



United Nations
Educational, Scientific and
Cultural Organization

Organisation
des Nations Unies
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Organización
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Организация
Объединенных Наций по
вопросам образования,
науки и культуры

منظمة الأمم المتحدة
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联合国教育、
科学及文化组织

**Full Analytic Report (2015)
on the implementation of the
UNESCO 1980 *Recommendation concerning the Status of the Artist***

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¹ Mr. Garry Neil was engaged by the Secretariat of the UNESCO 2005 Convention for the Protection and Promotion of the Diversity of Cultural Expressions to assist with the preparation of the 2014-2015 survey on the implementation on the UNESCO 1980 Recommendation concerning the Status of the Artist and to analyse the responses.

Section 1 – INTRODUCTION

Adopted by the UNESCO General Conference in 1980, the Recommendation concerning the Status of the Artist (hereafter “1980 Recommendation”) calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment, income and tax conditions, mobility and freedom of expression. It also recognizes the right of artists to be organized in trade unions or professional organisations that can represent and defend the interests of their members.

At its 34th session (2007), the General Conference considered that the Recommendation concerning the Status of the Artist should be monitored as a matter of priority (34 C/Resolution 87). A consolidated report on implementation was examined by the 187th session of the UNESCO Executive Board (Document 187 EX/20 Part VII) and submitted to the 36th session of the UNESCO General Conference (Document 36 C/57). Pursuant to General Conference 36C/Resolution 103, Document 197 EX/20 Part III presents the second consolidated report for examination by the Executive Board in 2015.

As described in the 1980 Recommendation, Status of the Artist refers to a category of legislation, regulations and other public policies which are directed at achieving two broad objectives:

- Acknowledging the important role that artists play in every human society;
- Encouraging creative expression and ensuring equitable treatment for professional artists by developing appropriate measures which respond to their unique circumstances and the atypical manner in which they work.

The 1980 Recommendation has been supported and further elaborated by other international instruments, notably UNESCO’s 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (hereafter “2005 Convention”), of which several Articles concern support for artists generally, and preferential treatment for artists and other cultural professionals and practitioners specifically.²

By outlining a range of measures that Parties may use to promote the diversity of cultural expressions, the 2005 Convention has created a cultural policy framework, or model, which Parties may wish to consider. As part of their statutory obligations to the 2005 Convention, 71 Parties have filed periodic reports which contain valuable information about measures and policies on the status of the artist.

In order to prepare the consolidated report, a survey was developed in consultation with international artists associations³ and was sent by the Director-General in October 2014 to UNESCO Member States and to relevant civil society organisations. Three reminders were sent.

² 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, Articles 4, 6, 7, 14 and 16.

³ Arterial Network; International Affiliation of Writers Guilds; International Authors Forum; International Federation of Actors (FIA); International Federation of Musicians (FIM); International Music Council (IMC); International Theatre Institute; PEN International; UNI Global Union, MEI Division (Media, Entertainment and Arts).

Responses were received from 60 Member States,⁴ distributed as follows among the electoral groups: 15 from Group I; 12 from Group II; 15 from Group III; 4 from Group IV; 12 from Group V(a); and 2 from Group V(b). There were also 55 responses from civil society organisations, which add to the diversity of the data. The full analytic report of the survey responses is presented in this document.

While the 1980 Recommendation covers a wide range of issues that can affect the social and economic situation of the artist, this survey concentrates on the most significant contemporary issues that are also relevant to the 2005 Convention:

1. Digital technologies and the Internet
2. Transnational mobility of artists
3. Social protections
4. Freedom of artistic expression

With a view to revitalising efforts to improve the status of artists, this report will examine the current state of implementation of the 1980 Recommendation around these key contemporary issues. It will highlight best practices based on the survey responses, as well as the earlier work and reports. Additional research, including interviews with key organisations working in the relevant field, has been undertaken to ensure the report can present a global picture.

THE CHALLENGE OF DATA COLLECTION AND ANALYSIS

It is difficult both to collect relevant data and to make comparisons between States on these issues for a number of reasons.

There are no universally agreed definitions of what constitutes a professional artist or what employment status that artist may hold. While some artists are employed in the traditional sense, most are not and many work on a temporary or irregular basis, and there is no common understanding of what constitutes being self-employed, a freelancer or an independent contractor. Additionally, in the current survey, some respondents chose to report only for a narrow range of artists, such as visual artists.

