenance of France’s film funding system⁴¹⁸.

9.2. Diversity: definition obvious, the way to achieve it less so

It is clear that the term ‘cultural exception’ is still subject to debate and interpretation. However, if we accept that the cultural exception is a tool for the protection and promotion of cultural diversity, then to be able to assess its effectiveness at doing this, it is important to understand what stakeholders mean when they talk about ‘cultural diversity’. Chapter 7 examined three distinct arguments used to justify cultural policies based on choice, market competition and the protection of national identity. If French and American stakeholders take a different view of cultural diversity, then their opinions on the policies needed to support it will also vary, with implications for France’s ability to maintain its defence of current policies in international trade talks.

Asked to define cultural diversity, few interviewees appeared to have given the notion much thought; they felt the term was self-explanatory and that individuals instinctively recognised a diverse market when they came across one. In the words of the public affairs specialist from the CNC, ‘l’expression «diversité culturelle» c’est vraiment la diversité’⁴¹⁹ – a sentiment echoed

⁴¹⁷ Dante Dessarthe, joint president of l’ARP, speaking during Rencontres Cinématographiques de Dijon, *Quelle régulation peut encore enrayer la dépréciation du cinéma et de la culture?*, 17 October 2014

⁴¹⁸ ‘...the development of cultural diversity and this virtuous system of financing’. Fleur Pellerin, Ministre de la Culture et de la Communication, talking during Rencontres Cinématographiques de Dijon, *Quelle régulation peut encore enrayer la dépréciation du cinéma et de la culture?*

⁴¹⁹ ‘...the expression “cultural diversity”, it’s really just that, diversity’.

by the representative of the US business community: 'I think that, for me, cultural diversity means just that'.

When pushed on the definition, other interviewees agreed that it was about preserving all forms of expression, so that individuals had access to the widest possible array of cultural artefacts; in this, it is similar to Cowen's individualist position and the traditional American view (see Chapter 7). Superficially, it appears that both sides agree that the protection of diversity is about the maintenance of consumer choice, rather than about respect for national identity or each nation's right to express itself. Chase felt that individuals should be able to enjoy 'the richness of all the wonderful things that are out there'; Lequerré agreed that it is about creating an environment where Hazanavicius' *The Artist* can exist alongside Luc Besson's *Lucy* and American blockbusters. The latter definition implies that providing a broad choice requires the protection of national modes of self-expression; it should not be left to market forces to define the choice as in the US. As seen in Chapter 5, such subtleties of meaning have been overlooked in the past, with the result that each side failed to appreciate the views of the other.

The CNC public affairs specialist added that protecting diversity was about safeguarding national identity and the means to express that identity, as defined in the UNESCO Convention. She felt the Convention recognised the dual economic and cultural nature of audiovisual products, the necessity for them to be treated as an 'exception au droit commun' and the right of nations to maintain policies in support of their creative industries⁴²⁰.

Miyet and Prieur, while agreeing that cultural diversity relates to choice, commented that it is also the 'pendant positif' or more acceptable companion of the cultural exception. The former asserted that Leon Brittan had coined the notion of cultural specificity during the Uruguay round as a way to advance discussions. The term 'cultural exception' was perceived as too

⁴²⁰ 'exception to common law'

protectionist and, therefore, antagonistic towards countries with a strong liberalising agenda including the US.

The European Commission official was more comfortable with the concept of cultural diversity than with the term 'cultural exception'. The governing treaties of the EU set out a commitment to promote diversity across the 'totality of EU policies', including trade-related policies. But the Trade Directorate does not have a definition that it specifically uses; like other interviewees, the Commission official stated, 'we take the term as a given', making reference to the UNESCO Convention when including 'cultural diversity' in the definitions section of agreements such as the CETA or the EU-Korea trade agreement. He thought the Directorate would refer the issue to DG Education and Culture if a more precise discussion were needed about whether a policy supported diversity or not. This seems somewhat lax given how controversial the concept has been over the past 20 years. It must be challenging to argue in favour of a principle when it is unclear how that translates in practice.

9.3. 21st century battle lines

The cultural exception has been a feature of CETA and other trade negotiations since the early 1990s. While France steadfastly classifies the cultural exception among its three *lignes rouges* that are beyond the scope of any discussions on trade liberalisation⁴²¹, the US appears more moderate in its opposition. Given the upheaval in the market wrought by the arrival of digital media, it is worth exploring whether France or the US really have modified their views on the cultural exception, particularly as this will shape the ongoing TTIP negotiations.

Not one of the interviewees thought that France had changed its stance on the need for continued defence of the cultural exception. The EU trade negotiator believed the nation had been 'pretty solid and consistent in terms of its principles', while Miyet was adamant that 'le

⁴²¹ The other two being defence and agriculture (see Section 2.1)

gouvernement français ne peut pas accepter de se lier les mains dans le domaine culturel sur le plan commercial'⁴²².

It also became clear during the 2012 Rencontres de Dijon, that for filmmakers even the slightest concession should not be countenanced; any relaxation of the rules would set a precedent and require France to make a larger compromise the next time around – a process that could ultimately lead to the whole system being dismantled⁴²³. Addressing delegates at the meeting, former culture minister Aurélie Filippetti said that the battle was only 'à moitié gagné'⁴²⁴. Several of France's European neighbours felt that the UNESCO Convention was sufficient to protect the cultural industries. She disagreed, stating that it was necessary to continue the fight until at least such time as digital media benefitted from the same protections as their more traditional counterparts.

Only isolated voices within France advocate the need for France to modify its stance on cultural issues. These tend to be industry observers, such as François Adibi, President of Altaïr, an independent think tank. He told the Lescure commission that no defensive wall could survive the digital revolution. Consequently, France should abandon its current stance and take a more proactive approach focused on building prestige at home and abroad⁴²⁵.

American interviewees were resigned in their assessment that unfortunately the French position had not changed, despite the fact that increased globalisation was restricting the ability of nations to enforce a discrete cultural policy. They appreciated why individual nations would want to promote local content creation. The US trade negotiator commented that:

⁴²² '...the French government cannot agree to bind its hands in the cultural sector via commitments on the commercial front'

⁴²³ Rencontres Cinématographiques de Dijon, *Peut-on parler d'exception culturelle dans une Europe numérique?*

⁴²⁴ '...half won', Ibid.

⁴²⁵ Culture-Acte II, *Audition d'Altaïr*, 30 November 2012

...we certainly understand the concern that a country wants to ensure that its own culture is reflected in the things that are available to its consumers and that its own language is being preserved.

He added that 'it's hard to argue against cultural diversity' as a motive for cultural policy, especially when US culture 'is doing just fine in Europe', suggesting the French have succeeded in establishing cultural diversity as the central objective in the trade and culture debate. However, the US negotiator called for 'fresh thinking in France about how you are going to realistically support cultural diversity on the internet', lamenting that as yet there is no sign of this.

9.3.1. French motivation

Globalisation has been regarded in France as an attack on national identity, in part because it erodes France's standing on the world stage (see Section 2.2). Alain Lombard has suggested that the defence of culture and cultural diversity is one way that France is carving out a new role of international influence for itself. The country certainly maintains one of the most high profile campaigns on the issue, but is it consciously trying to shape the debate on cultural diversity?

French interviewees were clear why France adopts the stance it does. The country has a cultural sensibility that is 'ancré dans l'histoire et dans la tradition' that resulted in it implementing cultural policies before many of its counterparts, such that there is now a political imperative to give prominence to cultural issues⁴²⁶. Delacroix and Bornon have

⁴²⁶ '...anchored in history and tradition'; public affairs specialist from the CNC. See also Section 2.2.3 on France's *mission civilatrice* which has been part of French policy on international relations since the 17th century.

suggested that the principle is sufficiently important that the political élite have attempted to enshrine protection of the cultural exception within the French constitution⁴²⁷.

Certainly, the public affairs specialist from the CNC felt 'Il est du devoir presque des autorités nationales de s'en préoccuper et de soutenir les modes d'expression de cette culture'⁴²⁸. Miyet agreed, highlighting the close links between the cultural and political sectors in France as in the US:

vous n'avez jamais vu en France une campagne législative ou présidentielle dans laquelle les questions culturelles n'ont pas été présentes. Les candidats à l'élection présidentielle notamment cherchent systématiquement à s'entourer d'intellectuels, de chercheurs et de créateurs, parce que c'est important pour être élu⁴²⁹.

Cultural policies are neither the preserve of the political left or right; they are upheld by whoever is in the office. Miyet described cultural policy as a 'tabou', with which no politician was going to tamper. The SACD's Prieur agreed.

Interviewees were divided over the question whether France is deliberately seeking out a thought-leadership role or position of specific influence. Chase considered it something of an overstatement and the European Commission official felt it was 'a bit far-fetched' to claim that just because France is very proud of its cultural heritage that it is using that to gain international influence; he thought simply that France was vocal about culture because it had done more than other nation to translate issues into policy. If it were really about restoring its role on the world stage following decline in its political and economic influence then the UK, among others, would be taking a similar approach, he believed.

⁴²⁷ Delacroix and Bornon, *Can protectionism ever be respectable?*, p. 354

⁴²⁸ 'It is almost a duty on the part of national authorities to concern themselves with and support the means by which that culture is expressed'

⁴²⁹ '...you have never seen an election or presidential campaign in France where cultural issues were not raised. Presidential candidates systematically try to surround themselves with intellectuals, researchers and artists, because it is important in their bid to get elected'.

However, there was evidence of more nuanced views. Several nations, not just France, are concerned about American cultural imperialism, a representative of the US business community admitted. That France takes what it considers a principled stand against the US on this issue may be perceived by other countries with similar concerns as leadership. It would be naïve, French interviewees maintained, to think that the country's reputation as a profoundly cultural nation did not afford France some form of influence. It was not, however, the principal driver; the ability to *rayonner* or project its identity abroad was a by-product of an approach founded on the need to retain the means of national self-expression.

The representative of the US business community suggested that France's ability to claim an influential role on cultural issues was undermined by its approach. She felt that the issue revolved around the role government should play in shaping the availability of cultural products; restricting access to cultural products from other sources as the French do through quotas is not really in the interests of society as a whole.

What emerged from the Rencontres Cinématographiques de Dijon debates was that filmmakers are convinced France has a leading role to play. Michel Hazanavicius believes that the French have a duty to defend a system that supports not just French filmmakers, but directors from across the globe⁴³⁰. He felt this view was widely shared; only in countries where there is limited local production and US films dominate the market does the consumer choice doctrine take precedence over the cultural imperative. Countries including China regard the French system as the model to replicate to retain and boost local cultural output, according to former CNC head Éric Garandeau; this alone is evidence of France's multinational influence in the cultural diversity debate⁴³¹.

⁴³⁰ Rencontres Cinématographiques de Dijon, *Peut-on parler d'exception culturelle dans une Europe numérique?*

⁴³¹ *Ibid.*

Some in the industry, including Hazanavicius and head of the UGC cinema chain, Alain Sussfeld, admit that they may have approached the issues in a way that is ‘too French’ and their campaign has been regarded as French arrogance in defence of a French system, but that is not to say that they should not do it; they are convinced that the French film industry is the only one with sufficient market share to have a credible voice on the issue of cultural protection⁴³².

Asked why the film industry took centre stage in the debate, the Europeans commented that, by comparison with the theatre or publishing, it has a high level of professional representation with associations voicing the concerns of all parts of the industry from production to distribution. The strongest of these associations is l’ARP representing producer-directors, leading the SACD’s Prieur to suggest it is not so much the film industry as directors that have the highest profile on cultural issues.

The industry can also call on high profile figures with close links to the political establishment including actors and directors who can quickly capture the attention of the media. This ensures policy concerns achieve public prominence. Miyet suggested that a public expression of annoyance from Gerard Depardieu or Bertrand Tavernier could generate the same impact as 100,000 workers striking in another industry.

The film industry also has a strong economic impact. Movies are expensive, but they can also generate significant profit. The CNC’s Lequerré noted:

C’est sûr qu’économiquement l’industrie du cinéma est beaucoup plus fort que celle du spectacle vivant en France ou de l’édition. Et c’est ce qui fait qu’effectivement elle est beaucoup plus entendue que les autres formes artistiques⁴³³.

⁴³² Rencontres Cinématographiques de Dijon, *Le cinéma est-il euro compatible?*, 25 October 2013

⁴³³ ‘It’s a fact that economically the film industry is a lot stronger than the theatre or publishing. And that means that it effectively has a much higher profile than other sectors of the arts.’

Unsurprisingly, this was an explanation common among US respondents. The US trade negotiator said that, as in the Watergate scandal, the key was to ‘follow the money’. The film industry is vocal about trade liberalisation because it has the most to lose from any attempt to dismantle French cultural policy. He described French cinema as ‘wholly dependent on support from the state’ and believed that filmmakers were worried that, if consumers had access to any film online or from their mobile phone, then viewing habits could change and the French industry would lose its audience.

Only the representative of the US business community suggested that film was considered a ‘jewel in the crown’ of French cultural output and that this was the reason why the defence of film policy grabbed the headlines. From the French perspective, this is a dangerous position to be in, as it leaves the country’s film policy open to criticism that it is a basket of economic measures designed to support a significant local industry not a cultural policy and could pave the way for renewed US attempts to dismantle support through trade liberalisation. Such criticisms have previously been levelled at the *aide automatique* because of its universal reach (see Section 4.3).

France’s refusal to moderate its position has left it increasingly isolated within Europe, according to the representative of the US business community. She felt France’s sustained efforts to exclude culture from negotiations was greeted by eye-rolling among its European neighbours.

I have the impression that France will continue to insist on the audiovisual exception; other member states have, I suppose, less and less sympathy or interest in the issue. In fact, they may be recognising that it is still an important principle and an element of their societal norms, but it may be less of a priority than it has been in the past.

She felt this would restrict any expansion of French policy – a view shared by other interviewees, as discussed below – but also France’s ability to defend the cultural exception.

However, the European Commission official felt it was less clear-cut. The Netherlands, Sweden and the UK may have little support for the French position and actively try to block French policies on occasion, but there is sympathy for the French view in Southern Europe. Even those countries that do not back the French stance on culture have growing concerns about the taxation of global companies, particularly the internet giants, that have led them to support the changes in VAT rules outlined below and may encourage them to back other amendments in community tax rules that would allow France to extend film funding mechanisms such as the TST to online businesses based outside of France.

9.3.2. American acceptance

If the French position on trade and culture has not altered in the 20 years since the conclusion of the GATT negotiations, the majority felt that the US approach has been modified to be less 'dogmatic' and 'brutal'.

A US film industry executive said the US government had approached the Uruguay round with the intention to just 'take down' any barriers to trade, because in theory all parties entering negotiations are interested in removing obstacles to liberalisation. 'It was an aggressive approach and it's one that didn't work and actually inflamed sensitivities'. The US had learnt from these mistakes, as was clear from an Objectives Paper released in advance of the Doha round of negotiations which acknowledged that the previous US position 'on content quotas and subsidies had hardened opposition to future liberalization commitments for the sector'⁴³⁴.

It is not possible to exclude audiovisual services from trade agreements, the industry executive commented, because films and television programmes are heavily traded, but negotiators are no longer attempting to expunge each and every subsidy or coproduction agreement declared as exemptions to trade agreements. The US trade negotiator confirmed this. He considered

⁴³⁴ Balassa, 'An "economic" approach toward the trade and culture debate', pp. 90-1

that the exception listed by all EU members in relation to the Television without Frontiers Directive still stood, despite the fact that all exceptions were originally only envisaged to last for 10 years (see Section 5.3)

Miyet described the American approach in the 1990s as ‘purement mercantiliste et économique’⁴³⁵. Competition and free trade was all that mattered and when it came to removing commercial barriers ‘ce qui vaut pour les boulons vaut pour le cinéma’⁴³⁶. If American products were better, be they bolts or television series, then it was a scandal to block them from the market. After the events of 1993, which almost resulted in GAT/S not being signed, there was a gradual realisation that attacking the issue of trade and culture head-on via multilateral agreements would only result in renewed conflict with Canada, France and the wider EU, potentially cutting off opportunities for trade elsewhere. It would be better to secure a series of bilateral agreements, especially with countries representing significant trade growth potential where ‘l’aspect culturel n’est pas un aspect’, such as with Korea⁴³⁷. TTIP is simply the latest of these bilateral agreements and one that is focused on harmonisation and mutual recognition of standards, for example for the approval of new medicines, rather than removal of traditional trade barriers.

The US film industry has also shifted focus. For many years, Hollywood has generated more of its revenue from overseas sales than from the US box office. Europe is still an important market, but ‘the real growth in American movies overseas has been in China, Russia and then Japan’, a former industry executive said. Another industry representative agreed that ‘the numbers on China are astounding’. To drive growth, US majors are looking ‘to keep [their] audience in the mature markets and then [they] want to build new audiences’ and this means that their attention is on markets beyond Europe.

⁴³⁵ ‘...commercial and economic’

⁴³⁶ ‘...what works for nuts and bolts should also work for cinema’

⁴³⁷ ‘...the cultural issue is not an issue’

Unlike France and many other European countries, the US does not seek formal coproduction treaties with other nations, but Hollywood does collaborate with film companies across the world. In fact, coproduction has an important role in helping the US industry capture market share overseas, especially in emerging economies like China with different tastes and cultural norms. Coproduction helps to create ‘a product that is going to do really well or better in that market because it is a local product’, the representative of the US film industry commented. She added that:

When you’re working with a French production company or a South African production company or Italian, whatever, and their talent and so forth, it gives you access oftentimes to subsidies because you’re hiring local talent, you’re paying so much in taxes and so forth.

Chase commented that he had never seen figures confirming it, but he suspected that a ‘fair proportion’ of the subsidies awarded in France actually went towards the making of non-French films. He is undoubtedly correct in that assumption. French filmmakers regularly assert that without French support there would be no Belgian or North African cinema and world renowned directors such as Ken Loach and Pedro Almodóvar would be unable to secure the funding they need⁴³⁸. If filmmakers from across the globe have been supported by the French system it seems unlikely that Hollywood majors have not found a way to benefit, especially with all the resources available to help them understand the full scope of the subsidies on offer and the regulations governing them. Given this, Chase added, ‘as long as US companies can benefit from those subsidies as well, for undertaking certain actions in France, I don't think that that's going to be much of an issue.’

Technological developments have also contributed to this softening of the US approach. In the 1990s, there was only one major commercial channel for films. ‘If you produced a film, it was

⁴³⁸ Michel Hazanavicius speaking at Rencontres Cinématographiques de Dijon, *Peut-on parler d'exception culturelle dans une Europe numérique?*

for theatres and that was it'; there may be some sales from the video release or the sale of television rights but, the US trade negotiator commented, Hollywood was 'really quite worried' that its main route to market would be blocked. Experience has shown this not to be the case; cinema entrances are still healthy and there are more distribution options, including satellite television channels, DVD and video on demand.

Hollywood has also learnt to 'live with' the French system. The American interviewees all commented that the US film industry has a significant market share, even in France, so it would be churlish to suggest that the system is having a detrimental impact. Regardless, US interviewees maintained an ideological objection to quotas and subsidies, which they saw as 'bad policy'⁴³⁹, suggesting that while they are more moderate in their stance, they are not prepared to drop the issue entirely.

A strong French film industry has also been helpful to Hollywood in tackling one of its most significant challenges – piracy. Targeting the sites offering illegal copies of American movies was a key priority for the former US industry executive during his movie career and, in this, the French were significant allies. France places a high value on its cultural output. Consequently, the French do not want to see their artists 'ripped off or hacked or pirated' and are prepared to take tough measures to address piracy, including blocking internet access under the now repealed Hadopi law to any user found repeatedly downloading illegal content. The French are also extremely supportive of international efforts to protect intellectual property rights; they have never indicated that the cultural exception would mean the exclusion of the audiovisual sector from international intellectual property agreements, according to Chase.

⁴³⁹ US trade negotiator

9.3.3. A new mandate on trade

Despite the apparent US acceptance of French policy and collaboration on key issues such as piracy, there is no expectation of a more open discussion on audiovisual issues during the TTIP negotiations. Indeed, the French have insisted that culture should be excluded from the European Commission's negotiating mandate and are 'vigilant' in monitoring that discussion of the cultural exception does not creep back on to the agenda⁴⁴⁰. However, there is also no sense that the exception could derail the talks as it threatened to do in 1993; the current French stance was widely anticipated.

Addressing the Rencontres Cinématographiques de Dijon in October 2014, French culture minister Fleur Pellerin reassured filmmakers that culture was not part of the negotiating mandate and would be excluded in future talks 'de façon récurrente'⁴⁴¹. The public affairs specialist from the CNC commented that the industry had been nervous about the timing of the talks, which are taking place against a backdrop of global economic instability. Western governments are all looking for renewed growth and there was a danger that, in trade discussions as broad as TTIP, culture could be 'troquée'⁴⁴² or squeezed by commercial concerns.

French filmmakers are also concerned that an open discussion on audiovisual issues could result in the current system being frozen. Not only would this mean that France would lose the capacity to update policies for a digital environment, it may mean traditional and digital media are treated differently; 'ce sont les mêmes services, quel que soit le mode de diffusion' and

⁴⁴⁰ 'Vigilant' is one of the most commonly used terms to describe France's stance on the cultural exception and TTIP. It has been used by, among others, Guillaume Prieur of the SACD and the public affairs specialist from the CNC during their interviews and by Sylvie Bermann, French Ambassador to the UK talking at an LSE debate, *Transatlantic Free Trade: the final push? British, French and US perspectives on a TTIP agreement*, 13 October 2014

⁴⁴¹ '...on a recurrent basis' Fleur Pellerin, Ministre de la Culture et de la Communication speaking during Rencontres Cinématographiques de Dijon, *Quelle régulation peut encore enrayer la dépréciation du cinéma et de la culture?*

⁴⁴² 'exchanged', i.e. offered up as a concession in order to secure concessions from the Americans in other areas

should be supported in the same way⁴⁴³. They were also acutely aware that digital channels are dominated by new players such as Google with even more commercial clout than the Hollywood majors; to separate digital and traditional channels would mean Europe would have almost no negotiating power on digital issues.

The US negotiator commented that the exclusion of audiovisual services from the European mandate was 'not welcomed' in the US. 'The US and EU agreed that these would be comprehensive conversations' and the exclusion had scuppered that from the outset. The US was well aware of French sensitivities and understood concerns that 'there are films of high merit that would not be made by the marketplace because their potential audience is too small'. However, including audiovisual services within the mandate would have meant that the US and the EU could have had broader discussions about how to support these smaller films; together they may have developed policy approaches that were more effective than either party could dream up in isolation.

The problem is because it's been carved out of the mandate of the Commission, we can't even have conversations about what those answers might be. We can't have conversations with the industry involved in the internet who might have other solutions that they could pose to encourage consumption of a catalogue of films as diverse as possible⁴⁴⁴.

When this suggestion was put to Prieur, he made it clear that 'il n'y a pas de discussion à avoir avec eux' about European policies⁴⁴⁵. That was a matter for discussion by EU member states alone. If the EU were to be criticised for not engaging in full and frank discussions in terms of the cultural exception then the Americans should be challenged about why they are not prepared for an open debate on financial services.

⁴⁴³ '...they are the same services regardless of distribution method'; public affairs specialist from the CNC

⁴⁴⁴ US trade negotiator

⁴⁴⁵ '...there is no discussion to be had with them'

Several of the Americans interviewed felt that the reassertion of the cultural exception could give rise to ‘a slippery slope’ or ‘a downward spiral’ where the US declined to discuss the financial or maritime sectors because the EU was reluctant to address cultural issues. Then in retaliation the EU would decide not to give ground on agriculture or some other issue and so on until all the sensitive issues had been removed from the field of discussion and what was left were the uncontroversial ones. By their very uncontroversial nature, these goods are already freely traded. Thus TTIP would become a hollow treaty covering only what has already been agreed in previous negotiations.

The trade specialists did not anticipate this happening. Miyet did not believe the Americans had adopted the same ‘poker mentalité’ that they did in 1993 because they are well aware that they dominate the sector despite the lack of a consensus on how trade in audiovisual services should be approached. The US negotiator affirmed it was ‘too early in the negotiations for that kind of horse trading’, adding that the US was making a conscious effort not to limit discussion on areas of greater concern for the US.

The European Commission official confirmed this, but there was an awareness that this could easily change. He felt that the European negotiating position had been significantly weakened because of the restrictions it was under and that its ability to insist on particular concessions could be met at any point by comments that “‘I am doing exactly as you do with audiovisual’”. Over the course of the discussion, it became clear that he felt his hands were tied and, like his US counterpart, he would have welcomed the opportunity to discuss potential alternatives for the protection and promotion of cultural diversity even if they were subsequently rejected by the EU. ‘My understanding of the Commission position is that we believe there are ways to protect the interests of the audiovisual industry other than excluding it from the outset from any negotiations.’ Member states are keen to retain the right to legislate in favour of their cultural industries and a broader discussion could generate ideas on what form that legislation should take.

9.3.4. Potential trigger

Having established that discussion of alternative policy approaches strictly off limits, the focus of the interviews shifted to the effectiveness of current French policies in promoting diversity and the extent to which they can be justified in international trade circles. While there may have been consensus around the self-evident nature of cultural diversity (see Section 9.2), respondents were starkly divided over whether French policies were beneficial – a division that is broadly along national lines.

The French felt that, thanks to local subsidies, France enjoyed ‘un cinéma très riche et très varié’⁴⁴⁶ and that Paris was the world city offering *the* broadest possible choice of films, be they French, American or world cinema. However, interviewees from the US felt that French quotas actually served to restrict consumer choice and, therefore, cultural diversity. This highlighted that the two sides focus on quite different aspects of French film policy when discussing its pros and cons and this skews opinion on its effectiveness. The quantitative assessment in Chapter 8 showing that the French market is in fact quite diverse could help to break down this stalemate based on belief rather than evidence.

Meanwhile, the representative of the European Commission would not be drawn on the issue, commenting only that the French are ‘convinced’ the scheme is a success because ‘the [French] cinema industry is the strongest one in Europe and they believe that this is the result of their policies’. While this is diplomatic, it does not suggest that the European Commission is fully supportive of the French position and prepared to push its case strongly in trade negotiations.

Both subsidies and quotas are applied across different parts of the French audiovisual industry to support French film, including video on demand (see Section 6.2). In France, the main consideration when it comes to modernising film policy is how to integrate new market

⁴⁴⁶ ‘...a very rich and very varied cinema’

entrants such as Apple and Google into the system, thus maintaining current levels of production funding. The Americans are wary that any attempt to update French policies would mean the introduction of quotas to digital channels that ‘they just weren’t designed to deal with’⁴⁴⁷, overlooking that such quotas exist already under the Audiovisual Media Services Directive as it is implemented in France. In this there are echoes of the American position with regard to the Directive’s predecessor, the Television without Frontiers Directive (see Chapter 5); the US administration only really grasped the full scope of the Directive in the closing stages of the Uruguay round, forcing the issue to be addressed with great urgency at that point.

The US interviewees felt that, if any support were needed, providing subsidies is a better approach and one that is used extensively even in the US via organisations such as the National Endowment for the Arts. Again some seemed unaware of the fact that subsidies are used to support digital channels. A representative of the US business community, commented:

I’m not sure what the French are seeking to do is actually promote diversity, as much as they are [trying] to protect their own culture. So if the idea is to ensure the continuation of and the full flowering of one’s own cultural output, I think there are ways that you can do that through domestic policies, subsidising your own cultural industries [and] finding ways to promote them, [and by] reducing any sort of regulatory restrictions that inhibit their ability to be widely available across the country. Those strike me as better ways to ensure the perpetuation of French culture.

From a trade perspective, the US negotiator felt that the country had ‘made [its] peace’ with subsidies so long as the amounts invested did not suddenly increase exponentially. He felt this was unlikely as France – like other Western nations – was experiencing pressure on all aspects of public funding. However, ‘when you get to quotas it’s a little bit more delicate’. He appreciated that where space was limited, as it was when there were only a few terrestrial

⁴⁴⁷ US trade negotiator

television channels, there could be a justification for reserving space for national films. 'We're not happy about it but, okay, we get it'. But applying quotas to digital channels such as video on demand was a 'particularly pernicious kind of concept' because it could cap the overall size of the market as discussed in Chapter 7.

The US negotiator added that applying quotas to video on demand 'would be a much more troubling policy to us and the peace we've been able to make with the concepts of subsidies and quotas on television and [in movie] theatres would be up-ended if this were to be expanded to the digital theatre'.

Chase of the US Chamber of Commerce agreed that the extension of quotas would be cause for concern, prompting the US government to 'weigh in heavily'. What worried him most was the introduction of quotas at the EU level. He acknowledged that France had established quotas for local video-on-demand services when it transposed the Audiovisual Media Services Directive into French law, but these posed little problem at the moment because 'it's kind of interesting how those quotas are enforced'; action is not taken against services that do not respect the guidelines. What is more, it is possible to avoid the quotas, as Netflix does, if the service is based in another EU member state. In lobbying for audiovisual services to be excluded from the TTIP negotiating mandate, France wants to ensure that it and other EU nations retain the right to set quotas for cultural products and, Chase indicated, is lobbying for content quotas at the EU level. 'If there were a move to create a regulation at the EU level mandating certain quotas, I think that there would be quite a lot of concern about that.'

At the moment, few of the Americans interviewed felt that EU-wide quotas were a realistic prospect, but there was general agreement that any move in that direction would cause discussion to flare up again as it had done in the closing stages of the Uruguay round of GAT/S negotiations.

9.4. Integrating the internet

While the French undoubtedly would welcome the application of an EU-wide content quota for video-on-demand services, it is not a priority – it is certainly not high enough up the agenda that it should generate the level of concern that it currently does with the Americans. Both filmmakers and television companies in France are preoccupied with how to ‘intégrer’ all online service providers into the current system of film financing. The latter are particularly concerned that they are being put at a significant disadvantage compared with the likes of iTunes and Netflix at a point where economic instability and technological change mean they are poorly placed to deal with that competition.

France’s system of film funding has been constructed on the principle that ‘ceux qui diffusent ou qui distribuent les œuvres et donc qui en tirent des bénéfices et des profits contribuent aussi à financer la création à venir’⁴⁴⁸. In return, the cinema distributors and broadcasters secure the right to air the films they finance for an exclusive period – rights which are inscribed in the *chronologie des médias* (see Section 6.2.2). From the recorded material, it was clear there is a consensus across the French film industry that the fundamental principle underpinning French film support is still valid. However, finding a way to apply it to all content providers is proving elusive.

