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THE ELEPHANT IN THE FOG: CULTURAL DIPLOMACY

Scholarly prose on holding accountable that which provokes the inhibition of conflict countries, Cuba and Iran, from cultural globalization

27 JULY 2014
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ABSTRACT

In a world where people can access the recorded music and hear the live concerts of artists from around the world thanks to technology and globalization, where governments and organizations have formed international alliances to promote their own heritage and simultaneously that of other nations, where certain laws enable and support the influx of cultural exchange, some countries and their artists are drowning in the depth of their own world of arts. Namely, Cuba and Iran remain far behind most developed nations and their efforts to partake in cultural exchange to the same capacity, as the former have been enjoined. It is my personal hypothesis that current intellectual property, international, and immigration laws in the U.S. provoke the inhibition of conflict countries Cuba and Iran, from cultural globalization. Perspectives on cultural diplomacy and the aforementioned laws will be discussed to assess the prevalence of their existences, the action and inaction that has positively and negatively effected the conflict countries, the inhibition that has systematically denied cultural exchange to the same, and the solutions that have been offered. The critique of inter-governmental organizations aims and missions, copyright, sanctions and the artist visa process in the U.S., specific instances of the neglect and inhibition of Cuban and Iranian artists thereto, and the intentions of national and international leaders will hopefully instill a sense of awareness of this phenomenon in the reader between the lines that are to follow.

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IN THE FOG¹

In a world where people can access the recorded music and hear the live concerts of artists from around the world thanks to technology and globalization, where governments and organizations have formed international alliances to promote their own heritage and simultaneously that of other nations, where certain laws enable and support the influx of cultural exchange, some countries and their artists are drowning in the depth of their own world of arts. Namely, Cuba and Iran, remain far behind most developed nations and their efforts to partake in cultural exchange to the same capacity, as the former have been enjoined. It is my personal hypothesis that current intellectual property, international, and immigration laws in the U.S. provoke the inhibition of conflict countries Cuba and Iran, from cultural globalization. Perspectives on cultural diplomacy and the aforementioned laws will be discussed to assess the prevalence of their existences, the action and inaction that has positively and negatively effected the conflict countries, the inhibition that has systematically denied cultural exchange to the same, and the solutions that have been offered. The critique of inter-governmental organizations aims and missions, copyright, sanctions and the artist visa process in the U.S., specific instances of the neglect and inhibition of Cuban and Iranian artists thereto, and the intentions of national and international leaders will hopefully instill a sense of awareness of this phenomenon in the reader between the lines that are to follow.

If we assume that the intersection between cultural diplomacy and the three laws is indeed a grey area in the United States, then let us name this obscurity as fog. Additionally, this paper will comply with the statement that, “for the sake of convenience, I use the term ‘American’ in the common, though inaccurate sense, as a synonym for the United States, well aware that there are other ‘Americas’ on our continent.” (Patry 2000: 384). If we assume that most of globalization’s benefactors are countries that are not undergoing economic sanctions or political turmoil, then let us name the nations defined as economically underdeveloped, politically labeled “sponsors of terrorism”², yet culturally rich, as conflict countries. Factors that may be driving globalization away from Cuban and Iranian culture will be considered, as they are examples of conflict countries—all the while recognized by the United Nations Education Science and Culture Organization (UNESCO) for their intangible cultural heritage.³ If we assume that cultural diplomacy—defined as “the exchange of ideas, information, art, and other aspects of culture among nations and their peoples in order to foster mutual understanding,” (Fang 2011: 202)—is neglected or inhibited, then let us name this foreign diplomacy tool as the elephant.

For the purposes of this study, specific elements of each law will be analyzed in order to test the assertion (a) that the current laws are inhibiting and (b) that the current laws neglect Cuba and Iran from cultural globalization in the U.S.

- The element of **entertainment law** observed consists of the intellectual property (IP) rights, with special emphasis on copyright and the existence of unilateral accords

¹ *Temperatures must be well below warm for there to be fog, especially at night, when the clouds obscure our vision. Trying on the perspectives below for size will metaphorically serve as the same. For this, a scarf of vocabulary will adorn each of the readers if they so choose. Entertaining the idea that the scarf is acronym for the key words used across the board by the relevant sources of this paper, let (s) stand for September 11, (c) for cosmopolitanism, (a) for arbitrariness, (r) for reform and (f) for fragmentation.

² "The Impact of Visa Crackdowns on World Music in the US." *Beautiful Horizons*. N.p., 12 Nov. 2003. Web. 30 Jan. 2014. <http://beautifulhorizons.typepad.com/weblog/2003/11/the_impact_of_v.html>.

³"Intangible Cultural Heritage." *UNESCO*. N.p., n.d. Web. 30 Jan. 2014. <<http://www.unesco.org/culture/ich/index.php?lg=en&pg=00024>>.

regarding performing rights organizations and other obstacles that musicians face when their music is performed or transmitted publicly abroad, intentionally omitting other IP law such as patents, trademarks, or other aspects of the entertainment industry.

- The element of **immigration law** observed consists of the artist visa process, the physical entry barrier that musicians face in public performances abroad, intentionally omitting other laws concerning citizenship or different visa statuses that do not pertain to this study.
- The element of **international law** observed consist of the effect of sanctions as it pertains to tourism, another implication of inhibiting access, intentionally omitting other international laws concerning trade embargoes, or other statutes otherwise involved in international law, unless relevant to the case of Iran or Cuba.

To that effect, if we deeply analyze the effects of these laws in the music world at large, a five-fold approach to achieving a well-rounded understanding will be tested. The five factors considered in each area of the laws and of the elephant are its prevalence, the inaction or neglect that has effected cultural diplomacy, the action that has effected cultural diplomacy, the inhibition of the same, and solutions offered to improve cultural globalization for all.

Finally, we assume that this paper will shed light on this neglected elephant that has inhibited cultural exchange between the conflict countries and the United States. If the elephant will take shape in the fog and color from the effects of the three laws, let red equate to intellectual property law, let yellow equate to international law and let blue equate to immigration law. The reason for the use of primary colors in this analogy was decided upon by its writer to illustrate the colorful poignancy of neglect and inhibition in the culture sector. If you are dissuaded from continuing the reading because of any strong objections to the assumptions supra, you are hereby invited to discontinue the read. It should be noted, though, that these analogies and metaphors only serve to constitute a more familiar and understandable approach to forming an opinion on cultural diplomacy in the United States and the surrounding matters at hand which provoke the inhibition of Cuba and Iran from engaging in cultural globalization. In the same way that comedians, playwrights and directors often use humour to illustrate the nakedly dry truths in society, the purpose for the similes here originate from a derivative approach in the term coined as scholarly prose. The content of this paper scarcely reference these analogies except for this chapter and the concluding chapter—termed as the kaleidoscope. For those who wish to continue on, it is my pleasure to introduce you to the elephant in the room, cultural diplomacy and the consequent shades that color the grey matter.

Of the elephant, the referenced individuals and entities that have given shape to the grey matter are Beckfield, Brady, Evans, Fang, Feldman, Hill, Lamberti, Mazzarella, Schneider and UNESCO. In Chapter 1.1, definitions and the prevalence of globalization, cultural diplomacy, cultural exchange and the role of the artist in society will be discussed and Beckfield, Evans, Fang, Feldman, Hill, Lamberti, Mazzarella and Schneider will be referenced. In Chapter 1.2, the existence of world polity, the Advisory Committee on Cultural Diplomacy, the actions of UNESCO, the World Trade Organization, the General Agreement on Tariffs and Trade, the G24, the Academy of Motion Pictures Arts and Sciences, the New York Philharmonic, and the National Endowment for the Arts will be assessed for their positive and negative effects on cultural globalization and Beckfield, Fang, Hill, Mazzarella, Schneider and UNESCO will be referenced. In Chapter 1.3, the inaction of the U.S. Information Agency, the collapse of the Colegio Santo Angel, the non-signatories to the

UNESCO Convention, and impact of September 11 will be assessed for their positive and negative effects on cultural globalization and Beckfield, Evans, Fang, Hill, Mazzarella and Schneider will be referenced. Chapter 1.4 has intentionally been omitted as there was no substantial evidence of inhibition that has systematically denied cultural exchange. In Chapter 1.5, the solutions that have been offered to promote cultural diplomacy consist of calls for more research on the dimensions of globalization, calls to engage in cultural dialogue with the Middle East, a call for the commercial creative sector to take cultural engagement seriously, and a call for the State Department to host cultural visitors and Beckfield, Brady, Fang, Mazzarella and Schneider will be referenced.

In red, the referenced individuals and entities who have added shade to the elephant are the Copyright Act of 1970 of Iran, the Copyright Act of 1977 of Cuba, Horowitz and Patry. In Chapter 2.1, definitions and the prevalence of rule of law and choice of law will be discussed in relation to copyright and Horowitz and Patry will be referenced. In Chapter 2.2, the existence of Cuban copyright law and Iranian copyright law will be assessed for their positive and negative effects on cultural globalization and the Copyright Acts of both countries will be referenced. Chapter 2.3 has intentionally been omitted as there was no substantial evidence of inaction or neglect in the realm of copyright that could be assessed. In Chapter 2.4, the inhibition of cultural exchange due to extraterritorial exercise of jurisdiction will be discussed and Patry will be referenced. In Chapter 2.5, the solutions that have been offered to promote cultural diplomacy consist of a call for adopting an international attitude, calls for copyright reform and a call for comity will be discussed and Horowitz and Patry will be referenced.

In yellow, the referenced individuals and entities that have added shade to the elephant are Davis, Dobbins, Ignatius, the Florida Bar Association's continued law education (CLE), and BBC News. In Chapter 3.1, the definition and prevalence of sanctions will be discussed and Davis will be referenced. In Chapter 3.2, the upcoming initiative of the Florida Bar Association will be assessed for its positive and negative effects on cultural globalization and a brochure from their CLE will be referenced. In Chapter 3.3, the inaction of non-party members to the World Trade Organization will be assessed for positive and negative effects on cultural globalization and Ignatius will be referenced. In Chapter 3.4, the inhibition of U.S. artist Ry Cooder to partake in cultural exchange due to sanctions will be discussed and the BBC news service will be referenced. In Chapter 3.5, the solutions that have been offered to promote cultural diplomacy consist of calls to lift sanctions and calls for engagement versus containment will be discussed and Davis, Dobbins and Ignatius will be referenced.

In blue, the referenced individuals and entities that have added shade to the elephant are Arrington, BBCb, Bell, Browne, Evans, Fang, Feldman, INA, Lamberti, Planas, Posner and Werman. In Chapter 4.1, definitions and the prevalence of the United States Citizenship and Immigration Services, Immigration and Naturalization Act, and the Grammy Awards will be discussed and Evans, the Act, Lamberti and Posner will be referenced. In Chapter 4.2, the existence of the Partnership for a New American Economy and the cases of Cuban artists Omara Portuondo and Pablo Milanés will be assessed for their positive and negative effects on cultural globalization and Lamberti and Planas will be referenced. In Chapter 4.3, the inaction of Congress and consequent neglect of the Arts Require Timely Service Act will be assessed for positive and negative effects on cultural globalization and Lamberti will be referenced. In Chapter 4.4, the inhibition of artists to partake in cultural exchange due to the Immigration Act of 1990, the strict artist visa procedure, the arbitrariness of admitting foreign talent, the risk factors involved for the incoming talent, the impact of September 11,

sanctions and current inhibition in Canada will be discussed and Arrington, the BBC news service, Bell, Browne, Evans, Fang, Feldman, Lamberti, Planas, and Werman will be referenced. In Chapter 4.5, the solutions that have been offered to promote cultural diplomacy consist of calls for visa reform and Evans, Fang, Feldman, Posner, and Planas will be referenced.

A slate grey could hereby represent a noticeable trend between four of the references that spoke at length about the elephant and immigration law, namely, Evans, Fang, Feldman and Lamberti. What becomes important here to mention is that this is the only combination of colors between all the grey, red, yellow and blue in terms of subject matter discussed. Then, it can already be deduced that this relationship between cultural diplomacy and artist visas—or the blue elephant—is the most significant, compared to the weight of the other two laws assessed hereafter.

Now that the palette has been visualized, it is my hypothesis that to remiss these laws and to remiss cultural diplomacy have negative impact on cultural globalization. The notion that conflict countries' ability to benefit from the beauty of globalization is being thwarted by a handful of countries' privileged economic and political status is an erroneous posture that must be reshaped, unless proven otherwise. Now, let your illustration begin.