Countries may have substantially different systems from each other in relation to the treatment of other workers. There may also be regional differences, including where sub-national governments have their own measures or policies, particularly in federal States.

Even within the same country the situation can vary between different types of artists. In particular, creative artists (such as authors, composers and visual artists), who tend to work alone, may have different conditions from interpretive artists (such as musicians, singers, actors, dancers and directors), who tend to work in groups. Similarly, there can be significant differences between artists who create on their own initiative and then offer their works for

⁴ Andorra; Argentina; Australia; Austria; Belgium-Flemish Community; Bolivia, Botswana; Brazil; Bulgaria; Burkina Faso; Canada; Canada-Québec; Central African Republic; Chile; Columbia; Costa Rica; Croatia; Cuba; Cyprus; Czech Republic; Democratic Republic of the Congo; Denmark; Ecuador; El Salvador; Ethiopia; Finland; France; Guatemala; Hungary; Japan; Kuwait; Latvia; Lithuania; Luxembourg; Madagascar; Mauritius; Mexico; Monaco; Morocco; Namibia; New Zealand; Niger; Nigeria; Paraguay; Peru; Poland; Portugal; Republic of Moldova; Russian Federation; Serbia; Slovakia; Slovenia; Spain; Sri Lanka; Suriname; Sweden; Togo; Turkey; Venezuela (Bolivarian Republic of); Zimbabwe.

sale, those whose works are commissioned, those on short-term contracts, and those who spend all of their working day as an artist, whether as an employee, on an ongoing contract, or in some combination.

Given the complexity of government and the relatively high rate of turnover of culture ministers and staff, even culture ministry officials may be unaware of important nuances. For example, comparing responses made to the various surveys and country reports reveals discrepancies and even some contradictory information, most likely because different departments of the government or ministry have completed the report. Some respondents report on policies about the “arts” or “cultural publishers or producers” without analysing exactly how such policies affect the social and economic status of the individual artists who are the creative centre of arts and culture.

Finally, the 1980 Recommendation is fundamentally about artist-centred policy making. It can be subtle, nuanced and highly technical, and addresses only a relatively small percentage of any population.

All of these challenges highlight the need for governments to engage with the associations of artists in order to ensure they have the best possible information for making decisions. Collaboration between governments and civil society has become more commonplace since the implementation of the 2005 Convention. Almost all Parties submitting Periodic Reports have cited collaborative activities, and many of them engaged civil society actively in the preparation of the report. A similar collaborative approach around status of the artist issues would be valuable.

These challenges also highlight the need for UNESCO to work to build the capacity of Member States to implement the 1980 Recommendation. The development of a training module specifically on the 1980 Recommendation, its continuing relevance and how it can be implemented successfully, in laws and policies, in developed, developing and least developed countries, and in countries in transition, to support a rich diversity of artistic activity in every cultural sector could be envisaged. This could be integrated into capacity building programmes around the 2005 Convention.

RECOMMENDATION

The *Recommendation concerning the status of the artist* remains as relevant today as it was in 1980. Given the complex and nuanced nature of the issues it addresses, the impact of technological change on the world’s artists, and the complicated and interrelated nature of governments, a training module specifically on the Recommendation could be envisaged. Given the potential synergies with the 2005 Convention, this could be done as part of the capacity building initiatives related to the Convention. When developing policies which may touch on the circumstances of artists, Member States should collaborate with artists and their associations and relevant non-governmental organisations to help ensure their laws and policies are as supportive as possible for professional artists.

Section 2 – THE 1980 RECOMMENDATION IS A TOOL TO CREATE A LEGISLATIVE FRAMEWORK AND/OR TO DEVELOP CULTURAL POLICIES

The 1980 Recommendation does not explicitly call on Member States to adopt omnibus legislation to improve the situation of artists, but some Member States have adopted Status of the Artist laws. One common purpose of these laws is to define who is a professional artist, to recognise associations of artists or to provide a process to grant such recognition, and to outline basic rights and responsibilities of the associations. This is the case for the laws in Canada and several of its provinces, such as Québec, and in Burkina Faso, Lithuania and Morocco.

Many other countries have rules governing the recognition of artists. Croatia, Slovenia and Togo all have provisions that self-employed artists who “register” with the Ministry of Culture can apply for social security contributions from the State. The Republic of Srpska (Bosnia and Herzegovina) has a law on the independent artist status which operates in conjunction with laws governing health insurance, pensions, disability and unemployment. In Brazil, only a registered artist may present a work in a public venue. Where such provisions are open and not exclusionary of emerging artists or newer forms of artistic practice, they may well be a catalyst to promote the professional treatment of artists in the society.