The historic terrestrial television channels – TF1, France Télévisions and M6 – and subscription TV service Canal+ have traditionally been and continue to be the major backers of film in France, contributing close to €500 million to the *compte de soutien* and buying film rights worth around €300m annually (see Section 4.5). However, their ability to contribute is being steadily eroded. Nicolas de Tavernost, Président of M6 told the Lescure commission that television advertising expenditure had declined from €3.5 billion in 2005 to €3.3bn in 2012, with a further decline expected in 2013. During the same period, the number of channels

⁴⁴⁸ ‘...those that derive benefit or profit from the broadcast or distribution of works should also contribute to their creation in the future’; Guillaume Prieur, SACD

supported by advertising had increased by a factor of four⁴⁴⁹. Smaller revenues being split between many more players has meant that all television companies are being squeezed. A ban on commercials on public service channels in 2009 represented something of a respite for private broadcasters, as it limited competition for advertising revenue. But this proved short-lived; the Sarkozy government reversed the move in 2012 to secure an injection of private money into France Télévisions.

Groupe Canal+ faces additional challenges. The launch of dedicated sports channel beIN Sport unleashed a bidding war for sports rights. Films and sporting events represent Groupe Canal+'s two major areas of programming, so an increase in costs for the latter results in less money to invest the former. France has also raised VAT on television subscriptions from 5.5 per cent to 10 per cent. Given the competition for subscribers, Groupe Canal+ felt obliged to absorb the difference rather than increase the price of its service – a further drain on funds⁴⁵⁰.

According to Rodolphe Belmer, the head of the group's flagship channel Canal+, film is the least profitable element of all the types of programming it offers. Production costs and fees to acquire the rights to films are high, but French rules impose a limit of two advertising breaks during a film, meaning that the opportunity to generate revenue is restricted⁴⁵¹. TF1 boss Nonce Paolini agrees, saying that offsetting what the group spends on acquiring films against the advertising revenue generated when those films are broadcast resulted in a loss of €20 million in 2012⁴⁵².

Public sector broadcaster France Télévisions which, after Canal+, is the second largest supporter of film in France, has also seen its ability to invest in films eroded, as the *redevance*, or television licence fee is frozen. As elsewhere in Europe, a section of the French public

⁴⁴⁹ Culture-Acte II, *Audition de M6 Groupe*, 19 November 2012

⁴⁵⁰ Presentation by Bertrand Meheut, Président, Culture-Acte II, *Audition de Groupe Canal+*, 17 December 2012

⁴⁵¹ Rodolphe Belmer, Directeur général. Ibid.

⁴⁵² Nonce Paolini, Président-Directeur général, TF1 talking during *Rencontres Cinématographiques de Dijon, Rapport Lescure : espoirs ou craintes d'une réforme du système cinématographique?*

questions the need to pay a flat fee to support a group of channels that they barely watch. An injection of private money into France Télévisions by way of a 0.9 per cent tax on revenues of private television channels and distributors such as Free served to minimise the impact of the licence fee freeze on France Télévisions, but added to the woes of the commercial channels. For a time, there was a ban on commercials on the public service channels. It has since been reversed, but the tax still stands. Yann Gilbert, Président of the cinema section of the Syndicat des Producteurs Indépendants told the Lescure review that the decline in France Télévision's income may mean that in future 10 fewer films could be made per year than at present⁴⁵³.

Despite the financial pressures on the television companies, Paolini, Belmer and France Télévisions boss Rémy Pflimlin are all adamant that their organisations should continue to support films being made. It gives them a period of exclusive rights to high quality content that will allow them to differentiate their television services in a multi-channel environment. But their support has not been unquestioning. The SACD's Prieur commented during his interview that, 'il y a eu chez les chaînes des tentations d'aller sur cette voie là de demander sinon une suppression en tout cas un affaiblissement très, très fort des règles qui leur soient applicable en termes de soutien et de création,' but these were rebuffed by the culture minister⁴⁵⁴. Since that rebuttal, the television companies have campaigned actively alongside filmmakers for funding obligations to be extended to all organisations that provide access to content to level the playing field, as long as it is not a 'nivellement par le bas'⁴⁵⁵. Their principal target is the major internet companies, including Apple, Google and Netflix, which have all of the benefits, but none of the obligations.

⁴⁵³ Culture-Acte II, *Audition du SPI*, 12 October 2012

⁴⁵⁴ '...there has been on the part of the television channels, an attempt on that front if not to suppress their funding and production obligations at least to dilute them very, very significantly.'

⁴⁵⁵ '...reduction to the lowest common denominator'

9.4.1. *Competing views*

For the French television companies, reform is urgently needed if they are to retain a competitive edge in a rapidly developing market. Where previously they operated just traditional television channels, they now offer free-to-air television, pay television, catch-up services and video on demand – all of which require significant and ongoing investment in platform and content development. However, available funds are tight because they surrender 50 per cent of their operating profits in taxes to support the production of new films and television programmes⁴⁵⁶. Multinational players such as Apple, Google and Netflix have higher revenues and are not subject to the same funding and film taxation obligations, so have vastly greater resources to invest in development to make their platforms easier to use and to secure rights to the most popular films.

Asked whether local players were in a position to stand up to this competition in the absence of any regulatory changes, Prieur and Lequerré both highlighted the relatively limited nature of Netflix's catalogue compared with Canal+, but did not comment on the position of smaller French players such as FilmoTV. Prieur even went as far as saying that for the time being the balance was tipped in favour of Canal+ 'qui a une politique tarifaire qui est proche de celle de Netflix et surtout qui a une offre en matière d'œuvres et de catalogue qui est beaucoup plus large que Netflix'⁴⁵⁷.

Others, including Groupe Canal+'s own Rodolphe Belmer, are less sanguine about the chances. Relative to media organisations outside France, Canal+ is quite small and hamstrung by French competition rules that prevent it from negotiating exclusive rights to films even for a day or so, or mimicking the strategy of US broadcasters such as HBO which has launched its own video-

⁴⁵⁶ Culture-Acte II, *Audition de M6 Groupe*

⁴⁵⁷ '...which has a similar charging policy to Netflix and which above all has a catalogue that is much larger in terms of numbers of works'.

on-demand service as an exclusive showcase for the films and television series it produces⁴⁵⁸. The French competition authority decided in autumn 2012 that the best way to encourage development in the video-on-demand sector was to limit exclusive deals for films. This would mean even small operators could secure the rights to a wide range of films. However, it puts local players at a disadvantage as multinational players can and do negotiate exclusive rights to some films, particularly US blockbusters in a bid to boost the appeal of their services.

Allowing iTunes and Netflix to negotiate exclusive deals unchecked could have a significant impact on the number of services in the market, Miyet cautioned, resulting in the creation of a monopoly or at best an oligopoly. 'Celui qui va disposer d'exclusivité sur les grands blockbusters ou les principaux films américains seront en position dominante'⁴⁵⁹, leaving other services to scratch out a living with an offering based on smaller films that had received little critical attention. In turn, this could have a significant impact on the range of films available as the major services would focus their offering around the titles they expected to be most popular. He felt that the only companies in a position to compete with online specialists like Netflix or iTunes would be Sky and other pay television channels that could negotiate package deals comprising both television and video-on-demand rights; television rights deals are more lucrative for filmmakers than video-on-demand agreements. In France, only Groupe Canal+ has the clout to do this, but is prevented by local competition rules.

A representative of the US film industry was asked the extent to which the major Hollywood studios are negotiating exclusive multinational deals for their films. She felt she had only limited insight into current practice, as all studios negotiate separately; there would be antitrust issues if one studio knew the kinds of deals the others were making. However, she believed deals of this nature were more likely for the major blockbusters, as Miyet described:

⁴⁵⁸ Rencontres Cinématographiques de Dijon, *Quelle place pour les plateformes V&D dans l'écosystème du cinéma européen?* and Rencontres Cinématographiques de Dijon, *Quelle régulation peut encore enrayer la dépréciation du cinéma et de la culture?*

⁴⁵⁹ 'Those that secure the big blockbusters or the major American films will be in a dominant position'

I mean I could see that more for the *Hunger Games* or something that does really well internationally, they might do some sort of really broad licensing agreement but then if you're talking about a smaller film like *Little Miss Sunshine* or something then you would license territory by territory.

As well as restricting Groupe Canal+'s negotiating power, limiting exclusivity has also served to depress prices within the French video-on-demand sector. Services offering a selection of films and television programmes not available elsewhere are able to charge premium subscription rates. Where the same films are available across multiple services then the only possible way to differentiate services is on price. While consumers may receive an attractive deal, filmmakers suffer because the video-on-demand services are unable to pay as much for the film rights, nor do these companies generate sufficient revenues to be able to contribute to the *compte de soutien* and future investment in French cinema. As someone who represents the interests of writers, directors and musicians, Prieur was particularly concerned by the relatively low prices in the market, as it had an impact on the remuneration of SACD members.

9.4.2. *It's not where you start, it's where you finish*

Levelling the playing field has been a constant preoccupation for the French film industry over the past few years, though little has been done to address areas of perceived unfair competition, primarily because they require resolution at the European level. Any change to the way funds are collected or allocated needs to be referred to the European Commission for approval and on these issues, 'les visions [françaises et communautaires] ne sont pas forcément les mêmes', the public affairs specialist from the CNC commented⁴⁶⁰.

Speaking at the Rencontres Cinématographiques de Dijon in 2012, director and producer Radu Mihaileanu commented that notification means approval by the European directorate general

⁴⁶⁰ '...the [French and EU] visions are not necessarily the same'

for finance, competition, telecommunications, the internal market...⁴⁶¹ In fact, almost any directorate other than DG Education and Culture. And in the rare event that the Commission approves it, then the proposal will also need to be reviewed by the European Parliament and the Council of Europe. Each organisation reviews the proposal for its impact on trade and competition in France and the EU, favouring liberalisation rather than regulation as the best way to ensure a diversity of operators within the market. However, French television companies perceive that, in this, European competition rules are interpreted against them, rather than in their favour, limiting their ability to compete against Apple, Google and Netflix.

Over recent years, the focus has been on amending VAT rules to eliminate 'une sorte de concurrence entre états membres au sein de l'Union européenne par laquelle les entreprises étrangères s'installent sur tel ou tel territoire parce qu'il est plus avantageux par rapport à des règles qu'il propose en termes d'impôts sur les sociétés ou de TVA'⁴⁶². A change to the regulations implemented in January 2015 is expected to pave the way for France to be able to impose the same obligations on multinational companies that national ones face in other areas of taxation, for example, in support of the film industry.

Until the end of 2014, VAT on online purchases was raised at the point of origination. This meant that a company was required to apply the tax at the rate in the market where it was based, not in the country to which the goods were being supplied. It provided companies trading over the internet with an incentive to establish their European operations in markets where VAT rates are low; goods sold by an online retailer were typically around 10 per cent cheaper in France than the locally supplied equivalent simply because of the variance in VAT rates between the market where it was supplied and consumed. In Luxembourg, VAT on TV and radio broadcasting services is charged at just 3 per cent, creating an even greater

⁴⁶¹ Rencontres Cinématographiques de Dijon, *Peut-on parler d'exception culturelle dans une Europe numérique?*

⁴⁶² '...a sort of competition between member states within the EU which means that foreign companies set up operations in one territory or another because it is more advantageous for them on the basis of company taxes and VAT'; public affairs specialist from the CNC

differential, such that Paolini declared in 2013 that if TF1 were only considering the interests of its shareholders, it should relocate its operations to Luxembourg to benefit from low VAT⁴⁶³.

The new rules implemented on 1 January 2015 stipulate that VAT should be charged at destination not origination, though Luxembourg – the last country to comply – will not have applied the measures until the end of 2018. This is important for the French film industry for three reasons. On a practical level, it means that VAT on the sale of a film on demand or the cost of a video-on-demand subscription will be charged at the predominant French rate regardless of where in the EU the supplier is based. It also gives the French some visibility into the French revenues of Amazon and Netflix, among others. Unlike local players, they are not required to file a revenue declaration with the CNC to prove they have met their film funding obligations. As a result, the agency can only calculate their share of the French market based on declared usage (see Section 6.1.2). The CNC will be able to compile a more complete view of the video-on-demand market on the basis of VAT declarations, as well as assess how much would be raised if film funding commitments were extended to these companies.

However, for the French individuals interviewed for this project, the VAT changes had a more important symbolic meaning. The origination principle is also enshrined in the European Audiovisual Media Services Directive, such that France can only oblige services based in France to respect its funding and quota rules; it does not apply to services predominantly or exclusively targeting France from abroad. The application of the destination principle to VAT is seen as setting a precedent for other tax changes.

Pour prendre un exemple un peu plus concret tel que Netflix... quand Netflix propose une offre en France et qu'elle a des abonnés en France – c'est assez facile de les décompter. À ce moment là, à partir de son chiffre d'affaires qui est généré en France il

⁴⁶³ Rencontres Cinématographiques de Dijon, *Rapport Lescure: espoirs ou craintes d'une réforme du système cinématographique?*

aurait, comme les entreprises françaises audiovisuelles, des obligations pour financer la création cinématographique et audiovisuelle⁴⁶⁴.

However, both Prieur and the public affairs specialist from the CNC felt that, while the change in VAT rules was significant, there was still significant work ahead to convince the European Commission that the destination principle should be more broadly applied. Prieur said that for the time being European authorities 'n'ont pas montré une grande écoute' because it runs counter to the fundamental drive to create a single European market⁴⁶⁵. However, he added that there was increasing pan-European support, including from Ofcom in the UK for a reform of the Directive which gave him hope of a change in mood.

9.4.3. The online response

While any change to the Audiovisual Media Services Directive is likely to be a long way off, it is apparent that the internet giants are going to be implicated in future discussion of issues on trade and culture, at a European level, within TTIP and more widely. So do their concerns align with those of the traditional players in the cultural exception debate?

According to the US trade negotiator, the internet companies that have made submissions to the TTIP negotiating team are worried that 'people might adopt a ham-fisted policy without carefully considering the differences between a distribution model over the internet and a distribution model in [movie] theatres'. Any such policy could set a precedent, according to the representative of the US business community, that would be difficult to update as online business models evolve and mature.

⁴⁶⁴ 'To take a more concrete example like Netflix... when Netflix offers a service in France and has subscribers within France – it is relatively easy to count them. Then at that point the revenue generated in France can be used to calculate its film and television funding commitments as is done for French audiovisual companies.'; Guillaume Prieur, SACD

⁴⁶⁵ '...has not shown any sign of listening closely'

The US trade negotiator felt that in some ways the concerns of the internet giants were quite different from the traditional Hollywood view. The latter are predominantly content owners concerned with the protection and promotion of the films they produce; the online giants are 'interested in having as diverse a catalogue of offerings as possible and being able to distribute them as widely as possible' and are perhaps a little less discriminating in their strategy for releasing works, which has meant the two groups 'have struggled to make peace with each other'. This points to tensions in the US position; while Hollywood may be prepared to accept French policies as they stand, the internet giants may be less inclined to do so and prepared to lobby as hard against restrictions as the US film majors did in the 1990s.

The new market entrants do not yet appear to have joined forces with Hollywood to campaign on cultural issues of mutual concern. During her interview, the representative of the US film industry agreed that internet companies are 'expressing concerns about different countries' cultural policies and how those cultural policies will implicate their business models', adding that she was unaware, however, of the approach they were adopting to lobby on such issues.

The representative of the US business community also felt that the internet companies had anticipated the French approach. The country has a history of creating and defending policies, so the reaction at each new attempt is 'there go the French again' trying to replicate in the digital world what they have done in traditional channels, unaware of the consequences of any such policy. Nonetheless, there is a sense that Google, Amazon, Netflix and others are confident that France's European neighbours will hold the country in check.

Francis Donnat, senior policy counsel for Google Europe, told the Lescure commission that 'L'instauration d'une taxe franco-française sur le numérique créera évidemment une distorsion de concurrence au détriment de la France elle-même, comme le fera d'ailleurs toute mesure

nationale⁴⁶⁶. He highlighted a report by the French consultancy CDE showing that France already lagged behind in terms of the commercial exploitation of the internet; creating new policies would set the country back even further. Donnat recognised that there is a political will to extend French cultural policy but, like the US interviewees, he felt that any such attempts would be counter to European harmonisation and would face numerous legal hurdles before being approved, if they ever were.

Marc Mossé, Directeur des Affaires Juridiques et Publiques at Microsoft agreed that France needed to update its policy approach and should stop implementing new taxes and protective measures as if they were a ‘citadel under siege’. France should look at how the internet could provide greater access to French culture at home and abroad. He and other internet companies, including Google and Amazon, highlighted to the Lescure commission how they were partners in the promotion of French culture, providing legal access to a much broader range of films, music and literature than was possible in an analogue environment. They felt that the focus should be on finding ways as an industry to work together to promote greater access and increased diversity of supply, rather than integrating new players into a French system based on rules set out in the 1980s.

9.5. Conclusion

‘La France est dotée d’une exception culturelle forte depuis longtemps. À l’exception du cinéma, celle-ci n’a pas produit les effets escomptés,’ president of M6 Nicolas de Tavernost told the Lescure commission⁴⁶⁷. While it may ensure that France retains a strong film industry, French regulation on the pre-financing of films has become an added burden for television

⁴⁶⁶ ‘The implementation of a French tax on digital markets will distort competition to the detriment of France, as will any other national measure.’ Culture-Acte II, *Audition de Google*, 10 October 2012

⁴⁶⁷ ‘France is blessed with a strong cultural exception, which has existed for a long time. But with the exception of cinema, it has not produced the results we expected.’ Culture-Acte II, *Audition de M6 Groupe*

companies at a point where they are facing both economic difficulties resulting from a drop in advertising and increased competition from a raft of new market entrants. However, with the exception of a few independent consultancies and think tanks, there is little call within France for a radical rethink in cultural policy.

The debate on French film policy within France is dominated by television companies and filmmakers that have vested interests to protect. French television companies dominate the video-on-demand sector; the most commonly visited services are all owned and operated by local broadcasters. The major channels believe that a continued supply of French films will help them to differentiate their television and video-on-demand services in the highly competitive 21st century media market and to maintain this dominant position. Thus, they are willing to continue to fund production. However, in return for their ongoing support, they expect French regulation to be extended to new market entrants, to ensure that the television companies are not put at a competitive disadvantage. French filmmakers are prepared to back them on this because it maintains their funding and their ability to make films.

More importantly for the continued defence of French regulation and the cultural exception, the French film industry – the only ones to benefit from the cultural exception according to Tavernost – is highly organised and has strong links to the media and the political élite to ensure its views are heard. This has meant that politicians of all hues now consider it a taboo to tamper with French cultural policies.

Another factor preventing any form of radical rethink is the focus on technological neutrality. French policy-makers believe that cultural products should benefit from the same protection regardless of channel and support mechanisms should be applied in the same way whether they are designed to help traditional film or video on demand. Given that there is a different dynamic to diversity in the cinema and video-on-demand sectors (Chapter 8) and that cultural diversity faces new threats in the digital era as outlined in Chapter 7, a different approach may

be needed for each sector to achieve a common level of protection. American and European trade negotiators appear to be keen to explore alternatives, but the French film industry interprets this as a way to dismantle policy by the back door.

While the arguments have evolved over the 20 years since the Uruguay round of trade negotiations, the fundamental positions have not. There are still signs of distrust among the French. The Americans may have learnt to live with French policies, but they still fail to grasp their full extent. Despite concerns about new quotas and their perceived impact on consumer choice and cultural diversity, there is little knowledge of what is in place; there is a perception that quotas are being discussed for video on demand, but have not yet been applied.

The debate on cultural diversity has not progressed significantly. Despite being fundamental to the French defence, the term is considered self-explanatory. All parties talk about diversity as access to choice, even though the European Commission appears to be more concerned with maintaining diversity through competition and France with issues of identity and national expression. This French position is implied by its focus on subsidies to ensure France retains the means to produce films and on maintaining legislative freedom to impose policies where necessary to support the cultural industries. However, it was never rarely explicit when interviewees were asked to define cultural diversity.

The French gained EU support during the Uruguay round of GATT negotiations, but Brussels is now widely considered to be a barrier to the introduction of new policies. France needs European Commission approval for any change in policy on how film should be funded and how the subsidies can be spent – an approval based on the fact that support measures do not adversely affect competition. The French feel this focus on competition puts French television companies particularly at a commercial disadvantage by comparison with the internet giants.

The final chapter pulls together these different positions on cultural diversity with the quantitative analysis and suggests how policies could be updated in light of the market trends identified and the potential threats to diversity in the digital era.

10. Conclusion

The French élites argue that their own style of capitalism makes for more humane and meaningful human relationships. And anybody who has tasted some of the beauties of French living can't immediately say they are wrong. All we can say for certain is that this argument does not pass the market test.

David Brooks
*The American Spectator*⁴⁶⁸

First coined during the GAT/S negotiations in the early 1990s, the cultural exception is the principle that cultural industries, particularly the audiovisual sector, should be excluded from the process of ongoing trade liberalisation, ensuring France and other nations retain the right to employ policies in support of those industries. At the time, the French argued in abstract terms that cultural products were different from other traded goods because of their importance in reflecting and shaping national identity. The Americans contended that French policies were merely protectionism designed to shore up an ailing film industry. In the intervening 20 years, the French have evolved their argument, introducing the notion of cultural diversity as the goal of cultural policy and asserting that the cultural exception is necessary to achieve that objective – a position which appears to be accepted, though not fully supported, by the Americans. However, understanding of the term ‘cultural diversity’ has not developed significantly; filmmakers and policy-makers take the concept as a given implying choice and breadth of offering, but have different views on how that choice manifests itself. Consequently, debate is shrouded in confusion, limiting France’s ambition for continued defence of the cultural exception.

Three important strands were identified at the outset (see Chapter 1): establishing what motivated France’s staunch defence of its cultural industries; how the arrival of video-on-

⁴⁶⁸ David Brooks, ‘Never for GATT’, *The American Spectator*, January 1994, p. 36

demand services had altered the shape of the French market; and the extent to which French policies in the words of David Brook ‘pass the market test’ and actually promote diversity⁴⁶⁹.

Individual nations are increasingly interconnected by the spread of social, political and economic activities across political frontiers. This growing interaction, or globalisation, is driven by a rise in international trade, faster transportation and rapid technological development, particularly in the field of telecommunications. What impact this economic development has on culture and identity has long been debated because, as Hopper notes, globalisation is ‘a powerful, complex and essentially indeterminate and open-ended transformative force’ and because societies adopt technological developments and adapt to the modern world at their own pace and in different ways⁴⁷⁰. A range of theories on the cultural dynamics of globalisation have emerged, including cultural imperialism, or the deliberate attempt by one culture to shape another, hybridisation and glocalisation. To understand the relationship between economic development and culture, it is important to examine developments within a distinct context (see Chapter 2). This thesis looks specifically at how cross-cultural exchange affects the choice of cultural products available, with reference particularly to Cowen’s ‘gains from trade’ model of cultural diversity (see Chapter 7).

Chapter 2 explored why the French have expressed unease with globalisation – even to the extent that they draw a distinction between the processes of trade and economic ‘*globalisation*’ and the more invasive process of ‘*mondialisation*’ which extends into the political and social sphere. In the cultural context, France uses the term ‘*mondialisation*’, perceiving that it undermines the fundamental building blocks of French identity – its republican values, its social model with the French state at the core and its cultural heritage

⁴⁶⁹ Ibid., p. 36

⁴⁷⁰ Paul Hopper, *Understanding cultural globalization*, (Cambridge: Polity, 2007), pp. 3-9. See also Robert J. Holton, *Making Globalisation* (Basingstoke: Palgrave Macmillan, 2005)

Bender comments that there has long been debate about the validity of any attempt by France or other nations to maintain and project a national identity in a globalised world:

...pour les apôtres du marché mondial comme pour les idéologues de la résistance, toute manifestation d'une volonté nationale est exclue dans une économie totalement ouverte sur l'extérieur. Pour les premiers, en effet, cette manifestation est, au mieux, inutile; pour les seconds, elle est, purement et simplement, impossible⁴⁷¹.

Bender disagrees with both the staunch proponents and opponents of globalisation that there is nothing that can be done to reassert national identity. He comments that France – like many other European countries – may not perceive themselves to be as influential on the world stage as they were in the 19th and early part of the 20th century, but 'Rien pourtant ne les condamne à être dominés par qui que ce soit'⁴⁷². In fact, global trade is predicated on the principles of exchange and competition and both these concepts are also valid when it comes to the expression of national identity; for an exchange of ideas to continue and to ensure that new notions and forms of expression can emerge to challenge existing ones, individual nations need to retain their ability in the terms of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions to 'create, produce [and] disseminate' cultural works.

In this, the cultural exception has a fundamental role to play, in that it permits countries to establish controls and policies around the production and dissemination of cultural products, just as labour laws have restricted economic activities in other areas, e.g. by defining acceptable working conditions, limiting working hours or imposing taxes on workers that go to pay benefits to those out of work. However, where employment restrictions of this nature are

⁴⁷¹ '...for the apostles of a global market as for the visionaries of the resistance, any expression of national will is incompatible with an economy that is totally open to the outside world. For the former, that expression is – at best – futile; for the later, it is purely and simply impossible.' Bender, *La France face à la mondialisation*, p. 10

⁴⁷² 'Nothing, however, condemns them to be dominated by another, whoever that is.' *Ibid.*, p. 23

widely considered to be valid, the need for a cultural exception is still far from accepted, largely because any benefit derived from the exception has not been fully expounded. The current dissertation aspires to provide an approach to identifying and demonstrating those benefits as the media landscape evolves and to clarify arguments leading to more productive future discussions on the relationship between trade and culture.

As seen in Chapter 2, the film industry has taken on a central role in the trade and culture debate. In reflecting the structure and ideals of a nation, film can help to mould the French national outlook at home and to spread those values internationally, underpinning France's *mission civilatrice*. However, the balance of trade within the film industry is far from even, with American films becoming an increasingly dominant force. This is particularly galling for a nation that not only puts significant store by culture, but also considers itself the birthplace of cinema. In French eyes, it justifies the introduction of a complex web of quotas and subsidies to support the film industry, as discussed in Chapter 4. The US film industry has viewed French backing for cinema purely as a means to protect a weak industry and, as outlined in Chapter 5, has sought to remove quotas and subsidies from the earliest days of GATT. The debate reached a head during the Uruguay round of trade negotiations, threatening to derail the entire process; it was at this point that the term 'cultural exception' emerged, as well as talk of cultural diversity.

Françoise Benhamou has suggested that the concept of 'cultural diversity' was introduced to shift the tone of the debate from one that was essentially characterised by opposition between the US and Europe to one that incorporated a wider group of nations⁴⁷³. In interviews, Guillaume Prieur of the SACD and former diplomat Bernard Miyet, agreed with this view that 'cultural diversity' is a less confrontational and more all-embracing notion. France has become the self-appointed cheerleader for the concept in international trade talks in Lombard's view because it affords the country a position of international influence that the

⁴⁷³ Benhamou, 'Diversité culturelle', p. 8

country can no longer claim on purely political or economic grounds. Interviewees thought this a somewhat over-stated position. However, the French individuals questioned felt France's position was natural given the country's long history of cultural promotion, indicating that they have thought about the motives underpinning their stance, if not the influence it secures for them. Filmmakers also felt the French support system was among the best in the world, which is why countries like China are copying it.

There is increasing acceptance that cultural diversity should be protected. It is enshrined in the governing treaties of the EU, as well as in the UNESCO Convention, and has gained acceptance as 'a prerequisite for the human right of freedom of expression' and 'essential for the well-functioning of democracies'⁴⁷⁴. The US interviewees also felt it was an increasingly difficult concept to argue against.

The quantitative analysis in Chapter 8 revealed that the French cinema sector exhibits higher levels of diversity than many other national film markets (see Section 8.4); it is notably more balanced, particularly when compared with the US. The level of diversity in the French market is broadly being maintained in the digital era. The video-on-demand sector has slightly higher scores on the HHi than cinema, but they still compare favourably with those in the other markets studied by Moreau, Peltier, Benhamou and Lévy-Hartmann. Video on demand is also stronger in some aspects of diversity than cinema and *vice versa* (see Table 8.6). For French policy to continue to promote diversity, it needs to take account of and profit from these differences.

UNESCO advocates that artists, cultural professionals, practitioners and citizens worldwide should be able to 'create, produce, disseminate and enjoy a broad range of cultural goods, services and activities, including their own'. Analysis of variety indicates that production of

⁴⁷⁴ Christophe Germann, 'Content industries and cultural diversity: The case of motion pictures' in Hamm and Smandych (eds.), *Cultural imperialism*

French films is increasing thanks to ongoing French support for film production, while distribution subsidies mean that filmmakers are also finding ways to disseminate their work.

The advent of video on demand means that cultural professionals now have additional ways to 'disseminate' their works; these do not have the same restrictions on bandwidth as traditional cinema. Support to convert films to digital formats have been instrumental in many smaller filmmakers being able to access these new distribution channels. Consumers have also found new ways to 'enjoy a broad range of cultural goods' and there are signs that disparity is increasing as a result (see Section 8.3.6 and Table 8.5). The most successful films occupy a smaller share of downloads than of box office entrances, while French films are better represented within the top 10.

Despite France's comparatively favourable position in terms of the level of diversity achieved, the quantitative analysis indicated that there is still room for improvement. French policies have been so successful in supporting the production and distribution of ever greater numbers of films that local content now outweighs supply of all other films and balance in the cinema sector has declined as a result. The granular look at both supplied and consumed balance in cinema also revealed that the market dynamics are dictated by French and American films and that the proportion of films produced by countries other than the US is too low for the market to be considered fully diverse. Within video on demand, the fact that US films are being added to services at a faster rate is cause for concern; this is partly because of a lack of funds among French producers to carry out digital conversion despite the subsidies available and partly a lack of clarity around the *chronologie des médias*. The greatest challenge is the fact that US films now account for over half of all downloads.

To resolve these issues will need further changes to the French policy framework. However, any changes are likely to be controversial. It stems from a lack of sophistication in how the term 'cultural diversity' is understood and employed which means stakeholders talk at cross

purposes. There is also a fundamental disagreement about how digital services should be treated.

Over the past 10 years, 90 video-on-demand services have been launched in France, of which around 50 make at least some films available (see Chapter 6). Some of these are global operators, such as Apple's iTunes and Netflix, which serve the French market from a base outside of France; most are national players, with the strongest services being provided by established players including Groupe Canal+ and TF1. The new services operate on a different model from traditional media, providing a vast array of films for consumption at a time most convenient to the viewer, for a one-off fee per film or a monthly subscription. The content they deliver, however, is the same as that which is shown in cinemas, on television and sold on DVD and thus the services should be subject to the same treatment under both French and international trade law as traditional channels, the French believe.

American interviewees contend that video on demand is naturally more diverse, 'because it is a platform where you can get access to really diverse content from all over the place' and so should not be regulated in the same way, or even at all⁴⁷⁵. They favour allowing an emerging sector to develop freely, pointing to the impracticality of legislation which can only be applied to national players and not to those serving the French market from a foreign base. US interviewees were also particularly concerned about the market capping effect of quotas.