1. THE ELEPHANT: CULTURAL DIPLOMACY

1.1 *Definitions and the prevalence of globalization, cultural diplomacy, cultural exchange, cultural globalization and the role of the artist in society will be discussed*

1.2 *The existence of world polity, ACCD, the actions of UNESCO, WTO, GATT, G24, AMPAS, regional arts organizations, the New York Philharmonic, and the National Endowment for the Arts will be assessed for their positive and negative effects on cultural globalization*

1.3 *The inaction of USIA, the collapse of the Colegio Santo Angel, the non-signatories to the UNESCO Convention, and impact of September 11 will be assessed for their positive and negative effects on cultural globalization*

1.4 *There was no substantial evidence of inhibition that has systematically denied cultural exchange*

1.5 *The solutions that have been offered to promote cultural diplomacy consist of calls for more research on the dimensions of globalization, calls to engage in cultural dialogue with the Middle East, a call for the commercial creative sector to take cultural engagement seriously, and a call for the State Department to host cultural visitors*

1.1 Definition and Prevalence

Definitions and the prevalence of globalization, cultural diplomacy, cultural exchange, cultural globalization and the role of the artist in society will be discussed

What stands between men has historically been geographical distance, economic and political incentives that cause factions and war, but what has always brought mankind together has been, by virtue, the universal language of art in its peaceful nature. The statement that “the world after globalization is one in which culture is everywhere, and everywhere at issue” supports this (Mazzarella 2004: 347). To this notion, technology has graced the world with its ability to allow for the sharing of heritage and broken the barrier of distance between nations and sprung forth equal opportunity to all. However, if technology is predominantly used to advance economic and political incentives, the divide between countries and citizens worldwide may still exist—unless culture is considered as equally important as the former two forms of globalization. Currently, much to the chagrin of equality, “research on the possible consequences of globalization has overshadowed research on the forms of globalization. This is particularly true for political globalization, or “the shifting reach of political power, authority and forms of rule.”” (Beckfield 2010: 2). For this reason, cultural will be attributed the utmost importance, in comparison to economic and political globalization.

Additionally, globalization has assisted in the convergence of social entities that carry international clout in the shaping of how nations can interact, whether culturally, economically, or politically. Such amalgamation is partially attributed to “...world polity theory, an institutionalist approach that explains the unexpectedly high and rising level of

isomorphism among states as a function of embeddedness in a singular and universalist “world polity”, which is conceptualized as a network of states, societies, and international organizations. The network of intergovernmental organizations (or IGOs) in particular has been shown to influence patterns of international trade, neoliberal restructuring, international conflict, and transnational social movement organizations.” (Beckfield 2010: 2). Using this reasoning, globalization and its respective typology, one outcome of world polity may be that its clout has become hierarchical. However, since the privilege of forming such unions is granted to all, it is suggested that “globalization then is not something that takes place in a top-down fashion—by global forces that impact the local rather, it is the outcome of global projects that link up with projects at other spatial scales to achieve their efficacy.” (Hill 2007: 74). Especially manifest in the art world, the latter view is given priority as equality calls for such outcomes, as opposed to intervention and authoritativeness. To further this point, it has been mentioned how “globalization studies, contrary to superficial objections, announce neither the end of culture nor the end of difference. Rather, they remind us that culture is an effect of social processes of mediation, that these processes of mediation always grapple with internal indeterminacies as well as external provocations, and that social actors consciously or unconsciously try to manage or fix these indeterminacies and provocations by means of reified schemes of cultural identity and cultural difference. That such a “fixing” is at once both necessary and impossible is one of the ground rules of cultural politics.” (Mazzarella 2004: 360). The foregoing may not apply to the economic or political sectors of nations, but it definitely is what drives the cultural sector.

To further illustrate the prevalence of cultural globalization today, reasons for the choice of focus on the arts, and specifically music can be drawn from this contradiction between fragmentation and amalgamation. One justification for the latter symptom of cultural globalization declared in 2010 that, “it is because entertainment is an indispensable, emotional escape from the burdens of everyday life. The business world is getting smaller. Corporations are extending past their national borders, trips around the world are more affordable than ever, and music and culture are crossing lines, borders, and genres.” (Feldman 2010: 562). Again, this may be true, but it was also noted in the same year that “the simultaneous growth of global, inclusive ties and regional, exclusive ties has produced a world polity where states are increasingly interconnected through common membership in global organizations, but the field of international organizations is increasingly fragmented. States are coming together. Organizations are coming apart.” (Beckfield 2010: 39). In order to achieve a well-rounded understanding of the currentness of this issue that still exists only four years later, both symptoms that constitute an apparent contradiction must be kept in mind. The question becomes how to participate in cultural politics and cultural globalization so as to avoid any further overshadowing.

Diligently and most vigilantly, cultural diplomacy is at the frontline of the debate on solutions for states so as to avoid such neglect in the arts sector. Under speculation for the last decade, “cultural diplomacy, defined by American political scientist Milton C. Cummings as ‘the exchange of ideas, information, art, and other aspects of culture among nations and their peoples in order to foster mutual understanding,’ is recognized by many countries as an effective foreign policy tool. Countries differ in the importance they place on cultural diplomacy, the benefits they seek to gain from it, and even in how they define it. Yet it is widely recognized that effective cultural diplomacy can help a country improve its global image and foster international understanding and dialogue. While at various points in its history, the United States has placed a strong emphasis on cultural diplomacy, its current

support and commitment to cultural diplomacy lags behind much of the world.” (Fang 2011: 202-203). Dully noting the same definition by Cummings two years prior, another author added that cultural diplomacy “...makes up a critical component of public diplomacy, which can be loosely defined as all a nation does to present itself to the world.” (Schneider 2009: 261). At once, the prevalence of such a tool for social change can be recognized and at once, one might ask why such apathy has been awarded to culture on the topic of globalization.

In order to calibrate parity for cultural diplomacy alongside political and economic globalization, one step back may assist us in how to open this once negated door. As the arts carry the same weight in society as politics and economics, “... an analysis of the history and how it relates to our current situation is important. There are historical accounts of when the U.S. government has controlled our culture to make a political point, specifically at the height of the Cold War.” (Evans 2008). As previously mentioned, even amidst the presence of war, culture is known for its power to help foster peace and understanding between nations. For instance, “the government-subsidized tours and cultural exchange programs...were considered by many to be incredibly effective tools in the “war of ideas” against the Soviets.” (Fang 2011: 206). This may, without any doubt, be due to how “the creative arts and media have unlimited potential to penetrate political barriers and build connections, even under adverse circumstances. To paraphrase Wole Soyinka, “Culture humanizes what politics demonizes.”” (Schneider 2009: 262). Nigerian playwright and poet Soyinka could not have paraphrased the power of culture better. Once again, it becomes clear that taking the culturally diplomatic route may serve, as it has in the past, as a best alternative to focusing on political and economic globalization in forming a more perfect union with the world.

Specifically, artists become the most persuasive social actors in helping to build unity about through cultural diplomacy, as has arguably been done so since the beginning of time—or rhythm for that matter. One voice that has resonated throughout the years on the role of the artist in society has been John F. Kennedy in his statement that, “the poet, the artist, the musician, continue the quiet work of centuries, building bridges of experience between peoples, reminding man of the universality of his feelings and desires and despairs, and reminding him that the forces that unite are deeper than those that divide.” (Fang 2011: 201). Case in point, it is in art that a naturally incurred unity of mankind can emerge. Even if an artist is economically or politically troubled, the worse they can do is play a song, paint, take a photograph, direct a movie—all of which constitutes arts education and is ageless in history. “In any society, artists, and increasingly, Internet and social media operators, hold up a mirror to politics and systems, and hold governments accountable. Secondly, culture, arts, and media yield indispensable insight into other countries.” (Schneider 2009: 262). These paradigms towards artists also destabilize the need for militarism in the socially responsible sense and character of the musician, per se. Instantly, the importance of artists in shaping the world today can be leveled with politicians and the social power of the wealthy, as all three forms of social activists are controversially ambassadors for change.

Moreover, it is now the appropriate time to take the musical artist as the main subject of this paper in the struggle for cultural globalization, though any type of artist could have been emphasized because art is a universal language. In light of the fact that “cultural exchanges constitute a key element in cultural diplomacy” (Schneider 2009: 261), exchange for the musician signifies the dissemination of recorded music and the execution of a live concert abroad. The one thanks to intellectual property law and the Internet, and the other

made possible by the acceptance of artist visas, respectively. In the case of the latter, it has been noted that “festivals aggregate talent and can produce the very best in cultural exchange.” (Schneider 2009: 274). This example of how an artist can create bonds, in comparison with a businessman (no pun intended), has indeed been appropriated with significance by many “because artistic performances appeal to emotion, they can have an incredibly powerful impact on ideology and decision-making.” (Fang 2011: 233). Ironically, even in one of the hubs for economic globalization, and ““thankfully, Sen. Gillibrand understands the importance of cultural diplomacy and that “musicians from overseas who perform in New York add tremendous value to the City’s vibrant cultural and touristic economy.” (page 35) (Lamberti 2011: 35). Coming from an authoritative voice, it becomes solidified that Sen. Gillibrand’s opinion helps to “...illustrate the potential of cultural diplomacy and exchanges to increase understanding, shatter stereotypes, and change the way people view each other, which ultimately can lead to changes in the way governments interact.” (Schneider 2009: 276). Then the positive impacts artists have on society from a macrolevel of analysis is almost inescapable.

1.2 Action

The existence of world polity, ACCD, the actions of UNESCO, WTO, GATT, G24, AMPAS, regional arts organizations, the New York Philharmonic, and the National Endowment for the Arts will be assessed for their positive and negative effects on cultural globalization

The birth of the United Nations and specifically UNESCO (United Nations Education Science and Culture Organization) will serve as the first action toward cultural globalization to be assessed as they represent a historical moment in the international arena of culture. Though it has been argued that “...the truly transformative geopolitical moment that ripples through the structure of the world polity is the regionalization of the world polity that occurs largely after the establishment of the United Nations system. After 1945, the world polity grows more sparsely interconnected, more centralized, more structurally uneven, and more fragmented by increasingly regionalized IGOs. It resembles less and less one small world.” (Beckfield 2010: 34). Despite the aforesaid fragmentation, the power of such IGOs remains constant. The world polity theorist also mentioned another statement that supports the same when it was noted that “for world polity theory, the United Nations (UN) and its agencies (e.g., the International Monetary Fund; World Bank Group; UN Education, Science, and Culture Organization; International Labour Organization; and World Health Organization) represent the ideal-typical international organizations. These organizations influence national policy, distribute resources, and include nearly every state in the international system as members.” (Beckfield 2010: 6). So, their cosmopolitanism still represents some form of positive cultural exchange due to their inclusiveness of member-countries. In general, the major organization stands for “this idea of a single global viewpoint through which all human history can be understood is in keeping with UNESCO's mission of creating solidarity by promoting an awareness of the unity of humankind.” (Hill 2007: 65). For this, their existence is assessed as having a positive role and impact on cultural globalization.

Most famous for their esteemed concern regarding world heritage, a brief glance at their mission is further analysed. Considering “UNESCO's vision of a world of global heritage objects of outstanding universal significance, preserved in the name of the world

community” (Hill 2007: 63) represents a full understanding of the importance of the culture sector for monuments and historical sites around the globe. In fact, “the network of cultural and natural heritage sites that are subsequently conjured into existence through this discourse become the symbolic glue through which the idea of humankind's belonging to a cosmopolitan community is cemented.” (Hill 2007: 64). Again, the prevalence of cosmopolitanism is attested to through the actions of UNESCO, but it should be also emphasized that there exist counterparts to UNESCO that concern arts other than sculptures and tangible heritage.

A deeper look into UNESCO’s Intangible Cultural Heritage sector will serve as the second action toward cultural globalization to be assessed. As defined by the organization in 2012, “the ‘Intangible Cultural Heritage’ means the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage. This intangible cultural heritage, transmitted from generation to generation, is constantly recreated by communities and groups in response to their environment, their interaction with nature and their history, and provides them with a sense of identity and continuity, thus promoting respect for cultural diversity and human creativity.” (UNESCO 2012: 5). This area of their existence pertains more to folk music and cultural tradition that is not necessarily tangible, as in their efforts to conserve tangible world heritage sites. What becomes particularly effective towards cultural globalization is the measures that member-countries are required to enact. Verbatim, the following duties are prescribed to the members:

“States Parties shall endeavour, by all appropriate means, to ensure recognition of, respect for and enhancement of intangible cultural heritage through educational and information programmes, as well as capacity-building activities and non-formal means of transmitting knowledge

States Parties are encouraged, in particular, to implement measures and policies aimed at:

- (a) promoting the role of intangible cultural heritage as an instrument of integration and intercultural dialogue, and promoting multilingual education to include vernacular languages;
- (b) teaching about intangible cultural heritage in school curricula adapted to local specificities, and developing appropriate educational and training material such as books, CDs, videos, documentaries, manuals or brochures;
- (c) enhancing the capacities of teachers to teach about intangible cultural heritage, and developing guides and manuals to this end;
- (d) involving parents and parent associations to suggest themes and modules for teaching intangible cultural heritage in schools;
- (e) involving practitioners and bearers in the development of educational programmes and inviting them to explain their heritage in schools and educational institutions;
- (f) involving youth in collecting and disseminating information about the intangible cultural heritage of their communities;
- (g) acknowledging the value of the non formal transmission of the knowledge and skills embedded in intangible cultural heritage;

(h) privileging experiencing intangible cultural heritage with practical methods by employing participatory educational methodologies, also in the form of games, home-tutoring and apprenticeships;

(i) developing activities such as summer training, open-days, visits, photo and video contests, cultural heritage itineraries, or school trips to natural spaces and places of memory whose existence is necessary for expressing intangible cultural heritage;

(j) making full use, where appropriate, of information and communication technologies;

(k) teaching about intangible cultural heritage in universities and fostering the development of interdisciplinary scientific, technical and artistic studies, as well as research methodologies;

(l) providing vocational guidance to youth by informing them about the value of intangible cultural heritage for personal and career development;

(m) training communities, groups or individuals in the management of small businesses dealing with intangible cultural heritage.” Section IV: Raising Awareness about ICH and use of the emblem of the Convention for the Safeguarding of the ICH) Article 107: Formal and non-formal education measures 107. (Article 14 (a) of the Convention. (UNESCO 2012: 50-51)

Besides the thirteen obligations supra, Articles 116-117 of the Convention also inscript the importance of tourism and other commerce that pertains to the arts:

“Commercial activities that can emerge from certain forms of intangible cultural heritage and trade in cultural goods and services related to intangible cultural heritage can raise awareness about the importance of such heritage and generate income for its practitioners. They can contribute to improving the living standards of the communities that bear and Practise the heritage, enhance the local economy, and contribute to social cohesion. These activities and trade should not, however, threaten the viability of the intangible cultural heritage, and all appropriate measures should be taken to ensure that the communities concerned are their primary beneficiaries. Particular attention should be given to the way such activities might affect the nature and viability of the intangible cultural heritage, in particular the intangible cultural heritage manifested in the domains of rituals, social practices or knowledge about nature and the universe.