Costa Rica reports that it has a series of laws designed to support the artist. These laws establish the dignity of the artist as a “public servant”, promote a fair and competitive system of remuneration, and promote the development, dissemination and promotion of works in all artistic disciplines.

The Russian Federation reports that its law on *Fundamentals of Legislation of the Russian Federation on Culture* has confirmed the position of artists, including recognition of “the exceptional role of an artist in cultural activity, his freedom, (and) his moral, economic and social rights;” promotion of “the activity of artists, aimed at improving the quality of life of the nation, the preservation and development of culture;” and providing “employment and working conditions of artists in such a way that they (can) devote themselves to creative activity in their preferred form....”

On the other hand, some States have no special rules for artists. For example, Spain reports “there is no specific legal or institutional framework for the artist..., moreover, there is no standard for qualifying as an artist, unlike other countries that require (membership of) a professional association, or validation by a committee of experts or a public body.”

The Status of the Artist laws in Burkina Faso, Québec, Canada, Lithuania and Morocco go beyond the common purpose, and provide explicit benefits to those recognized as artists. In the case of Québec, the two laws offer security of tax status and lay the foundation for artists to benefit from a variety of targeted measures. Lithuania’s law provides a right to have access to grants and prizes, as well as to a social security programme. Burkina Faso’s law provides specific tax and social security rights to employed artists and to artists who work independently.

BEST PRACTICE

Morocco's law on the Status of the Artist has been in effect since 2003. It is a comprehensive law which establishes a requirement for remuneration and a written contract between the artist and engager, ensures that performing artists with term contracts are considered to be employees for purposes of labour laws and social benefits, regulates the work of agents including rates which they may charge, regulates the employment of minors in the arts and entertainment, and acknowledges and takes into account the dignity of the artist as well as the importance of the artist for the society..

The law also provided the basis for the 2007 decision to implement basic health care and other social benefits to artists, with funding coming primarily from the State.

In September 2014, Venezuela (Bolivarian Republic of) passed a law that enables national artists to access social security benefits, regardless of whether they are freelance or employed by public agencies. The law, which recognises cultural activity as socially necessary work, appears to be similar to other status of the artist laws since certain clauses provide that artists must "organise themselves" and "actively enrich their communities" in order to qualify for State benefits.

It should be noted that a number of the NGOs which responded to the survey believe that the common purpose of Status of the Artist laws to define who is a professional artist and to recognise and authorise their associations remains fundamental to improving the situation of artists. Several point out that where strong unions/guilds/associations exist, there are also stronger conditions for artists.

USE OF THE 1980 RECOMMENDATION AS A POLICY DEVELOPMENT TOOL

The 1980 Recommendation is used by many governments as a policy tool. Of the 47 States which answered this question in the survey, 41 (87 percent) reported the Recommendation "is (or has been) a reference for ongoing policy development" and 31 (66 percent) reported the Recommendation "is (or has been) a tool to promote policy discussion." More than one-half of the respondent Member States reported the 1980 Recommendation has been used as "the basis for changing one or more policies."

The adoption of the 2005 Convention has provided an additional impetus for Parties to develop policies which promote the status of professional artists. Parties have the right to adopt "measures aimed at nurturing and supporting artists and others involved in the creation of cultural expressions." These artists are the individuals who "create" the cultural goods and services, and thus they can be the subject of "national policies and measures implemented to support the creation, production, distribution, dissemination and enjoyment of cultural goods and services."

In its Periodic Report for the 2005 Convention, Albania highlights that “a draft strategy for culture is being developed.” One of the objectives of that strategy is “to support creativity of Albanian artists” through four priorities, including “creation of fiscal facilities for Albanian artists and improvement of their social status.”

Austria reports that its *Federal Arts Promotion Act* explicitly emphasizes “improving the social situation of artists and the framework for private sponsorship.” Hence, in addition to direct public support, Austrian legislation provides for a number of important instruments of indirect support for the artists in social and tax policy, measures in the field of labour market management, copyright (both direct and indirect payments), and the encouragement of private sector support for the arts by various means.