10.1. Marrying up the arguments

Tardif and Farchy have identified three areas where state intervention in cultural industries could be justified to support diversity: to increase product choice; to limit market domination by just a few players and promote competition; and to reinforce national identity. In Chapter 8, supplied and consumed diversity was assessed against three dimensions. Each approach

⁴⁷⁵ US film industry representative

provides a more nuanced view of diversity, but reviewing the various rationales for intervention alongside the dimensions of diversity allows us to further deconstruct the concept, clarifying national positions on trade and culture and helping to break the stalemate in negotiations.

The three justifications align with the diversity measures. Variety is a simple measure of the number of categories into which a market can be divided; in terms of the film industry the number of movies available. Increasing variety boosts product choice. Balance describes the nature of competition in the market, with optimum balance achieved when all groups have the same market share. Disparity relates to the degree of difference between films. The national identity justification suggests that each nation offers a distinct world view; ensuring that all countries have the means to express their identity and outlook in their own way increases the array of discrete opinions available and therefore disparity.

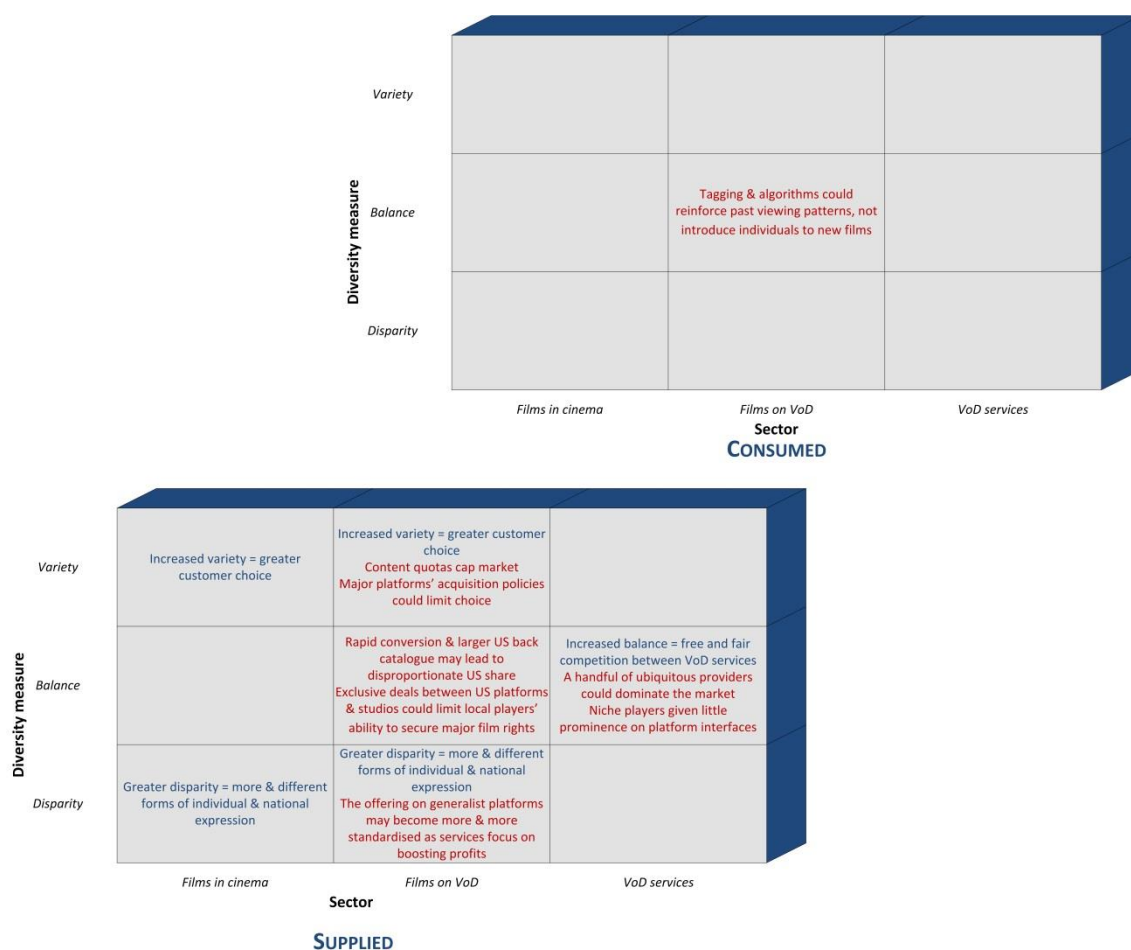
Dig down further and the alignment is no longer quite so neat, especially once the various national positions are incorporated. American support for consumer choice relates to the supplied variety of films. Arguments for intervention to balance competition relate to the number of companies operating in the market, not the number or origin of products, introducing a new aspect on which to judge diversity. When evoking potential threats to diversity in the digital era, French filmmakers focus just as heavily on the range of services as on the product offering, reinforcing the importance of this corporate aspect to the future debate. For example, they express fears that French operators such as Canalplay will be unable to compete with Netflix, forcing the former to fold, reducing the number of operators and ultimately the variety and disparity of products available.

Figure 10.1 sets out the various justifications for state intervention put forward by Tardif and Farchy (blue text) and the anticipated threats to diversity in the digital era (red text) and how they relate to the various sectors and measures for diversity.

It reveals that the focus is on the supply side, which is the part of the market that stakeholders are in the best position to influence through the production of more films, the launch of new video-on-demand services, or the introduction of cultural policies. In an analogue environment, content quotas could shape consumption, but the same is not true of the digital setting where a limited connection between supply and consumption restricts the impact that quotas can have on the films that are watched (see Section 7.1.1). This further strengthens the need to focus on the supply side.

It also indicates that arguments in favour of intervention focus on just one aspect of the market when threats may exist more widely. Competition law may be invoked to prevent excessive consolidation and prevent Google, Apple and Netflix dominating the market as the French fear they will. However, balance could be affected even if that situation were prevented. The US has consistently produced around 500 films a year, compared with 200 in France. US studios may deem it uneconomic to release those films in cinemas internationally that were not major successes in their home box office. However, digital distribution is cheaper, potentially rendering a wider release more viable. If the US were to adopt this tactic across its sizeable back catalogue then the proportion of US films available could quickly outstrip those from other countries including France, unbalancing product supply. Quotas could be applied to correct the problem, but would face US opposition because of their impact on consumer choice and variety (see Section 9.3.4).

Figure 10.1: Deconstructing diversity arguments



This highlights the need for a more nuanced view of cultural diversity in international discussions to understand the true impact of policies. If the French judge regulatory effectiveness on the basis of reduced US dominance and increased balance, they will have a different view of policy success than Americans examining a measure’s impact on variety.

However, interviewees displayed very little appreciation of the various possible ways to look at the concept, implying that it is purely about optimising supplied variety to ensure access to ‘le spectre le plus large possible’⁴⁷⁶. Consequently, the two sides speak at cross purposes – something that is likely to be exacerbated in future as digital developments result in an increasingly complex audiovisual landscape. When asked about the effectiveness of French film policy and the country’s desire to extend support to the video-on-demand sector, US

⁴⁷⁶ ‘...the broadest possible spectrum’; Sophie Lequerré, former Chargée de mission V&D, CNC

interviewees were unsure of French objectives, which led them to express doubts that they were designed to support cultural diversity.

10.2. Policy recommendations

The French may be well advised to adopt a more granular view of diversity not only to clarify positions in international negotiations, but also to establish new policies that may be better aligned to the needs of digital channels. Former French culture minister, Aurélie Filippetti has acknowledged that:

La révolution numérique est une révolution des usages, mais aussi une révolution du modèle économique sur lequel repose notre système audiovisuel. Donc il faut repenser le modèle, le faire évoluer⁴⁷⁷.

But there is little sign of this rethink. The focus is firmly on how to fund the current system by expanding the pool of contributors, rather than on whether funding is being spent effectively. In part, this is due to the dominant role in debates of traditional actors in the sector, namely filmmakers and television companies, which have significant vested interests to protect; in part, it stems from the immaturity of the digital arena. The core of current French film policy was introduced in the 1950s and needed to be amended throughout the remainder of the century to ensure it effectively supported the needs of the analogue market. Video on demand is only just entering its second decade. It has brought rapid and wide-reaching change, and, as a result, represents a far greater evolution than any previously experienced in the audiovisual sector. It is perhaps not surprising that the approach to policy would struggle to keep pace.

⁴⁷⁷ 'The digital revolution is a revolution in the way content is used, but also a revolution of the economic model on which our audiovisual system is based. As a result, it is necessary to rethink and evolve the model.' Speech by Aurélie Filippetti at the Assises de l'Audiovisuel cited in Margaux Duquesne, 'Assises de l'Audiovisuel: en pleine révolution numérique comment repenser le modèle économique', *L'Informaticien*, 5 June 2013

Finally, as mentioned, the French system has been highly effective up until now and there is a sense that while it is not broken, there is no need to fix it.

Consequently, to date, French policy-makers have done little more than tinker with the existing structure (see Chapter 6). Even the outcome of the *Exception Culturel – Acte II* review conducted by Pierre Lescure came up with ‘pas de choses fondamentalement révolutionnaires’⁴⁷⁸. The headline proposals were a levy on the sale of smartphones and tablets, considered a way to tax organisations such as Apple and Amazon in the absence of a direct contribution to the *compte de soutien*, and some changes to the *chronologie des médias*.

If France is to continue to defend the cultural exception on the grounds of diversity, an alternative approach may be advisable. This would look first at which policies are needed to drive diversity in the digital era and where new threats are emerging to upset the balance. Then the country could decide what funding is required to support those policies and finally the source of the money to finance those initiatives.

Examining French policies with the help of the diversity framework reveals an ongoing justification for production subsidies. This would be relatively uncontroversial, as the US negotiator felt that countries should be ‘free to promote their own production’. Investment via both the *soutien automatique* and the *aide sélective* in *films d’initiatives français* increased from around €50 million⁴⁷⁹ in 1996 to over €350 million in 2014 (see Figure 4.1). During the same period, there was a more than 150% increase in films classified as 100 per cent French (see Section 8.3.1). While some of the growth in expenditure can be put down to economic inflation, the rate of increase is far higher, suggesting subsidies are more readily available and this has resulted in more films being made. If the goal is to maximise the number of products

⁴⁷⁸ ‘...nothing revolutionary’. Comment by Pierre Lescure on the eve of publication of the commission report cited in Stéphane C. Jonathan, ‘Mission Lescure’, *Sud Ouest*, 13 May 2013

⁴⁷⁹ CNC, *Bilan 2000*, May 2001, p. 11

available, then funding the production of films for release in cinema increases supplied variety within the sector. As seen in Section 8.3.3, production subsidies have been used to support a wide array of films from low-budget movies to the works of established directors such as Luc Besson; this has ensured that different styles of films are made and by a range of production companies and film directors. Consequently, the presence of subsidies has served as a boost to disparity.

Production subsidies aimed at increasing the number of films available in cinemas also have a knock-on effect on supplied diversity in the video-on-demand sector; the latter benefits from greater numbers and a broader range of products available for digital conversion, with the result that supplied balance is improving (see Figure 8.6).

Production subsidies also ensure that there is a sufficient supply of French films to counter US market dominance though – as seen in the analysis of supplied balance – if production is increased too significantly balance can suffer (see Figure 8.3). In fact, French support for its film industry may need to be scaled back slightly. Supply in cinema has become less balanced since 2009, while US films appear to be doing more to drive consumed variety than those from other nations, including France (see Section 8.3.1). At 0.348, the HHi was at its lowest in 2008, indicating that supply was more balanced than at any other point during the period. That year, the French film industry produced 240 films, and the US 155, while an additional 160 came from all other nations. Stabilising production at the 2008 level would result in a reduction of over 90 French films a year compared with 2014.

There is also an indication that the proportion of aid allocated to automatic and discretionary subsidies should be adjusted. The evaluation of consumed disparity within French cinema reveals a small cohort of directors are responsible for almost 40 per cent of the most popular films made (see Section 8.3.3). They are predominantly Hollywood film directors. However, French filmmakers Dany Boon, Laurent Tirard and Luc Besson were each involved in at least

two films that made the top 10 list in cinemas between 2007-2014. The latter is also behind the *Taken* and *Transporteur* series, which garnered Olivier Megaton two directing credits among the list of major films in the video-on-demand sector (see Section 8.3.6). Once an individual has made a successful film, securing funding from private sources including television broadcasters, banks and production companies becomes easier; they have a proven track record, making them less of a risk. The process is easier still after an individual has had two or three successful films, as is the case with the individuals mentioned here. At this point, they have less need of the ongoing support offered by the *aide automatique*.

Meanwhile, the analysis of supplied disparity revealed that almost one-quarter of the 1,595 French films released between 2007-2014 had production budgets of less than €1 million. Under the CNC's *avance sur recettes* programme, films with a budget of less than €1.25 million can claim support for 60 per cent of production costs, with the result that they have to find additional funding of €500,000 at most. This means that it is relatively easy to get small-budget films, even those made by new directors, off the ground.

Emerging directors, on the other hand, struggle to secure the funding that they need for films dubbed '*du milieu*' – that is mid-tier films. According to Le Club des 13, a group of 13 independent film directors, it is hardest to find funding for films costing between €3-8 million because they require greater resources than are available to an independent producer via their *aide automatique* account and any discretionary support fund. However, they cannot afford to recruit the big name actors and directors that would make them attractive to television companies and other film industry backers⁴⁸⁰.

The French should consider a cap on funding, such that once a director has had multiple successes, they no longer qualify for automatic support. Success could be defined as more than one film within a limited period appearing in the top 10 list, securing over 1 million

⁴⁸⁰ Le Club des 13, *Le milieu n'est plus un pont mais une faille*, December 2007

entrances at the box office, or generating a particular amount of revenue. At the same time, they should review whether to fund quite as many low-budget films. The money saved by both these actions could be reallocated to support production of mid-tier films, which would enhance supplied disparity by giving voice to a broader pool of directors and may also have an impact on balance. Funding fewer small films would address the oversupply of French films discussed above; it may also support the production of more films able to challenge Hollywood at the French box office.

The analysis of consumed balance revealed that France produces a small number of phenomenally successful films coupled with masses of very small films; when the former are absent, France's market share and balance drop, as it did in 2013 (see Section 8.2.3). Alain Sussfeld, Directeur général of UGC cinemas has suggested that the ideal film for the French market costs €4-10 million and generates between 800,000 and 1 million box office entrances⁴⁸¹. Such a film would comfortably make the list of the top 50 most commercially successful films. Each year between 2011-2014, around 20 French films generated more than 1 million entrances, compared with around 25-30 for the US⁴⁸². The French number dropped to 17 in 2013; 34 Hollywood films achieved the threshold that year. Consumed balance has been at its strongest when, as in 2012, the number of French films achieving the 1 million entrances target was 22, indicating that a focus on boosting a mid-tier reflecting Sussfeld's criteria could maintain balance in cinemas and probably also in the video-on-demand sector as they would have generated sufficient public attention for consumers to know to seek them out on digital channels.

The quotas introduced as part of the Audiovisual Media Services Directive (see Section 6.2.1) should be abandoned. As seen in Chapter 6, they have proved complex to implement. Quotas are increasingly considered to be ineffective in boosting consumption in a market where

⁴⁸¹ Speaking at the Rencontres Cinématographiques de Dijon, *A-t-on le droit de parler de transparence et de rentabilité dans le cinéma?*

⁴⁸² CNC, *Bilan 2014*, p. 12

individuals are free to choose what to watch from a library of content (see Section 7.1.1). The interviewees made it clear that they are likely to be the subject of ongoing controversy in international negotiations; the Americans do not view quotas as an effective support for diversity, so focus on their removal. This serves only to cloud debate on how other policies promote diversity.

The Directive also includes a stipulation for all video-on-demand services to give prominence to European and national works, giving them a special position on the home page of the service or highlighting them in the electronic programme guide. The wealth of content now available means that ensuring consumers are introduced to a range of different works, not just those films in the top 10, has become a priority, as seen in Section 7.1.3. However, the discretionary support for video on demand introduced in 2007 is focused on conversion of films to a digital format or creating bonus material aimed at educating individuals about particular directors or genres and introducing them to other similar works. This improves access to European works, while the tagging and algorithms used by the major services such as Netflix and Canalplay go some way to making niche content more prominent, but both are considered inadequate solutions to the challenge of introducing consumers to a broad array of different films. It is necessary, therefore, to identify additional ways to boost discoverability.

One suggestion that has been mooted within the French film industry is the creation of a ‘public service’ video-on-demand offering which would have a duty to carry a range and variety of films and ensure access to those works that commercial video-on-demand services would be less likely to promote⁴⁸³. This proposal would sit well with Europe’s heritage of maintaining diversity of output and freedom of expression through public service broadcasting. Christine Blandin, a member of the French Sénat, believes that France has a responsibility to create such a service and fund it through taxation. She added that everyone

⁴⁸³ Comments by François Adibi, President of Altaïr during Culture Acte II, *Audition d’Altaïr*, and Culture Acte II, *Audition de Marie-Christine Blandin*, 21 December 2012

pays for schools even if they do not have children and pays the television licence fee even if they predominantly watch commercial channels. Being seen to act in the general interest rather than focusing on the cultural exception for its own sake may also help the French case in Europe, she believed. Securing funding may not be quite that straightforward, especially as a universal television licence fee is under fire in an age when consumers watch increasing amounts of content online and less through traditional channels⁴⁸⁴. If an effective funding model could be established, then a public-service offering could help to give greater profile to niche films and increase disparity.

However, a public service offering could also be quickly consigned to obscurity if it becomes just one of many niche services; finding a way to build the profile of smaller services catering for particular interests is just as important as ensuring prominence for content within those and other services. With around 50 different video-on-demand services making films available in France, the market is very well served, such that some providers are unknown by consumers and struggling to gain commercial success. As seen in Chapter 7, niche providers have claimed that the ADSL platforms do not promote them sufficiently. This is a question for the industry to explore as part of efforts to improve discoverability in the video-on-demand market, as suggested above.

There is also an argument that the market is too crowded. Research indicates viewers watch only a fraction of the television channels available to them – on average 11 out of a total of 48, or 13 when 200 channels are on offer⁴⁸⁵. There is likely to be a similar dynamic in the video-on-demand market, especially as so many films are available on multiple services, resulting in little differentiation between services. State intervention is required when a market becomes too heavily concentrated, but this is currently far from the case in the French video-on-demand market. Efforts to support the launch of ever more new services appear to be creating an over-

⁴⁸⁴ See Section 9.4 and also David Sillito, 'BBC cutting 1,000 jobs to save £50m', *BBC News*, 2 July 2015

⁴⁸⁵ Hesmondhalgh, *The Cultural Industries*, p. 226.

supply and a daunting level of consumer choice. Allowing the market to consolidate naturally may give rise to a few French players with the resources to compete with international services such as iTunes.

Florence Gastaud, Déléguée générale of l'ARP has suggested that Europe should be investigating how to create a powerful local player that could compete internationally⁴⁸⁶. Interviewees believed that Canal+ is currently in a position to compete with new market entrants such as Netflix (see Section 9.4.1), though the channel's Directeur général felt that advantage could be short lived because, relative to other media organisations outside of France, Canal+ is quite small and is working within a tight regulatory framework. Gastaud has also commented that Orange could have been a prime candidate to become a pan-European provider of video-on-demand services given its telecommunications background, but this has become increasingly less likely since the launch of its range of dedicated cinema channels; in common with Canal+, it now has significant film funding commitments that limit its ability to invest in the technological development needed to create a competitive video-on-demand service.

The major services emerging from a period of market consolidation could be subject to a 'must carry' rule that ensures that niche libraries are incorporated into their general offering to maintain current levels of supplied variety and disparity of content. Market consolidation would reduce the overwhelming array of services and the need to find ways to give prominence to individual services, but increases the need to find solutions to raise the profile of individual works within each platform. It could be argued that consumers are more likely to view niche films forming part of a general service than if they are only available from a niche provider; they are unlikely to seek out and pay for additional smaller services if the general offering fulfils the majority of their viewing needs. The creation of the proposed 'public

⁴⁸⁶ Rencontres Cinématographiques de Dijon, *Quelle place pour les plateformes V&D dans l'écosystème du cinéma européen?*

service' channel alongside any consolidation would ensure continued access to the content currently provided by some of the low-profile niche providers, where that were not picked up by the major commercial players.

France should review rules on content licensing. Limiting the ability of local players to secure exclusive deals has suppressed consumer prices, but also resulted in little differentiation or disparity between services. Over two-thirds of the films that have been made available on demand are listed on more than one service; one-third are available through four or more different providers⁴⁸⁷. Market consolidation may help, reducing the number of players and, therefore, listings for films. However, as we saw in Chapter 9, major French service providers have been calling for the right to show some films exclusively to enhance their competitive position relative to the major international players that already employ this tactic. While more flexible rules would give French services a competitive edge and boost retail prices (and with it investment in the *compte de soutien*), this process should not be left entirely unchecked. The aggressive pursuit of exclusive deals could reduce the variety of films available, with the major services only offering US blockbusters, as former trade negotiator Bernard Miyet commented (see Section 9.4.1).

Making films available as soon as possible after their cinema release is perhaps the most fundamental way to encourage development of the video-on-demand sector. As noted, the CNC already funds efforts to convert films for digital distribution where they are supported with bonus material to put them into context. But the availability of French films still lags behind that of American films (see Section 6.3) and needs to be addressed urgently to maintain both supplied variety and balance; the US has a greater back catalogue and is making films available at a far quicker rate, with the result that the volume of US content available could quickly come to outweigh the number of French films, threatening balance. This initiative would need to include the conversion of back catalogue films, posing issues about the

⁴⁸⁷ CNC, *Le marché de la vidéo en 2014*

treatment of orphan works, that is historic films for which it has been impossible to identify a legal owner to give permission for the conversion. Lescure has proposed making subsidies contingent on prompt digital conversion, such that support would be withdrawn from any director not making their work available on demand⁴⁸⁸. This is something that would be worth the industry exploring in more detail.

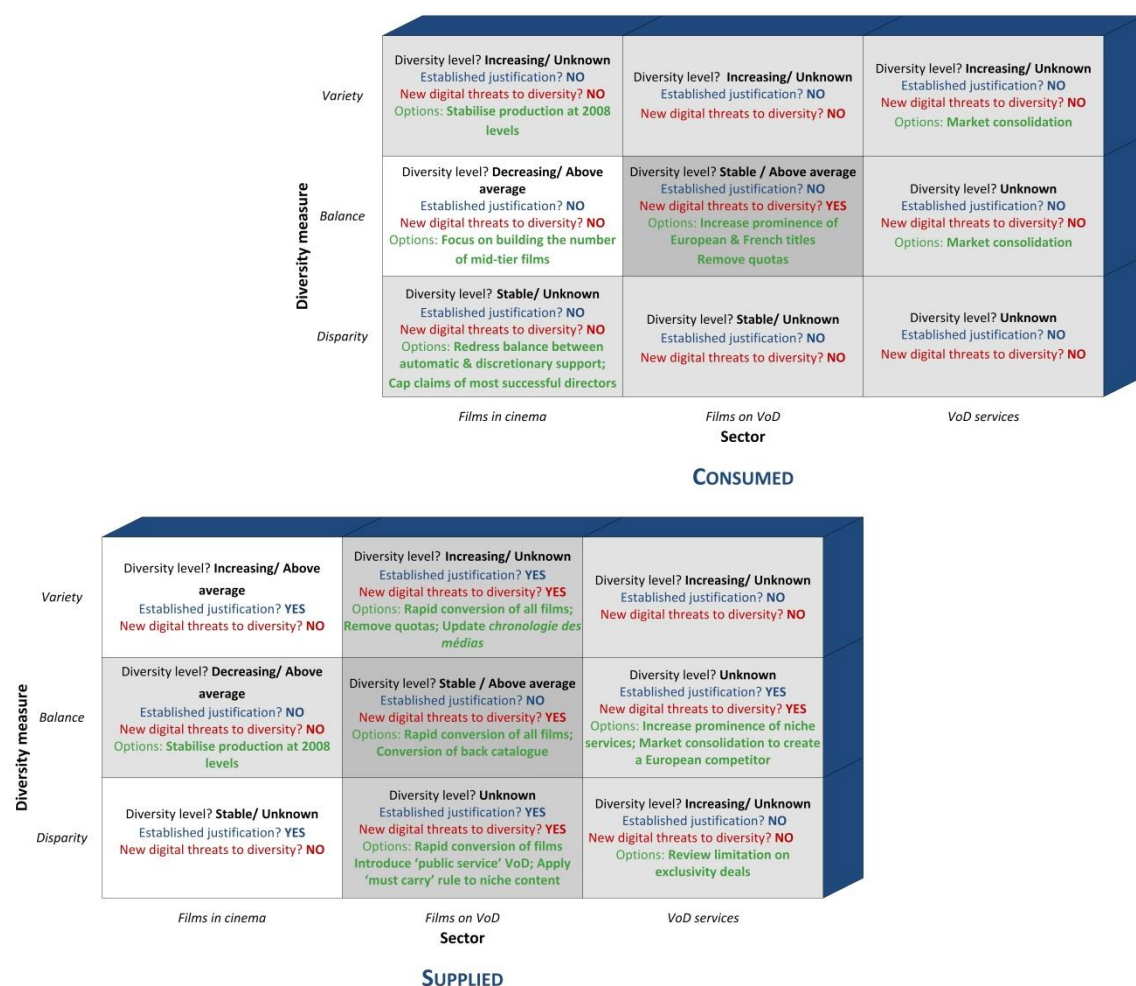
The current practice of withdrawing films from the online rental market after four months when the same does not happen with physical disc rental is confusing to consumers and damaging to the sector. Unable to find the film they want, consumers are being forced to seek it out on an international service at best, but often illegally. The industry should abandon the practice. This may require clarification of the *chronologie des médias*. However, as any amendment is subject to inter-professional agreement achieving consensus will almost certainly be a slow process.

Thus, France has numerous policy options to further enhance diversity in the video-on-demand sector. But which of these should it pursue? Figure 10.2 builds on the previous diagram showing the threats to diversity and where state intervention is justified. It features an assessment of diversity and lists where implementation of the proposals outlined above could help to improve on the current performance. The evaluation of diversity is based on the analysis in Chapter 8; and indicates whether the level of diversity in France is improving or declining and how the assessment for the French market compares with other countries, where that information is available from the work conducted by Moreau, Peltier *et al.* (as discussed in Section 8.4). While increased supply was linked to growth in consumed variety, there were indications that US films were doing more to drive consumption than French ones. Diversity was not assessed in terms of the services available, but an estimation has been included based on the information in Chapter 6 on the video-on-demand market. For example, around one-quarter of those questioned by Harris Interactive reported using La VoD d'Orange

⁴⁸⁸ Ministère de la Culture et de la Communication, *Remise du rapport de Pierre Lescure*, p. 8

and MyTF1Vod, while at least 10 per cent reported using the services ranked three to nine. This suggests that the market share occupied by each of the top players is likely to be quite even and competition relatively balanced. The shading indicates where action to augment current policy is required as a priority. The dark grey boxes in the centre demand the most urgent action; the white boxes are of the least importance. Priorities were determined based on the assessment of diversity in Chapter 8 and the identification in Chapter 7 of any new trends that threaten to reduce the level of diversity that have emerged with the introduction of digital technologies.

Figure 10.2: French policy options to promote cultural diversity



France should address balance in the video-on-demand sector as a priority, as American films are threatening to dominate. US films regularly capture 56-58 per cent of downloads, with the result that balance is less than optimal. If Hollywood makes a significant proportion of its back

catalogue available online, then the balance could slip still further. To counter this, as mentioned above, France needs to ensure the rapid conversion of all films to digital – current and back catalogue works – and focus on ways to bring them to prominence within video-on-demand libraries. Policy-makers and trade negotiators will need to find ways to defend intervention, as current justifications supporting balance focus on fair competition between market operators rather than products of different geographic origin. More timely conversion also supports variety and disparity in video on demand – among the second tier of priorities. However, justification for state intervention is more established in both areas, which may allow France to defend policies to ensure the quick release of films through video on demand, confident in the knowledge that it also supports balance, even if the arguments in favour of such intervention are less well rehearsed.

10.3. A policy approach for the digital era

Whichever policy approach France decides to take, be it one that has been suggested here or one of its own creation, a degree of experimentation will be important. The current system has taken close to 60 years to evolve to its present state and it is unlikely that any new initiatives will be 100 per cent effective from the outset, not least because video on demand is still in its infancy. There are currently two major business models within the video-on-demand sector – subscription and pay as you go. The former has yet to take off, there are suggestions that free distribution of content supported by advertising will become the dominant model in the future (see Section 6.1.1), while a ‘public service’ offering is also mooted. While these models are in flux, creating an effective and enduring regulatory framework will be challenging, if not impossible. This is unlikely to be a scenario that sits comfortably with policy-makers used to developing regulations for the long term.

Moreover, the various diversity measures are closely connected, such that increasing diversity in one aspect may diminish it in another. Balance in French cinemas has declined as a result of increased variety (see Section 8.3.2). Optimising each of these measures will be an ongoing juggling act, reinforcing the need for an experimental approach.

Being seen to experiment more may also support France's case for defence of the cultural exception, which French interviews clearly saw as about retaining the flexibility to legislate as appropriate. The Americans interviewed perceived that the French were trying to preserve the current system in aspic in spite of the digital revolution. Exploring a wide range of options rather than appearing simply to replicate online the approach taken in traditional channels would be a sign that the French are truly taking advantage of the regulatory flexibility they seek through the cultural exception. The US negotiator would support efforts to identify ways 'to encourage consumers to expand their tastes and look at new kinds of films'.

He added that the question warranted discussion among a broader set of stakeholders, though this was not currently possible because the cultural industries had been excluded from the European Commission's negotiating mandate. It appeared to be a genuine desire motivated by acceptance of French concerns and one shared by the European Commission official. However, such a discussion is unlikely because there is little belief in France that the US suggestion is genuine; they see it as little more than a surreptitious way to bring down the entire system. While filmmakers remain the dominant voice within the French lobby, then discussions of this nature are unlikely to get off the ground.

Despite French fears, there is a need to progress beyond the current insular positions. The digital revolution throws up numerous new challenges, many that cannot be solved by nations working in isolation. At the top of this list is taxation. VAT rates are far from harmonised within Europe and it has taken changes at the Community level to restrict multinational corporations' ability to exploit this variation to their advantage. The French film industry regards this change

positively, paving the way for it to broaden the catchment of its film funding policies. It can undoubtedly be used as a basis from which to build. However, the French will need the support of their European neighbours to expand funding obligations. It took action by a broad group of world leaders to address loopholes allowing major corporations to offshore profits and avoid tax as coffee chain Starbucks, among others, has done⁴⁸⁹. There is little reason to believe that the internet giants will not employ similar tactics to minimise French and European revenues even if an expansion of film funding policies were approved by the European Commission, suggesting that France will need to secure international backing for its actions, even if it does not need their approval.