Particular attention should be paid to avoiding commercial misappropriation, to managing tourism in a sustainable way, to finding a proper balance between the interests of the commercial party, the public administration and the cultural practitioners, and to ensuring that the commercial use does not distort the meaning and purpose of the intangible cultural heritage for the community concerned.” “(Section IV: Raising Awareness about ICH and use of the emblem of the Convention for the Safeguarding of the ICH) Articles 116-117: Commercial activities related to intangible heritage (UNESCO 2012: 53)

If the duties to preserve and promote intangible cultural heritage is not enough, it is also setting a great example to perform such responsibilities in an ethical manner. Moreover, it is worth mentioning that the list of countries recognized for their ICH and are considered “State Parties” include Palestine, Iran, and Cuba and exclude the United States, the United Kingdom and Canada.⁴

The implications made by the General Agreement on Tariffs and Trade and the World Trade Organization, the existence of the Group of 24, toward cultural globalization will be assessed next. Quite possibly, it is a signifying moment when in the 90’s, “even after the United Nations Educational, Scientific, and Cultural Organization (UNESCO)-sponsored New

⁴ “Intangible Cultural Heritage.” UNESCO. <http://www.unesco.org/culture/ich/index.php?lg=en&pg=00024> (accessed June 8, 2014).

World Information and Communication Order (NWICO) collapsed in the mid-1980s, European states continued to draw on these assumptions during the General Agreement on Tariffs and Trade (GATT) and World Trade Organization (WTO) negotiations of the 1990s, arguing that culture constituted a unique (and uniquely vulnerable) kind of resource that needed to be protected from the predations of the market. (Mazzarella 2004: 349-50). As interrelated as the state parties are to each other as in other IGOs, here the European counterparts set a better example for a sustainable preservation method. As a side note, these global organizations do represent the voices of many, but as more developed nations engage isomorphically, some countries also took action for their own economic globalization. “For instance, the Group of 24 (G24) was founded in 1971 by 24 less developed countries to represent the interests of poor countries in international financial matters and counterbalance organizations like the Group of 7 (or G7, now G8) industrialized countries.” (Beckfield 2010: 13). This is significant because as has been shown, all forms of globalization are increasingly interlinked and the unification of the less developed nations serves as another positive impact towards equality of opportunity to cross-borders.

In the motion picture and classical music world, the actions of the Academy of Motion Pictures Arts and Sciences (AMPAS), regional arts organizations, and the New York Philharmonic will be assessed for their positive and negative effects toward cultural globalization. Some may not be aware that AMPAS recently travelled to Iran. “At the invitation of their counterparts in Iran, a delegation of members of the Academy of Motion Pictures, including then—President Sid Ganis and actresses Annette Benning and Alfre Woodard, traveled to Iran in March 2009. In ten days they visited four cities and held screenings as well as in depth discussions about the two societies and their filmmaking traditions. The Academy delegation was impressed by the Iranians’ depth of knowledge of American film, perhaps best demonstrated by the festival of films by indie director John Sayles, held while they were in Iran... This historic exchange has the potential to profoundly impact the relationship between the Iranian and American peoples because the impressions that both the American and Iranian filmmakers take away from this experience will filter into their films and thus impact a much wider public. Even though the tumultuous events of the Iranian election have intervened since the initial trip of the Academy to Iran, the return visit of the Iranian filmmakers went ahead as planned. In some instances, and this is one of them, people-to-people diplomacy can thrive when government-to-government relations are strained.” (Schneider 2009: 267, 269). This cultural exchange between Iran and the United States constitutes a best example of positive action. In fact, a few years later, it may have went unnoticed that ever since the AMPAS visit, Iran became recognized for their culture abroad by winning an Oscar for the first time in history and was nominated for another award last year.⁵ As far as the live concert industry is concerned, many actions are positively supporting cultural exchange. For one, “the festivals at the Kennedy Center and in New York, as well as many other events organized by regional arts organizations, from the New England Foundation for the Arts to the Western States Arts Federation, bring a needed taste of the diversity of other cultures to America.” (Schneider 2009: 275). Along the same lines, the cherry on top of New York’s cosmopolitan attitude may very well be “...the New York Philharmonic’s [2008] historic performance in North Korea. Although some criticized the performance in North Korea as catering to a dictator and others dismissed it as “just a

⁵ Kilday, Gregg. "Oscars: Iran to Submit Asghar Farhadi's 'The Past' for Foreign Language Category." The Hollywood Reporter. <http://www.hollywoodreporter.com/news/oscars-iran-submit-asghar-farhadis-638880> (accessed June 8, 2014).

concert,” John Deak, the orchestra’s principle bassist, captured the intangible but unmistakable emotional impact of a successful cultural event when he described the conclusion of the concert: “Half of the orchestra burst into tears. . .and suddenly there was this kind of artistic bond that is just a miracle. I’m not going to make any statements about what’s going to change. . .things happen slowly. But I do know that the most profound connection was made with the Korean people tonight.”” (Schneider 2009: 276). Let us not forget that this historic moment of breaking a barrier between two nations occurred within the last decade. It is highly doubted that any economic or political unity could bring about the same level of unity and for this the positive impacts are invaluable.

Last assessed will be the existence of the Advisory Committee on Cultural Diplomacy and the actions of the National Endowment for the Arts. Surprisingly, “there has been a renewed governmental interest in cultural diplomacy since 9/11. George W. Bush appointed an Advisory Committee on Cultural Diplomacy (“ACCD”) to consult the U.S. Department of State, and the committee urged America to increase funding for cultural diplomacy. In its report, the ACCD stated: “history may record that America’s cultural riches played no less a role than military action in shaping our international leadership, including the war on terror.”” (Fang 2011: 229). I would argue that cultural diplomacy indeed plays a larger role, with respect to the aforementioned trips to Iran and North Korea for their humanizing effects, whereas militarism represents the contrary of humanization. Attention will also be drawn to another positive action that enhanced support for cultural exchange. Corresponding with the year of the New York Philharmonic’s successful visit to North Korea, “...congressional appropriations to the National Endowment for the Arts increased by sixteen percent to 144.7 million, the agency’s largest increase in twenty-eight years.” (Fang 2011: 229). One would only believe that according to all of the actions provided hereto, the state of cultural diplomacy is blossoming voluptuously. One would fallaciously be too optimistic.

1.3 Inaction

The inaction of USIA, the collapse of the Colegio Santo Angel, the non-signatories to the UNESCO Convention, and impact of September 11 will be assessed for their positive and negative effects on cultural globalization

Though the actions listed above highlight a bright side of acknowledgement toward the significance of culture, some still assert a more pessimistic attitude toward the same. Take for instance how it has been noted more recently that “...global neo-realist approaches downplay or neglect the role of culture, highlighting instead conflict and power.” (Beckfield 2010: 13). In context, this purportation may appear to be illegitimate, it must be taken into consideration that it was declared four years ago. Even in 2009, one author points out that “the bad news is that as a result of a number of factors, including federal disinvestment, lack of a cohesive strategy, absence of interagency or public-private collaboration, and a general ignorance of the significance of arts, culture, and media in shaping the landscape in which international politics operates, the potential of cultural diplomacy, and particularly of cultural exchange, has not been realized.” (Schneider 2009: 262). Despite increased funding and particular instances of positive actions in favor of cultural globalization, there still appears to be a general disconcern for culture. One cause for this may be how “the reliance on substantialist models of culture and cultural correspondence ultimately becomes a strategy for avoiding the questions that really need to be asked. These questions require us to

confront culture as, at one and the same time, ideology and social process, as something continuously made and remade through constantly shifting relations, practices, and technologies of mediation.” (Mazzarella 2004: 355). Then, one’s optimism morphs into a more meticulous eye toward sustainable measures, rather than short-term glimpses of cultural diplomacy that have been executed in the more distant past.

Concerning the world after September 11, much ado rests in an increased provocation of neglect towards the arts. “Whereas earlier the U.S. responded, in part, to external threats by a cultural diplomacy campaign, the post 9/11 era has seen a diminution of the cultural component of diplomacy.” (Schneider 2009: 263). This is difficult to process as a diminishing resort to using cultural diplomacy consists of not enough action over a long period of time and thus cannot focus on specific band-aid solutions to fostering better relations with nations, especially in the Middle East. Moreover, “many reports, op-eds, and essays point out the importance of cultural exchange, especially in a post-September 11 world. Experts in diplomacy, arts administrators, and government officials often speak and write on the lost opportunities to bring our nation together...” (Evans 2008). These assertions can provide one with a more comprehensive perspective on an equally pessimistic view as an optimistic one.

Only three years ago, the inaction of the United States was held culpable for the diminution of cultural diplomacy on two accounts. One account mentions that “after the Cold War, however, the U.S. Information Agency (“USIA”), one of the main arms of America’s cultural diplomacy efforts during the Cold War period, was abolished, and government support for cultural diplomacy activities dwindled.” (Fang 2011: 206). Understood as a general statement, the author’s opinion is more legitimized as the second account entails how “in 2006, the E.C. [European Community] ratified the United Nations Educational, Scientific and Cultural Organization’s Convention on the Protection and Promotion of the Diversity of Cultural Expressions (“UNESCO Convention”). The UNESCO Convention encourages the free movement of artists between countries. Certain provisions of the Convention inform ratifying developed countries that they must adopt procedures to facilitate cultural exchange with developing countries...Article 16 provides that “developed countries shall facilitate cultural exchange with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries” but, “the United States is not a party to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, and it has not engaged in any regional collaboration focused on this issue.” (Fang 2011: 225, 229). Even as the government has made some developments in utilizing cultural diplomacy since the Cold War, it makes a strong case that even in 2011 the U.S. has been held accountable for not being party to the UNESCO convention.

Even as the formation of UNESCO and its focus on world heritage, tangible or intangible have been expressed supra as positive drivers for culture, one symbolic result of neglect in Cuba can highlight the foggier side of the organization itself. “In October 1993 the Colegio Santo Angel, an eighteenth-century merchant's house recognized by the World Heritage Committee of the United Nations Educational, Scientific, and Cultural Organization (UNESCO), collapsed in a pile of dust while awaiting restoration.” (Hill 2007: 59). This collapse due to negation is significant because “...at the global level, the Colegio is a concrete instance of the assemblage of heritage objects through which UNESCO's global geography of World Heritage cities and sites is comprised. Through the particular

experience of the Colegio and its immediate environment, the Plaza Vieja, the cosmopolitan observer can experience and know the "universal history of humankind," and through it, the "common humanity» that comprises the world as a community. Through the intersection of these scales (local, national, global) a new dynamic of capital investment is created." (Hill 2007: 61). However, such cosmopolitanism and unity cannot be brought forth without diligent preservation tactics. Yet again, the optimism levels with the pessimists in light of "awaited restoration."

1.4 Inhibition

There was no substantial evidence of inhibition that has systematically denied cultural exchange

1.5 Solution

The solutions that have been offered to promote cultural diplomacy consist of calls for more research on the dimensions of globalization, calls to engage in cultural dialogue with the Middle East, a call for the commercial creative sector to take cultural engagement seriously, and a call for the State Department to host cultural visitors

Of the solutions offered to promote cultural diplomacy as a tool, the one that is most prevalent to this paper is the call for more research on the dimensions of globalization— inferring more research on cultural globalization. Clearly stated as more significant than economics or politics, "...political globalization and economic globalization may not necessarily be reinforcing processes, [thus, a] call for more research on the relations among the various dimensions of globalization" has come about. (Beckfield 2010: 40). Additionally, another author purports that "compared with research on the state and the economy, comparatively less globalization research examines civil society, and this is the domain where research is most needed." (Brady 2007: 323). From a sociological perspective, it has also dawned upon the same critic of the neglect of cultural diplomacy that "regarding civil society, we think sociologists can make significant contributions by investigating how globalization influences a wider variety of aspects of civil society, including the realm of consumption and culture.." (Brady 2007: 326). Thus, one solution for individuals or entities to research cultural globalization has been testified.

Leaning towards a call directed at entities more than individuals, the commercial creative sector and the State Department have been held responsible to take cultural engagement more seriously and in a more proactive manner. Drawing on the words of one author, the hopes of such activism is referenced when stated that "...the elephant in the room, the commercial creative sector, one of the United States' top exports, continues to shape perceptions for good and bad—more often the former—as it reaches millions around the globe. All this with no strategy or coordination; think what might be possible if the potential of cultural engagement were taken seriously." (Schneider 2009: 264). As for the U.S. government, "only a few programs at the State Department host cultural visitors in the U.S. Nonprofit arts organizations have worked together to maximize impact, but so much more could be done, especially considering the dearth of information about foreign cultures and countries in the average American public school education." (Schneider 2009: 264). Culture, then, has been taken in a light-hearted fashion and this must be changed.