The format of any film funding extension is also not obvious. Lescure has suggested that ‘les acteurs vertueux’ that commit to supporting the film industry should receive some benefit for doing so, in terms of additional access to funding or advanced rights to show films on television and on-demand channels⁴⁹⁰. The current level of funding available to video-on-demand services is unlikely to act as an incentive to the internet giants to take on film financing commitments when compared with the tax liabilities incurred. Gaining early and even exclusive rights to French films also has little allure set against potential exclusive deals for global blockbusters such as *The Hunger Games* series or *Jurassic World*. But failure to incorporate all players in the market puts local companies at a competitive disadvantage, which they are currently prepared to accept but may not do for long if the advantages of *vertueux* behaviour do not increase. This is where allowing exclusivity and market consolidation to create fewer, stronger service providers may come in.

⁴⁸⁹ BBC News, ‘Starbucks pays UK corporation tax for first time since 2009’, 23 June 2013

⁴⁹⁰ ‘virtuous players’

10.4. Conclusion

Speaking in 2012, former French culture minister Aurélie Filippetti suggested that the battle to defend the cultural exception would not be over until the same protection was afforded to digital media as to traditional channels (see Section 9.3). At the moment, the second phase of the campaign looks as if it will be equally as protracted as the first.

The US individuals interviewed for this project showed an understanding of why countries would want to promote their own culture and that subsidies may be employed to support local production as part of this process. There is also a growing appreciation that cultural diversity is a valid justification for intervention in the cultural channels. However, they felt policies should be restricted to traditional channels and not expanded to a digital market perceived as inherently diverse.

The quantitative analysis demonstrates that the French market exhibits higher levels of diversity than many other national markets in cinemas and online, providing France with empirical support for its defence of the cultural exception and for ongoing market intervention. However, there is a significant battle ahead before this evidence is accepted by the Americans, or even France's European neighbours. That is because no party in the debate has a holistic view of cultural diversity, or even a sophisticated enough appreciation of the concept to realise that a more nuanced discussion of the issues is needed to achieve a breakthrough in trade negotiations. France also needs to be more disciplined in its rhetoric, consistently referring to the cultural exception as a tool to support diversity and relying on the empirical evidence at its disposal to demonstrate the effectiveness of its policies.

The current dissertation contributes to a more detailed and rounded view of cultural diversity and of national negotiating positions. Proponents of the mixed methods approach to research have suggested that traditional investigative strategies provide an incomplete view of any issue (see Chapter 3). They maintain that looking at a topic from one perspective constrains

our understanding of it, but using a combination of qualitative and quantitative data provides new angles on the issue, producing deeper insight.

This has certainly been the case here. Combining the quantitative assessment of cultural diversity with the arguments put forward by Tardif and Farchy allowed for the creation of a framework through which to evaluate the opinions advanced in the interviews and recorded material. It has revealed that stakeholders view the concept of 'cultural diversity' in quite simplistic terms, despite its polysemic nature, and assume that their understanding of the term is the same as that of other stakeholders. This has allowed trade negotiations to become bogged down in misunderstanding that, because of the strength of feeling on both sides, can quickly escalate into a major disagreement as it did in 1993, resulting in a legacy of mistrust and confusion on both sides of the debate.

The framework provides a way to assess current policies and identify new areas for intervention, as outlined in Section 10.2. French filmmakers have expressed numerous fears that their funding system is under threat, but have provided little more than anecdotal evidence of the dangers. When invited to put forward proposals to update France's cultural policy, as they were during the Lescure review, stakeholders naturally made suggestions that would address any negative effects of the system that they were experiencing, rather than assessing whether the recommended action would support diversity. The approach adopted for this research project provides a framework by which to measure both aspects, determining what is a real threat to diversity and identifying priorities for state intervention that can then be justified more widely.

The analysis also stands out for its scope and scale. Where Benhamou *et al.* have applied the quantitative assessment in the past, it has been to assess diversity in cinemas over just a few years, albeit across multiple countries. This is the first time that a significant longitudinal analysis of a national market has been conducted and that the video-on-demand sector has

been reviewed. Both the cinema and video-on-demand markets continue to evolve. The TTIP negotiations are ongoing and are unlikely to be the last round of trade negotiations where the treatment of culture is an issue. Consequently, continuing to track and assess the market in this way will be important to understand how market developments affect diversity and the impact of cultural policies.

Assessment should be expanded, however, to incorporate an analysis of video-on-demand service providers, not just products. The competition argument for state intervention is aimed at limiting excessive consolidation in a market; this is a view that holds significant weight in the European Commission. The data currently published by the CNC allows us to make an instinctive assessment of the state of competition between video-on-demand services, but not to evaluate it fully. The nature of competition, particularly between the major television broadcasters and international operators such as Google, Apple and Netflix, is a subject of concern in France, especially if the latter are able to dominate provision with a standardised global offering. Monitoring the number of services and the competitive dynamic is, therefore, important for ongoing understanding of diversity.

Finally, the availability of detailed international comparisons would help to strengthen France's argument that its policies promote cultural diversity and that the cultural exception should be retained. A similar longitudinal analysis should be conducted on a range of national markets, ideally those like Spain where film policies have slowly been eroded, or markets like China, Tunisia and Senegal which have adopted the French approach to cultural protection (see Section 9.3.1). The research would be looking to establish whether diversity diminished as policies were revoked, or increased with the introduction of a dedicated legislative framework, demonstrating that the level of diversity is a result of policy initiatives and not a quirk of the market in that country and by implication in France.

The current analysis has deconstructed arguments sufficiently to allow national positions to be assessed and examine where and why misunderstanding arises in the debate on trade and culture. Detailed and ongoing assessment of the kind proposed here would help to further break down the arguments and identify those assertions based on meaningful evidence rather than cherished beliefs.

Appendices

A. France's film support mechanisms

A.I. Quotas

A.I.i. Content quotas

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>General quotas</i>	<i>Quotas by nationality</i>	<i>Additional restrictions</i>
Cinemas	28 May 1946 Modified 16 September 1948	Blum-Byrnes Agreement Caffery-Schuman Agreement	N/A	Four weeks in every quarter should be reserved exclusively for French films. This was increased to five weeks in 1948. These quotas remain in place, but in practice are not actively enforced.	Operators of multiplexes have committed to take no more than two prints of a film or schedule films such that any one title would represent more than 30 per cent of the programme in a week.
Free-to-air broadcasters ⁴⁹¹	First introduced in 1972. Responsibility for setting the quotas was transferred to the CNC in	La loi du 17 janvier 1990 (90-66) La loi du 29 juillet 1982 (82-652) Le décret du 28	192 mainstream feature-length films (that is films with a duration of at least one hour) may be shown per channel per year, of which no more than 144 should air between 20:30-22:00 on permitted days 52 additional arthouse films (<i>films d'art et essai</i>) may be shown per	Some 60 per cent of all feature-length films shown must be of European origin. Within this, two-thirds – or 40 per cent of total output – should be French. In 2001, the regulations were updated such that they would explicitly apply to the prime time	Films cannot be shown in advance of the delays set out in the <i>chronologie des médias</i> or according to the terms of any rights acquisition deal between the channel and filmmakers, usually at least 22 months. No films to be shown on

⁴⁹¹ Free-to-air broadcasters covers the traditional channels – TF1, France 2, France 3, France 4, France 5 (La Cinquième), M6, Arte – as well as more recent additions, including Direct 8, Direct Star, Gulli, NRJ12, TMC, W9 and BFM TV.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>General quotas</i>	<i>Quotas by nationality</i>	<i>Additional restrictions</i>
	1982 Current rules date from 17 January 1990 Modified 28 November 2008	décembre 2001 (2001-1330 & 1333), le décret du 28 novembre 2008 (2008-1242) and le décret du 9 mai 2012 (2012-757)	year outside the peak hours of 20:30-22:30	hours of 20:30-22:30 to prevent broadcasters 'burying' French content at less popular times of the day.	Wednesday or Friday evening except arthouse films after 22:30. No films to be shown on Saturday or Sunday evening before 20:30. In 2008, the broadcast hours were extended, allowing films to be show on Saturdays after 22:30 and on Sundays before 03:00 in return for increased funding commitments. In 2012, following consultation with filmmakers, the rules on showing films on a Wednesday evening were relaxed, allowing general channels with a less than 5 per cent audience share to show films between 20:00-22:00. This was principally to allow France 4 to broadcast films in this timeslot.
Canal+	1996	La loi du 17 janvier 1990 (90-66) Le décret du 9 mai 2012	No more than 500 mainstream feature-length films (that is films with a duration of at least one hour) may be shown on each channel within the group per year.	Some 60 per cent of all feature-length films shown in a year should be of European origin. Within this, two-thirds – or 40 per cent of total output – should be	Canal+ was originally banned from showing any films on: <ul style="list-style-type: none"> • Wednesdays between 13:00-21:00; • Saturdays between 18:00-

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>General quotas</i>	<i>Quotas by nationality</i>	<i>Additional restrictions</i>
		(2012-757)		<p>French.</p> <p>For cinema channels classified as “services de premières diffusions” there is a slightly more flexible regime, but under no circumstances can the proportion slip below 50 per cent. There is a strict lower limit on French films of 35 per cent. Canal+ is classified as a “service de premières exclusivités”, but its charter specifically mentions that its quota commitments are judged by the more flexible rules applied to “services de premières diffusions”.</p> <p>Canal+’s charter explicitly mentions that the rules also apply to the prime time hours of 18:00-02:00. This was added following changes to regulations in 2001 to prevent broadcasters ‘burying’ French content at less popular times of the day.</p>	<p>23:00; and</p> <ul style="list-style-type: none"> •Sundays between 13:00-18:00. <p>The restriction on Wednesday showings has now been lifted to bring it into line with the other cinema channels as set out below, while the restrictions on Saturdays were relaxed in 2012 following consultation with filmmakers to allow channels to show films that had achieved limited success in their first year following cinema release or that are over 10 years of age.</p> <p>Films cannot be shown in advance of the delays set out in the <i>chronologie des médias</i> or according to the terms of any rights acquisition deal between Canal+ and filmmakers.</p> <p>Each film cannot be shown more than seven times within a three-week period and 35 times over three months.</p>
Specialist cinema	Introduced as part of their broadcast	La loi du 17 janvier 1990	Cinema channels dedicate at least 75 per cent of air time to showing films. They are allowed to	Some 60 per cent of all feature-length films shown in a year should be of European origin.	Channels have restrictions on when films may be broadcast. These are dependent on the type

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>General quotas</i>	<i>Quotas by nationality</i>	<i>Additional restrictions</i>
channels ⁴⁹²	licence as the services launched	(90-66) Le décret du 28 décembre 2001 (2001-1330 & 1333), le décret du 4 février 2002 (2002-140), le décret du 2 juillet 2010 (2010-747) and le décret du 9 mai 2012 (2012-757)	broadcast up to 500 mainstream feature-length films (that is films with a duration of at least one hour) per channel in the group per year. Cinema channels are then classified based on the number of new films shown annually, as follows: <ul style="list-style-type: none"> • “premières exclusivités” – those channels that show 75 or more films within 36 months of their cinema release. Of these, at least 10 should be French works for which they have acquired the broadcast rights prior to the end of production; • “premières diffusions” – those channels taking exclusive rights to the television premiere of at least one film or have the second window of exclusivity on 	Within this, two-thirds – or 40 per cent of total output – should be French. This can be calculated on the basis of the total duration of films shown, or on the number of films. For cinema channels classified as “services de premières diffusions” there is a slightly more flexible regime, but under no circumstances can the proportion slip below 50 per cent. There is a strict lower limit on French films of 35 per cent. The regulations extend to prime time hours, defined as 18:00-02:00 to prevent broadcasters ‘burying’ French content at less popular times of the day.	of service offered, as follows: <ul style="list-style-type: none"> • “premières exclusivités” channels have a restriction on showing those films on Saturdays between 18:00-23:00 that reached a certain level of box office sales in their first year. The level is determined by the Ministre de la culture. They are also banned from showing any films on Sundays between 13:00-18:00; • “premières diffusions” channels have a restriction on showing films on Saturdays between 18:00-23:00 that were released in the previous 10 years and achieved more than 1.5 million cinema entrances. They are also banned from showing any films on Sundays between

⁴⁹² The specialist cinema channels include: the Ciné group of channels (Ciné Comédie, Ciné Famille, Ciné Passion, Ciné Polar and Cinéastes), Ciné+ group (formerly CinéCinéma comprising Ciné+Classic, Ciné+Club, Ciné+Emotion, Ciné+Famiz, Ciné+Frisson and Ciné+Premier) and the Orange group of channels (Orange Ciné Happy, Orange Ciné Max, Orange Ciné Novo, Orange Ciné Choc and Orange Ciné Géant).

Prime-time quotas do not apply to those television channels that are distributed by providers that do not use frequencies allocated by the Conseil supérieur de l’audiovisuel. However, these channels accounted for less than 1.5 per cent of viewing figures.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>General quotas</i>	<i>Quotas by nationality</i>	<i>Additional restrictions</i>
			<p>more than 10 films of less than 36 months old;</p> <ul style="list-style-type: none"> • “patrimoine cinématographique” – those channels showing classic movies that are at least 30 years old; and • other – those channels showing at least 52 films a year, but not necessarily new films. <p>Any change to the channel classification, e.g. from “other” to one of “premières diffusions” is set out in the channel’s charter, esp. if it is looking to increase the number of films shown on an exclusive basis because this has associated funding commitments.</p>		<p>13:00-18:00;</p> <ul style="list-style-type: none"> • “patrimoine cinématographique” channels are banned from showing any films on Saturdays between 18:00-23:00 and any films in colour on Sundays between 13:00-18:00; • all other cinema channels are banned from showing films on Fridays between 18:00-21:00, Saturdays between 18:00-23:00 and Sundays between 13:00-18:00; and • pay-per-view cinema channels are banned from showing films on Saturdays between 18:00-23:00. <p>Films cannot be shown in advance of the delays set out in the <i>chronologie des médias</i> or according to the terms of any rights acquisition deal between the channel and filmmakers, usually at least 12 months.</p> <p>Each film cannot be shown more than seven times within a three week period.</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>General quotas</i>	<i>Quotas by nationality</i>	<i>Additional restrictions</i>
Video on demand	2011	La loi du 5 mars 2009 (2009-258) Le décret du 12 novembre 2010 (2010-1379)		Video-on-demand services offering at least 20 films are subject to the same content quotas as television companies. Some 60 per cent of all feature-length films available should be of European origin. Within this, two-thirds – or 40 per cent of the total – should be French. The limits were phased in gradually, such that for an initial three year period, services were subject to the lower limits of 50 per cent and 35 per cent.	Video-on-demand services have an additional obligation to ensure that a ‘substantial’ proportion of the content promoted on the service homepage is European. What constitutes ‘substantial’ however has not been defined.

A.I.iii. [Import licences](#)

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Quotas by nationality</i>
Mainstream cinemas ⁴⁹³	16 September 1948	Caffery-Schuman Agreement	<p>186 visas to be available annually for foreign films seeking a cinema release in France. Visas would be allocated as follows:</p> <ul style="list-style-type: none"> • 110 to companies that are members of the MPAA (the Hollywood majors); • 11 to companies that are members of the Society of Independent Motion Picture Producers (US independent studios); and • 65 to film producers from nations other than the US. <p>The MPAA quota was reduced to 90 in 1953 and to 70 in 1959 and then increased later that same year when the allocation was combined with that for the SIMPP and set at 116 visas.</p>

A.II. *Subsidies*

A.II.i. [Agrément and calculation of credits for the soutien automatique](#)

Criteria in force in 2015

Basic conditions for securing funding from the CNC	<p>A film begins to build up deposits that may be used to support future films only if:</p> <ul style="list-style-type: none"> • the film is made by a production company registered in France that is owned and managed by French or European nationals as set out below; • the production company uses a studio and film development laboratory based in France or an EU country. The exception to this is for coproductions made under the auspices of a government coproduction agreement, where the studio or laboratory may be based in the partner country; • the film has been approved, or <i>agrée</i>, by the CNC. This may take place before production starts via the <i>agrément des investissements</i>, or following completion of the project via the <i>agrément de production</i>. At either stage, the project
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⁴⁹³ According to the MPAA, these quotas are still in place, but they do not appear to have been enforced for several decades (see Chapter 4).

Criteria in force in 2015

would be assessed according to the criteria used by the Commission d'agrément below;

- the film has achieved at least 25 points during the Commission d'agrément assessment, excluding any points awarded in relation to the language of the film, i.e. the points must come from the other six assessment classes; and
- the film has achieved 14 out of 18 points on the European assessment scale, asserting its credentials as a European work. This is based on the nationality of actors and crew employed on the project, mirroring the personnel measures below used to assess the level of funding. European coproductions must be backed by producers from at least 3 different countries attached to the European convention on coproduction and achieve 15 out of 19 points on the European assessment scale.

Criteria used by the Commission d'agrément to establish a film's coefficient

Nationality of the production company (10 points)

Since 1999, it has been a requirement that at least one of the production companies involved in the making of the film must be a French registered company owned by French or European shareholders and managed by French or European nationals. Europe is defined as EU countries and countries covered by the Council of Europe's conventions on cross-border television and on film coproduction.

Language of production (20 points)

Points are awarded for films that are wholly or predominantly shot in French or a French regional dialect such as *la langue basque*.

Appointment of director, composer & screenwriter (10 points)

The points are awarded if the director, screenwriter and composer are contracted to the project via an agreement governed by French law. Half the points relate to the director, while the screenwriting points cover all those involved in writing the dialogue, scenario and the original text if the film is an adaptation of a novel.

Nationality of the actors (20 points)

The points are awarded if the individuals are French or European nationals (as above) and the contract of employment is governed by French law.

Separate points are awarded for the lead actors and for the supporting cast. A lead actor is defined as someone involved in at least 50 per cent of the scenes in a film.

Criteria in force in 2015

Nationality of technical staff (14 points)

The points are awarded if the individuals are French or European nationals (as above) and the contract of employment is governed by French law.

This covers staff involved in the artistic production of the film, including assistant directors, editors, lighting technicians, set designers, wardrobe directors and make-up artists.

Nationality of the crew (6 points)

The points are awarded if the individuals are French or European nationals (as above) and the contract of employment is governed by French law.

This covers technical staff involved in shooting the film, including film crews and set builders.

Location of filming and post-production (20 points)

Points are awarded for using French or European facilities for post-production activities such as editing, sound-mixing, dubbing and the production of special effects and for shooting on location or in a studio based in France or Europe. The exception to this is where there is a valid artistic reason to shoot outside Europe and not to do so would undermine the artistic integrity of the project.

Calculating the support fund

Credits are calculated on the basis of the number of points that the film achieved when reviewed by the Commission d'agrément against the assessment criteria (the *coefficient d'agrément*) and the level of commercial success it achieved in cinemas, on television and in the aftermarket.

Coefficient d'agrément

The *coefficient d'agrément* is calculated, as follows:

- a film scoring 25-70 points out of 100, receives a coefficient equal to the number of points registered, i.e. a score of 30 results in a coefficient of 30 per cent being applied;
- a film scoring 71 points out of 100, receives a coefficient of 73 per cent;
- a film scoring 72 points out of 100, receives a coefficient of 76 per cent;
- a film scoring 73 points out of 100, receives a coefficient of 79 per cent;
- a film scoring 74 points out of 100, receives a coefficient of 82 per cent;

Criteria in force in 2015

- a film scoring 75 points out of 100, receives a coefficient of 85 per cent;
- a film scoring 76 points out of 100, receives a coefficient of 88 per cent;
- a film scoring 77 points out of 100, receives a coefficient of 91 per cent;
- a film scoring 78 points out of 100, receives a coefficient of 94 per cent;
- a film scoring 79 points out of 100, receives a coefficient of 97 per cent; and
- a film scoring 80 points or more out of 100, receives a coefficient of 100 per cent.

Box office takings

Producers receive a percentage of the tax collected on the generation of box office revenues within the first five years following the release of the film in cinemas, as follows:

- 125 per cent of the TSA (the tax collected on box office sales (see A.III.i below)) for films that generated a total revenue of up to €3.075 million, or c. 500,000 box office entries;
- 95 per cent of the TSA for films that generated a total revenue of between €3.075-30.750 million, or c. 500,000 to 5,000,000 box office entries; and
- 10 per cent of the TSA for films that generated a total revenue of over €30.750 million, or over 5,000,000 box office entries;

The *coefficient d'agrément* is then applied as a multiplier to the tax collected, e.g. a film with a coefficient of 82 per cent and generating €5 million in box office revenues would receive €417,544 as follows:

Subsidy = tax collected x revenue-related percentage x coefficient

Tax collected = €536,000 (€5m box revenues x 10.72 per cent TSA)

∴ Subsidy = €536,000 x 95 per cent x 82 per cent = €417,544

Television rights

Producers receive 10 per cent of the amount that they generated from selling the broadcast rights to a television company that is subject to the TST (tax on television revenues) requirement (see A.III.i below) or to a satellite or cable broadcaster with a reach of at least 100,000 households. The calculation is based on sales made within the first eight years following the release of the film in cinemas. Credits are calculated on the basis of up to eight deals covering the

Criteria in force in 2015

rights for a single broadcast or one deal with a subscription television channel allowing a maximum of 35 airings in a defined period. Since 1 September 2005, the amount that can be generated has been capped at €30,500 x the relevant coefficient regardless of the actual sale price.

The *coefficient d'agrément* is then applied as a multiplier to this amount, e.g. a film with a coefficient of 82 per cent that sold television rights for €200,000 would receive €16,400:

Subsidy = television rights fee x 10 per cent x coefficient

∴ Subsidy = €200,000 x 10 per cent x 82 per cent = €16,400

Video and DVD sales

Producers receive 4.5 per cent of all DVD and video sales made within the first six years following the release of the film in cinemas.

The *coefficient d'agrément* is then applied as a multiplier to this amount, e.g. a film with a coefficient of 82 per cent that generated €4,000,000 in video sales would receive €147,600:

Subsidy = video sales x 4.5 per cent x coefficient

∴ Subsidy = €4,000,000 x 4.5 per cent x 82 per cent = €147,600

Video-on-demand rights

Since 2008, sales of works to *services de médias audiovisuels à la demande (SMAD)* can also be used to generate credits via the *soutien automatique*. Initially, this was only for sales to broadcasters for both television and online rights, but since 2011, the sale of rights to online-only services has also counted, so long as the sale is to a SMAD that is subject to the same obligations to show French and European content as a television broadcaster or to a commercial service that focuses on showing independent and cultural content.

The credits are calculated by multiplying the length of the work in minutes by the *coefficient d'agrément* and by a defined rate of euros per minute depending on the genre. These rates are established annually as part of the CNC's budgeting process.

Criteria in force in 2015

Distribution of credits for coproductions

The principal producer may claim the total amount of credits generated from a film if the amount raised is less than €150,000, but only 50 per cent above that threshold. In the case of coproductions, two production companies can each claim 25 per cent of the total over the €150,000 threshold. The production arm of a television company can only ever claim 50 per cent of the amount generated by a film.

Limits on reinvesting the credits

The producer must draw on these deposits within five years of the award being made, with the clock starting from 1 January of the first full year following the award, i.e. if a credit is generated on 4 May 2012, the producer must reinvest the credits in a new film on or before 31 December 2017.

Additional criteria

Once a film has been approved via the *agrément des investissements* process, it has two years in which to apply for a *visa d'exploitation*, or cinema release certificate. An extension of up to two years may be granted by the president of the CNC. If, at the end of this period, the film does not have a certificate, then the production company must reimburse all funding received from the CNC – via both the automatic and selective or discretionary programmes.

If on review by the *agrément de production* process, the CNC determines that the circumstances of production have changed and the film no longer scores the same number of points it did at the pre-approval stage, the production company may be required to reimburse part of the advance it has received.

All films must be approved via the *agrément de production* process if they wish to build up credits via the *soutien automatique* scheme, whether or not they have previously received the *agrément des investissements*. This approval must take place within four months of the cinema release certificate being issued. An extension of up to two months may be granted by the president of the CNC.

A.II.ii. General subsidy conditions

Under new rules introduced on 1 July 2015 aimed at limiting budgetary inflation, a film is no longer eligible to claim certain categories of support if the salary costs and bonuses based on box office and other revenues for a single member of the cast, the writer, producer or director exceed defined limits. The rules apply to all films, even those that secured the *agrément des investissements* (outlined above) prior to the date the rules entered into force.

The limits are:

- 15 per cent of the total for all production costs up to €4 million;

- 8 per cent of the total for all production costs between €4-7 million; and
- 5 per cent of the total for all production costs between €7-10 million.

The CNC does not provide any guidance on what would happen if production costs were to exceed €10 million and whether these would be taken into account in its assessment of eligibility for film funding.

The limits are applied cumulatively, such that no individual working on a film costing €8 million could earn more than €890,000. This is worked out as follows:

<i>Budget bracket</i>	<i>Calculation</i>	<i>Amount</i>
up to €4 million	€4 million x 15%	€600,000
€4-7 million	€3 million (i.e. €7 million - €4 million) x 8%	€240,000
€7-10 million	€1 million (i.e. €8 million - €7 million) x 5%	€50,000
TOTAL		€890,000

The producer will not be able to claim any of the following:

- credits generated under the *soutien automatique* scheme;
- subsidies under the *avance sur recettes*;
- discretionary subsidies relating to the use of new production technologies; and
- subsidies to support film distribution.

Eligibility for support will be assessed on the budget submitted at the point the film applies to be *agr  *. If the CNC subsequently discovers that a film has exceeded its provisional budget, it reserves the right to ask for subsidies to be reimbursed.

A.II.iii. Soutien automatique

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
Production	1959	Le décret du 30 décembre 1959 (59-1512) Le décret du 24 février 1999 (99-130)	Producers receive funding based on the success of previous films, according to the calculations set out above. They may invest some or all of this in the production of a subsequent film, so long as funding from the <i>soutien automatique</i> does not represent more than 50 per cent of the total film budget, or in the case of coproductions 50 per cent of the French contribution to the project. Funding from the <i>soutien automatique</i> should also not have the effect of taking the total amount of state funding above 50 per cent of the budget. This limit was imposed by the European Commission following its 2006 review of the legality of the French subsidy system (case C (2006) 832 of 22 March 2006). The available credits may be grossed up by the CNC if the current project is filmed wholly or predominantly in French and the project achieves 64 points out of the 80 points available in the non-language categories of the Commission d'agrément assessment. This can increase the funds available by up to 15 per cent.	To be able to reinvest deposits built up from previous projects, a production company must: <ul style="list-style-type: none"> • have its current film pre-approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process; • appoint a producer who will be responsible for managing the film's budget; • be registered in France and be owned and managed by French or European nationals as set out in A.II.i (above); and • use a studio and film development laboratory based in France or an EU country. The exception to this is for coproductions made under the auspices of a government coproduction agreement, where the studio or laboratory may be based in the partner country.
Distribution			Distributors receive a percentage of the tax collected on the generation of box office revenues within the first five years following the release of the film in cinemas, as follows:	Any company – regardless of ownership structure and the nationality of its shareholders – may benefit from the subsidy in order to support their activities in France.

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<ul style="list-style-type: none"> • 220 per cent of the TSA (the tax collected on box office sales (see A.III.i below)) for films that generated a total revenue of less than €307,500; • 140 per cent of the TSA for films that generated total revenue between €307,500-615,000; • 120 per cent of the TSA for films that generated total revenue between €615,000 to €1.230 million; • 50 per cent of the TSA for films that generated total revenue between €1.230-3.075 million; • 30 per cent of the TSA for films that generated a total revenue of between €3.075-4.305 million; and • 10 per cent of the TSA for films that generated a total revenue of between €4.305-6.150 million. <p>There is no subsidy for films that generated a total revenue of over €6.150 million.</p> <p>Distributors may invest some or all of this in the production of a subsequent film to which it has already secured the distribution rights, or in the distribution of a new film, e.g. for the creation of distribution copies. They may receive a 50 per cent bonus on the first €125,000 they invest in films with a production budget of less than €4</p>	<p>To benefit from the maximum credits available, the distributor:</p> <ul style="list-style-type: none"> • must hold a distribution licence from the CNC; • must have agreed to contribute to financing the production or promoting the film, including via advertising and the production of distribution copies. The agreement with the film's producer must provide for these advances to be repaid from box office takings; and • must reinvest the subsidy in the production or promotion of a new film within four years of the subsidy being granted, dating from 1 January on the first full year after approval, i.e. for a film approved on 30 September 2012, the grant would need to be reinvested by 31 December 2016. <p>The film must have:</p> <ul style="list-style-type: none"> • been approved, or <i>agr��</i>, by CNC via the <i>agr��ment de production</i> process; or • been approved or <i>agr��</i>, by the CNC via the <i>agr��ment de distribution</i> process if the production was supported by one of the regional funds or the world film fund.

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>million or a 25 per cent bonus on the first €250,000 invested in films costing €4-8 million.</p> <p>Under European Commission rules the <i>soutien automatique</i> should not represent more than 50 per cent of the total distribution budget, or have the effect of taking the total amount of state funding from automatic and discretionary schemes above 50 per cent of the total budget.</p>	
Exhibition	L'arrêté du 17 avril 2007	<p>Cinema owners receive up to 90 per cent of the pre-tax cost of the cinema upgrade. Half of the cost may be paid upfront; the remainder on completion of the work.</p> <p>The allocation is calculated as a percentage of the tax collected by the cinema on the generation of box receipts (TSA) which is grossed up by a coefficient based on the number of cinema screens in the complex. There is a guaranteed minimum equivalent to 30 per cent of the tax collected. The amount is determined as follows:</p> <ul style="list-style-type: none"> • 80 per cent of the TSA collected for cinema complexes generating tax of less than €8,500; • 70 per cent of the TSA collected for cinema complexes generating tax of between €8,501-25,500; • 60 per cent of the TSA collected for cinema complexes generating tax of between €25,501-51,000; 	<p>Any company – regardless of ownership structure and the nationality of its shareholders – may benefit from the subsidy in order to support their activities in France, e.g. to upgrade or build new cinemas, with the exception of cinemas specialising in the exhibition of pornographic or violent films.</p> <p>To benefit from the maximum level of investment, the distributor must:</p> <ul style="list-style-type: none"> • complete its returns accurately and on time allowing the CNC to calculate the TSA; and • must provide a detailed breakdown of expenditure, proving that the amount relates to the approved categories of infrastructure investment, within six months of the work taking place (five years in the case of a new-build). <p>From 1 January 2010, a time limit has been imposed on claiming credits. The exhibitor must</p>	

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<ul style="list-style-type: none"> • 50 per cent of the TSA collected for cinema complexes generating tax of between €51,001-136,200; and • 20 per cent of the TSA collected for cinema complexes generating tax of more than €136,201. <p>A cinema complex then receives a coefficient based on the number of screens it operates as follows:</p> <ul style="list-style-type: none"> • 1-2 screens results in a coefficient of 1.06; • 3 screens results in a coefficient of 1.11; • 4 screens results in a coefficient of 1.17; • 5 screens results in a coefficient of 1.22; • 6 screens results in a coefficient of 1.27; • 7-12 screens results in a coefficient of 1.33; and • 13 or more screens results in a coefficient of 1.06. <p>The exhibitor may apply for an advance on future investment allowances if an upgrade project exceeds the amount allocated based on previous tax submissions. In such cases, the amount advanced is calculated as above and multiplied by three for cinemas collecting tax of less than €152,000, by two for cinemas collecting tax of between €152,000-305,000 and by 1.5 for</p>	<p>draw on these deposits within ten years of the award being made, with the clock starting from 1 January of the first full year following the award, i.e. if a subsidy is approved on 4 May 2012, the producer must reinvest the credits in improvement works on or before 31 December 2022.</p> <p>Owners of a cinema chain may pool allocations from several cinemas within the chain to create a larger fund to spend on the upgrade of an existing site, or the construction of a new one. They may also request an advance on future taxes if the current value of the account is insufficient to cover the work in hand, but then no further claims can be made until the advance is paid off and the exhibitor's account has returned to credit.</p>

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			cinemas collecting tax of more than €305,000 in the previous year.	
Video distribution		<p>Le décret du 24 février 1999 (99-130)</p> <p>Modified by le décret du 24 octobre 2003 (2003-1018) and le décret du 11 mai 2007 (2007-824)</p>	<p>Video producers receive a percentage of the tax collected on the sale of <i>films générateurs</i>, that is the films for which it owns the rights that have been approved, or <i>agrée</i>, by the CNC and were released in cinemas within the previous six years. The amount – 4.5 per cent of total sales – is calculated on the basis of the monthly sales reports that companies have to file with the CNC.</p> <p>Credits generated via the <i>soutien automatique</i> should be reinvested in acquiring video distribution rights for additional films.</p>	<p>To qualify, the video producer must:</p> <ul style="list-style-type: none"> • file their monthly sales returns within six months of the end of the month to which the sales relate. Beyond that point, these sales will not be taken into account as part of the <i>soutien automatique</i> credit calculation; • be registered in France and be owned and managed by French or European nationals as set out in A.II.i (above); and • have filed contracts showing they have the video distribution rights with the <i>Registre Public du Cinéma et de l'Audiovisuel</i>. <p>The credits that a video producer generates:</p> <ul style="list-style-type: none"> • must be invested in films that have been approved, or <i>agrée</i>, by the CNC via the <i>agrément de production</i> process. If a video producer invests in a film before it is approved and that film subsequently fails to be <i>agrée</i>, then the amount invested must be reimbursed; • must be reinvested in the production or promotion of a new film to which it has secured the future video distribution rights; • must be reinvested within five years of the

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
				<p>subsidy being granted, dating from 1 January on the first full year after approval, i.e. for a film approved on 30 September 2012, the grant would need to be reinvested by 31 December 2017;</p> <ul style="list-style-type: none"> • cannot all be invested in one go with the effect of draining the video producer's account; and • must be reimbursed should the video producer subsequently decide it is not economically viable to release the subsidised titles on video.
Video on demand	December 2014 with retrospective effect from 1 January 2014	Le décret SMAD du 12 novembre 2010 (2010-1379)	<p>VoD service providers can claim support for investment in new technology, in the promotion of works or in activities to improve the way works are presented, e.g. the creation of bonus material that puts a work into context, as long as the state support does not exceed 50 per cent of the total improvement costs.</p> <p>Editors receive a percentage of all sales made within the first eight years following the release of the film in cinemas, as follows:</p> <ul style="list-style-type: none"> • 15 per cent for those editors generating revenue of less than €50 million; and • 10 per cent for those editors generating revenue of between €50-200 million. <p>The value of the aid package may be increased by</p>	<p>To qualify, editors must:</p> <ul style="list-style-type: none"> • operate a video-on-demand service offering films and programmes for rental or purchase, or access to content on subscription as defined in the <i>décret SMAD</i>. Television catch-up services do not qualify; • generate annual revenues of less than €200 million globally from the sale of audiovisual material that has been approved, or <i>agrée</i>; • submit monthly revenue returns detailing revenue generated globally, in France and on a film-by-film basis; • make available a selection of films that have been approved, or <i>agrée</i>, by the CNC within

<i>Sector supported</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			up to 25 per cent for those editors which have developed and own IP rights in their own platform.	<p>the previous eight years;</p> <ul style="list-style-type: none"> • respect the delays stipulated in the <i>chronologie des médias</i>; • make a subsidy request within six months of incurring the cost of any improvement works; and • draw on any deposits within three years of the award being made, with the clock starting from 1 January of the first full year following the award, i.e. if a subsidy is approved on 4 May 2015, the producer must reinvest the credits in improvement works on or before 31 December 2018.

A.II.iv. *Aide sélective to support the creation of French films*

The *aide sélective* programmes outlined below are funded from the *compte de soutien* unless specifically stated otherwise.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
<i>Avance sur recettes</i>	1960	<p>Le décret du 16 juin 1959 (59-773)</p> <p>Le décret du 30 décembre 1959 (59-1512)</p> <p>Le décret du 24 février 1999 (99-</p>	<p>The <i>avance sur recettes</i> was set up to provide funding to directors making their first film and, therefore, unable to benefit from the <i>soutien automatique</i>, and to promote films that were culturally important, independent and daring.</p> <p>Requests for funding are assessed by one of three specially appointed committees:</p>	<p>To qualify for funding, a film must:</p> <ul style="list-style-type: none"> • be filmed wholly, or in large part, in French; and • have been pre-approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process. For films that were not <i>agrée</i> prior to production and are submitting their

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
		130) L'arrêté du 22 mars 1999	<ul style="list-style-type: none"> • one for first films (1^{er} collège); • one for films from established directors assessed prior to production (2^e collège); and • one for films from established directors assessed post-production (3^e collège). <p>Each committee then recommends suitable projects to the president of the CNC for approval. The president decides the final level of funding and any conditions to be imposed on the repayment of the advance.</p> <p>Combined with other awards, the total public subsidy cannot exceed 50 per cent of the film's budget – 60 per cent for those films with a budget of less than €1.25 million.</p> <p>Films can be assessed pre- or post-production.</p>	<p>funding request post-production, the producer is required to prove that the film was made under conditions in line with the <i>agrément des investissements</i> process.</p> <p>In the case of a coproduction, the coproduction partner may not be from another EU country; these coproductions are covered by the European convention on coproduction.</p> <p>Applicants must submit a detailed dossier, including the script/scenario to prove that the work has cultural value, assessed in terms of subject and the quality and conditions of its production.</p> <p>The subsidy must be used within 24 months of the award.</p>
Scenario & project development	1999	Le décret du 24 février 1999 (99-130)	<p>Production companies can claim up to 50 per cent of costs incurred in the early stages of development, including the acquisition of book rights and scriptwriter's fees, up to a maximum of €70,000.</p> <p>Eligibility is assessed by a committee of four experts who make a proposal to the president of the CNC for final approval.</p> <p>The company may be granted an additional 20 per cent at the discretion of the assessment committee of the CNC to cover development costs other than the standard scriptwriting and</p>	<p>To qualify, films must:</p> <ul style="list-style-type: none"> • be filmed wholly, or in large part, in French; • meet the CNC criteria for approval via the <i>agrément des investissements</i> process; • demonstrate quality, artistic merit and viability; and • not have previously benefitted from the scheme to promote the rewriting of scripts (below). <p>In addition, the production company must show it owns the rights to the project, e.g. it has</p>

Sector	Date introduced	Relevant legislation	Level of funding available	Qualifying criteria
Scriptwriting			<p>rights acquisition costs.</p> <p>There are two aspects to the programme. Support is given to the most active production companies, which – by virtue of their level of activity – are carrying the most risk, to underpin their full development programme. Individual companies, particularly new production companies, can benefit on a project-by-project basis.</p> <p>The subsidy must be reimbursed once the project goes into production – 50 per cent on the first day of filming and 50 per cent on the date of the film’s release in cinemas. A refund of 25 per cent is required for any projects that do not enter production.</p>	<p>reached an agreement with the author on the literary rights.</p> <p>To qualify for support of its film programme, a production company must have produced at least three feature-length films in France during the current and previous three years. To qualify for support on a film-by-film basis, the production company must show that it has produced one previous feature-length film, or several short films, or is working with a director with proven experience in making short films or television programmes.</p> <p>A producer cannot claim for more than four projects simultaneously (two in the case of new companies), nor apply for a pre-production subsidy under the <i>avance sur recettes</i>.</p>
			<p>Writers, directors and production companies may apply for support to fund the writing, or re-writing, of a script. The subsidies for scriptwriting and for rewriting are considered distinct schemes, but follow similar rules.</p> <p>An award is assessed by one of two nine-member committees, based on whether the claimant has previously written a film (2^e collège) or not (1^{er} collège). This is then subject to approval by the president of the CNC.</p> <p>A request for a writing subsidy is based on the</p>	<p>To qualify, films must be written wholly, or in large part, in French.</p> <p>It is not possible to benefit from this scheme alongside any other support programme.</p> <p>Even under the 1^{er} collège, a writer is only considered suitable for support if he or she has written the screenplay for short films that have been included in a festival in the previous seven years or television programmes of at least 26 minutes in length.</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>submission of a synopsis.</p> <p>A maximum of €30,000 is awarded per project, of which up to €20,000 should go to the principal writer. The payment is made in two tranches – on receipt of the letter of notification and on completion of the writing, which must be within two years of the letter.</p>	
Script rewriting			<p>Writers, directors and production companies may apply for support to fund the writing, or re-writing, of a script. The subsidies for scriptwriting and for rewriting are considered distinct schemes, but follow similar rules.</p> <p>An award is assessed by one of two nine-member committees, based on whether the claimant has previously written a film (2^e collège) or not (1^{er} collège). This is then subject to approval by the president of the CNC.</p> <p>A request for a rewriting subsidy is based on the submission of a script or scenario and a description of how it needs to be reworked.</p> <p>A maximum of €21,000 is awarded per project, of which up to €9,000 should go to the principal writer. The payment is made in two tranches – on receipt of the letter of notification and on completion of the writing, which must be within nine months of the letter.</p>	<p>To qualify, films must be written wholly, or in large part, in French;</p> <p>Authors may not apply for support with rewriting if the same project has benefitted from a grant to fund the original writing or from the innovation fund (below).</p> <p>It is not possible to benefit from this scheme alongside any other support programme.</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
Concept development			<p>Writers and directors may apply for retrospective support to fund the development of a project concept, after a film's release in cinemas. The subsidy is designed to support the emergence of new talent. As a result, it is only open to individual writers and directors, not production companies, or writers and directors attached to production companies.</p> <p>Eligibility is assessed by the president of the CNC. A maximum of €10,000 is awarded per project. The payment is made in two tranches – on receipt of the letter of notification and on submission of a detailed treatment, which must be within three months of the contract.</p>	<p>To qualify for an award, the project must:</p> <ul style="list-style-type: none"> • be written wholly, or in large part, in French; • be a work of fiction; • have been released in cinemas in the previous calendar year; • have been approved, or <i>agr��</i>, by the CNC via the <i>agr��ment de production</i> process; • must not have been awarded a subsidy under any other CNC scheme; • must not have been supported with funding from any of the free-to-air television channels; and • have cost less than €4 million to produce.
Project preparation	1999	<p>Le d��cret du 24 f��vrier 1999 (99-130) as modified by le d��cret du 1^{er} octobre 2008 (2008-1015)</p> <p>L'arr��t�� du 22 mars 1999 as modified by l'arr��t�� du 1^{er} octobre 2008</p>	<p>With approval of the CNC, producers may divert up to 50 per cent of the amount in their <i>compte de soutien</i> account to fund development rather than production of a new project.</p> <p>The producer can draw down up to 25 per cent of his/ her available credits up to a limit of €230,000 per project. This may be increased to 50 per cent if the investment relates to scriptwriting or acquiring the film rights to literary works, subject to a limit of €100,000 in a single year. These costs must be paid before production starts.</p> <p>At the point where the project is <i>agr��</i> or</p>	<p>A producer may use his/ her credits under the <i>soutien automatique</i> to fund project development if:</p> <ul style="list-style-type: none"> • the number of projects is limited to two per year; • project development costs represent no more than 10 per cent of the entire expected cost of the project; • 80 per cent of the development costs are incurred within France; • the projects fulfil the criteria for approval by the CNC under the <i>agr��ment des</i>

Sector	Date introduced	Relevant legislation	Level of funding available	Qualifying criteria
Music			<p>approved by the CNC under the <i>agrément des investissements</i> process, the level of investment may be increased by 25 per cent if it has not already been grossed up in the way described above. This is on condition that the project has achieved at least 64 out of the 80 points available in the non-language categories.</p> <p>The amount is paid in two parts: the first of up to €54,000 is payable at the point that the CNC approves the investment; the balance is payable on presentation of approved expenses.</p>	<p><i>investissements</i> process. The application for the film to be <i>agrée</i> or pre-approved must be made within two years of any grant to cover preparatory expenses being awarded; and</p> <ul style="list-style-type: none"> • the project has been inscribed on the <i>Registre Public du Cinéma et de l'Audiovisuel</i>.
			<p>The amount awarded is at the discretion of the assessment committee, based on how integral music is considered to the broader project and the number of projects under review during each session. The minimum award is €5,000, but could be more as long as the total award does not represent more than 50 per cent of the film's music budget and when combined with other awards it does not push the total subsidy over 50 per cent of the full film budget.</p>	<p>A producer can claim funding to support the composition and recording of original music for a film score, provided that:</p> <ul style="list-style-type: none"> • the film has been approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process; • the total budget for the film is less than €7 million; • the music budget accounts for at least 1.5 per cent or €20,000 (whichever is the higher) of the total budget; • the composer's fee is at least 20 per cent of the music budget; and • the duration of original music represents no less than 10 per cent of film running time.

Sector	Date introduced	Relevant legislation	Level of funding available	Qualifying criteria
Distribution			<p>Distributors can claim support for the distribution and promotion of one or more films, so long as the promotional budget for those films does not exceed €550,000 per film. This is limited to a maximum grant of €76,300 per film or €33,000 per company per year in the case of support for company operating costs. The total amount of public subsidies used to support distribution should not exceed 50 per cent of the distribution costs.</p> <p>Applications for support can be made on a film-by-film basis (particularly in the case of new distribution companies), or for the distribution company's programme of film releases. Applications for individual films are reviewed weekly just prior to a film's official release date by a committee of 13 individuals (<i>1^{er} collège</i>) or at fixed points throughout the year (<i>2^e & 3^e collège</i>). In the case of films classified as <i>1^{er} collège</i>, the distributor will receive a minimum of €15,500 if the film has already received production support under the <i>avance sur recettes</i>.</p> <p>Distribution companies qualifying for support for their full programme can apply for separate subsidies for the film programme (<i>aide au programme</i>) and to support company operations (<i>aide à la structure</i>).</p>	<p>Selective subsidies exist for:</p> <ul style="list-style-type: none"> • quality French and foreign films that are considered difficult to distribute (<i>1^{er} collège</i>). Making them more widely available is deemed important to promote cultural diversity; • back catalogue films from any country first released more than 20 years previously and not re-released in cinemas for at least 10 years (<i>2^e collège</i>); and • films from any country targeting a younger audience (<i>3^e collège</i>). This can be claimed in combination with subsidies under the <i>1^{er}</i> or <i>2^e collège</i>. <p>To qualify, films must have received a <i>visa d'exploitation</i>, or release classification certificate.</p> <p>Distributors must have been operating for at least two years and released at least three films over that period. Under the <i>1^{er} collège</i> scheme this obligation is waived if the company is intending to distribute a minimum of two films over and above those for which it is seeking funding in the current year or has committed to distribute the first film of a director who has qualified for the <i>avance sur recettes</i>.</p> <p>To qualify for support of its film programme, a</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			Support granted for a programme of releases will be calculated on the basis of the average costs incurred for distributing each film. The distributor is not required to deploy the subsidy equally across the portfolio; the amount spent on any one film must be between 25-200 per cent of the average allocated, however.	<p>distributor must:</p> <ul style="list-style-type: none"> • seek pre-approval on the quality, nature and scope of its film programme, e.g. in terms of film genres covered. Approval is based on the films distributed in the previous year; • release a programme comprising between four to seven films annually. This can be extended to nine films, if the programme includes films covered by the first film scheme (above) and reduced to three to six films for films classified as <i>2^e collège</i>; • forego any subsidies for individual films; and • release the films in at least 30 cinemas within the space of a year and ensure that its reach covers at least 20 per cent of the Paris cinema circuit and 30 per cent of the regional circuit. This can be reduced to 15 cinemas in the case of films classified as <i>2^e collège</i>.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
	1 September 2010		To support the transition process to digital distribution, distributors can claim up to 50 per cent of the additional costs incurred as a result of the need to create both analogue and digital versions of the film, i.e. the creation of a digital master from an analogue film, or of a film copy from a digital master.	To qualify, the film does not need to be pre-approved, or <i>agr��</i> . However, it must: <ul style="list-style-type: none"> • be released simultaneously in digital and analogue forms; and • not have received a subsidy for the creation of copies from the Agence pour le D�veloppement R�gional du Cin�ma. The distributor must prove that it bore the costs of conversion.
	1 July 2015			To ensure that films are distributed by commercially viable companies, from 1 July 2015, distributors are required to prove they have access to working capital of at least �15,000.
Exhibition	1983	Le d�cret du 24 ao�t 1998 (98-750) Le d�cret du 22 avril 2002 Le d�cret du 28 f�vrier 2011 (2011-226)	The level of subsidy granted is at the discretion of the assessment committee of the CNC. In the case of arthouse cinemas, the subsidy equates to �1.5-2.5 per spectator depending on the categorisation of the cinema in one of five groups. The categories are determined on the number of arthouse films shown as a proportion of the total programme, the location of the cinema, the number of screens it has and the general level of maintenance of the cinema. An arthouse cinema may be part of a large group, so long as it shows the requisite proportion of arthouse films, though in practice cinemas	Selective subsidies exist to: <ul style="list-style-type: none"> • promote the building or upgrading of cinemas in underserved regions particularly those deprived of arthouse cinemas; • support exhibitors with a difficult programming schedule, i.e. comprising films that are considered culturally important but not necessarily commercially viable. In this case, the exhibitor must achieve at least 50 points in an assessment of the quality and diversity of its film programme (50 points), the quality of its cinemas (20 points), its programme of activities (15 points) and its

Sector	Date introduced	Relevant legislation	Level of funding available	Qualifying criteria
			<p>within the major chains rarely reach the defined thresholds.</p>	<p>financial situation (15 points); and</p> <ul style="list-style-type: none"> • support arthouse cinemas. <p>With the exception of support for arthouse cinemas, support is extended to independent cinema operators:</p> <ul style="list-style-type: none"> • running fewer than 50 screens; • operating a reasonable level of service, defined as at least five showings per week; and • where the level of support provided by the automatic aid programme (above) is insufficient to maintain the cinema’s facilities and operations. <p>To benefit from the maximum level of investment, the cinema operator must complete its TSA returns accurately and on time allowing the CNC to calculate the tax accurately.</p>
Translation & dubbing			<p>Producers and exporters can claim support for the cost of dubbing their films into or subtitling their films in Catalan, English, German, Italian, Japanese and Spanish to support their attempts to export the products.</p> <p>Eligibility for funding is assessed by a specially appointed committee, which then determines the retrospective subsidy on the basis of the costs incurred.</p>	<p>To qualify for funding under the scheme the film must have been shot in French and:</p> <ul style="list-style-type: none"> • have been approved, or <i>agr��e</i>, by the CNC and released in France within the previous four years; • have been funded by the discontinued Fonds Sud or the world film programme; • have a production budget of less than €2.5 million; or

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
				<ul style="list-style-type: none"> • be an historic work that has been recently digitised with the support of the CNC's digitisation programme or that has been decorated at the Venice Biennale, the Cannes Film Festival or the American Academy Awards. <p>Exporters and distributors can only claim support for two films per year.</p> <p>In the case of historic works, the distribution company must have generated revenues of less than €600,000 in the previous three years.</p>
Subtitling & audio-description		<p>Le décret du 24 février 1999 (99-130) as modified by le décret du 22 novembre 2012 (2012-1296)</p> <p>La décision du 8 avril 2013</p> <p>La charte du 12 décembre 2011 et la charte de l'audiodescription du 10 décembre 2008</p>	<p>Producers can claim support to add subtitles or audio-description to their film to make it more accessible to the visually or hearing impaired when released at the cinema or on video or for broadcast on television. The subsidy is awarded by the president of the CNC, but is capped at 50 per cent of the costs incurred or €200,000 over three consecutive financial years, whichever is the lower.</p>	<p>To qualify for funding under the scheme:</p> <ul style="list-style-type: none"> • the film must have been approved, or <i>agrégé</i>, by the CNC via the <i>agrément des investissements</i> process since 1 January 2012; • the producer must have filed the request for support before the film's release; and • the subtitling and audio-description must be completed by a French organisation in line with the standards set out in the relevant charters.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
Export	2005		<p>Film export companies may claim support to help them find an export market for their films.</p> <p>The scheme is divided into two parts:</p> <ul style="list-style-type: none"> • support to help prospecting for export markets; and • support to market works abroad. <p>Under the scheme to promote the sale of works abroad, companies can claim up to 50 per cent of the costs validly incurred within France, including dubbing and subtitling, reformatting the film for the international market, the creation of promotional trailers and materials and the purchase of advertising space in trade publications. Subsidies for dubbing, subtitling and reformatting are limited to 25 per cent of the total costs incurred.</p> <p>Under the prospecting scheme, companies can claim up to 50 per cent of the total cost up to a maximum of €25,000 per film and €100,000 per company per year.</p> <p>Eligibility for funding is assessed retrospectively by a specially appointed committee. The committee determines the level of the subsidy taking into account the company's strategy and the costs incurred.</p>	<p>Exporters must apply for reimbursement at the end of an export programme once all costs have been incurred. They can apply for a second tranche of funding, if they launch a new promotional campaign and incur further costs.</p> <p>To qualify for funding under the prospecting scheme the film must also have been:</p> <ul style="list-style-type: none"> • released in France within the previous four years; • classified as a French or majority French film with a production budget of less than €8 million; and • approved, or <i>agr��</i>, by the CNC, or funded by the discontinued Fonds Sud programme. <p>Historic works may qualify for support if they had a production budget of less than €2.5 million and have recently been digitised with the support of the CNC's digitisation programme or have been decorated at the Venice Biennale, the Cannes Film Festival or the American Academy Awards.</p> <p>Exporters can only claim support to identify markets for up to 15 films per year, of which no more than five can be back catalogue films.</p>

Sector	Date introduced	Relevant legislation	Level of funding available	Qualifying criteria
Video distribution			<p>Video producers can claim up to 50 per cent of the cost of rights acquisition, production and promotion for video releases of films as long as they are destined for commercial exploitation in France. Foreign films will also qualify for support, but only if they are produced in a subtitled or dubbed version that makes them accessible to the French market. Pornographic videos are not eligible.</p> <p>Any grant via the <i>soutien sélectif à l'édition vidéo physique</i> can be combined with the similar programme for video on demand, but the joint amount should not have the effect of taking state aid for the project over 50 per cent of the total budget.</p> <p>The programme is divided into two parts:</p> <ul style="list-style-type: none"> • support for the production of individual films on video; and • support for a video producer's full editorial programme of video production, so long as all titles in the portfolio are released within a year of the decision to award a subsidy and the suite contains between six and 30 titles. <p>Eligibility for funding is assessed by a specially appointed committee on the basis of the company's editorial strategy, the cultural importance of the project, the product's</p>	<p>To qualify, the video producer must:</p> <ul style="list-style-type: none"> • be headquartered in France or another EU nation and be owned and managed by French or European nationals as set out in A.II.i (above); • own valid video distribution rights to a film, or collection of films, demonstrable by filing contracts showing the acquisition of rights with the <i>Registre Public du Cinéma et de l'Audiovisuel</i>; • file details of the project with the CNC in advance of the commercial release date of the video; • observe the delays set out in the <i>chronologie des médias</i> on the release of films on video; • have existed for a minimum of two years; and • have produced at least 10 videos a year, if they are seeking support for a broader editorial programme. <p>They may also receive extra funding to cover the cost of adding subtitles and audio-description to the work to make it more accessible to disabled viewers.</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>technical quality and the efforts made to make the film more accessible to disabled audiences. The committee makes a recommendation for funding to the president of the CNC who then determines the level and the conditions of any award.</p> <p>Support for a portfolio of videos is payable in two parts: the first part equivalent to 70 per cent of the award is payable on signature of the agreement with the CNC; the remainder once the full suite of videos has been produced and the production costs have been filed with the CNC.</p>	
Images de la diversité	2007	Le décret du 25 avril 2012 (2012-582)	<p>Run in collaboration with l'Agence nationale pour la cohésion sociale et l'égalité des chances (Acsé), the fund is aimed at ensuring that the full scope of French cultural diversity is reflected in film, television and new media works.</p> <p>Projects can benefit from up to two awards a year, each capped at €50,000 and on condition that the total of state subsidies does not exceed 50 per cent of total production costs.</p>	Support can be claimed for any part of the production process from writing to video production, so long as the work has already been approved to receive <i>aide sélective</i> in any one of the preceding categories.

A.II.i. [Aide sélective to support the creation of coproductions and international films](#)

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
World film	6 February 2012 replacing the 1997 Foreign language film subsidy and the Fonds Sud introduced in 1984	Le décret du 23 avril 2012 (2012-543)	<p>Producers can claim up to €250,000 in support before production begins, or €50,000 if the claim is made after the film has been made to support editing.</p> <p>The producer may not claim a subsidy equivalent to more than 50 per cent of the amount invested by the French coproduction partner. In the case of first or second films, films on a small budget (<€1.25 million), or films made with partners from a defined list of developing countries, the award may be increased to up to 80 per cent of the French investment.</p> <p>The pre-production subsidy is payable in three parts:</p> <ul style="list-style-type: none"> • 30 per cent at the time the award is made and the grant contract is agreed with the CNC; • 40 per cent at the end of the first week of filming; and • 30 per cent when a statement is produced showing the full and final contribution of the French coproduction partner to the project. <p>The offer of aid is only valid for 18 months from the date of the first payment. This can be extended to 24 months by permission.</p>	<p>A French film producer may claim support for any film (pre- or post-production) that has been made with a foreign coproduction partner, provided that:</p> <ul style="list-style-type: none"> • the producer filing the claim is established in France; • the film is due for cinema release; • the film has been shot on location outside of France; • the director is not French; • the film is shot in the native language of the director or of the country where the film is being made; • any request for production support is made before filming starts. This will have to be supported by a valid coproduction agreement, unless the partner comes from one of a list of countries in the developing world; • the producer has not already requested funding via the <i>avance sur recettes</i> scheme or is planning to claim tax relief via the <i>crédit d'impôt international</i>; • if the film's budget exceeds €2.5 million, the project fulfils the criteria for approval by the