One specific area of interest in the solutions call for increased engagement in cultural dialogue with the Middle East. Thankfully, “a recent Brookings Institute Project on U.S.-Muslim Relations applied this research in advocating for artistic exchange between the United States and the Muslim world. The study argued that because of its emotional power, artistic and cultural experiences could have a strong impact on deeply divided communities, encouraging mutual understanding and empathy. The war against radicalism can only be won through diplomatic means, and cultural dialogue is an invaluable tool in building a strong and lasting relationship with the Muslim world.” (Fang 2011: 234). If not enough incentive has been provided, the view of “...IGOs in the Middle Eastern region as especially distant from the center of the world polity, [make] these organizations another promising area for the exploration...” (Beckfield 2010: 42). However, this request cannot be carried out unless the call for research is also acknowledged. This is because first, “...we need, ethnographically speaking, to attend to the places of mediation, the places at which we come to be who we are through the detour of something alien to ourselves, the places at which we recognize that difference is at once constitutive of social reproduction and its most intimate enemy.” (Mazzarella 2004: 356). In other words, we need to sacrifice our comfortableness with an adopted attitude of exploration in order to meet the prerequisites of these solutions. Of course, on a more general note, “if and when the importance of culture in shaping America’s relationship with the world is recognized and acted upon, hopefully that information will be systematically gathered and analyzed. Until then, the thousand flowers blooming that characterize cultural diplomacy, and especially cultural exchanges today, will remain a thousand trees falling in the forest.” (Schneider 2009: 263). As we shift gears towards the shades of this elephant of cultural diplomacy in the room, let us remember to not forget the aforementioned prevalence, action and inaction presented in the quest to the cost-benefit analysis of abiding by the said solutions as they are fiercely intertwined with what rests underneath.

2. IN RED: COPYRIGHT

2.1 Definitions and the prevalence of rule of law and choice of law will be discussed in relation to copyright

2.2 The existence of Cuban copyright law and Iranian copyright law will be assessed for their positive and negative effects on cultural globalization

2.3 There was no substantial evidence of inaction or neglect in the realm of copyright that could be assessed

2.4 The inhibition of cultural exchange due to extraterritorial exercise of jurisdiction will be discussed

2.5 The solutions that have been offered to promote cultural diplomacy consist of a call for adopting an international attitude, calls for copyright reform and a call for comity

2.1 Definition and Prevalence

Definitions and the prevalence of rule of law and choice of law will be discussed in relation to copyright

Recognizing the role of copyright in today's age of digital music sets a precedent for musicians worldwide to understand the breadth of how their music can be disseminated and ultimately, how they can engage in cultural globalization. That there exists a decade long-debate on how copyright fares over international borders, a sense of urgency to address the same is ensued. For that matter, the curtain lifts to reveal the prevalence of two ideals, rule of law and choice of law. "The Rule of Law ideal begins with the phrase 'rule of law,' and the idea that the government should operate according to law, and not according to the whims of officials—a rule of law and not of men." (Horowitz 2012: 372). This definition, though theoretically sound, induces a grey area in law that is insurmountable once applied in an international context—or, a situation where jurisdiction of one nation must be asserted over another nation. The same dilemma can chiefly be found in exercising choice of law, when "...the same work will be subject to a multiplicity of laws as well as the actions of administrative agencies of other countries, laws and actions that may vest different parties with ownership or exploitation rights. Licensing of worldwide rights under such a situation becomes complex, adding unnecessary costs and uncertainty." (Patry 2000: 396). Another way to frame these inconveniences to creators and users of music in the scope of copyright can be attributed as the arbitrariness of the law that comes afloat in global settings. Since not many cases reveal the solution as to how to proceed and the probability of dilemmas arise as more countries enter the globalized music world, questions arise abroad where, for conversation's sake, "...in foreign countries, where there was no renewal term, should the reversion to the author's heirs under U.S. law dictate that the heirs also own the foreign rights, or, should the assignee prevail? No case has decided the issue, but the weight of

scholarly opinion is strongly in favor of the assignee.” (Patry 2000: 446). This same arbitrariness has also spread to “...cases where under both a conflicts and contributory infringement analysis, the United States lacks sufficient contacts with either the subject matter or the acts of infringement to assert jurisdiction, some courts have, nevertheless, been unable to resist the temptation to act as a world forum for copyright infringement.” (Patry 2000: 467). Be it in terms of licensing, “second bites at the apple”, or infringement—all dominant functions of copyright and exercising exclusive rights have become fogged mirrors for the artist or rights holders to fully understand the extent and territory where their rights may be applicable—regardless of location.

2.2 Action

The existence of Cuban copyright law and Iranian copyright law will be assessed for their positive and negative effects on cultural globalization

It would be an overstatement to say that Cuban and Iranian copyright has been recognized, critiqued, compared, to the same extent as other countries’ intellectual property laws or that any of the existing scholarly publications on the matter are easily discoverable. In spite of this, the actual statutes were published internationally on an internationally recognized forum and for intellectual property law, the World Intellectual Property Organization (WIPO) of which both countries are members.⁶ Both countries exhibit much more condensed statutes as compared to The U.S. Copyright Act of 1976, but surprisingly, they were formed around the same time and the major difference between all three is the term. Whereas the term of U.S. copyright extends for a period of the life of the author plus seventy years after his death, Cuban copyright—ratified in 1977—extends for a period of the life of the author plus twenty-five years after his death:

“El período de vigencia del derecho de autor comprende la vida del autor y veinticinco años después de su muerte, salvo las excepciones señaladas expresamente en esta Ley. Si se trata de una obra en colaboración, el período de vigencia del derecho de autor se extenderá veinticinco años después del fallecimiento de cada autor.” [Ley No. 14: Ley Del Derecho De Autor: § 9 Artículo (43): Del Periodo De Vigencia Del Derecho De Autor (p12)] (Copyright Act of 1977). (See translation by author)⁷

Whereas the term of Iranian copyright—ratified in 1970—extends for a period of the life of the author plus thirty years after his death:

“The financial rights of the author, the subject of this law, are transferred to his heirs, or by covenant, for a period of thirty years after his death. In the absence of such heirs or a transfer by covenant, the Ministry of Culture and Arts will hold the rights for public use for the same period of time.” [Copyright Law: § 3 The Period of Protection of the Author’s Rights and Other Legal Protections Article (12) (p2)] (Copyright Act of 1970).

⁶ “World Intellectual Property Organization.” Member States. <http://www.wipo.int/members/en/> (accessed June 9, 2014).

⁷ “The term of copyright includes the life of the author and twenty-five years after his death, subject to the exceptions expressly set out in this law. If it is a collaborative work, the term of copyright will be extended twenty-five years after the death of each author.” [Ley No. 14: Ley Del Derecho De Autor: § 9 Artículo (43): Del Periodo De Vigencia Del Derecho De Autor (p12)] (Copyright Act of 1977). (Translation by author)

In assessing the existence of these laws, clearly the conflict countries are at par in having recognizing authors' rights to their creative works so a positive impact toward cultural globalization surfaces, but this does not imply that the laws are being adequately enforced or recognized abroad. Without sufficient amounts of research on these laws as they pertain to the digitalized world and choice of law, as discussed earlier, one cannot truly grasp the significance of the existence of these statutes.

2.3 Inaction

There was no substantial evidence of inaction or neglect in the realm of copyright that could be assessed

2.4 Inhibition

The inhibition of cultural exchange due to extraterritorial exercise of jurisdiction will be discussed

One form of inhibition is the U.S.'s inclination toward extraterritorial exercise of jurisdiction—or, the act of imposing one country's law over another's for lack of better judgment. "There may come a time when a multilateral agreement is entered into permitting one country to exercise jurisdiction over all acts that emanate wherefrom, but that time is not here yet. Caution is particularly important given the current international disagreements over fundamental questions such as whether computer storage of works as a necessary adjunct to electronic receipt constitutes the making of a prohibited "copy." The United States unsuccessfully sought to establish this principle in 1996 diplomatic negotiations that led to the WIPO Copyright Treaty. The European Union in its May 21, 1999 proposal to implement that treaty exempts such activity, demonstrating that the United States is unlikely to prevail in future debates. The extraterritorial exercise of jurisdiction over activities for which there is no international consensus, or, as with temporary storage, there is a sharp disagreement, is a singularly bad idea. When the United States adhered to the Berne Convention, the House Judiciary Committee noted that adherence would require "careful due regard for [the] values" of other countries. Applying our law in the face of known differences in national laws is the antithesis of such regard." (Patry 2000: 457-458). Due to the U.S.'s failure to ratify changes in international settings for avoidance of such issues that arise in choice of law over the past two decades and that the government has been held accountable for not adhering to the Berne Convention, there is no reason to believe that the same has been or could be experienced in other instances of cases without international consensus. By not attributing value to the laws of other lands, such as Cuba and Iran, the U.S. may indeed be inhibiting those countries' authors' capacity to exercise exclusive rights. This goes hand in hand with the debate on rule of law not being enforced and rather, a discretionary system continues to evolve as a negative force against cultural globalization.

2.5 Solution

The solutions that have been offered to promote cultural diplomacy consist of a call for adopting an international attitude, a call for comity and calls for copyright reform

In light of the rebukes on the unhealthy practices of the U.S. towards other countries when faced with choice of law and in their shameless exercising of extraterritorial jurisdiction, a call of adopting a more international attitude and comity have been provided as solutions towards a more prosperous approach in favor of cultural globalization. Reading between the lines, the argument for adopting an international attitude is found in questioning “what happens if an original work is not protected by copyright in either its foreign country of origin or in the United States? One approach would be to apply U.S. law across the board: if the U.S. Copyright Act protects the work, fine; if not, too bad. This purely domestic attitude may, though, run afoul of treaty obligations, and thus a more thorough inquiry must be made.” (Patry 2000: 391). That these inquiries have failed to have been conducted over the past two decades alludes to the conclusion that first, an international attitude must be adopted. Quite possible a precursor to such change in idealism is the idea of “...comity.” A desire to be friendly toward other nations is, though, hardly adequate grounds for displacing domestic law...it would be useful to engage in comity since other countries may thus be led to reciprocate in cases of interest to our citizens. This hope still springs eternal...” (Patry 2000: 416). Hope, though in its glowing optimism, has not effected the status quo, so further action becomes essential.

Once a more international attitude is exhibited by the U.S., additional calls for long overdue copyright reform may be actualized. “Like it or not, though, federal judges are not the equivalent of a Copyright Interpol; they operate under the confines of a statute, and like it or not that statute is maddeningly territorial. Congress is not always parochial in the intellectual property field, though. The Lanham Trademark Act expressly provides for extraterritorial application, and under this language the courts have granted extraterritorial injunctions. Until Congress amends the Copyright Act in a manner similar to the Lanham Act, courts should apply the former as written.” (Patry 2000: 457). This assertion does not hold accountable international treaties, rather, specifically what the U.S. can enact to advance their regard for cultural globalization. On the subject of choice of law and in compliance with the Berne Convention, another call for reform is derived by how “regardless of the prominence first publication may play in certain circumstances, e.g., for determining national eligibility, courts should be wary of assigning it prominence for choice of law analysis. Given the globalization of markets and entertainment corporations, the country of first publication may not be the country with the most significant relationship. In the case of sound recordings, for example, if Cuban musicians are recorded in Havana's Egrem studio, but the sound recording is first published in the United States, Cuba should be considered the country of origin for choice of law analysis.” (Patry 2000: 424). A statement such as this effectively calibrates the existing inequality in placing value towards other countries, such as Cuba. Furthermore, “copyright's asymmetric distribution of uncertainty may make economic sense, but welfare comes at the expense of the Rule of Law ideal. The ideal prizes clarity to enable individuals to order their lives under the law. The need for notice is stronger where the law imposes a prohibition, and strongest where the law turns punitive. Copyright is exactly backwards. The clearest questions concern the provision of benefits, and the most vexing concern the scope of copyright's prohibitions—and the price of transgression. The

Rule of Law ideal provides good reason to clarify copyright, even if doing so inhibits rather than promotes expression.” (Horowitz 2012: 381). At the expense of inhibition, this request for being motivated by the rule of law ideal is effervescent with sound logic. All on account of how “...the Rule of Law is valuable because it recognizes the dignity of persons and promotes freedom, then the ideal should include a commitment to legal directives clear enough to be followed. Copyright's asymmetric distribution of uncertainty is inconsistent with that commitment... (Horowitz 2012: 373-374). All in order to subdue arbitrariness as “uncertain legal prohibitions conflict with a principle of respect for individuals to order their affairs according to law.” (Horowitz 2012: 382).