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>Payment for subsidies awarded after filming to support editing and completion of the project is made at the time of the grant (60 per cent) and on presentation of the final budget (40 per cent). The request is reviewed by one of two committees comprising the president and the vice president of the CNC and five other appointed members, who also determine whether there are any special conditions to be applied to the grant.</p> <p>France has set aside a dedicated fund in 2015 of €6 million for this programme.</p>	<p>CNC under the <i>agrément des investissements</i> process;</p> <ul style="list-style-type: none"> • the project displays an artistic merit, according to the CNC assessment committee; and • in the opinion of the CNC assessment committee, the film would not be financially viable without that funding. <p>A minimum of 50 per cent of the award must go towards production expenses incurred in France, while at least 25 per cent of the amount should be used to fund production in the partner country if the coproduction partner is from one of a list of countries where the local cinema is considered weak, including Algeria, Kenya, Sudan and Vietnam.</p>
Films made by/in France's overseas territories		<p>La loi du 13 décembre 2000 and la loi du 21 juillet 2003</p> <p>Le décret du 29 octobre 2001 and le décret du 12 février 2004</p>	<p>The amount awarded is at the discretion of the assessment committee, which includes representatives of both the CNC and the economic affairs representative for France's overseas territories.</p> <p>The subsidy is paid in two parts: the first instalment at the start of production; and the balance on presentation of final expenses.</p> <p>The subsidy may be combined with other awards from the French subsidy system, provided that the total amount of state funding does not</p>	<p>A producer can claim support for films that promote the cultural interests of France's overseas territories, including Réunion, Guadeloupe and Martinique, provide exposure for the territories to a wider audience or promote local filmmaking on condition that:</p> <ul style="list-style-type: none"> • the film is made by a French production company, according to the general rules on film production set down in <i>le décret du 24 février 1999</i>; • the films would qualify for the <i>soutien</i>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			exceed 50 per cent of the final budget.	<p><i>automatique</i>, or discretionary support for foreign language films under the prevailing rules on production;</p> <ul style="list-style-type: none"> • the films are destined for a cinema release; and • the request is made prior to the start of production, coincidental with the application for the <i>agrément des investissements</i>.
Franco-Italian coproductions	2013, with the first awards made in June 2015	La convention franco-italienne du 21 mai 2013	<p>The subsidy is designed to increase the number of Franco-Italian coproductions being made and is focused particularly on the work needed to get a project off the ground, such as scriptwriting, literary rights acquisition and scenario development. The amount awarded is at the discretion of the assessment committee, which comprises representatives of the CNC and of the Ministero dei beni e delle attività culturali e del turismo (MIBACT). They are able to grant up to €50,000 to each project, subject to a limit of 70 per cent of project development costs – an award that must be claimed within two years of the decision (or three years with prior approval). It will be paid in two instalments of 50 per cent each.</p> <p>The producer will have to refund the award if it does not result in a film entering production within two years of the grant (three years in</p>	<p>A producer can claim support for a coproduced film, provided that:</p> <ul style="list-style-type: none"> • the film is supported by at least one French and one Italian production company each investing between 20-80 per cent in the film. Their investment should be in line with their artistic input; the coproduction should not just be a financial arrangement; • it promotes the cultural interests of both countries involved in the coproduction; and • the producer has not claimed aid of more than €200,000 under this scheme within the previous three financial years in line with European Commission Regulation 1998/2006 of 15 December 2006.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			extenuating circumstances). The CNC and MIBACT have set aside a combined total of €500,000 to fund projects each year.	
Franco-Greek coproductions	2014, initially for a period of three years	L'accord cinématographique du 20 octobre 1973 La convention franco-grecque du 19 mai 2014	<p>The subsidy is designed to increase the number of Franco-Greek coproductions being made and is focused particularly on the work needed to get a project off the ground, such as scriptwriting, literary rights acquisition and scenario development.</p> <p>The amount awarded is at the discretion of the assessment committee, which comprises representatives of the CNC and of the Greek Film Centre.</p> <p>They are able to grant up to €500,000 to each project, so long as the total amount of support from this and other schemes does not exceed 50 per cent of the film's budget. The award must be claimed within two years of the decision (or three years with prior approval).</p> <p>The award will be shared between both production companies and paid to each separately. It does not necessarily have to be divided in a way that reflects the individual production companies' shares of the project, unless allocating it in any other way would transform a major French partner into a minor one, or <i>vice versa</i>. Any subsidy awarded by the</p>	<p>A producer can claim support for a coproduced film, provided that:</p> <ul style="list-style-type: none"> • the film is supported by at least one French and one Greek production company each investing between 30-70 per cent in the film; • it promotes the cultural interests of both countries involved in the coproduction; • the request is made prior to the start of production; and • the producer spends 50 per cent of the amount awarded by each funding body in France and 50 per cent in Greece.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>CNC under this scheme is considered part of the amount that the French coproduction partner invests in the film.</p> <p>A total of €1 million was set aside to fund projects in 2014, of which the CNC will contribute €800,000. There is no information on the value of the 2015 fund.</p>	
Franco-Portuguese coproductions	2014, initially for a period of three years	<p>L'accord cinématographique franco-portugais du 10 octobre 1980</p> <p>La convention franco-portugaise du 20 mai 2014</p>	<p>The subsidy is awarded by a committee, comprising representatives of the CNC and of the Instituto do Cinema et do Audiovisual.</p> <p>The award is for 10-20 per cent of the production budget up to a maximum of €500,000 and on condition that the total of all subsidies does not exceed 50 per cent of the production budget. The award must be claimed within two years of the decision (or three years with prior approval).</p> <p>The award will be shared between both production companies and paid to each separately. It does not necessarily have to be divided in a way that reflects the individual production companies' shares of the project, unless allocating it in any other way would transform a major French partner into a minor one, or <i>vice versa</i>. Any subsidy awarded by the CNC under this scheme is considered part of the amount that the French coproduction partner</p>	<p>A producer can claim support for a coproduced film, provided that:</p> <ul style="list-style-type: none"> • the film is supported by at least one French and one Portuguese production company each investing at a level proportionate with their artistic and technical involvement in the film; • it promotes the cultural interests of both countries involved in the coproduction; • the request is made prior to the start of production; and • the producer spends 50 per cent of the amount awarded by each funding body in France and 50 per cent in Portugal.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			invests in the film. A total of €1 million was set aside to fund projects in 2014, of which the CNC will contribute €800,000. There is no information on the value of the 2015 fund.	
Franco-German coproductions	2001	L'accord franco-allemand du 17 mai 2001	The amount awarded is at the discretion of the assessment committee, which includes representatives of both the CNC and the German Filmförderungsanstalt. The subsidy may not exceed 20 per cent of the final budget. The amount is divided between the two production partners, pro rata according to their shares of the investment.	A producer can claim support for a coproduced film, provided that: <ul style="list-style-type: none"> • it promotes the cultural interests of both countries involved in the coproduction; • it is considered by the assessment committee to promote artistic exchange between coproduction partners; • it has been approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process; • the request is made prior to the start of production, coincidental with the application for the <i>agrément des investissements</i>; and • the project is subject to a formal coproduction agreement between the two parties.
Franco-Canadian coproductions	1983	L'accord franco-canadien du 11 juillet 1983	The subsidy is designed to increase the number of Franco-Canadian coproductions being made. It is assessed initially by a committee in the country which is home to the major production partner. If that body chooses to make an award	A producer can claim support for a coproduced film, provided that: <ul style="list-style-type: none"> • the request for support is filed at least one month prior to the start of production; and • the project is subject to a formal

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>based on the film's artistic merits, it will then recommend to the assessment committee in the minor partner country to follow suit. If the major partner in the project is Canadian, then the French assessment committee will not review the application until the Canadian authorities have given their approval and <i>vice versa</i>.</p> <p>The French portion of the award is decided by a committee formed of three producers named by the <i>Ministre de la Culture et de la Communication</i>. They make a proposal to the president of the CNC who has final approval.</p> <p>The CNC award may not exceed €381,000, or 20 per cent of the French contribution to the film's budget. The producer must state the value of their request as part of their application.</p> <p>The amount is reimbursable according to conditions set at the time of the award.</p> <p>France has dedicated an annual budget of €762,000 to this programme.</p>	coproduction agreement between the two production companies involved.

A.II.ii. [Aid programmes for new and multimedia products](#)

The *aide sélective* programmes outlined below are funded from the *compte de soutien* unless specifically stated otherwise.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
Video on demand	2008		<p>Filmmakers and companies operating video-on-demand services can receive up to 50 per cent of the costs incurred to make films more widely available via video on demand in France. This can include the conversion of their films to digital, as well as rights acquisition, promotional costs, technical service improvements and the creation of bonus material to put works into context. Restoration costs are not eligible, but are covered by the programme for the digitisation of France's film heritage.</p> <p>Any grant via the <i>soutien sélectif à l'exploitation en vidéo à la demande</i> can be combined with the similar programme for video, but the joint amount should not have the effect of taking state aid for the project over 50 per cent of the total budget.</p> <p>The programme is divided into two parts:</p> <ul style="list-style-type: none"> • support for the conversion and contextualisation of individual films on a French video-on-demand service; and • support for a video producer's full editorial programme, so long as all titles in the portfolio are released within a year of the decision to award a subsidy and the suite contains at least 	<p>To benefit the company must:</p> <ul style="list-style-type: none"> • operate a video-on-demand service offering films and programmes for rental or purchase, or provide access to a library of content on subscription as defined in the <i>décret SMAD</i>. The catch-up services offered by television companies do not qualify; or • own the rights to a catalogue of films that it wants to make available on demand. <p>The company must also:</p> <ul style="list-style-type: none"> • be based in France; and • be owned and operated by French or EU nationals. <p>To qualify for support under the cinema section of the programme, the video-on-demand service needs to have a library of at least 20 French and European films. They should only have been released in line with the delays set out in the <i>chronologie des médias</i>.</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>10 films or 50 hours of television programmes.</p> <p>Eligibility for funding is assessed by a specially appointed committee on the basis of the company's editorial strategy, the cultural importance of the project, the product's technical quality and the efforts made to make the film more accessible to disabled audiences. The committee makes a recommendation for funding to the president of the CNC who then determines the level and the conditions of any award.</p> <p>Support for a portfolio of videos is payable in two parts: the first part equivalent to 70 per cent of the award is payable on signature of the agreement with the CNC; the remainder once the full suite of videos have been made available and the production costs have been filed with the CNC.</p>	
Digitisation of France's film heritage			<p>Rightsholders can benefit from support to convert their works to digital to make them more widely available and ensure that they are restored and preserved for future generations.</p> <p>Awards are assessed by a committee and approved by the president of the CNC. They can be in the form of a subsidy or an advance or a combination of the two support mechanisms, depending on the scope and importance of the project and the financial situation of the</p>	<p>A producer will qualify for support if:</p> <ul style="list-style-type: none"> • they can demonstrate the historical and cultural importance of restoring and converting the film; • the work was released in cinemas before 1 January 2000; • the work was filmed largely or totally in French. Coproductions filmed in another language will only qualify under the scheme if they are filmed in the language of the majority

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>rightsholder.</p> <p>Awards are paid in two tranches: the first on signature of an agreement with the CNC; the second on presentation of full and final accounts.</p> <p>Given the wealth of historic works to be digitised, the committee reviews a maximum of 60 applications in any one session, of which no more than seven can come from a single rightsholder.</p>	<p>coproduction partner;</p> <ul style="list-style-type: none"> • the production company used a studio and film development laboratory based in France or an EU country; • the film was made by a production company registered in France that is owned and managed by French or European nationals; • they can prove they have the rights to exploit the work in at least two of the following channels: in cinemas, on television, on video, via video on demand, or in export markets; • the request is made before the project starts; and • the film has been inscribed on the <i>Registre Public du Cinéma et de l'Audiovisuel</i>.
New media	2007 Formalised in 2012	Le décret du 24 février 2012 (2012-269)	<p>Authors and individual creators can claim support for new media projects which incorporate the internet or mobile technologies within their film or other audiovisual work. Production companies may also claim support where they can prove that valid rights to the project have been assigned to them.</p> <p>The programme is divided into three parts:</p> <ul style="list-style-type: none"> • support for the writing and development of new TV and film projects; • support for the writing and development of 	<p>To qualify for the first category of funding, the project must:</p> <ul style="list-style-type: none"> • take an innovative approach to the incorporation of new media; • be intended for multichannel distribution, including via cinemas and on television; • incorporate different storylines and narrative elements in each medium; • be particularly interactive; • be conceived and written in French; and • be created by a French or European author, or

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>video games; and</p> <ul style="list-style-type: none"> • support for the production of video games⁴⁹⁴. <p>Film producers can claim up to 50 per cent of the development costs incurred up to a maximum of €50,000. This is payable in two instalments: 75 per cent at the start of the project and 25 per cent on completion. The writing and development must be completed within 12 months from the date of the decision for the producer to be eligible for the second instalment, though an extension of a further six months is occasionally granted.</p> <p>The request is reviewed by a specially appointed committee which recommends projects to the president of the CNC for a final decision.</p>	<p>by a production company established in France and owned and operated by French or European nationals.</p> <p>The funding request will be assessed on the basis of the editorial integrity and originality of the project and how well it targets and engages its audience across different media.</p> <p>Projects that have already received aid via the traditional <i>aide sélective</i> programme cannot also claim support from this programme.</p>
R&D fund	1999 Expanded in 2007 following the involvement of Bpifrance	Le décret du 24 février 2012 (2012-269)	<p>With the support of Bpifrance, the scheme is aimed at encouraging technical innovation within the French film and audiovisual industry.</p> <p>The programme covers both exploratory work to scope out an R&D programme and full research programmes. It is divided into two parts:</p> <ul style="list-style-type: none"> • support for the development of new technologies for use in content creation or delivery; and • support for programmes to increase 	The scheme is predominantly targeted at small and medium-sized enterprises employing fewer than 2,000 people.

⁴⁹⁴ Criteria relating to categories two and three covering video games are not considered relevant and have been excluded here

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>accessibility to works of all types via conventional and new media.</p> <p>Companies can claim up to 50 per cent of the development costs incurred up to a maximum of €50,000. The amount can take the form of a subsidy or a combination of subsidy and interest-free loan; the split between these two elements is decided by the awards committee.</p>	
	2013		To support the development of the video-on-demand sector, the CNC extended the R&D fund to cover R&D related to the development of new tools and services on any platform – IP TV, computer or mobile.	Projects will qualify for funding if they help to improve user experience, increase discoverability of works or support the generation of standards resulting in increased interoperability of the different platforms.
Aide à la Création Artistique Multimédia (DICRÉAM)	2002	Le décret du 17 janvier 2012 (2012-54)	<p>Producers can claim support from the CNC, the Ministère de la Culture et de la Communication and the Centre national du livre for the development, production and exhibition of multimedia projects which are considered innovative and experimental.</p> <p>The programme is divided into three parts:</p> <ul style="list-style-type: none"> • support for the development of new projects; • support for the production of digital projects, so long as the digital technology is integral to the nature of the project; and • support for the exhibition of digital projects as part of a varied programme of innovative and 	<p>To qualify for funding, the project must:</p> <ul style="list-style-type: none"> • be created by a French or European national or a company established in France; and • demonstrate that the writing and the approach to the project are innovative. <p>The producer must also show that at least 25 per cent of the funding has already been secured – 50 per cent in the case of exhibition support.</p> <p>In the case of production funding, requests must be made before the work enters production. To benefit from support for the exhibition of digital projects, the applicant must be in possession of a signed contract covering release and exhibition.</p>

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>experimental work.</p> <p>Producers can claim funding equivalent to up to 50 per cent of the development budget. In 2014, the average award was €8,000 for the first category, €12,000 for the second and €10,000 for the third.</p> <p>The request is reviewed by a specially appointed committee which recommends projects to the president of the CNC for a final decision.</p> <p>Funding must be claimed within 24 months of the grant decision; 12 in the case of exhibition support.</p>	
Web COSIP	April 2011	Le décret du 1 ^{er} avril 2011 (2011-364)	<p>In April 2011, the support for the development and production of audiovisual works was extended to cover digital projects destined for online distribution only rather than to be televised. This allows producers who already have an account to generate <i>soutien automatique</i> credits from projects that have been made for the web. Those that do not have an account must seek support for their work through the new media scheme above; this work will then be approved, or <i>agrégé</i>, by the CNC and be qualified to generate <i>soutien automatique</i> credits for subsequent works.</p> <p>The credits are generated in the same way as for television based on a percentage of the</p>	<p>A producer may reinvest credits from previous works in any project, so long as:</p> <ul style="list-style-type: none"> • it records or reflects France’s cultural heritage; • is not an advertisement for a company or brand or a trailer or other promotional piece for a film or television programme; • is due for release via one of the <i>services de médias audiovisuels à la demand (SMAD)</i> based in France, which are subject to the same obligations to show French and European content as television channels, or via a commercial service that focuses on showing independent and cultural content; and • meets the European approval criteria on its

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			<p>acquisition cost per minute multiplied by the duration of the programme and a coefficient determined with reference to the acquisition cost.</p> <p>Producers can reinvest credits up to a total of 40 per cent of the production costs incurred on new projects made in France.</p> <p>The level of the grant is adjusted to ensure that it does not have the effect of taking total state funding above 50 per cent of the total project budget.</p>	<p>18-point barometer.</p> <p>On application, the producer must show that at least 25 per cent of the funding – or 25 per cent of the French share of the budget in the case of a coproduction – has been secured through the conclusion of a coproduction agreement, or the pre-sale of rights.</p> <p>Producers who have already received funding via the new media programme outlined above cannot also apply for funding under web COSIP for the same project.</p>
Support for technical industries	1999		<p>The programme provides funding for companies to continually update their facilities, ensuring film production and distribution remains at a high standard.</p> <p>It covers all aspects of development from initial scoping studies to the cost of development of new products and services and prosecution of IP rights.</p> <p>The level of support varies from 10 per cent of project costs up to 70 per cent based on the size of the organisation and the type of project. Large companies (defined as more than 550 staff and with an annual turnover of greater than €50 million) can claim up to a maximum of €200,000 over three fiscal years. There is no such restrictions on most types of aid to small and</p>	<p>Funding is open to a broad spectrum of companies involved in special effects and post-production, animation, sound recording, manufacture of camera equipment, editing, subtitling and the production of film copies. To qualify for funding, the company must:</p> <ul style="list-style-type: none"> • be established in France and owned and managed by French or European nationals; and • demonstrate the benefits of the proposed project in terms of impact on film production quality, its commercial potential and its complementarity with the company's existing activities.

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			medium-sized companies due to a European exemption on levels of state support aimed at boosting development of these organisations.	
New production technologies			<p>Up to €200,000 in support is awarded for the use of digital technology. The support for 3D projects is at the discretion of the assessment committee and is subject to agreement by the European Commission’s cultural office.</p> <p>The award is paid in two parts: 60 per cent up front and the remainder on completion of the project. Any conditions on the award are set by the assessment committee at the time the award is granted.</p> <p>The scheme is divided into two parts: one to support the use of innovative digital technology, including cameras, special effects and animation; the second to support the use of 3D techniques.</p> <p>The request is reviewed by a specially appointed committee which recommends projects to the president of the CNC to make a final decision.</p>	<p>To qualify, a producer must show that:</p> <ul style="list-style-type: none"> • the use of the technology is innovative; • the technology supports rather than detracts from the artistic merit of the film; • the application is made before the start of filming; • the technology costs represent a significant part of the budget; • the proposed approach is feasible. Suitability for the award is assessed on the basis of a short film or pilot showing the proposed technology in use; and • the film has been approved, or <i>agr��</i>, by the CNC via the <i>agr��ment des investissements</i> process.
Digital exhibition	1 October 2009	Le d�cret du 2 s�ptembre 2010 (2010-1034) for digital upgrades	<p>The subsidy provided by the CNC has been limited to a maximum of €200,000 over a period of three fiscal years.</p> <p>Distribution companies have a legal requirement to financially support the upgrade of cinemas to digital projection for a period of 10 years up to 31 December 2021.</p>	<p>Support is provided to cinema operators:</p> <ul style="list-style-type: none"> • running fewer than 50 screens; • operating a reasonable level of service, defined as at least five showings per week; • where the level of support provided by <i>aide automatique</i> (above) is insufficient;

<i>Sector</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Level of funding available</i>	<i>Qualifying criteria</i>
			This aid package was discontinued at the end of December 2013, as the vast majority of cinemas were deemed to have been converted to digital.	<ul style="list-style-type: none"> • where the cinema would be unable to cover at least 75 per cent of the costs from advances made by its distribution partners; and • where the work to upgrade the cinema does not predate 1 October 2009; <p>Operators have to fund at least 10 per cent of the upgrade themselves through their own funds or the advances received from distributors.</p>

A.III. Sources of funding

*A.III.i. Sources contributing to the *compte de soutien*⁴⁹⁵*

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Percentage levied</i>
Taxe spéciale additionnelle (TSA)	1959	Le décret du 16 juin 1959 (59-773)	<p>10.72 per cent levy imposed on the box office takings for all films, not just French films. The amount is calculated on the basis of annual returns filed by film exhibitors, e.g. Gaumont.</p> <p>With the introduction of a new X-rated category in the 1970s, an additional rate was created for pornographic and particularly violent films of 16.08 per cent. This represents a 50 per cent premium over other films.</p>

⁴⁹⁵ A small part of the *compte de soutien* (<1 per cent in 2002) is derived from additional sources, including repayment of the discretionary support programmes such as the *avance sur recettes* and fines issued by the Conseil supérieur de l'audiovisuel against French broadcasters.

<i>Source</i>		<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Percentage levied</i>
Taxe sur les services de télévision (TST) ⁴⁹⁶	Free-to-air broadcasters	1984 on all new revenue streams generated by broadcasters Modified in 1986 to cover all revenue streams	La loi de finances du 29 décembre 1983 (83-1179) as modified by la loi de finances du 29 décembre 2010 (2010 -1657), la loi de finances du 28 décembre 2011 (2011-1977) and la loi de finances rectificative du 29 décembre 2013	4.5 per cent tax on company turnover, including revenue derived from the television licence fee, subscriptions and advertising. In 2014, the scope was broadened to include revenue derived from catch-up services. In 1987, the rate was increased to 5.5 per cent of company turnover over a minimum threshold. The initial regulations stipulated that the tax was only payable once a broadcaster was bringing in monthly revenues of FFr1 million (c. €150,000). The tax-free allowance stands at €11 million annually in 2015. Providers of mobile and high definition television services have to pay a premium of 0.1 and 0.2 per cent respectively, such that broadcasters pay 5.6 or 5.7 per cent tax on all revenues from the launch date of these channels. In practice, only the high definition premium has been applied, as no provider has yet launched a dedicated mobile channel. France Télévisions benefits from a 50 per cent reduction on all revenues derived from services targeting France’s overseas territories specifically.
	Canal+ & other cable & satellite broadcasters	1984	La loi de finances du 29 décembre 1983 (83-1179) La loi du 5 mars 2007 (2007-309)	5.5 per cent tax on company turnover, including revenue derived from subscriptions and advertising sold in France over a threshold of €11 million. In 2008, the law was updated to cover all television channel providers regardless of their mode of distribution. In 2014, the scope was broadened to include revenue derived from catch-up services. Satellite and cable channels are subject to the same premiums on high definition services as the free-to-air broadcasters outlined above.

⁴⁹⁶ The CNC has been responsible for collecting the TST directly from broadcasters since 1 January 2010. TST is the collective name for the tax paid by channel editors (*taxe sur les services de télévision-éditeurs* or TST-E) and that paid by distributors such as the internet services providers (*taxe sur les services de télévision-distributeurs* or TST-D).

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Percentage levied</i>
Distributors of television services	2008 Amended 2011 Fully enforced from 2014 following a decision of the European Court of Justice	La loi de finances du 28 décembre 2011 (2011-1977)	<p>Companies distributing a channel or package of television channels, e.g. telecommunications companies and internet service providers (ISPs), are obliged to pay TST on all television-related revenue. ISPs and telecommunications companies are liable for TST on 90 per cent of the net revenue derived from the sale of subscriptions to television services.</p> <p>Many of the distributors targeted, particularly ISPs, provide composite packages of services. In 2011, the rules were changed to define the television-related revenue on which they are required to pay tax as follows:</p> <ul style="list-style-type: none"> • 45 per cent of revenue from the sale of subscriptions for a ‘triple play’ or ‘quadruple play’ package, that is a composite service including a telephone line, internet access, mobile phone access and television (usually delivered through a set-top box connected to an ADSL line); plus • 90 per cent of the revenue derived from the sale of discrete channels or channel packages, e.g. from the sale of a bundle of film channels on top of the standard television service available through the set-top box. <p>From 2014, the proportion of triple play revenue liable for tax has been reduced to 34 per cent.</p> <p>In 2011, the amount payable was based on a sliding scale and applied to revenues over the tax-free allowance of €10 million, such that 0.5 per cent is payable on the first tranche up to €75 million, 1.0 per cent on revenues in the next band, and so on as follows:</p> <ul style="list-style-type: none"> • 0.5 per cent on revenues between €10-75 million; • 1.0 per cent on revenues between €75-140 million; • 1.5 per cent on revenues between €140-205 million; • 2.0 per cent on revenues between €205-270 million; • 2.5 per cent on revenues between €270-335 million;

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Percentage levied</i>
			<ul style="list-style-type: none"> • 3.0 per cent on revenues between €335-400 million; • 3.5 per cent on revenues between €400-465 million; • 4.0 per cent on revenues between €465-530 million; and • 4.5 per cent on all revenues over €530 million. <p>A premium of 2.2 per cent is applied on distribution operations run by broadcasters, such that any broadcaster handling their own distribution has to pay 6.7 per cent tax on company turnover over €530 million.</p> <p>From 2014, the bands have been consolidated, such that companies pay:</p> <ul style="list-style-type: none"> • 0.5 per cent on revenues between €10-250 million; • 2.1 per cent on revenues between €250-500 million; • 2.8 per cent on revenues between €500-750 million; and • 3.5 per cent on all revenues over €750 million. <p>The premium applied on distribution operations run by broadcasters was increased to 3.75 per cent, such that any broadcaster handling their own distribution has to pay 7.25 per cent tax on company television revenues over €750 million.</p>

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Percentage levied</i>
Tax on the sale of video ⁴⁹⁷	1 July 1993 Modified 1 July 2003, 1 July 2004 and 25 March 2007	La loi de finances du 30 décembre 1992 (92-1376) Updated by la loi du 18 juin 2003 (2003-517) and la loi du 9 juillet 2004 (2004-669)	2 per cent on the revenue generated by companies producing or importing video cassettes in France. In 2003, the rules were extended to cover the sale of DVDs and the basis for calculation changed to the retail cost to buy or rent a film, defined as the price charged to the consumer less VAT. The percentage was held at 2 per cent. In 2004, a further extension meant that the tax was also due on the revenue generated by video-on-demand services based in France from the sale of subscriptions, or access to videos on a pay-as-you-go basis. In 2007, an increased rate of 10 per cent was applied to the sale or rental of all videos considered pornographic or likely to incite violence.

A.III.ii. [Subsidies from distributors](#)

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
Free-to-air broadcasters	1986 Modified 1990 & 2001	La loi du 30 septembre 1986 (86-1067) Le décret du 17 janvier 1990 (90-67), le décret du 9 juillet 2001 (2001-609), le décret du 28 décembre 2001	Under the terms of its licence, a broadcaster must invest: <ul style="list-style-type: none"> • a minimum of 3.2 per cent of its revenue for the previous financial year in film production; and • Up to one-sixth of the amount invested – or 0.7 per cent of total revenue – may be invested in European films not produced in French. The remainder (2.5 per cent of revenue) must be invested in French films. 	Investment should: <ul style="list-style-type: none"> • be made by way of a coproduction agreement or a commitment to acquire the broadcast rights in advance of the film entering into production. Any coproduction investments must be handled by a separate film production subsidiary company; and • only be made in films pre-approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process.

⁴⁹⁷ This tax covers sales of all forms of recorded material including video cassettes, DVDs, Blu-ray discs and video-on-demand services

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
		(2001-1333), le décret du 2 juillet 2010 (2010-747) and le décret du 9 mai 2012 (2012-757)	<p>In 2001, the regulations were modified such that channels were only required to invest in cinema production if they broadcast more than 52 films per year, with repeats making at least 104 showings of these films over the year.</p> <p>In 2008, reflecting an earlier informal agreement between the TV channels and the Conseil supérieur de l'audiovisuel, the minimum investment was increased to 3.5 per cent for all channels wanting to benefit from a liberalisation of the film broadcast rules (see A.I.i above).</p> <p>In 2012, France Télévisions agreed to invest 3.5 per cent of the revenues of each service in the group (rather than an aggregate across the group), or a minimum of €50 million, in film production in return for the right to show films on France 4 on Wednesday evenings.</p>	Some 75 per cent of total investment must go towards films made by independent filmmakers. Independent is defined according to the ownership structure of the production company, as well as the method of distribution for the film.
Groupe Canal+	1986 Modified 1990 & 2001 The company's broadcast charter was most recently updated on 13 March 2014	La loi du 30 septembre 1986 (86-1067) Le décret du 17 janvier 1990 (90-67), le décret du 28 décembre 2001 (2001-1332) and le décret du 2	<p>Under the terms of its broadcast licence, Canal+ must invest:</p> <ul style="list-style-type: none"> • a minimum of 12 per cent of total revenue for the previous financial year in the acquisition of European film rights (increased to 12.5 per cent in 2009 following conclusion of an interprofessional agreement with filmmakers); and • a minimum of 9 per cent of total revenue 	<p>Canal+ has an additional investment restriction within its charter, in that 80 per cent of its investment in French films should take the form of exclusive broadcasting rights and the investment should be made in advance of production on the film starting.</p> <p>From 2000, the channel was required to invest 45 per cent of its funding into films with budgets of less than €5.4 million to encourage diversity. These limits were replaced in 2009</p>

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
		juillet 2010 (2010-747)	<p>should be in the acquisition of French film rights (increased to 9.5 per cent in 2009).</p> <p>By agreement with the Conseil supérieur de l'audiovisuel, this investment is subject to a guaranteed minimum of €3.61 per subscriber to be invested in European films, €2.73 of which must be invested in French films.</p>	<p>with a new commitment that 17 per cent of the channel's investment would be ploughed into films with budgets below €4 million.</p> <p>Some 75 per cent of total investment must go towards films made by independent filmmakers.</p> <p>To ensure that funding is spread across the film industry, Canal+ may not partner with one of the French free-to-air channels on at least half of the French films acquired.</p>
	1 January 2010		<p>The broadcaster is committed to investing in cinema distribution to ensure that films receive a cinema release. The investment is as follows:</p> <ul style="list-style-type: none"> • 2010 – €4.00 million; • 2011 – €4.25 million; and • 2012 onwards – €4.50 million annually. <p>Canal+ advances a distributor up to 50 per cent of the total distribution costs up to a maximum of €61,000. The subsidy is reduced by 25 per cent for all films that are not designated EOF, or <i>d'expression originale française</i>.</p> <p>The advance is paid in three tranches: 50 per cent one month before the film's release; 40 per cent on presentation of detailed accounts (this has to be within six months of the film's release); and the final amount in July of the</p>	<p>To benefit, the distributor:</p> <ul style="list-style-type: none"> • must have distributed at least three films in the 24 months prior to the request for funding; • warrant that the subsidy will support film distribution; • warrant that the company has no links with a television or telecommunications company, or a major Hollywood studio; and • must apply for the subsidy within seven months of the film's release. <p>The subsidy can only be used to distribute new films:</p> <ul style="list-style-type: none"> • approved, or <i>agrée</i>, by the CNC; • where the French investment in production is equivalent to at least 30 per cent of the

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
			<p>year following release.</p> <p>Distributors are required to reimburse Canal+ if the film makes a profit within six months of release. The level of reimbursement is the advance less a commission calculated as 25 per cent of the distributor's gross receipts.</p> <p>This aid was originally agreed for a term of five years from 1 January 2010, but appears to still be in operation in 2015.</p>	<p>total production budget;</p> <ul style="list-style-type: none"> • that will air simultaneously on between five to 200 screens; and • for which the costs of distribution are at least €45,000.
Ciné+ group (now part of Groupe Canal+)	<p>2001</p> <p>The company's broadcast charter was most recently updated on 31 December 2012</p>	<p>La loi du 30 septembre 1986 (86-1067)</p> <p>Le décret du 17 janvier 1990 (90-67), les décrets du 28 décembre 2001 (2001-1332 & 2001-1333) and le décret du 2 juillet 2010 (2010-747)</p>	<p>Under the terms of its broadcast licence, the channels in the Ciné+ group are considered "chaînes de premières diffusions" and must invest:</p> <ul style="list-style-type: none"> • a minimum of 27 per cent of revenue for the previous financial year in the acquisition of European film rights; and • a minimum of 22 per cent of total revenue for the previous financial year in the acquisition of French film rights. This has been reduced from 25 per cent. <p>The broadcaster is also subject to set minimums on the amount spent on the pre-acquisition of television rights for films. This is currently set at €1.00 per subscriber to be invested in European films, €0.70 (previously €0.85) of which must be invested in French films.</p>	<p>From 2003, 25 per cent of the investment must be ploughed into films with budgets below €5.35 million to encourage diversity. This was increased to 28.4 per cent in the most recent charter negotiations.</p> <p>Some 75 per cent of total investment must be in independent film.</p>

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
The Orange group of channels	2001 The company's broadcast charter was most recently updated on 20 December 2013	La loi du 30 septembre 1986 (86-1067) Le décret du 17 janvier 1990 (90-67), les décrets du 28 décembre 2001 (2001-1332 & 2001-1333) and le décret du 2 juillet 2010 (2010-747)	<p>Under the terms of its broadcast licence, the channels in the Orange Cinéma séries group are considered "chaînes de premières diffusions" and must invest:</p> <ul style="list-style-type: none"> • a minimum of 27 per cent of revenue for the previous financial year in the acquisition of European film rights; and • a minimum of 22 per cent of total revenue for the previous financial year in the acquisition of French film rights. <p>The broadcaster is also subject to set minimums on the amount spent on the pre-acquisition of television rights for films. This is currently set at the following levels for each of the channels it operates:</p> <ul style="list-style-type: none"> • €2.01 per subscriber to be invested in European films, €1.70 of which must be invested in French films for each channel that has fewer than 1.5 million subscribers; and • €2.25 per subscriber to be invested in European films, €1.90 of which must be invested in French films for each channel that has more than 1.5 million subscribers. <p>There had previously been a third tranche set at €3.12 per subscriber for European films and €2.64 for French films for each channel that had</p>	<p>Some 25 per cent of the investment must be ploughed into films with budgets below €5.35 million to encourage diversity. In the most recent charter negotiations, this was updated to 30 per cent to be invested in films with a budget of less than €6.5 million.</p> <p>60 per cent of its investment in French films should take the form of broadcasting rights rather than production funding.</p> <p>Some 75 per cent of total investment must be allocated to independent filmmakers.</p> <p>In the most recent charter, Orange has committed to a minimum investment of €179 million over five years, split as follows:</p> <ul style="list-style-type: none"> • 2014 – €33 million, of which €27 million invested in French films; • 2015 – €35 million, of which €28 million invested in French films; • 2016 – €36 million, of which €29 million invested in French films; • 2017 – €37 million, of which €30 million invested in French films; and • 2018 – €38 million, of which €31 million invested in French films.

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
			more than 3.0 million subscribers. This has been removed in the most recent charter.	
	1 January 2013		<p>The broadcaster is committed to investing in cinema distribution to ensure that films receive a cinema release.</p> <p>The broadcaster agreed to set aside €333,333. This will cover a series of retrospective payments to cover the distribution costs of films released in 2013. Distributors must have applied for aid before the 27 February 2015. The aid they receive is a factor of the budget divided by the number of qualifying applicants.</p> <p>There is no indication whether this scheme will be renewed to cover subsequent years.</p>	<p>To benefit, the distributor must:</p> <ul style="list-style-type: none"> • have distributed at least three films in the 12 months prior to the request for funding – each being shown on at least five screens; • warrant that the subsidy will support film distribution; • warrant that the company has no links with a television or telecommunications company, or a major Hollywood studio; • agree to respect all interprofessional agreements, particularly the <i>chronologie des médias</i>; and • apply for the subsidy within seven months of the film’s release. <p>The subsidy can only be used to cover the distribution costs of new films released in 2013:</p> <ul style="list-style-type: none"> • approved, or <i>agrée</i>, by the CNC; • that are non-European films or Franco-European coproductions where the French investment in production is less than 30 per cent of the total production budget; • that will air simultaneously on between five to 120 screens in the first week of release; and

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
				<ul style="list-style-type: none"> • for which the costs of distribution are at least €45,000.
The Ciné group of channels (owned by AB Thématiques)	1999 The company's broadcast charter was most recently updated on 11 February 2015	La loi du 30 septembre 1986 (86-1067) Le décret du 17 janvier 1990 (90-67), les décrets du 28 décembre 2001 (2001-1332 & 2001-1333) and le décret du 2 juillet 2010 (2010-747)	<p>Under the terms of its broadcast licence, the channels in the Ciné group are considered “chaînes de premières diffusions” and must invest:</p> <ul style="list-style-type: none"> • a minimum of 26 per cent of revenue for the previous financial year in the acquisition of European film rights; and • a minimum of 22 per cent of total revenue for the previous financial year in the acquisition of French film rights. <p>The broadcaster is also subject to set minimums on the amount spent on the pre-acquisition of television rights for films. This is currently set at the following levels for each of the channels it operates:</p> <ul style="list-style-type: none"> • €0.75 per subscriber to be invested in European films, €0.53 of which must be invested in French films for each channel that has fewer than 2.5 million subscribers; and • €1.00 per subscriber to be invested in European films, €0.70 of which must be invested in French films for each channel that has more than 2.5 million subscribers. 	<p>Some 30 per cent of the investment must be ploughed into films with budgets below €4 million to encourage diversity.</p> <p>Some 75 per cent of total investment must be allocated to independent filmmakers.</p> <p>In its most recent charter, the Ciné group has undertaken to enter discussions with the French film industry between 1 September and 31 December 2015 leading to more detailed commitments on film funding.</p>

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
Terrestrial digital TV channels	2001	La loi du 30 septembre 1986 (86-1067) Le décret du 17 janvier 1990 (90-67), les décrets du 28 décembre 2001 (2001-1332 & 2001-1333), le décret du 4 février 2002 (2002-140) and le décret du 2 juillet 2010 (2010-747)	The new general interest digital channels are subject to the same funding requirements as the traditional national free-to-air broadcasters once annual revenues reach €75 million and they broadcast at least 52 films per year. Consequently, on reaching these thresholds, 3.2 per cent of revenue should be invested in the production or acquisition of European films, within which 2.5 per cent should be set aside for French films. On the launch of a new channel, these requirements can be phased in at a rate agreed with the Conseil supérieur de l’audiovisuel and written into the TV company’s broadcast charter.	Some 75 per cent of total investment must be allocated to independent filmmakers.
Digital cinema channels⁴⁹⁸	2001	La loi du 30 septembre 1986 (86-1067) Le décret du 17 janvier 1990 (90-67), les décrets	Cinema channels that are considered “chaînes de premières diffusions” must invest: <ul style="list-style-type: none"> • a minimum of 26 per cent of revenue for the previous financial year in the acquisition of European film rights; and • a minimum of 22 per cent of total revenue 	Some 75 per cent of total investment must be to independent film makers.

⁴⁹⁸ The share of revenue that digital and specialist cinema channels, including Canal+, Ciné+ Group and Ciné Group, are required to invest in the acquisition of European and French film rights is set out in their individual broadcast charters, in the case of the *chaînes de premières diffusions* as 26 per cent and 22 per cent respectively. It is implied that the amount allocated to French film falls within the overall European quota, but is not explicitly stated and there is some ambiguity about whether the requirements are cumulative or not. In its *Guide des chaînes numériques*, the CNC states that these services must dedicate 26 per cent of their resources to the acquisition of European rights and that the proportion allocated to French works must be at least 22 per cent, so long as any stipulated minimum spend per subscriber is also respected, indicating that any spend on French works is counted as part of the overall investment in European film (see CNC, *Guide des chaînes numériques*, 8^e édition, p. 93).

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
		du 28 décembre 2001 (2001-1332 & 2001-1333) and le décret du 2 juillet 2010 (2010-747)	<p>for the previous financial year in the acquisition of French film rights.</p> <p>For all other cinema channels the rates are 21 per cent and 17 per cent.</p> <p>On the launch of a new channel, these requirements can be phased in at a rate agreed with the Conseil supérieur de l’audiovisuel and written into the TV company’s broadcast charter.</p> <p>Channels dubbed “patrimoine cinématographique” can count the amount spent on restoration and conservation of old films toward their funding commitments.</p>	
Cable, satellite and Pay-per-view cinema channels	2002	Le décret du 14 février 2002 (2002-140)	<p>Cable and satellite channels are subject to the same funding requirements as other channels depending on their classification as a generalist channel, cinema channel or a pay-per-view channel. For those with an annual budget of €150,000 or more the obligations are written into their broadcast charter; those under the threshold are required to make an annual declaration of their investments to the CSA, but do not have the restrictions written into their charter.</p> <p>On the launch of a new channel, these requirements can be phased in at a rate agreed with the Conseil supérieur de l’audiovisuel and</p>	

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
			written into the TV company's broadcast charter. Channels dubbed "patrimoine cinématographique" can count the amount spent on restoration and conservation of old films toward their funding commitments.	
Pay-as-you-go video-on-demand services ⁴⁹⁹	2011	La loi du 5 mars 2009 (2009-258) Le décret du 12 novembre (2010-1379)	Video-on-demand services that offer at least 10 films and make revenues of at least €10 million must invest: <ul style="list-style-type: none"> • a minimum of 15 per cent of revenue for the previous financial year in the acquisition of European film rights and the production of new European films; and • a minimum of 12 per cent of revenue for the previous financial year in the acquisition of French film rights and the production of new French film. <p>This does not include the revenues generated by television companies from their catch-up services, which are covered within the rules on contributions made by television channels.</p>	If it is possible to determine the proportion of revenue that comes from the sale of films and that from the sale of other audiovisual works, services are obliged to split their investment between film and other works according to the same proportions. If not, service providers should employ statistics on the usage of film and other content to determine how to split investment.

⁴⁹⁹ See note 480

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
Subscription video-on-demand services ⁵⁰⁰	2011	La loi du 5 mars 2009 (2009-258) Le décret du 12 novembre (2010-1379)	<p>The business model for subscription video-on-demand services is considered to be closer to that of a specialist cinema channel. As a result, these services have similar commitments to fund production of new content and to acquire film rights as the digital cinema channels, as follows:</p> <ul style="list-style-type: none"> • “premium” services defined as those offering access to films within 36 months of their cinema release must invest: <ul style="list-style-type: none"> • a minimum of 26 per cent of revenue generated in the previous financial year from the sale of films within the first 22 months following release (recent films) and a minimum of 21 per cent from all other films in new European works; and • a minimum of 22 per cent of revenue generated in the previous financial year from the sale of recent films and 17 per cent of other films in new French works; • “other” services defined as those offering access to films over 36 months in age are obliged to invest 15 per cent of revenue in film production. <p>In practice, all services are obliged to invest 15</p>	<p>If it is possible to determine the proportion of revenue that comes from the sale of films and that from the sale of other audiovisual works, services are obliged to split their investment between film and other works according to the same proportions. If not, service providers should employ statistics on the usage of film and other content to determine how to split investment.</p> <p>Services generating at least €50 million turnover a year must use at least 25 per cent of their annual investment to support the production of new films.</p>

⁵⁰⁰ See note 480

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Statutory investment</i>	<i>Additional restrictions & conditions</i>
			per cent of revenue, as the <i>chronologie des médias</i> currently prohibits subscription video-on-demand services from showing films within the first 36 months following their cinema release.	

A.III.iii. [Tax relief and programmes to support investment](#)

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Available tax credits</i>	<i>Additional restrictions & conditions</i>
SOFICAs	1985	La loi du 11 juillet 1985	<p>A SOFICA, or <i>Société pour le financement du cinéma et de l'audiovisuel</i>, is a limited liability company operating as an investment fund for the production of film and audiovisual works. Individuals and companies buying shares in the SOFICA benefit from tax deductions, as follows:</p> <ul style="list-style-type: none"> • no tax is payable on the amount invested up to €18,000 or 25 per cent of an individual's personal income, whichever is the lower amount; or • up to 50 per cent of the company investment can be written off, avoiding corporation tax on that sum. <p>The SOFICA benefits from any profits, or sustains any losses, on the projects in which it has invested in proportion to its investment. Profits are returned to the company for</p>	<p>Shares in a SOFICA cannot be traded for the first five years following purchase. Any investor transferring their shares before the end of the term will sacrifice the tax benefit for the full tax year in which the trade was made.</p> <p>A SOFICA can only invest in a film project that has been pre-approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process.</p> <p>Investment must take the form of a cash participation in the production of a particular film or a capital investment in a film or television production company.</p> <p>Since 2005, the SOFICA have signed an annual guarantee to invest in independent film. Films produced by companies in which the SOFICA has made a capital investment are not considered independent, but those from all</p>

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Available tax credits</i>	<i>Additional restrictions & conditions</i>
			<p>reinvestment in another film, or for distribution as a dividend.</p> <p>In 2010, individuals investing in a SOFICA would pay no tax on the first 40 per cent of profits generated, if the investment was committed for a minimum of five years. The tax free allowance is capped at €7,200. A higher rate of 48 per cent applied where an investor committed at least 10 per cent of their investment to independent production companies.</p> <p>The rates were cut in 2011 to 36 per cent (capped at €6,480) and 43 per cent respectively.</p>	<p>other production houses would be. It has typically ensured a minimum investment of 35 per cent of the total goes to independent film. This proportion was increased to 50 per cent from the start of 2010 following a review of activities commissioned by the then CNC President Véronique Cayla.</p> <p>Investment from a SOFICA can account for a maximum of 50 per cent of the European funding of any project.</p> <p>Up to 20 per cent of the funding allocated by a SOFICA in any given year can be in European coproductions not shot in French.</p>
Tax relief on film production	2004	<p>La loi du 30 décembre 2003 (2003-1311) as modified by la loi du 30 décembre 2004 (2004-1485), la loi du 30 décembre 2005 (2005-1719), la loi du 30 décembre 2005 (2005-1720) & la loi du 29 décembre 2012 (2012-1510)</p> <p>Les décret du 20 mars 2006 (2006-</p>	<p>Licensed French production companies qualify for a tax credit equivalent to 20 per cent of all production expenses incurred in France.</p> <p>The value of any claim cannot exceed €4 million or 80 per cent of the film's production budget, or of the French contribution in the case of a coproduction, whichever is the lower.</p> <p>All applications for tax relief are reviewed by a committee before being approved by the CNC's financial director and the president of the Commission d'agrément.</p> <p>The level of the tax relief may be adjusted to ensure that it does not have the effect of taking total state funding above 50 per cent of the</p>	<p>To qualify, the film expenses must relate to films that:</p> <ul style="list-style-type: none"> • have been pre-approved, or <i>agrée</i>, by the CNC via the <i>agrément des investissements</i> process; • are produced in France, both in terms of filming and post-production/editing work; • are mainly, or entirely, shot in French; • are produced using technical staff of French or European nationality; and • support the development and diversity of the French and European film and audiovisual industry.

<i>Source</i>	<i>Date introduced</i>	<i>Relevant legislation</i>	<i>Available tax credits</i>	<i>Additional restrictions & conditions</i>
		317 & 2006-325)	total production budget. In the case of 'difficult' films (the first or second film by a new director, or those with a budget of less than €1.25 million), the ceiling may be increased to 60 per cent.	
International tax relief	2009	L'arrêté du 1 ^{er} décembre 2009 (2009-1465)	<p>Overseas production companies can claim tax relief up to 20 per cent of all production expenses incurred in France. This was limited at €10 million per project, but has been increased to €20 million from 1 January 2015.</p> <p>All applications for tax relief are reviewed by a CNC committee before being approved.</p>	<p>To qualify, a production company must:</p> <ul style="list-style-type: none"> • have incurred production expenses in France of at least €1 million. In the case of films with a budget of less than €2 million, then at least 50 per cent of the production costs should have been incurred in France; • have spent at least five days filming in France; • promote French history and/ or culture via the work. This is determined according to an assessment scale; and • submit its claim for tax relief within 24 months of filming taking place in France.

A.III.iv. [Government guarantees on investment \(IFCIC\)](#)

<i>Source</i>	<i>Date introduced</i>	<i>Available support</i>
IFCIC	1983	<p>IFCIC, or the <i>Institut pour le Financement du Cinéma et des Industries Culturelles</i>, is a government-mandated credit institution. Some 49 per cent of the organisation's shares are owned by the French State and Bpifrance and 51 per cent by a consortium of French banks.</p> <p>IFCIC receives a grant in support of its operations from the CNC and from the European Union's MEDIA programme to support its investment in European films. From 2014, the CNC is increasingly assuming the MEDIA funding commitments, on the expectation that the MEDIA fund will begin to disappear.</p> <p>IFCIC facilitates companies within the cultural industries in finding and securing bank loans and also stands guarantor for the loans to encourage banks to lend the money. Its guarantees extend to independent cinemas and distributors, as well as film producers.</p> <p>The first stage in securing the guarantee is for the company seeking funding to approach a bank about a loan. The bank will then file a request for a guarantee with IFCIC, which is reviewed by the organisation's assessment committee. Suitable projects are then recommended to the management board, which signs them off and informs the bank to approve the loan.</p> <p>In 2014, IFCIC guaranteed an average of 51.5 per cent of the amount loaned by the banks on the films it agreed to support. This translated to a total guaranteed amount of €214.6 million (including new credits agreed in 2014 and outstanding credits from previous years), which underpinned combined loans of €417.3 million.</p> <p>The organisation manages a fund that was worth €39.5 million at the end of 2014, which can be used to reimburse banks in the event of a company defaulting on its loan.</p>

B. Interviews

The list of questions below is an aggregated list; not all questions were asked of all interviewees. Those questions that were posed in all interviews are marked in bold.

B.I. Interview candidates

The following were interviewed directly as part of this project:

- Peter Chase, Vice President Europe, US Chamber of Commerce Europe Office;
- Marie-Sophie Lequerré, former Chargée de mission V&D, CNC⁵⁰¹
- Bernard Miyet, & former French diplomat in charge of audiovisual affairs at the GATT negotiations
- Guillaume Prieur, Directeur des Affaires Institutionnelles et Européennes, SACD
- French public affairs specialist, CNC
- US negotiator for trade in services in TTIP
- Former US film industry executive
- Representative of the US business community
- European Commission official & trade negotiator
- Public affairs specialist & representative of the US film industry

B.II. Questions for English-language interviews

B.II.i. France's cultural policy & identity

- 1. What do you understand by the term 'cultural exception'?**
- 2. The French Ministry of Culture has stated that the cultural exception is a tool for the protection of cultural diversity. How would you define cultural diversity?**
- 3. Some French have claimed that their efforts to promote debate on the issue of cultural diversity gives France a special position of influence on the world stage. What do you think about that statement?**

B.II.ii. Trade negotiations

- 4. Why do you think the French campaign more vociferously during trade negotiations to protect cinema and the audiovisual industry than they do other creative industries, for example publishing?**
- 5. Do you think the French position on the cultural exception has changed over the past 20 years? In what ways?**
- 6. And do you think the US position on the impact of French state support for film has changed over the past 20 years? If so, why?**

⁵⁰¹ At the time of interview in December 2014, Marie-Sophie Lequerré was responsible for the CNC's subsidy programme relating to video on demand, but has since left the organisation.

7. **What impact has the exclusion of audiovisual services from TTIP had on the current negotiations?**
8. Since the conclusion of the Uruguay round of trade negotiations in 1993, European integration has advanced significantly. What impact has this had on how issues of trade and culture have been handled at a European level?
9. One of your US counterparts felt that the exclusion of audiovisual services from the European TTIP mandate was unhelpful; it prevented you from discussing alternative ways to protect and promote culture via digital channels. What do you think?
10. Thinking about the mandate that you have been given for TTIP, do you think that European attempts to exclude audiovisual services has meant that the US is less willing to make concessions in other areas of the trade negotiations?
11. At the time of Uruguay round of GATT negotiations, the French claimed that the US was 'very protectionist' with regards to film and that French films were effectively blocked from the US market because of the inability to find a local distributor.
 - a. Does this claim persist?
 - b. Is it as relevant now that French companies can make their films available on demand in any territory they would like?

B.II.iii. [US film industry](#)

12. Are there other issues that are now actually more important to the US film industry than the cultural exception, e.g. piracy?
13. **Do you think that the US film industry has found ways to benefit from the quotas and subsidies imposed in France that means it is less inclined to oppose them?**
14. Is it because other export markets are now more important?
15. One individual I spoke to commented that the MPAA historically took a high-profile stance against the cultural exception as much because it was a personal concern of Jack Valenti as an issue for the industry. What do you think about that view?
16. **In the 1990s, concern about European quotas and subsidies stemmed predominantly from Hollywood. Do you now find other organisations, such as the internet service providers, are as concerned as the film industry about French policies?**
 - a. To what extent do you now work with other players, such as Apple and Google, to campaign for removal of protectionist measures within the French film market?
 - b. Are the new players particularly concerned about French attempts to extend film funding obligations to VoD platforms and ISPs?

B.II.iv. [France's cultural policy & diversity](#)

17. **Do you think that French policy towards the film industry is effective in protecting cultural diversity?**
 - a. If so, in what ways?
 - b. If not, what role do you think the policy serves?
18. **Given what you have just said about the impact of France's film policy, do you think that France has strong grounds to argue that the cultural exception is needed to protect and promote cultural diversity?**

19. **Do you think that services such as Apple's iTunes are now so well-established that Hollywood has a distribution channel into France regardless of French protection measures?**
20. **The French want to adopt the same approach to digital channels – imposing quotas and funding requirements on the new channels and players in those sectors.**
 - a. **What do you think of that as an approach?**
 - b. Are your members concerned at all by these proposals?
 - c. Does it have any impact on how they manage their European operations?
 - d. Do you think it will change the current US stance on French film policies?
 - e. **Do you think that France's desire to extend its support policies is actually being held in check by its European neighbours?**
21. **Are there any measures/approaches that you think would be more effective than the current French policy in promoting diversity within the film industry?**
22. **Given the advent of video-on-demand means that a much broader and more diverse range of content can be economically made available to consumers, do you think that there is less need to support the French film industry than there was 20 years ago?**
23. Questions around the impact of globalisation on cultural diversity come in discussions within both UNESCO and the World Trade Organization. Which do you think is the appropriate forum for these debates?

B.III. Questions for French-language interviews

B.III.i. Diversité & identité

1. **Qu'est-ce que la phrase 'exception culturelle' vous signifie?**
2. **Également, qu'est-ce que vous voulez dire par 'diversité culturelle'?**
3. **À votre avis, pourquoi les Français est-ce qu'ils défendent le principe de la diversité culturelle si activement?**
4. **J'ai lu une théorie que cette approche est une recherche d'influence internationale; qu'est-ce que vous en pensez de cette théorie?**
5. **Et, à votre avis, pourquoi la défense de l'industrie cinématographique et audiovisuelle se fait entendre plus que celle des autres industries créatives – l'édition par exemple?**

B.III.ii. La politique culturelle française et la commerce

6. **À votre avis, la position française par rapport à l'exception culturelle a-t-elle changé pendant les 20 dernières années? Comment et pourquoi?**
7. **Et selon vos expériences, la position américaine a-t-elle également été modifiée? Il me semble qu'on n'a pas entendu autant des Américains sur le sujet pendant le TTIP.**
8. **Quelqu'un avec qui j'ai parlé a suggéré que la position américaine n'est pas aussi combative parce que Jack Valenti n'est plus chef du MPAA. Qu'est-ce que vous en pensez?**
9. **Lors des négociations GATT, l'industrie cinématographique française s'est plainte des problèmes d'accès au marché américain.**
 - a. **Est-ce qu'il est toujours aussi difficile?**
 - b. **Les plateformes VàD, est-ce qu'ils offrent à l'industrie française une nouvelle voie d'entrée dans le marché américain?**
10. **Quant aux négociations TTIP, est-ce que l'exclusion des industries culturelles du mandat de négociation a-t-elle eu un impacte significatif?**
11. **Quant aux négociations TTIP, quels sont les aspects de l'échange qui inquiètent le plus à l'industrie cinématographique?**
12. **L'intégration européenne s'est avancée de façon significative depuis 1993 tant que la France ne peut plus insister que la majorité de soutien doit être dépensé en France. Ceci, est-ce qu'il va à l'encontre des dispositions de nation favorites?**

B.III.iii. La politique culturelle française et la diversité culturelle

13. **À l'ère numérique, les systèmes de soutien envers l'industrie cinématographique, sont-ils toujours aussi efficace qu'ils ont été à promouvoir la diversité culturelle? Pourquoi?**
14. **Est-ce qu'il y a un autre approche au soutien de l'industrie cinématographique qui serait aussi, sinon plus, efficace?**
15. **Les opposants de l'exception culturelle soutiennent qu'avec l'avènement de la vidéo-à-demand, l'exception n'est plus nécessaire, parce que, grâce à la technologie, il y a un plus grand offre de films qu'il n'a jamais été, même des films de niche. Est-ce que vous y êtes d'accord?**

16. **Les plateformes VàD français, sont-il aussi établi pour faire face à la concurrence de plateformes comme Apple iTunes ou Netflix?**
17. **Pierre Lescure a fait beaucoup de recommandations pour le développement de l'exception culturelle à l'ère numérique. Pour vous, est-ce qu'on y a pris des mesures en réponse de façon opportune?**
18. J'ai beaucoup lu sur l'extension de la TST-D et comment il doit être autorisé par Bruxelles. Est-ce que la France ressent des problèmes en mettant à jour sa politique culturelle parce qu'il y a cette besoin de chercher de telle autorisation?
19. Le sujet de l'impacte de mondialisation sur la diversité culturelle se discute chez UNESCO et l'OMC. Pour vous, lequel est le meilleur forum pour ces débats?

B.III.iv. [La Commission VàD](#)

20. Est-ce que vous pouvez me dire un peu plus sur le rôle de la Commission VàD? Est-ce qu'elle cherche à soutenir une taille de l'industrie cinématographique plus qu'un autre?
21. J'imagine que vous ayez beaucoup de demandes d'aide. Comment est-ce que vous arrivez à la décision sur les projets que vous allez soutenir?
22. Par rapport à d'autres sections du CNC, les aides que donne la Commission ne sont pas énorme. Est-ce que vous avez un budget limité? Ceci est-il suffisant, étant donné le taux de croissance du secteur VàD?
23. Selon votre expérience avec la Commission VàD, quels sont les problèmes les plus communs auxquels les producteurs et réalisateurs français doivent faire face en mettant leurs œuvres en ligne?
 - a. Est-ce qu'ils ont assez de soutien (financière ou autres) pour faire des copies numériques, surtout pour les films de catalogues?
 - b. Et par rapport à l'offre illégal, est-ce que ceci leur donne tant de soucis qu'ils ne veulent pas mettre leurs œuvres en ligne?
24. Et, à votre avis, est-ce que le patrimoine cinématographique est suffisamment promu par les plateformes VàD français? Sinon, qu'est-ce qui devrait arriver de plus?

C. Recorded debates and hearings

Individuals highlighted in bold have been quoted in the text.

C.I. Lescure Commission

Hearing

Participants & representatives of the organisation

	Patrick Bloche, Député de Paris & Président de la Commission des affaires culturelles et de l'éducation à l'Assemblée nationale
	Marie-Christine Blandin, Sénatrice du Nord & Présidente de la Commission de la Culture, Éducation et Communication.
	Françoise Benhamou, Professeur Université Paris-XIII
Assemblée pour la culture et la création à l'ère du numérique (ACCEN)	Patrick Bézier, Directeur général du groupe Audiens Léonidas Kalogeropoulos, Fondateur & Directeur du cabinet de lobbying Médiation & Arguments
Association de lutte contre la piraterie audiovisuelle (ALPA)	Nicolas Seydoux, Président Frédéric Delacroix, Délégué général
Altaïr	François Adibi, Président Céline Mas, Vice-présidente Louis Montagne, Responsable du pôle numérique
Amazon Europe	Andrew Cecil, Directeur des relations publiques Sabine Zylberbogen, Directrice des affaires juridiques
Association des producteurs de cinéma (APC)	Marc Missonnier, Président Anne-Dominique Toussaint, Vice-présidente Frédéric Goldsmith, Délégué général
Association des producteurs indépendants du cinéma (API)	Nathanaël Karmitz, Co-président & Directeur général de MK2 Marc Lacan, Co-président directeur général de Pathé Hortense de Labriffe, Déléguée générale
Société civile des Auteurs Réalisateur Producteurs (l'ARP)	Michel Hazanavicius, Président Jean-Paul Salomé, Vice-président Dante Desarthe, Vice-président Florence Gastaud, Déléguée générale
Arte	Véronique Cayla, Présidente d'Arte Anne Durupty, Directrice générale d'Arte France
Association des services Internet communautaires (ASIC)	Giuseppe de Martino, Président Benoît Tabaka, Decrétaire général
Bouygues Telecom	Didier Casas, Secrétaire général Franck Abihssira, Directeur, Offre fixes, contenus et services Laurence Sonzogni, Directrice, Contenus kiosques et publicité

	Anthony Colombani, Chargé de mission auprès du secrétaire général
Confédération des producteurs audiovisuels (CPA)	Marc du Pontavice, Président du Syndicat des producteurs de films d'animation (SPFA) Matthieu Viala, Vice-président de l'Union syndicale de la production audiovisuelle (USPA) & Président de Making Prod Stéphane Le Bars, Délégué général du SPFA & de l'USPA Vincent Gisbert, Délégué général du Syndicat des producteurs et des créateurs d'émissions de télévision Nicolas Coppermann, Représentant du Syndicat des producteurs et des créateurs d'émissions de télévision & Président d'Endemol France
Dailymotion	Martin Rogard, Directeur général
Syndicat professionnel des distributeurs indépendants réunis européens (DIRE)	Carole Scotta, Co-présidente de DIRE & Président directeur général de Haut et Court Eric Lagesse, Co-président de DIRE & Président directeur général de Pyramide Distribution Sylvie Corréard, Déléguée générale
Fédération Communication Conseil Culture (F3C-CFDT)	Jean-Michel Rousseau, Secrétaire national en charge du pôle médias Alain Dorval, Comédien & Membre du Syndicat national des artistes et des professionnels de l'animation du sport de et de la culture
Fédération française des télécoms (FFT)	Yves Le Mouël, Directeur général Julien Vin-Ramarony, Président de la Commission Contenus de la Fédération Jean-Marie Danjou, Directeur général délégué du Collège Mobiles de la Fédération
FIECC (Fédération des industries électriques, électroniques et de communication)	Bernard Heger, Délégué général Olivier de Chazeaux, Conseiller Henri Chite, Président de la commission sur la Copie Privée du Syndicat National des Supports d'Image et d'Information Marc Heraud, Délégué général du Syndicat National des Supports d'Image et d'Information Stéphane Elkon, Délégué général du Groupement des industries des technologies de l'information et de la communication
Fédération nationale des cinémas français (FNCF)	Jean Labe, Président Marc-Olivier Sebbag, Délégué général
France Télévisions	Rémy Pflimlin, Président directeur général Bruno Patino, Directeur délégué en charge de la stratégie numérique
Groupe Canal+	Bertrand Meheut, Président Rodolphe Belmer, Directeur général Frédéric Mion, Secrétaire général Sébastien de Gasquet, Directeur du cabinet du Président Pascaline Gineste, Directrice des affaires réglementaires Manuel Alduy, Directeur du cinéma
Groupe Iliad/ Free	Maxime Lombardini, Directeur général du Groupe Iliad-Free Olivier de Baillenx, Directeur des relations institutionnelles