3. IN YELLOW: SANCTIONS

3.1 *The definition and prevalence of sanctions will be discussed*

3.2 *The upcoming initiative of the Florida Bar will be assessed for its positive and negative effects on cultural globalization*

3.3 *The inaction of non-party members to the WTO will be assessed for positive and negative effects on cultural globalization*

3.4 *The inhibition of U.S. artist Ry Cooder to partake in cultural exchange due to sanctions will be discussed*

3.5 *The solutions that have been offered to promote cultural diplomacy consist of calls to lift sanctions and calls for engagement versus containment*

3.1 Definition and Prevalence

The definition and prevalence of sanctions will be discussed

Without a common understanding of a form of exercised international law, sanctions to be exact, one can neither identify its inhibition by nature of its definition nor in its practice, so a brief definition must be presented to the reader. "Sanctions are unilateral or "collective action against a state considered to be violating international law" designed "to compel that state to conform [to the law]." (Davis 2003: 187). Also, and in more direct relation to the purposes of this paper, "sanctions include the withholding of diplomatic recognition, the boycotting of athletic and cultural events and the sequestering of property of citizens of the targeted country." (Davis 2003: 187). Thus, sanctions are inhibiting in nature due to their action against one country to attempt effectual change and they are considerably inhibiting in practice as an active protesting of even cultural events is included in its basic definition.

3.2 Action

The upcoming initiative of the Florida Bar will be assessed for its positive and negative effects on culture

The Florida Bar International Law Section will present Course No. 1763R entitled "Cuba 2014: What the U.S. Legal and Business Communities Need to Know" open to the public with discounted rates for members of the International Law Section, Judges, Government Officials and Full-time Florida University Professors and University students. Classified as an "Intermediate Level" course, the live presentation will take place on Thursday and Friday, November 20 – 21, 2014 at the Loews Portofino Bay Hotel in Orlando, Florida. Presentation headings include, but are not limited to: Cuba: An Evolving Marketplace; U.S. Policy Towards Cuba – Changes Since 2008; The Legal Framework for

Economic Development: Challenges; and Case Studies relating to doing business in Cuba. (CLE 2014). This action is highly representative of a positive conduit for change in fostering better relations with Cuba, first, aimed at educating persons in the legal practice of the United States, and with a focus on international law.

3.3 Inaction

The inaction of non-party members to the WTO will be assessed for positive and negative effects on cultural globalization

Intriguing insight into the world of the conflict countries' participation in IGOs that pride themselves with acting as international forums and whereby international law becomes a key element of such organizations, can help rectify that some publications are found to be contradictory. One debatable claim is that "talks with Iranian entrepreneurs give a sense of what's possible" however, "...when the country remains outside the World Trade Organization and intellectual property can't be protected" (Ignatius 2013) one would question the validity of such a claim as even though Cuba is a member of the WTO and Iran is not, both countries are members of WIPO as previously mentioned. One would further wonder as to why Iran has been sequestered from joining the WTO and falsely recognized as not being able to have intellectual property recognized. Thus, such inaction contains neither positive nor negative impact as the apparent contradictions must first be made clear.

3.4 Inhibition

The inhibition of U.S. artist Ry Cooder to partake in cultural exchange due to sanctions will be discussed

The following occurrence of cultural exchange in the late 90s at first was a positive action toward cultural globalization and exemplifies best practice for cultural diplomacy, but when the demonization of such action occurred in the last decade, such inhibition could lead many other artists astray in assessing their cost-benefit analysis of working with Cuban musicians. Most dehumanizing, "American guitarist Ry Cooder says his latest collaboration with Cuban musicians could be his last. Cooder helped put the country on the musical map after bringing together a group of Cuban musicians to make the Buena Vista Social Club album in 1996. The project was an unexpected commercial and critical smash, earning a Grammy and becoming the best-selling release of Cooder's career. But the US Government banned Cooder from working with musicians from the communist country again, fining him \$100,000 under America's Trading With The Enemy Act." (BBC 2003a). Such inhibition and treatment as criminal activity toward an artist, whose merit is equivalent to that of any leader in a nation as formerly described, is magnificently negative and thwarts the future of cultural globalization to unknown extremes as incredible amounts of risk and hesitation can arise in other musicians who learn about this atrocious practice of imposing international law on an act for peace.

3.5 Solution

The solutions that have been offered to promote cultural diplomacy consist of calls to lift sanctions and calls for engagement versus containment

The most obvious solution to avoiding the inhibition of cultural globalization in the quintessential nature of international law, as has been referenced, is to lift the sanctions. For one, "...economic sanctions may either be ineffective, in the sense that they fail to bring about the desired change in behavior, or unfair, in the sense that large and wealthy economies are generally more capable of bearing the costs associated with such constraints, as well as with organizing and enforcing the constraints on others, than are relatively small and poor countries." (Davis 2003: 188). That sanctions have been imposed not according to economies of scale, but on the basis of the capacity for developed and thriving economies to overcome the financial burdens that arise from such inhibition, is satisfactory enough to lift the sanctions. For another reason, "that sanctions have generally not been so successful over the last few decades suggests that the enhanced legitimacy of their application may not be having a fundamental impact on the actual state of the world." (Davis 2003: 196). So, it becomes even more elusive to find sanctions as relevant diplomatic action today and lifting sanctions becomes more and more befitting to current times. "Indeed, trade sanctions were imposed in 117 cases between 1970 and 1998, with the United States primarily responsible or "part of the sanctions coalition" in over two-thirds of them" (Davis 2003: 188), so even though the past may have proven otherwise, it is not reason enough to continue a practice that the U.S. has developed a mastery of for sake of convenience as primary inhibitors and practioners of employing sanctions. Even in the conflict country, "Iranians foresee a future boom if sanctions are lifted and the nation fully joins the global economy. Four economic analysts separately told me they could see growth at 10 percent or more after 2015, if [President] Rouhani can deliver a deal with the West. That's the real leverage – not to punish Iran today but to open the door to a much more prosperous future." (Ignatius 2013). Premonitions of a more prosperous future rest in the humility of politicians and legislators to remove these barriers to cross-cultural exchange at once.

Instead, even more incentive to lift sanctions on Iran specifically have been called for, enthralled by a public conference in Capitol Hill, Washington, D.C., held by the Research and Development (RAND) Corporation, a 501(c)(3) nonprofit global think tank in 2007. The conference was entitled: Coping with Iran: Confrontation, Containment, or Engagement. Seven-year young remarks by panelists "Martin Indyk, (director, Saban Center for Middle East Policy, The Brookings Institution) and Danielle Pletka (vice president, Foreign and Defense Policy Studies, American Enterprise Institute)" (Dobbins 2007: 49), serve as the basis for engagement rather than more imposed sanctions—inconspicuously leaning toward cultural diplomacy. During his speech on "Elements of a Successful Diplomatic Strategy, Indyk posed the question, "What should U.S. strategy toward Iran be? Should the United States look to contain or engage the regime, or is a military option (preemption) in order? A strategy that depends on diplomacy is not an admission of defeat—diplomacy has been used effectively to disarm Libya, liberate Lebanon, negotiate Arab-Israeli peace, promote human rights, and, in earlier times, contain Iraq. Any policy toward Iran needs to decide between changing the *behavior* of the Iranian regime, and changing the Iranian regime itself. An effective diplomatic strategy should focus on behavior, as past efforts to change regimes

have not been particularly productive...The idea of dialogue is not a new idea. But, like ships passing in the night, the history of engagement between the United States and Iran has been one of missed opportunities—when one side was ready, the other was not...Sanctions are far less important than the fact that the UNSC is acting unanimously. Every time the UNSC acts on Iran, it underscores Iranian isolation.” (Dobbins 2007: 50-51). This call for moving away from resorting to sanctions and engaging the country begs for cultural diplomacy to be coordinated. Later, during the question and answer session, one audience member posed a question on the role of dissidents in Iran when they asked, “how can the United States work with dissidents in Iran? How can we trust that the United States will effectively engage dissidents in the community? How can we engage those voices?” and in response by Pletka, it was noted that, “the United States does engage some critics of the regime, but we do not do enough, and there is no coherent approach to the Iranian opposition. In addition, our allies that actually have embassies in Tehran could do much more. In terms of human rights, women’s rights and more, the effort to engage could be approached more as an international effort.” (Dobbins 2007: 58). Adding on to her response, it is justly worth mentioning that of the dissidents living in the United States, Cuban or Iranian, there exists a percentage of musicians. Then, once sanctions are lifted and cultural engagement is sought after by the United States, the only question becomes why this strategy was not adopted earlier.

4. IN BLUE: ARTIST VISAS

4.1 Definitions and the prevalence of the USCIS, INA, and the Grammy Awards will be discussed

4.2 The existence of the Partnership for a New American Economy and the cases of Cuban artists Omara Portuondo and Pablo Milanés will be assessed for their positive and negative effects on cultural globalization

4.3 The inaction of Congress and consequent neglect of the ARTS Act will be assessed for positive and negative effects on cultural globalization

4.4 The inhibition of artists to partake in cultural exchange due to the Immigration Act of 1990, the strict artist visa procedure, the arbitrariness of admitting foreign talent, the risk factors involved for the incoming talent, the impact of September 11, sanctions and current inhibition in Canada will be

4.5 The solutions that have been offered to promote cultural diplomacy consist of calls for visa reform

4.1 Definition and Prevalence

Definitions and the prevalence of immigration, USCIS, INA, and the Grammy Awards will be discussed

Of the laws that enable or disable cultural diplomacy, immigration law is simply the most complex. Notorious for its wide variety of interpretations, the scaffold of publications on the artist visa process in the United States, suggest that this area of law has definitively been more thoroughly researched than the former two laws. It's interrelatedness to cultural diplomacy in enabling musicians to perform live concerts abroad is also the most influential and circumvented. The prevalence of immigration law in general will first be discussed in terms of the goal of immigration policy, the positive and negative impacts of admitting migrants into the U.S., general qualifications applicable to all incoming talent, and the importance of diversity as it pertains to the goals of the State.

"If cultural diplomacy can be controlled to communicate a specific message to the outside world, can the visa process be a method to control the messages we receive from other cultures?"
(Evans 2008)

In short, yes. That "the ultimate goal of immigration policy is clearly to maximize some conception of welfare. The major goals of immigration policy...are related to improving the wellbeing or wealth of various individuals or firms. Employers seek skilled workers; households seek nannies and gardeners; Americans seek to be reunited with foreign relatives. But whose welfare? Should immigration law advance the welfare of Americans only, or also that of foreigners? The latter view, which has some support among philosophers, is known as cosmopolitanism." (Posner 2013: 291). The controversy

surrounding the impact on the labor force is a question for the ages, but as soon as the positive and negative impacts are weighed, it becomes clear that the goal of immigration policy does not solely pertain to the supply of the labor force, but especially in the context of cultural globalization more good can be done than harm. This is illustrated by a brief overview of the sides for and against immigration that contends how “a more careful understanding of this goal starts with the observation that the admission of a migrant has numerous effects, both positive and negative. First, the migrant, whether highly skilled or not, will expand the labor supply within a particular economic sector. As a result, wages will drop. Employers (including shareholders) will benefit from lower labor costs, so will consumers if, as normally occurs, some of the cost savings result in lower prices. Holding all else equal, American workers in the same sector will experience lower wages (or, if the sector is booming, their wages will not rise as quickly as they otherwise would). Second, the migrant, once in the United States, will consume goods and services, increasing demand, and thus potentially helping American workers who produce goods and services that migrants consume. Third, the migrant will pay taxes and in this way help finance public goods in the United States. But fourth, migrants will contribute to congestion—for example, crowding hospitals and schools.” (Posner 2013: 292). Then, it is difficult to determine whether or not generally admitting more migrants is a purely positive or negative endeavour. The case that will be made in this section do analyse a more cosmopolitan perspective towards artists specifically. In any case, all applicants must meet general qualifications, whether the individual is an artist or not. Responsibly so, the “...the government can (for example) condition a visa on proof that an employer will hire the migrant and indeed on satisfactory performance for a period of time. Where the question is not the migrant's skills but his assimilability, the government could condition the visa on proof that the migrant speaks English, has lived in the United States, or has other characteristics or experiences that predict assimilability.” (Posner 2013: 297). Immediately, one must possess valuable skills for domestic employers and, though difficult to assess objectively, must be able to assimilate to U.S. culture. To cite the simultaneous importance of diversity, which seemingly may feel like a contradiction, it has been noted that “although most of US immigration law is oriented toward importing workers and family members, a number of more marginal provisions advance other goals as well. The laws give preference to talented athletes, artists, and scholars. These people help the United States compete against other countries in the areas of culture and science...Immigration law also attempts to ensure that migrants hail from a diverse group of countries rather than just a few—possibly reflecting a theory that diversity is valuable, or a fear that an excessive number of migrants from a single country or culture may cause political fragmentation.” (Posner 2013: 293). Again, we see contrasting views towards cosmopolitanism and fragmentation, and referencing the backbone of the implementers, IGOs and statues that support immigration will provide the reader with a more comprehensive look at the prevalence of issues surrounding immigration law today.