Groupement des éditeurs de contenus et de services en ligne (GESTE)	Corinne Denis, Présidente Antoine Clement, Président de la commission e-publicité Xavier Filliol, Président de la commission musique Maxime Jaillet, Responsable des affaires réglementaires et institutionnelles
Google Europe	Olivier Esper, Director, Public Policy Alexandra Laferrrière, Senior policy manager & Directrice en charge du contenu Francis Donnat, Senior policy counsel
M6 Groupe	Nicolas de Tavernost, Président Thomas Valentin, Vice-président du directoire & Directeur général des antennes et contenus Karine Blouët, Secrétaire générale & Présidente de Paris Première
Microsoft France	Marc Mossé, Directeur des affaires juridiques et publiques Stanislas Bosch-Chomont, Manager affaires publiques
Numéricâble	Jérôme Yomtov, Directeur général délégué Angélique Benetti, Directrice des contenus Brigitte Laurent, Directeur des relations institutionnelles et de la réglementation
Orange - France Télécom	Pierre Louette, Directeur général adjoint et secrétaire général de FT-Orange Nicolas Guérin, Directeur juridique Michael Trabbia, Directeur des affaires publiques
Parti pirate français	Maxime Rouquet, Ancien co-président & Membre du Parti pirate Txo, Porte-parole du Parti pirate
Renaissance Numérique	Guillaume Buffet, Co-président Loïc Bodin, Délégué général Didier Fass, Chercheur à l'INRIA(marché de la musique)
Syndicat des éditeurs de vidéo à la demande (SEVAD)	Marc Tessier, Président & Président de Video Futur Entertainment Group Bruno Delecour, Président de Filmoline Alain Rocca, Président de LMC Christian Bombrun, Directeur général adjoint de M6web Pascaline Gineste, Directrice des affaires réglementaires et européennes du Groupe Canal+
Syndicat de l'édition vidéo numérique (SEVN)	Pauline Grimaldi, Présidente, Directeur général d'Universal Pictures Video France & Benelux & Directeur général d'Universal StudioCanal Vidéo Pascal Fauveau, Vice-président & Directeur général de Sony Pictures Home Entertainment Jean-Yves Mirski, Délégué général

Syndicat de l'industrie des technologies de l'information (SFIB)	Renaud Deschamps, Président du SFIB & Directeur général de Lexmark France Antoine Vivien, Vice-président du SFIB & Secrétaire général d'HP France Maxence Demerle, Déléguée générale adjointe du SFIB Lionel Thoumyre, Président de la commission SFIB sur la copie privée & Responsable des sujets de propriétés intellectuelles pour Intel Europe
Syndicat des industries de matériels audiovisuels électroniques (SIMAVELEC)	Philippe Citroën, Président & Directeur général de Sony France Philippe Barthelet, Vice-président & Directeur général de Samsung France Michel Brian, Vice-président de LG Electronics France Bernard Heger, Délégué général Pascal Chevallier, Délégué général adjoint en charge des affaires techniques
Syndicat des producteurs indépendants (SPI)	Bénédicte Lesage, Présidente Jérôme Caza, Président, Télévision Yann Gilbert, Président, Long métrage Matthieu Bompont, Président, Court métrage Juliette Prissard-Eltejaye, Déléguée générale
Société des réalisateurs de films (SRF)	Jean-Jacques Jauffret, Co-président Cyril Seassau, Délégué général Pauline Durand-Vialle, Déléguée adjointe Michel Andrieux, Membre du bureau
Syndicat des régies Internet (SRI)	Eric Aderdor, Président Marie Delamarche, Directrice générale
Terra Nova	Nelly Fesseau, Coordinatrice des pôles Culture et Numérique
TF1	Nonce Paolini, Président directeur général Jean-Michel Counillon, Secrétaire général Régis Ravanais, Directeur général adjoint diversification Jean-Pierre Paoli, Directeur du développement et des relations internationales
Union fédérale d'intervention des structures culturelles (UFISC)	Philippe Berthelot, Président Serge Calvier, Secrétaire général Patricia Coler, Déléguée générale
Union de l'édition numérique et vidéographique indépendante (UNEVI)	Renaud Delourme, Président & Président directeur général des Éditions Montparnasse Serge Bromberg, Président de Lobster Films & Directeur artistique du festival du Film d'Animation d'Annecy (1999-2012) Nils Bouaziz, Gérant de Potemkine Marie Ceuzin, Déléguée générale & Responsable Business affairs des Éditions Montparnasse
Union des producteurs de films (UPF)	Alain Terzian, Président Margaret Menegoz, Vice-présidente & Présidente des Films du Losange Marie-Paule Biosse Duplan, Déléguée générale

C.II. Rencontres Cinématographiques de Dijon

<i>Year</i>	<i>Debate</i>	<i>Speakers</i>
2011	VàD: Gestion individuelle ou gestion collective?	Nicolas Mauvernay, Producteur Galatée Films Pascal Rogard, Directeur général de la SACD Marc Tessier, Président de Vidéofutur Entertainment Group & Président du Syndicat des éditeurs de vidéo à la demande
2012	Peut-on encore parler d'exception culturelle dans une Europe numérique?	David Assouline, Sénateur de Paris Henrik Bo Nielsen, Président directeur général du Danish Film Institute Jean-Marie Cavada, Député européen Aurélié Filippetti, Ministre de la Culture et de la Communication, 2012-2014 Eric Garandeau, Président du CNC, 2011-2013 Michel Hazanavicius, Auteur Réalisateur, Producteur & Co-président de L'ARP Pierre Jolivet, Auteur Réalisateur Producteur & Membre de L'ARP Radu Mihaileanu, Auteur Réalisateur, Producteur & Membre du Conseil d'Administration de L'ARP Rémy Pflimlin, Président directeur général de France Télévisions Fernando Trueba, Réalisateur
2012	Quelle place pour les plateformes VàD dans l'écosystème du cinéma européen?	Rodolphe Belmer, Directeur général du Groupe Canal+ Jean-Yves Bloch, Directeur général d'UniversCiné France & de Blaq Out & Président d'EuroVoD Jérôme Chung, Co-fondateur de Under the Milky Way Bruno Delecour, Président de Filmo TV José-Antonio de Luna, Fondateur de Filmin & Gestionnaire de contenu, Cameo Florence Gastaud, Déléguée générale de L'ARP Antoine Rein, Producteur, Karé Productions & Delante Films Pascal Rogard, Directeur général de la SACD
2012	Le cinéma indépendant face à de nouvelles menaces - La concentration des financements, atteinte à la diversité du cinéma?	Manuel Alduy, Directeur général de Canal OTT Florence Gastaud, Déléguée générale de L'ARP Jean-Paul Salomé, Auteur Réalisateur, Producteur, Membre du Conseil d'Administration de L'ARP & Président d'Unifrance
2013	Discours d'introduction de Pierre Lescure	Pierre Lescure, Président de la Mission Acte II de l'Exception culturelle
2013	Rapport Lescure: Espoirs ou craintes d'une réforme du système cinématographique	Rodolphe Belmer, Directeur général du Groupe Canal+ Patrick Bloche, Député de Paris Aurélié Filippetti, Ministre de la Culture et de la Communication, 2012-2014 Pierre Lescure, Président de la Mission Acte II de

		<p>l'Exception culturelle</p> <p>Pierre Louette, Directeur général adjoint d'Orange</p> <p>Nonce Paolini, Président directeur général de TF1</p> <p>Richard Patry, Président de la FNCF</p> <p>Alain Rocca, Président d'UniversCiné</p> <p>Pascal Rogard, Directeur général de la SACD</p>
2013	Le Cinéma est-il Euro compatible?	<p>Frédérique Bredin, Présidente du CNC, 2014-present</p> <p>Denis Freyd, Producteur, Archipel 35</p> <p>Didier Huck, Vice-président des Relations institutionnelles et du Développement durable de Technicolor</p> <p>Rémy Pflimlin, Président directeur général de France Télévisions</p> <p>Patrick Quinet, Auteur Réalisateur, Producteur & Président de l'Union des Producteurs de Films Francophones (Belgique)</p> <p>Jean-Paul Salomé, Auteur Réalisateur, Producteur, Membre du Conseil d'Administration de L'ARP & Président d'Unifrance</p> <p>Alain Sussfeld, Président de la Procirep & de l'Angoa & Directeur général du Groupe UGC</p> <p>Henri Weber, Député européen</p>
2013	A-t-on le droit de parler de transparence et de rentabilité dans la cinéma?	<p>René Bonnell, en charge du <i>Rapport sur la rentabilité des films français</i></p> <p>Vincent Grimond, Président de Wild Bunch</p> <p>Serge Siritzky, Directeur de la publication et de la rédaction Écran Total</p> <p>Alain Sussfeld, Président de la Procirep & de l'Angoa & Directeur général du Groupe UGC</p> <p>Laurent Vallet, Directeur général de l'IFCIC</p>
2013	Convention collective: Comment pérenniser la diversité et l'émergence de nouveaux talents?	<p>Antoine Desrosières, Auteur Réalisateur & Producteur, La Vie est Belle</p> <p>Michel Ferry, Auteur Réalisateur & Producteur & Membre de l'ARP</p> <p>Julie Gayet, Auteur Réalisateur & Producteur, Rouge International</p> <p>Antoine Héberlé, Directeur de la photographie</p> <p>Gilles Sacuto, Producteur & Membre du Bureau du SPI</p> <p>Pierre Schoeller, Cinéaste</p> <p>Anne-Dominique Toussaint, Productrice</p>
2014	Quelle regulation peut encore enrayer la depreciation du cinema et de la culture?	<p>Rodolphe Belmer, Directeur général du Groupe Canal+</p> <p>Frédérique Bredin, Présidente du CNC, 2014-present</p> <p>Nicolas Colin, Inspecteur des Finances, Co-Auteur du <i>Rapport d'expertise Colin et Collin sur la fiscalité de l'économie numérique</i></p> <p>Dante Desarthe, Auteur Réalisateur, Producteur & Co-président de L'ARP</p> <p>Maxime Lombardini, Directeur général du Groupe</p>

		Iliad/ Free Fleur Pellerin, Ministre de la Culture et de la Communication, 2014-present Pascal Rogard, Directeur général de la SACD Olivier Schrameck, Président du CSA
2014	Netflix et après	Manuel Alduy, Directeur général de Canal OTT Laurent Cotillon, Rédacteur en Chef du <i>Film Français</i> Vincent Grimond, Président de Wild Bunch Marc Missonnier, Président de Fidélité Films & Président de l'APC Janneke Slöetjes, Director Public Policy, Netflix Marc Tessier, Administrateur de Videofutur Entertainment Group
2014	Exploitation des films en salles : comment retrouver les meilleures conditions de distribution des œuvres?	Olivier Grandjean, Directeur de la programmation de Pathé Daniel Goudineau, Directeur général de France 3 Cinéma Jean Labadie, Président du Pacte Stéphane Libs, Gérant/ Programmateur des Cinémas Star Etienne Ollagnier, Co-gérant de Jour2fete & Co-président du SDI Richard Patry, Président de la FNCF

C.III. Other recordings

Debate

Speakers

Cinéma français et mondialisation: Compte rendu du débat	Audrey Azoulay, Directrice générale déléguée du CNC Pierre Lescure, Président de la Mission Acte II de l'Exception culturelle Michel Hazanavicius, Auteur Réalisateur, Producteur & Co-président de L'ARP Alain Sussfeld, Président de la Procirep & de l'Angoa & Directeur général du Groupe UGC
Transatlantic Free Trade: the final push? British, French and US perspectives on a TTIP agreement	Sylvie Bermann, French Ambassador to the UK Peter Chase, Vice President, Europe, US Chamber of Commerce Europe Office ⁵⁰² Pascal Lamy, Director General of the World Trade Organisation, 2005-2013 Peter Ricketts, British Ambassador to France Peter Sutherland, Director General of the World Trade Organization, 1993-1995
Rapport Bonnell: Réaction de l'ARP	Jean-Paul Salomé, Auteur Réalisateur, Producteur, Membre du Conseil d'Administration de L'ARP & Président d'Unifrance

⁵⁰² All comments attributed to Peter Chase in this thesis have been taken from the interview conducted with him and not from this recording.

D. Top 10 films by year

The following lists of films were used for the analysis of disparity in the market in Chapter 8

D.I. Cinema

<i>Year</i>	<i>Rank</i>	<i>Film</i>	<i>Nationality</i>	<i>Series?</i>	<i>Global 10</i>	<i>Director</i>	<i>Budget (\$m)</i>	<i>Production company</i>
2007	1	Ratatouille	US	No	Yes	Brad Bird & Jan Pinkava	150	Pixar Animation, Walt Disney Studios
	2	Spiderman 3	US	Yes	Yes	Sam Raimi	258	Columbia Pictures
	3	Harry Potter & the Order of the Phoenix	UK	Yes	Yes	David Yates	150	Warner Bros
	4	Pirates of the Carribean: At World's End	US	Yes	Yes	Gore Verbinski	300	Walt Disney Pictures, Jerry Brukheimer Films, Second Mate Productions
	5	Shrek the Third	US	Yes	Yes	Chris Miller & Raman Hui	160	DreamWorks Animation, Paramount Pictures
	6	La Môme	France, Czech Rep., UK	No	No	Olivier Dahan	28	Légende Films
	7	Taxi 4	France	Yes	No	Gérard Krawczyk	24	EuropaCorp, ARP Sélection
	8	The Simpsons Movie	US	No	Yes	David Silverman	75	20th Century Fox, Gracie Films, The Curiosity Company
	9	Ensemble, c'est tout	France	No	No	Claude Berri	17	Hirsch, Pathé Renn Productions, TF1 Films Production
	10	Night at the Museum	US	No	No	Shawn Levy	110	20th Century Fox, Ingenious Film Partners, 1492 Pictures, 21 Laps Entertainment

2008	1	Bienvenue chez les Ch'tis	France	No	No	Dany Boon	15	Pathé Renn Productions, Hirsch, Les Productions du Chicon, TF1 Films Production
	2	Astérix aux Jeux Olympiques	France, Germany, Spain, Italy	Yes	No	Frédéric Forrestier & Thomas Langmann	107	Pathé Renn Productions, La Petite Reine, TF1 Films Production, TriPictures, Sorolla Films, Constantin Film, uFilm, Novo RPI
	3	Madagascar 2: Escape 2 Africa	US	Yes	Yes	Eric Darnell & Tom McGrath	150	DreamWorks Animation, Paramount Pictures
	4	Indiana Jones and the Kingdom of the Crystal Skull	US	Yes	Yes	Steven Spielberg	185	Paramount Pictures, Lucasfilm
	5	Quantum of Solace	UK	Yes	Yes	Marc Forster	200	MGM, Columbia Pictures, Eon Productions, B22
	6	Kung Fu Panda	US	No	Yes	Mark Osborne & John Stevenson	130	DreamWorks Animation, Paramount Pictures
	7	Wall-E	US	No	Yes	Andrew Stanton	180	Pixar Animation, Walt Disney Studios
	8	Hancock	US	No	Yes	Peter Berg	150	Columbia Pictures
	9	The Chronicles of Narnia: Prince Caspian	US	Yes	Yes	Andrew Adamson	225	Walt Disney Pictures, Walden Media, Ozumi Films, Propeler, Silverbell Films, Stillking Films
	10	The Dark Knight	US	Yes	Yes	Christopher Nolan	185	Warner Bros, Legendary
2009	1	Ice Age 3: Dawn of the Dinosaurs	US	Yes	Yes	Carlos Saldanha & Mike Thurmeier	90	Blue Sky Studios, 20th Century Fox
	2	Avatar	US	No	Yes	James Cameron	237	20th Century Fox Film
	3	Harry Potter & the Half-blood Prince	UK	Yes	Yes	David Yates	250	Warner Bros
	4	Le Petit Nicolas	France, Belgium	No	No	Laurent Tirard	31	Fidélité Productions, Wild Bunch, M6 Films, Mandarin Films, Scope Pictures
	5	2012	US	No	Yes	Roland Emmerich	200	Columbia Pictures, Centropolis Entertainment, Farewell Productions, Mark Gordon Co.

	6	Up	US	No	Yes	Peter Docter & Bob Peterson	175	Walt Disney Pictures, Pixar Animation Studios
	7	Twilight: New Moon	US	Yes	Yes	Chris Weitz	50	Summit Entertainment
	8	LOL (Laughing out loud)	France	No	No	Lisa Azuelos	13	Pathé, Bethsabée Mucho, TF1 Films Production, M6 Films
	9	Arthur et la Vengeance de Maltazard	France	Yes	No	Luc Besson	87	EuropaCorp, TF1 Films, Apipoulai, Avalanche Productions
	10	Gran Torino	US	No	No	Clint Eastwood	33	Matten Productions
2010	1	Avatar	US	No	Yes	James Cameron	237	20th Century Fox Film
	2	Harry Potter & the Deathly Hallows (part 1)	UK	Yes	Yes	David Yates	242	Warner Bros
	3	Les Petits Mouchoirs	France	No	No	Guillaume Canet	24	Les Productions du Trésor, EuropaCorp, Caneo Films, M6 Films
	4	Inception	UK	No	Yes	Christopher Nolan	160	Warner Bros, Legendary
	5	Shrek Forever After	US	Yes	Yes	Mike Mitchell	165	DreamWorks Animation, Paramount Pictures
	6	Alice in Wonderland	US	No	Yes	Tim Burton	200	Walt Disney Pictures, Roth Films, Team Todd, Zanuck Company, Tim Burton Productions
	7	Toy Story 3	US	Yes	Yes	Lee Unkrich	200	Walt Disney Pictures, Pixar Animation Studios
	8	Camping 2	France	Yes	No	Fabien Onteniente	32	Pulsar Productions, Pathé, TF1 Films Production
	9	Twilight: Eclipse	US	Yes	Yes	David Slade	68	Summit Entertainment
	10	L'Arnacoeur	France	No	No	Pascal Chaumeil	12	Quad Productions, Script Associés, Focus Features, Chaocorp
2011	1	Intouchables	France	No	No	Eric Toledano & Olivier Nakache	13	Quad Productions, Ten Films
	2	Rien à déclarer	France, Belgium	No	No	Dany Boon	27	Pathé, Les Productions du Ch'timi, TF1 Films Production
	3	Harry Potter & the Deathly Hallows (part 2)	UK	Yes	Yes	David Yates	125	Warner Bros

	4	The Adventures of Tintin: the Secret of the Unicorn	US	No	No	Steven Spielberg	130	Columbia Pictures, Paramount Pictures, Amblin Entertainment, WingNut Films, Kennedy/Marshall Company, Hemisphere Media Capital, Nickelodeon Movies
	5	Pirates of the Carribean: On Stranger Tides	UK/US	Yes	Yes	Rob Marshall	250	Walt Disney Pictures, Jerry Brukheimer Films, Second Mate Productions
	6	Twilight: Breaking Dawn (part 1)	US	Yes	Yes	Bill Condon	110	Summit Entertainment
	7	Puss in Boots	US	Yes	No	Chris Miller	130	DreamWorks Animation
	8	Rise of the Planet of the Apes	US	Yes	No	Rupert Wyatt	93	20th Century Fox, Zanuck Company, Tim Burton Productions
	9	The King's Speech	UK	No	No	Tom Hooper	15	Weinstein Company, UK Film Council
	10	Cars 2	US	Yes	Yes	John Lasseter & Brad Lewis	200	Walt Disney Pictures, Pixar Animation Studio
2012	1	Skyfall	UK	Yes	Yes	Sam Mendes	200	MGM, Columbia Pictures, Eon Productions, Danjaq
	2	Ice Age 4: Continental Drift	US	Yes	Yes	Mike Thurmeier & Steve Martino	95	Blue Sky Studios, 20th Century Fox
	3	Sur la piste du Marsupilami	France	No	No	Alain Chabat	54	Chez Wam, Pathé, TF1 Films Production, Scope Pictures
	4	Twilight: Breaking Dawn (part 2)	US	Yes	Yes	Bill Condon	120	Summit Entertainment
	5	Marvel's Avengers Assemble	US	No	Yes	Joss Whedon	220	Marvel Studios, Paramount Pictures
	6	The Dark Knight Rises	US	Yes	Yes	Christopher Nolan	250	Warner Bros, Legendary
	7	La vérité si je mens! 3	France	Yes	No	Gilou Thomas	35	La Vérité Production, Vertigo, Les Films Manuel Munz, Télégraphe

	8	Astérix et Obélix: Au service de sa Majesté	France, Hungary, Spain, Italy	Yes	No	Laurent Tirard	84	Fidélité Films, Wild Bunch, Cinetotal, Lucky Red, Morena Films, Saint Sébastien Froissart, France 2 Cinéma, France 3 Cinéma
	9	Madagascar 3: Europe's Most Wanted	US	Yes	Yes	Eric Darnell & Tom McGrath	145	DreamWorks Animation, Paramount Pictures
	10	The Hobbit: An Unexpected Journey	New Zealand, US	Yes	Yes	Peter Jackson	180	Warner Bros, New Line Cinema, MGM
2013	1	Despicable Me 2	US	Yes	Yes	Pierre Coffin & Chris Renaud	76	Universal Pictures, Illumination Entertainment
	2	Django Unchained	US	No	No	Quentin Tarantino	100	Weinstein Company, Columbia Pictures
	3	Iron Man 3	US	Yes	Yes	Shane Black	200	Marvel Studios, Paramount Pictures, DMG Entertainment
	4	Gravity	UK	No	Yes	Alfonso Cuaron	100	Warner Bros, Esperanto Filmoj, Heyday Films
	5	Les Profs	France	No	No	Pierre-François Martin-Laval	22	Les films du 24, TF1 Droits Audiovisuels, TF1 Films Production
	6	The Hobbit : The Desolation of Smaug	New Zealand, US	Yes	Yes	Peter Jackson	250	Warner Bros, New Line Cinema, MGM
	7	Frozen	US	No	Yes	Chris Buck & Jennifer Lee	150	Walt Disney Pictures
	8	Now you see me	US	No	No	Louis Leterrier	75	Summit Entertainment, K/O Paper Products, Soixan7e Quin5e
	9	Fast & Furious 6	US	Yes	Yes	Justin Lin	160	Universal Pictures, Relativity Media
	10	Hunger Games: Catching Fire	US	Yes	Yes	Francis Lawrence	130	Colorforce, Lionsgate
2014	1	Qu'est-ce qu'on a fait au bon Dieu?	France	No	No	Philippe de Chauveron	18	Les films du 24, TF1 Droits Audiovisuels, TF1 Films Production
	2	Supercondriaque	France, Belgium	No	No	Dany Boon	43	Pathé, Les Productions du Ch'timi, TF1 Films Production
	3	Lucy	France	No	No	Luc Besson	67	Europa Corp, Canal+, Ciné+

4	The Hobbit: The Battle of the Five Armies	New Zealand, US	Yes	Yes	Peter Jackson	250	Warner Bros, New Line Cinema, MGM
5	Dawn of the Planet of the Apes	US	Yes	Yes	Matt Reeves	170	Chernin Entertainment, Ingenious Media, TSG Entertainment
6	How to Train your Dragon 2	US	Yes	No	Dean deBlois	145	Dreamworks Animation, Mad Hatter Entertainment
7	X-Men : Days of Future Past	US	Yes	Yes	Bryan Singer	200	20th Century Fox, Marvel Entertainment, TSG Entertainment
8	Rio 2	US	Yes	No	Carlos Saldanha	103	20th Century Fox, Blue Sky Animation
9	Samba (pour la France)	France	No	No	Olivier Nakache & Eric Toledano	21	Quad Productions, Ten Films, Gaumont
10	The Maze Runner	US	No	No	Wes Ball	34	20th Century Fox, Gotham Group, Temple Hill Entertainment

D.II. Video on demand

Titles in italics are television series that have been excluded from the analysis

<i>Year</i>	<i>Rank</i>	<i>Film</i>	<i>Nationality</i>	<i>Series?</i>	<i>Global 10</i>	<i>Director</i>	<i>Budget (\$m)</i>	<i>Production company</i>
2009	1	Twilight	US	No	Yes	Catherine Hardwicke	37	Summit Entertainment
	2	LOL (Laughing Out Loud)	France	No	No	Lisa Azuelos	13	Pathé, Bethsabée Mucho, TF1 Films Production, M6 Films
	3	De l'autre côté du lit	France	No	No	Pascale Pouzadoux	15	Fidélité Films, TF1 Films Production
	4	Gran Torino	US	No	No	Clint Eastwood	33	Matten Productions
	5	Knowing	US, UK, Australia	No	No	Alex Proyas	50	Summit Entertainment
	6	Harry Potter & the Half-blood Prince	UK	Yes	Yes	David Yates	250	Warner Bros
	7	The Dark Knight	US	Yes	Yes	Christopher Nolan	185	Warner Bros

	8	Coco	France	No	No	Gad Elmaleh	20	Légende Films, KS2 Productions, StudioCanal, TF1 Films Production
	9	Iron Man	US	No	Yes	Jon Favreau	140	Paramount Pictures, Marvel Enterprises
	10	Transporteur 3	France	Yes	No	Olivier Megaton	42	EuropaCorp, TF1 Films Production, Grive Production
2010	1	<i>Lost: season 6</i>	US	TV				
	2	Camping 2	France	Yes	No	Fabien Onteniente	32	Pulsar Productions, Pathé, TF1 Films Production
	3	L'Arnacoeur	France	No	No	Pascal Chaumeil	12	Quad Productions, Script Associés, Focus Features, Chaocorp
	4	2012	US	No	Yes	Roland Emmerich	200	Columbia Pictures, Centropolis Entertainment, Farewell Productions, Mark Gordon Company
	5	Le Petit Nicolas	France, Belgium	No	No	Guillaume Canet	24	Fidélité Productions, Wild Bunch, M6 Films, Mandarin Films, Scope Pictures
	6	<i>House: season 6</i>	US	TV				
	7	Twilight: New Moon	US	Yes	Yes	Chris Weitz	50	Summit Entertainment
	8	Neuilly sa mère	France	No	No	Gabriel Julien-Laferrière	4	Miroir Magique!, Vito Films, France 2 Cinéma, TF1 International
	9	Sherlock Holmes	US, Germany	No	Yes	Guy Ritchie	90	Warner Bros
	10	Tout ce qui brille	France	No	No	Hervé Mimran & Géraldine Nakache	9	Vertigo, M6 Films, Bethsabée Mucho, Pathé
2011	1	Rien à déclarer	France, Belgium	No	No	Dany Boon	27	Pathé, Les Productions du Ch'timi, TF1 Films Production
	2	Les Petits Mouchoirs	France	No	No	Guillaume Canet	24	Les Productions du Trésor, EuropaCorp, Caneo Films, M6 Films

	3	Harry Potter & the Deathly Hallows (part 1)	UK	Yes	Yes	David Yates	125	Warner Bros
	4	House: season 7	US	TV				
	5	Case départ	France	No	No	Lionel Steketee, Fabrice Eboué & Thomas N'Gijol	13	Légende Films, TF1 Films Production, Mars Distribution
	6	Grey's Anatomy: season 7	US	TV				
	7	Pirates of the Caribbean: On Stranger Tides	UK, US	Yes	Yes	Rob Marshall	250	Walt Disney Pictures, Jerry Brukheimer Films, Second Mate Productions
	8	Les Tuche	France	No	No	Olivier Baroux	15	Pathé, Eskwad, Serenity Films, TF1 Films Production
	9	Limitless	UK	No	No	Neil Burger	27	Relativity Media
	10	Hereafter	UK	No	No	Clint Eastwood	50	Warner Bros
2012	1	Intouchables	France	No	No	Eric Toledano & Olivier Nakache	13	Quad Productions, Ten Films
	2	Hollywood	France	No	No	Frédéric Berthe & Pascal Serieis	22	LGM Productions, StudioCanal, TF1 Films Production, Lorette Production, Comme Une Grande Production
	3	Marvel's Avengers	US	No	Yes	Steven Spielberg	130	Summit Entertainment
	4	Le Prénom	France	No	No	Alexandre de la Patellière & Matthieu Delaporte	15	Chapter 2, Pathé, TF1 Films Production, M6 Films, Fargo Films, Nexus Factory
	5	Twilight: Breaking Dawn (part 1)	US	Yes	Yes	Bill Condon	110	Summit Entertainment
	6	Les Infidèles	France	No	No	Emmanuelle Bercot & Fred Cavayé	17	JD Prod, Black Dynamite Films, Mars Distribution, M6 Films, Cool Industrie
	7	Men in Black III	US	Yes	Yes	Barry Sonnenfeld	225	Columbia Pictures

	8	La vérité si je mens! 3	France	Yes	No	Gilou Thomas	35	La Vérité Production, Vertigo, Les Films Manuel Munz, Télégraphe
	9	<i>Grey's Anatomy: season 8</i>	US	TV				
	10	Sur la piste du Marsupilami	France	No	No	Alain Chabat	54	Chez Wam, Pathé, TF1 Films Production, Scope Pictures
2013	1	Les Profs	France	No	No	Pierre-François Martin-Laval	22	Les films du 24, TF1 Droits Audiovisuels, TF1 Films Production
	2	Les Seigneurs	France	No	No	Olivier Dahan	29	Vito Films, Od Shots
	3	Taken 2	France	Yes	No	Olivier Megaton	51	Europa Corp, Canal+, Grive Productions
	4	Skyfall	UK	Yes	Yes	Sam Mendes	200	MGM, Columbia Pictures, Eon Productions, Danjaq
	5	<i>Plus Belle La Vie - Season 6</i>	France	TV				
	6	Fast & Furious 6	US	Yes	Yes	Justin Lin	160	Universal Pictures, Relativity Media
	7	Django Unchained	US	No	No	Quentin Tarantino	100	Weinstein Company, Columbia Pictures
	8	Oblivion	US	No	No	Joseph Kosinski	120	Universal Pictures, Relativity Media, Monolith Pictures
	9	De l'autre côté du périph	France	No	No	David Charhon	11	Mandarin Films, Mars Films, M6 Films
	10	The Hobbit: An Unexpected Journey	New Zealand, US	Yes	Yes	Peter Jackson	180	Warner Bros, New Line Cinema, MGM
2014	1	Qu'est-ce qu'on à fait au bon dieu	France	No	No	Philippe de Chauveron	18	Les films du 24, TF1 Droits Audiovisuels, TF1 Films Production
	2	Supercondriaque	France, Belgium	No	No	Dany Boon	43	Pathé, Les Productions du Ch'timi, TF1 Films Production
	3	Fiston	France	No	No	Pascal Bourdiaux	10	Monkey Pack Films, Nexus Factory, Umedia
	4	Lucy	France	No	No	Luc Besson	67	Europa Corp, Canal+, Ciné+

5	Divergent	US	No	No	Neil Burger	85	Summit Entertainment, Red Wagon Entertainment
6	Les garçons et Guillaume, à table!	France	No	No	Guillaume Gallienne	11	LGM Productions, Rectangle Productions, Don't Be Shy Productions
7	Frozen	US	No	Yes	Chris Buck & Jennifer Lee	150	Walt Disney Pictures
8	Barbecue	France	No	No	Eric Lavaine	13	Same Player, StudioCanal, TF1 Films Productions
9	Eyjafjallajökull	France	No	No	Alexandre Coffre	32	BBDA Quad Productions
10	Babysitting	France	No	No	Nicolas Benamou & Philippe Lachaux	5	Axel Films, Madame Films, Cinéfrance 1888

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