For starters, the Grammy Awards, United States Citizenship and Immigration Service (USCIS), and the Immigration and Naturalization Act will be discussed. Only three years ago, “... foreign artists and entertainers accounted for roughly 30% of Grammy Award winners...” (Lamberti 2011: 3). However, some may overlook that the only way in which an artist can enter the U.S. to receive their award, or even be present for their nomination for that matter, is to obtain a visa. The organization responsible for allotting of visas is the USCIS, whose “...mission reads: To restore public confidence in the integrity of America’s immigration services by making certain that the right applicant receives the right benefit in the right

amount of time.” (Evans 2008). One would presume that such an awardee—a Grammy nominated artist—makes the ideal candidate for admittance, but the cases against the foregone will be discussed in the sections to follow. Alongside the USCIS, an act that was passed over half a century ago remains resilient still in the debate on the effectiveness of immigration law. Specifically, “...in 1952, in an effort to control the flow of immigrants, Congress passed the Immigration and Naturalization Act (the “1952 Act”)...Particular to the artistic community, nonimmigrant artists and entertainers had to apply for an H-1 or an H-2 visa before traveling or performing in the United States. Although much has changed in the H visa since then, this category was, and continues to be, applied to skilled and unskilled workers coming to the United States temporarily.” (Lamberti 2011: 5). It is this very 1952 Act that adorns the USCIS with a non-discretionary or non-discriminatory approach in reviewing applicants:

“Except as specifically provided in paragraph (2) and in sections 101(a)(27), 201(b)(2)(A)(i), and 203, no person shall receive any preference or priority or be discriminated against in the issuance of an immigrant visa because of the person’s race, sex, nationality, place of birth, or place of residence. (B)Nothing in this paragraph shall be construed to limit the authority of the Secretary of State to determine the procedures for the processing of immigrant visa applications or the locations where such applications will be processed.” INA: § 202 Numerical Limitation To Any Single Foreign State [8 U.S.C. 1152] (a) Per Country Level (1) Nondiscrimination (A)(B). (Immigration and Nationality (INA) Act of 1952)

The following section also reveals a profound respect for entering artists:

“the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation, (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and (iii) the alien's entry into the United States will substantially benefit prospectively the United States.” INA: § 203 Allocation of Immigrant Visas [8 U.S.C. 1153] (b) (b) Preference Allocation for Employment-Based Immigrants (1) Priority workers (A) Aliens with extraordinary ability.” (i)-(iii)(Immigration and Nationality (INA) Act of 1952)

These two sections, the mission of the USCIS, and the fact that in the past, nearly one third of Grammy Award winners were foreign all go to show the building blocks for the importance of a clear and related law to the enabling of cultural diplomacy, including Iran and Cuba, but this view could only be kept if the action, inaction, and inhibition of the same through immigration law supported cultural exchange. The remaining sections will determine the extent to which theory and practice have been disharmonious with cultural globalization.

4.2 Action

The existence of the Partnership for a New American Economy and the cases of Cuban artists Omara Portuondo and Pablo Milanés will be assessed for their positive and negative effects on cultural globalization

Among the plethora of literature and publications discussing immigration law as they pertain to artists from Cuba and Iran, three instances were found to have some form of betterment toward cultural exchange. The first positive action that will be mentioned is the Partnership for a New American Economy. A supporter, “New York City’s Mayor Michael Bloomberg, one of the most notable politicians hoping for visa reform...is among many other mayors and business leaders that have joined the Partnership for a New American Economy, a group dedicated to highlighting the “critical need to fix our broken system” by raising “awareness of the economic benefits of sensible immigration reform.”” (Lamberti 2011: 35).

As the sections on inaction, inhibition and solution unfold, the existence of this group will illustrate its impact on the culture sector of the United States. One reason for its existence, in the interim, may be due to how it took until 2009 for “singer Omara Portuondo [who] became the first Cuban ever to come to the United States to receive a Latin Grammy award, after her album “Gracias” was awarded ‘Best Tropical Music Performance’.” (Planas 2010). This cannot be a reference for positive action on cultural globalization, rather, as a positive case of improvement. Lastly, “...without announcing any shift, the Barack Obama administration began approving Cuban cultural exchange visas in October 2009. The U.S. State Department approved Cuban folk singer Pablo Milanés’ visa to play a concert in Puerto Rico...U.S. government officials have not clarified whether these changes augur a broader reevaluation of U.S. policies toward Cuba. “We are neither actively promoting nor actively impeding these artistic exchanges,” a State Department official told The New York Times last fall.”” (Planas 2010). Even here, it becomes onerous to assert that the sudden approval of Cuban cultural exchange visas has provided a positive impact as the worlds of the State Department ring neutral and indifferent to cultural exchange.

4.3 Inaction

The inaction of Congress and neglect of the ARTS Act will be assessed for positive and negative effects on cultural globalization

Similarly, of the dearth of instances mentioned referencing inaction, two specific opinions will be noted for their negative impact on cultural globalization. The first culprit is Congress. “‘There is not a chance that immigration is going to move through the Congress,’ said Ohio Senator John Boehner in 2010. To this day, such passive inaction from legislators, likely because of the polarity associated with every immigration bill, shows a complete disdain for the plight of foreign entertainers and domestic supporters of the arts.” (Lamberti 2011: 37). Clearly, this veers towards an unprecedented negative impact on cultural exchange. By the same token “among several pieces of immigration legislation advanced by the House, none speak more directly to artists and entertainers than the Arts Require Timely Service (ARTS) Act. Originally introduced in 2003, the main focus of the legislation was to amend Section 214(c) of the 1990 Act to eliminate the premium processing fee and guarantee a thirty day processing time for O and P visa petitions filed by non-profit organizations. Unlike multi-national production companies and talent agencies, non-profit arts organizations are among the biggest losers in this process since they often lack the financial resources to pay for premium processing. Unfortunately, despite being approved in the House in 2008, the 110th Congress ended session before the Senate could vote on it. In 2009, the bill was reintroduced and referred to subcommittees in both Houses, but once again it died without a vote.” (Lamberti 2011: 36-37). The few instances of action and inaction already constitute grounds to question the validity of the INA as Congress has taken inadequate action in actively promoting cultural globalization.

4.4 Inhibition

The inhibition of artists to partake in cultural exchange due to the Immigration Act of 1990, the strict artist visa procedure, the arbitrariness of admitting foreign talent, the risk factors involved for the incoming talent, the impact of September 11, the negative impacts of sanctions will be discussed

Extraordinarily, the power of one law has suppressed the ability of foreign talent to enter the United States to an extent unimaginable. Ever since “Congress passed S. 358, also known as the Immigration Act of 1990. Sponsored by Senator Kennedy and supported by Senators Simpson and Dodd, the 1990 Act was a substantial departure from the strict quota based immigration system to a more comprehensive merit and relationship-based approach. As described by President George Bush upon it’s signing, the 1990 Act represents “a complimentary blending of our tradition of family reunification with the increased immigration of skilled individuals to meet our economic needs.” (Lamberti 2011: 5-6). On the surface, S.358 seemingly stands for a more just approach toward cultural exchange—as did the Immigration and Naturalization Act. Just below the skin, however, the distraught approach towards a more culturally globalized state is revealed, “...as a result of substantial lobbying by entertainment labor organizations and private business representatives, the 1990 Act created two new nonimmigrant visa categories designed to address the immigration needs of artists and entertainers: The O and the P categories. Not surprisingly, the newly created visa categories and eligibility requirements created quite a stir in the industry forcing a delay in their implementation until 1992, when further revisions and amendments were made. Even Senator Kennedy remarked that the arts community saw the new categories as “not only a major departure from current practice, but a serious threat to their artistic programs.” (Lamberti 2011: 7). Created as a response to the advocates of the art sector, S.358 markedly underscores the very purpose of its existence as pronounced by Senator Kennedy. It is the ratification of this law that has invited the following inhibition to deter artists from cultural exchange from a procedural point of view, as well as the qualifications that judge each candidate.

All told, it is still plausible that immigration laws, in theory, promote cultural globalization—but the facts have shown us otherwise. “Nevertheless, stricter U.S. immigration laws pose many barriers to foreign artists’ attempts to showcase their talents in the American market.” (Lamberti 2011: 3). As one non-profits arts organization contended, “although others may disagree, some [...] felt the O and P visa categories limited the artists who qualified to enter the country. This limitation led one organization to work mostly with the H-1B visa, because the international artists they employ are at an earlier stage in their careers...The artistic director at this organization felt the 65,000-per year cap on the H-1B was also limiting.” (Evans 2008). By imposing a limit to the most commonly used visa for artist entry, the palpability of S.358 becomes numbing and if the same law has led to the outcry of arts organizations, it must be an inhibitor, rather than a promoter of cultural exchange. “As if reaching the level of extraordinary ability required for an O visa was not hard enough, the United States Citizenship and Immigration Services [...] has a very strict and demanding application procedure, and failure to fully comply with it can disqualify even the most deserving applications.” (Lamberti 2011: 13-14). It is precisely this inherent intimidation that looms over applicant’s shoulders in the decision-making process of entering into cultural exchange with the United States.

Pitch-forked by the inhibition, artists have felt the polar opposite of magnetism to the U.S. arts scene due to the feared procedural process. Intimidated by a clause proclaimed “under section 222(e) of the Immigration and Nationality Act, the Department of State has the discretion to determine whether non-immigrant visa applicants must appear in person at their consular office.” (Fang 2011: 217). If, then, discretion becomes a part of the decision-making process for the USCIS, equal opportunity becomes more and more difficult to reach. “Under the current law, O visa petitions cannot be filed more than one year prior to the alien’s projected date of entry. In turn, the projected date of entry must coincide with the dates of employment or the scheduled events in which the alien is performing. For anyone familiar with the touring or production process, this stringent time limitation should already raise some red flags since any possible delays in attaining the alien’s visa could set off a disruptive chain of events, jeopardizing the entire project or tour.” (Lamberti 2011: 14). Similarly, if the USCIS is unfamiliar with the chronology of tour management, entering the United States under current laws becomes more and more unattractive. To the same effect, “...of the process that often lead petitioners and practitioners astray, resulting in undeserved denials or ambiguous requests for further evidence (RFE). At the heart of it all lays the problem of ambiguity, arbitrariness, and lack of precedent, arguably a lawyer’s most feared trifecta.” (Lamberti 2011: 14). All the more reason to continue the critique.

On a global level, the inhibitive nature of the procedure has critically assessed by respected icons in the international cultural scene. One resonating voice on the issue has been Scott Southard, the president of the International Music Network, a booking agency and tour organizer for some of the biggest names in international music. He stated, “the application procedure is complex. And certain aspects of it are perceived as unfair. Take the “Premium Processing Service.” That’s a thousand dollar fee that applicants can pay to the immigration service to expedite visa processing.” (Werman 2003). In accordance with the discretionary system, “in 2006, Yo-Yo Ma, the internationally renowned cellist, and Sandra Gibson, President of the Association of Performing Arts Presenters, testified to Congress on the impact of the visa processing delays on the arts. During his testimony, Ma discussed Iranian artists who had to travel to Dubai because the U.S. does not have an embassy in Iran. Although these artists had previously travelled to the United States nearly 10 times, they were required to fly to Dubai in order to sit for an in-person interview and then fly back a second time to get the visas. This past year, it required a third visit to Dubai, as the printer for the visas was out of order and it was unknown when it would be repaired. All told, for these two musicians to participate in their ninth United States tour...the process cost \$5,000 and lasted 3 months.” (Evans 2008). The intimidation that can arise from these facts and examples evoke negligence on the behalf of the USCIS to respond to the outcry. In a second report on the inhibition of Ma himself, it was remarked that “even artists who have toured regularly to the United States as part of internationally-recognized groups must wait in line each time they enter the country. Yo-Yo Ma discussed the delays faced by artists in his internationally-recognized Silk Road Project in front of the House Committee on Government Reform...Yo-Yo Ma stated, “ninety days is inexcusable, particularly in a global economy where things are moving at warp speed and the competition doesn’t put up the same restraints.” (Fang 2011: 218-219). Though the existence of S.358 and the INA state otherwise, the inhibition of cultural exchange is indeed inexcusable.

That there exists arbitrariness in immigration law remains a claim yet to be fully proven. Unfortunately, what unfolds beyond intimidation, is uncertainty. “To wit, the biggest complaints point to the largely discretionary and arbitrary application of the laws, the harsh

procedural requirements, and the unwillingness of many legislators to meaningfully address these issues. From the industry perspective, all these amount to great uncertainty as to whether foreign artists will be allowed to perform in the U.S., and whether it is worth taking the risk to book their acts.” (Lamberti 2011: 3-4). A wolf in sheep’s clothing, the future of artist influx into the U.S. has been flooded under an arbitrary and discretionary system and provokes risk in the applicant. One impediment contributing to the flawed system points to the USCIS as, “despite some training regarding visa petitions generally, U.S.C.I.S. agents are in no way capable of evaluating the artistic and qualitative aspects of the petitioner’s work, as they are required to do.” (Lamberti 2011: 15). Along the same lines of reasoning, it has been stated that “...the requirement that the alien has performed or will perform in a lead or starring role for distinguished organizations, ‘turns on the reputation of [the alien’s] past and future employees.’ As illustrated by a case of an alien whereby “...the INS was equally unimpressed by evidence that the alien would be participating in projects with million-dollar budgets...It is easy to notice how this ambiguous and amorphous terminology can lead to crater-sized holes in the legislation. With no set precedents and no clear cut standards of review, U.S.C.I.S. officials can pick and choose which paragraph of the petition they believe do not meet the requirements; today the issue might be the reputation or documented fame of the alien, tomorrow it may be the reputation of the project, and the next day might be the reputation of the critic.” (Lamberti 2011: 17). This preemption is uncalled for and due to the arbitrariness of the laws, lends itself to thwarting cultural exchange, but let us not forget the velocity of risks instilled in the applicants as a result of such uncertainty.

The risk factors considered by foreigners who wish to perform in the United States mainly pertain to the touring industry. The weight of such risk must also be analyzed as “...an entertainer primarily makes money by going on tour. With a tour, multiple parties profit. Tours create jobs, venues make money, merchandising companies turn a profit, and, though not economically driven, fans profit by seeing and connecting with the artists they support and admire.” (Feldman 2010: 559). Here, the positive effects of cultural globalization through live performances are outlined. Yet, “an inability to enter the United States market negatively affects a number of industries in this country...” and to reiterate, “...an artist makes the majority of their money through touring.” (Feldman 2010: 558-559). Faced with the current demise of the USCIS’s fulfillment of their mission, an artist or band is perversely obligated to reconsider their investments in applying for a visa. This means total reconsideration of “the costs associated with cancelling a show [including] lost salary wages, marketing fees, and earned revenue when ticket refunds must be reissued...When a visa is denied, the organization must go back to its funders for the project and obtain permission to use the donated money in another project.” (Evans 2008). Coupled with the fact that merely “risking an incorrect visa could also result in deportation and may even prevent artists from entering the country in the future,” (Feldman 2010: 558) the effectiveness of the procedure and its adverse effects on the culture sector is intensively called into question. Besides, “replacing last minute cancellations is nearly impossible, and either the venue or promoter ends up suffering from the lost revenue. While the door to the global market is swinging wide open, the window into the United States is getting smaller and smaller.” (Feldman 2010: 559). One could only dream of when the windows of opportunity will be cracked open as procedurally, they are currently shutting out cultural exchange.

To remiss the racial profiling that is also exemplified in the qualifications of an applicant, including the negative impacts of September 11 on the artist visa process, would be a grand illusion. Considering that, “the U.S. has also designated the following countries as state sponsors of terrorism: Cuba, Iran, Iraq, Libya, Sudan, and Syria. Applicants from these countries, regardless of gender or age, must complete the extra forms and are subject to additional questioning.” (Evans 2008). If we recall the non-discriminatory aims mandated by the 1952 Act, an absurd contradiction arises. “In 2005, Eric Nuzum wrote an essay that echoed many of the concerns over immigration and visas, and how the issues have affected international artists abroad. He wrote that although U.S. immigration was restrictive before September 11, the new regulations put in place post-September 11 made the process more difficult...The newly tightened visa restrictions have affected musicians from around the world, making it difficult for them to perform in the United States simply because the process has become unwieldy and unpredictable. Especially burdened artists are artists from other ‘state-sponsors of terrorism’: Iran, Iraq, Syria, Libya, Sudan, and North Korea – even if the musicians currently reside in other countries. The problems that international artists face often causes U.S. presenters to question whether the risks of cultural exchange are worth the reward.” (Evans 2008). Noting that for the past decade, this contradiction has went unrecognized alludes to the neglect of cultural globalization and equality in the application procedure for all—despite race. This is hinted at as such “...an historical exploration of immigration policy in the U.S. and its relationships to culture demonstrate how a political situation can cause a reaction that opens or closes borders. Following September 11, additional security measures were added to our visa processing system that have caused our country to be less open to accepting immigrants. These changes have affected the arts. In a time when cultural exchange could work to unite our country and create mutual understandings with those whose ideals differ from ours, the added security measures equate to isolationism and division.” (Evans 2008). Widening the scope of inhibition aroused from the contradiction, not only is risk an unwanted outcome for the individual or persons applying, but also the U.S. at large in becoming an isolated and non-diverse state. Taking a look at when this isolation became considered a legitimate sacrifice for ‘security’ it has been verified that “internationals applying to enter the United States on an immigrant or non-immigrant visa must go through three different agencies to process their applications. Prior to September 11, all visa petitions were sent through the United States Immigration and Naturalization Service (INS), under the United States Department of Justice. However, in June 2002 and in response to the attacks of September 11, President George W. Bush proposed the development of the Department of Homeland Security (DHS) whose primary mission was to protect U.S. borders, synthesize intelligence and security reports, and coordinate efforts to protect Americans. With the creation of DHS, INS was transferred from the Justice Department and reorganized as U.S. Citizenship and Immigration Services (USCIS) on March 12, 2003.” (Evans 2008). In contradiction with his father’s culturally diplomatic approach in ratifying S.358, George W. Bush has caused unnecessary inhibition of cultural exchange in the 21st century.

Contesting for cultural exchange in a post-September 11 world resembles more and more as a road to perdition, even in the last couple years. In 2011, one critic of the system contended that “U.S. visa procedures have become unduly restrictive and act as a barrier to cross-cultural exchange. Immigration reform in 1990 and restrictive visa procedures implemented after the attacks of September 11, 200 have closed the door to many gifted artists attempting to work temporarily within the United States. If the United States makes it

too difficult for international artists to enter its borders, other countries will be less willing to open their borders to American artists, and the United States will be unable to reap the long-term benefits of cross-cultural exchange.” (Fang 2011: 203). Then, not only has the risk and isolation built a wall between the U.S. and the music of conflict countries, but also aborted lost opportunities, like a symbol of a dove that dies as an egg. On top of that, one negative impact that is ancillary has been in the educational system. Namely “the restrictive post-9/11 visa policy has led to a decrease of international students in U.S. universities, and many have argued that this development will negatively impact our economic competitiveness. But much less attention has been given to the practical impact this policy has on foreign artists and the broader implications of inhibiting artistic exchange.” (Fang 2011: 216). If the drawn conclusions about the negative impacts have not been enough, theoretically speaking, President Bush also signed legislation in 2002 that has unequivocally granted the same inhibition to artists from conflict countries. Citing “Section 306(a) of the Enhanced Border Security and Visa Entry Reform Act (“EBSEVERA”) [this legislature] states that no non-immigrant visa will be issued to a noncitizen ‘from a country that is a state sponsor of international terrorism unless the Secretary of State determines . . . that such alien does not pose a threat to the safety or national security of the United States.’ Nationals of the seven designated state sponsors of terrorism must bear the cost and time of filling out extra paperwork and going through incredibly stringent ‘Visas Condor’ security checks.” (Fang 2011: 219). In rhetoric, one would ask why an applicant from a conflict country would even have a split-second of applying to a visa for the U.S. as an artist, yet many have and will continue to despite the circumstances.

Targeting Middle Eastern and Cuban nationals has still left musicians unshaken and relentless in their marginalized state and individuals from venue program directors and Congress unsettled. One voice from the latter group contested that, “the general frustrations are adding up, says Bill Bragin, who is the program director at Joe's Pub in New York. Bill Bragin: ...with musicians from Cuba and the Middle East being flagged, some are charging that all the visa problems are having the same effect as censorship. Even if it's not an intended effect, certainly there is a defacto effect that these international voices are not being given the opportunity to be heard. Bill Bragin points out that music is the common tongue for many US and foreign artists. If more foreign musicians stay away from the states, the opportunities for cultural cross fertilization will decrease. The risk is that the American music scene will become more and more bland.” (Werman 2003). Referencing the lost opportunity for a more diverse cultural sector in the United States, one Middle Eastern band’s subjugation as artists in 2002 proves the unwillingness of the State to cooperate with cultural globalization. “The Spanish-Arabic ensemble Radio Tarifa doesn't have good memories of its North American tour [in 2002], at least not the US part of it. Some of the members of Radio Tarifa are of Middle Eastern descent. One night in Cleveland, authorities searched Radio Tarifa's dressing room at the concert venue. Another time, police showed up at Radio Tarifa's rehearsal space because someone in the neighborhood had complained about hearing "Arabic music."...Radio Tarifa is only one group of foreign musicians who have had problems performing stateside since September 11. But at least they got in the country. The way the US government views it, non-American musicians are no different from any other foreigner. The government is especially alert to musicians coming from one of the state department's seven countries they label as sponsors of terrorism: Cuba, Iran, Iraq, Syria, Lybia, Sudan and North Korea.” (Werman 2003). Yet again, the racial profiling exists against musicians is not befitting of a diplomacy strategy that benefits the advocates for

peace and dialogue through the arts. Around the same time, a politician with the consular affairs bureau at the State Department protested, “the fact that someone is a musician doesn't mean that they might also be used by one of these terrorist state governments to perform a function other than music when they arrive in the United States. That they may be asked to work on behalf of that terrorist government and not simply be here to play music. Music presenters are the ones who begin the process of bringing foreign musicians to the United States. Of ten, a booking agent may be pulled into the picture to file a petition with the Department of Homeland Security's Bureau of Citizenship and Immigration Services, the BCIS, formerly the INS. If the musician receives approval from the BCIS, they then go to their local American embassy to complete the visa application. There, a consular security interview with the applicant occurs, and that can be followed by further review in Washington...This has affected musicians particularly from Cuba and Iran, countries that are on the list of state sponsors of international terrorism.” (Werman 2003). Disturbing the peace process that is innate to cultural exchange still exists decades after the statements and concerns of officials, venue employees and marginalized artists.

In the case of Cuban artists, cases of marginalized musicians have sparked the Cuban government, the U.S. government, attorneys and scholars to expose the injustice since 2003. Using arbitrary logic for visa denials, the new inhibiting system differs from the time of George Bush Sr.. “In the late 1990s and early 2000s, Cuban musicians like the Muñequitos de Matanzas, the Buena Vista Social Club and Los Van Van played regularly in the United States. The Hostos Center brought ‘maybe 10 groups’ from Cuba between 1996 and 2003, according to Director Walter Edgecombe. Then, in early 2004, the Bush administration stopped approving cultural exchange visas for musicians, without ever announcing an official policy change. The measure coincided with general tightening of the half century-old U.S. trade embargo against Cuba. Cuban-Americans’ ability to travel to Cuba or send money to relatives living there was restricted, and long ignored laws prohibiting the Cuban government from circulating the dollar began to be enforced.” (Planas 2010). Famously, “the Cuban government has accused the United States of deliberately delaying visas to stop Cuban nominees attending the Latin Grammy Awards in Miami. Nominees including Latin jazz stars Chucho Valdes and Los Van Van [did not] attend [the] ceremony because they [had] not been given visas.” (BBC 2003b). Many instances of denial have taken place in the past decade, yet the reasoning remains highly arbitrary. Only one year following the inhibition of Grammy award nominees, “Carlos Varela, the great Cuban singer-songwriter, applied for a visa to come to the United States to sing his powerful, amazing songs. He had concerts planned in Miami, New York and Los Angeles. [The U.S.] government turned him down. Visas have been denied to other Cuban artists because their visits are ‘detrimental to the interests’ of our country.” (Browne 2004). Forgetting the symbolism of artists in all societies means barring an opportunity for enhanced relations, through a cultural route—but this can only take place if such barriers to entry are removed. If not, the flawed reasoning will detrimentally ensue as it had in the same year as Varela when, “in Cuba, renowned artists keep much of what they earn, because the government does not want them to leave the country and live somewhere else. Yet, the Bush administration used the same reasoning to keep Ibrahim Ferrer, of the Buena Vista Social Club, and Manuel Galbán from attending the Grammy award ceremony in Los Angeles last month. (Both men won awards.) It also forced the postponement of concerts by the Spanish flamenco master Paco de Lucía because he plays with Alain Pérez Rodríguez, a Cuban-born bassist.” (Browne 2004). By allowing the unnoticed and unaddressed issues of certainty to prevail in

such decision-making processes, one would think that Congress would make amends after denying all ten⁸ Grammy award nominees the right to attend the ceremony amidst the other instances of injustice, but even in the past couple years this has not ignited any change.

As time has passed since the deliberate attempts to block cultural exchange with Cuba in the beginning of the 21st century, the arbitrariness persists and the reactions have come from more dedicated catalysts for cultural diplomacy. Take for instance the bittersweet memory of when “New York City recently hosted its first Cuban band in five years, after the group Septeto Nacional became the first to win a visa that allowed it to accept a booking there.” (Planas 2010). At first glance, a sweet moment of progression is sensed. “[Septeto Nacional] was the first Cuban band to play in New York since 2004, when the George W. Bush administration began systematically denying Cuban musicians cultural exchange visas.” (Planas 2010) as described earlier with unpredictable logic. However, the bitter taste overpowers the symbolism of the band due to the straining process that led to the victory of “winning” the visa. “San Francisco attorney Bill Martínez, who ushered through Septeto Nacional’s visas, called the group’s approval ‘a breakthrough’. But Martinez, who has specialised in Cuban cultural exchange visas since 1983, is cautious about what that augurs for future visits. ‘We’re glad we can finally get anybody in,’ he said. But he ‘had nail-biting moments’ with Septeto Nacional, whose visa too eight months to secure. He said the group had nearly been rejected on the grounds that it wasn’t ‘culturally unique’” (Planas 2010). Again, administering process in such a discretionary light and based on arbitrary grounds for musicians from Cuba may appear to support the arts sector in more recent years, but if the fundamental aspects of the system are not critically analyzed, the procedural requirements and qualifications could make a stone nervous at the thought of applying for a U.S. visa. Especially keeping in mind that “Cuba, with Iran, Sudan and Syria, is one of four countries on the U.S. government’s “state sponsors of terrorism” list for allegedly supporting rebels in Colombia and Spain, and for refusing to extradite U.S. citizens wanted by U.S. authorities. The blacklist status makes applying for a cultural exchange visa tedious, according to a report [by] music scholar Ned Sublette produced for the Cuba Research and Analysis Group (CRAG), a group that supports U.S.-Cuba cultural exchanges. Cuban musicians must first present an application to the U.S. Interests Section in Havana, the diplomatic mission the U.S. government maintains in Cuba instead of an embassy. The sponsoring venue generally pays 1,000 dollars to expedite the process, though it can still drag on for months. Then the application is turned over to the State Department for security clearance. Since 2004, most such applications have died there.” (Planas 2010). At this point, Grammy award winners and nominees, renowned music groups, and even musicians of other descent who collaborated with Cuban musicians have been met with a checkpoint and denied entry to engage in a cultural act based on the reasoning that an artist’s purpose for playing music is detrimental to the interests of the U.S., in the name of national security because the country is on a blacklist, and because a trade embargo encapsulated the arts sector, cultural diplomacy has suffered.

With an air of despair, musicians are taking the stand in holding accountable that which is provoking the inhibition of conflict countries’ cultural globalization. During the same cultural turmoil in the early 2000’s, “a group of musicians [in 2004] criticized new U.S. regulations that will further limit travel to Cuba, urging the United States to build bridges to

⁸ “The most recent public visa denial for musicians happened [in 2003]. But the best Cuban musicians from [2003], all ten of the island’s Latin Grammy nominees, didn’t make the show. The US government denied them visas.” (Werman 2003)

the island instead of tearing them down. The musicians, who produce jazz, Afro-Cuban music and a ballad style known as Cuban trova, tied their comments to [their] release of 'Bridge to Havana.' The combination CD-DVD was produced by dozens of U.S. and Cuban artists during a songwriting workshop and cultural exchange program in Havana in 1999. The product 'proves the brotherhood that exists between American and Cuban musicians,' said a statement signed by 'the unstoppable Cuban musicians,' about 10 of whom held a news conference to call for a second such meeting of artists in Cuba. 'The day that the U.S. government intensifies its attacks on our country, on Cuba, is the same day that our response is to send more songs, to send more music, to send more love, to send more solidarity,' said Pablo Menendez, founder of the Afro-Cuban fusion band Mezcla and a U.S. citizen who has lived in Cuba nearly 40 years." (Arrington 2004). These testaments in favor of cultural diplomacy were in response to "the new U.S. rules, which tighten a U.S. trade embargo against Cuba..." and with a primary purpose of "...limiting visits by cultural and academic groups as well as Cuban-Americans to the island. During the workshop, Menendez said the artists discovered 'we not only have a common history, we have a lot of common objectives about our desire for a better world and for peace between our two peoples.' The United States' ongoing hard-line policies against Cuba have also made it difficult for Cuban musicians to obtain visas to perform on U.S. soil. Despite Washington's policies, some artists here said they hoped for change. 'Everyone knows that these measures are unsustainable,' said Amaury Perez, a Cuban trova singer." (Arrington 2004). From the outcry of Menendez and Perez, an awareness of the unifying nature of music and the resistant forces in immigration law preventing the amalgamation of nations through culture point to the magnitude of inhibition taking place every time an artist wants to travel.

For every note that an artist is inhibited from performing in the U.S., another voice is aroused to critically assess the mute. As such, an autonomous unhappiness with the status quo can be heard in the overtones of citizens from the top-down. One voice recently remarked that "the long legacy of the Cold War has set the entry barrier higher for Cubans than for visitors from nearly anywhere else, said Robert Browning, of New York City's World Music Institute. "We've consistently brought in people from the so-called 'Evil Axis' countries," he said, referring to Bush's notorious label for Iraq, Iran and North Korea. The Cuba policy is "just kind of left over" from the 1960s, he said. Clubs and theatres are reluctant to promote shows that might be canceled if visas are denied, or approved too late. So, despite apparently thawing U.S. policy, Cuban bands aren't seen as likely to flood into the United States any time soon." (Planas 2010). The impact of this inhibition has been a culturally isolating and not nearly as literate about the art of other nations, though highly educated and versed in politics, economy, and religion. Much to the chagrin of the global leader's mentioned herein, the missions of the organizations thereto, and "in a profound way, our government takes on the role of oppressor when it tries to control which artists will be allowed access to our minds and our hearts. We may think we are isolating Cuba with our embargo and our travel restrictions, but it is we Americans who are becoming isolated." (Browne 2004). Paradoxically, the same opinion is echoed in the same statement about how "United States foreign policy toward Cuba is unpopular in America, and for good reason. It stops Americans from traveling to Cuba and Cubans from coming into the States. It stops us from sharing medicine with the ill and restricts our ability to sell food to the hungry. This policy is an outdated relic of the cold war and exists only as a political payoff to Republican-leaning Cuban-American voters in Miami." (Browne 2004). All intriguing a curiosity as to why such inhibition exists in the "land of opportunity" and quite possibly why, only last year, this

inhibiting model has influenced the U.S.'s neighbor to the North.

Whilst even in Canada now, another voice has resisted a new law slammed as 'anti-arts and culture' as it requires a \$275 fee for international musicians performing in the country. "Leanne Harrison, owner of locally based artist management and booking company SIN Agency" says "There's only so many Canadian artists, you can only tour your country so often," she says. "If you're limiting the international artists we can bring in, well, to me, music is global. It shouldn't have those kinds of doors on them." (Bell 2013). Yet, the door does not only exist, but its dimensions are only becoming taller, wider and with the thickness of an elephant's foot, unless the United States recognizes the solutions so as to clearly see the elephant in the room, cultural diplomacy.

4.5 Solution

The solutions that have been offered to promote cultural diplomacy consist of calls for visa reform

Before it can be proven that there is no validity to the claims of diversity and promotion of culture that immigration policies claim, solutions have been suggested to fix the problems in cultural diplomacy. Solutions to avoid lost opportunities, to avoid the superiority complex phenomenon found in the reactionary approach by immigration officials, and an overarching call to engage in true democracy. If these solutions are continued to be neglected, the culture sector will continue to face the "...economic and educational losses when an artist is denied entry into the United States," (Evans 2008) and it is further implied that such denial shall not discriminate an artist based on their race. If this privilege continues to become even more inhibition, the United States will become known for the superiority complex found in denying artists entry to the country. Especially when the "[United States] is built on a nation of immigrants, yet we are choosing to close ourselves off from the cultures of many of our ancestors. Without an understanding of who we are and where we have come from, how can we build a strong future? Making our borders difficult to cross sends the message that the United States views other cultures as inferior. When we cannot share and interact with our neighbors, the fear of the 'Other' can increase." (Evans 2008) With this mentality, democracy cannot fully be ascertained as "democracy requires that we engage with those we don't know or agree with, instead of closing ourselves off to those who may be different from us. Cultural exchange is vital to the health of a diverse democracy, and can be considered the first step to making our borders safe. As Yo-Yo Ma stated, trust is at the center of this issue. When will we stop living from the past, and begin living from a future that moves us forward as individuals, as a society, and as a world?" (Evans 2008). One presumption is once the following solutions are enacted.

Let us not forget the two notable initiatives that had been proposed to Congress in the past decade, and distraughtly neglected. Worth mentioning again, let us not forget that "one of the biggest barriers to artistic change is the costs and delays resulting from the premium processing system. Congress has recognized the especially high burden premium processing has placed on non-profit organizations attempting to admit foreign artists. In 2003, sixteen congressmen wrote a letter to USCIS Director Eduardo Aguirre, urging him to reduce visa processing for O and P petitions filed by non-profit organizations...Legislators did not act until four years later, however, when they introduced the ARTS [Arts Require Timely Service] Act in March 2007. The Act represented a bipartisan effort to deal with the

difficulties faced by non-profits attempting to bring in foreign artists...The House passed the bill in April 2008, but the congressional session ended before any new action on the bill was taken. In March and July of 2009, the bill was re-introduced in the House and Senate, and both Houses referred the bill to subcommittees. When the 11th Session of Congress ended, the ARTS Act was once again cleared from the books. Congress must prioritize visa reform in its effort to aid artistic change, and the passage of this bill is a necessary first step.” (Fang 2011: 230-232). Then, once this Act is passed in Congress, after significant reconsideration of priorities for the public, other solutions can be voted upon, so as not to die without a voice. Looking to how allies have responded to the influx of artists who wish to amplify their social responsibility by travelling and performing abroad, it has been recommended that the United States “...adopt a system similar to that of the United Kingdom (U.K.) by adding an additional visa, the B3 visa, which would be applicable to entertainers who wish to enter the United States to work as entertainers for a brief period of time.” (Feldman 2010: 556). Yet, there are many other opinions on the matter, specifically centered around the call for visa reform in situations where it applies to conflict countries’ abilities to engage in cultural exchange.

Let us now consider the variations of visa reform that have been carefully constructed and whose prevalence still stands as vital to the health of cultural globalization today as they did in their inscriptions in publications since 2008. Let the United States stand for the principles on which the country was founded and recognize artists with the standing in society that has been appointed to them by international leaders in support of cultural globalization. “America has discovered the limits of military power, and it must now look for alternative ways to protect its borders and ensure its prosperity. Cross-cultural exchange has the unique power to break down stereotypes and instill mutual trust and understanding. Through visa reform, the United States can foster international cooperation and reaffirm its status as a champion of freedom of expression, openness, and rich cultural diversity.” (Fang 2011: 237). Without such a foundation, the integrity and respect for those who inhabited the country before the USCIS, who laid the ground for Congress in the 19th century, to build a more culturally diverse future for today and tomorrow. The need for these reforms point to the current manifestation of chaos “under a points system, [whereby] the government awards points to an applicant based on the number and kind of desirable characteristics that she has. An applicant will receive points for, among other things, advanced degrees that show educational attainment; fluency in the national language; prior experience living in the host country; relationships with citizens; and related factors that show the applicant's suitability as a temporary worker or immigrant. Points systems exist in Canada and other countries. Many immigration reformers praise points systems because they seem like a logical way to ensure that immigration serves the national interest; these systems are contrasted to America's apparently chaotic approach that relies on the uncoordinated efforts of employers and family members.” (Posner 2013: 303). Let the United States coordinate its efforts, and put an end to the discriminatory artist visa process that is fallaciously grounded on heightened security since September 11. The discrimination towards artists’ race that still exists today carries great weight in this debate as has been witnessed. In fact, “there is vigorous debate about the effectiveness and wisdom of the governmental policy of ethnic profiling. One of the harmful effects of this policy is the increased difficulty faced by artists attempting to travel to the United States. Unfortunately, the countries designated as state sponsors of terrorism are those for which the need for cultural diplomacy is most necessary. Instead of alienating these countries, the government needs to encourage cross-cultural

exchange in order to foster better relations and a more positive image abroad.” (Fang 2011: 220). As long as such an outdated and arbitrary system in immigration is solely based and justified on grounds of security, the people will not stand quiet in attempting to rectify many of its harmful effects on cultural globalization. From one perspective, it has been noted that “many of the heightened security requirements enacted after 9/11 are instrumental in helping to protect our borders, but some of the visa requirements cannot be justified based on security grounds. The United States must reassess the procedures it has in place in order to determine whether the benefits of the particular procedure outweigh the costs.” (Fang 2011: 230). As juxtaposed as it appears to be, the cost-benefit analysis of admitting artists into the United States may not have been accurately assessed in every case where democracy should prevail. For this reason, it has become common knowledge that more can be done as testified by the statement that “some improvements to the visa process have already been achieved through advocacy for better immigration laws and more effective procedures that will benefit cultural exchange. But, there is more that can be done in the future to support arts organizations in facilitating the visa process for international artists.” (Evans 2008). Not only more can be done, but more needs to be done. “[The] Obama administration has made it clear that they would like to see more cultural relations...But until the “arcane system” of approvals is changed, it will always be financially hazardous...” and furthermore, “one can only hope that it will get a lot easier.” (Planas 2010). Only by listening to the aforementioned calls for visa reform, as seen in other areas of the law, can the United States prove its stance on cultural exchange.

5. IN THE KALEIDOSCOPE

Remembering a time before September 11, during provinciality, with dependable laws, no need for form and an unregimented world is difficult to imagine. Even from the publications cited throughout this illustration of the elephant, a kaleidoscope of opinions on the matter have emerged, yet five key trends on the topic have been maintained. They are, (1) the impact and phenomenon of September 11, (2) cosmopolitanism, (3) arbitrariness, (4) reform, and (5) fragmentation. Used as an acronym, or SCARF, these keywords have been found in combinations of all the sections, including sanctions—the most insignificant law that is thwarting cultural globalization, but was important to mention. On the topic of September 11, Evans and Fang who both wrote about cultural diplomacy and immigration law Schneider who wrote about cultural diplomacy and Werman who wrote about immigration law all found the impact of September 11 to negatively impact cultural globalization. On the topic of cosmopolitanism, Hill and Schneider who wrote about cultural diplomacy and Posner who wrote about immigration law recognized the importance of adopting a cosmopolitan stance to enhance cultural globalization. On the topic of arbitrariness, Horowitz and Patry who wrote about rule of law, choice of law and copyright, respectively and Lamberti who wrote about cultural diplomacy and immigration law all held accountable policymakers and enforcers regarding the unclear nature of current laws and statutory aims.

On the topic of reform, Evans, Fang, Feldman and Lamberti who wrote about cultural diplomacy and immigration law, Patry who wrote about intellectual property law and Planas and Posner who wrote about immigration law all felt the need for reform. On the topic of fragmentation, Beckfield who wrote about cultural diplomacy and Posner who wrote about immigration found that the world today is more fragmented than first meets the eye. However, if it is your intention to see the elephant in the room—cultural diplomacy—more clearly, you will have by now illustrated to yourself the shades of red, yellow, and blue that color this elephant, you will have dissipated the fog of this grey matter, and given shape, giving life, to the elephant so that your blindfold could be removed.

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