In the summary of Periodic Reports for 2013 prepared for the Intergovernmental Committee on the Protection and Promotion of the Diversity of Cultural Expressions⁵, it was noted that “[p]olicies and measures taken to foster and support artistic creation are the prevailing trend in the 2013 reports. Thus, measures targeting individual artists and arts-producing or delivery organisations were reported as significant components of the policies developed by a majority of Parties to implement the Convention.”

The Arterial Network is an Africa-wide network of artists, cultural activists, arts NGOs, cultural enterprises and others committed to developing the continent’s cultural capacity. In its 2010 publication *Adapting the Wheel: Cultural Policies for Africa*, Arterial called on African States “to improve the status of creative and performing artists.” The objectives are “to ensure the legal and economic conditions necessary for the exercise of artists’ creative work” and “to align existing tools in the field of employment and other areas with the needs of artists and other creative workers....” Arterial continues to work actively throughout Africa on status of the artist initiatives.

RECOMMENDATION

Status of the Artist is fundamentally about acknowledging the important role that artists play in every society, and promoting laws and policies that encourage creative expression and ensure equitable treatment for artists by responding to their unique circumstances and the atypical manner in which they work. Member States should continue to use the Recommendation as a reference when they are developing cultural policies (as defined in the 2005 Convention).

⁵ Quadrennial periodic reporting: new reports and analytical summary, document CE/13/7.IGC/5 Rev., 7th ordinary session of the Intergovernmental Committee on the Protection and Promotion of the Diversity of Cultural Expressions.

Section 3 – DIGITAL TECHNOLOGIES AND THE INTERNET⁶

The most significant development for artists and cultural industries since the 1980 Recommendation was adopted has been the development of digital production, storage and distribution technologies. These forces are changing fundamentally the relationship between artists and their audiences, as well as the economics and business models in the cultural industries.

Artists create and interpret works in every imaginable medium, from sculpting in stone, words on paper, recorded music, to sounds and images on stages and screens. In the case of artistic works that are ephemeral, this is the end of the story. However, most works have an ongoing life and value, and can be distributed in many different ways.

Digital technologies are ubiquitous and, in developed countries, the Internet is on the way to becoming the principal vehicle through which creative works of all kinds are distributed. Music, books, periodicals, movies, television and radio programmes, games, photographs and other creative works are already widely available. Internet distribution has grown exponentially in the past decade and the growth rates continue to soar. Aside from some forms of visual arts and crafts, all other creative works can be digitised easily and quickly, and can be transmitted over the Internet. And even visual and craft artists now use the Internet to market their works.

As with every new medium that has emerged since Gutenberg developed moving type in 1468, this newest medium creates challenges and opportunities for artists and the cultural industries.

Some artists have used the Internet to gain new audiences, both at home and around the world. But, the dominant voices on the Internet continue to be those which are dominant in other media. For example, the top 20 most viewed YouTube videos are all leading recording artists.

Central to the digital revolution is the fact that, by reducing even complex artistic expressions to a binary code, effectively a string of ones and zeros, works can be easily copied and manipulated. Individuals in most countries now have access to sophisticated but low-cost technologies that can produce professional quality sound and images, and can be used to upload, download and share music, films and written works.

In the digital age, consumers, particularly those who have grown up in that age in the global North, have come to enjoy instant access to a wide range of artistic works, often for free. The ease of copying and manipulating digital works also means that some artists experience difficulty protecting their work against unauthorized uses. The survey results from both Member States and civil society highlight that piracy is a significant problem.

In this process, there has been an erosion of the perceived value of the creative endeavour.

⁶ Generally, Internet refers to the networking infrastructure and the World Wide Web refers to one means used to access content through the medium of the Internet. This paper uses Internet as a generic term to refer to both aspects of the digital world.

Most artists want their works to be seen, heard, used and enjoyed, but they want also to be paid. It is common in most countries for well-established contractual arrangements to ensure there is some compensation paid to creators for the primary use of their work. But, widespread and stable income flows do not yet exist in the digital world, and this will not change until the new business models are further developed and firmly established. These models may well develop in the near term, particularly as the globally dominant firms secure their positions.

In responding to the issue of what is the most significant challenge artists face in light of the digital technologies, Screen Actors Guild/American Federation of Television and Radio Artists, which represents performers in the recorded media in the United States, outlined a comprehensive range of challenges.

- For existing material, it is how to identify the payment that should be made when the money flow is uncertain, and how to collect that payment.
- For productions created for the Internet, it is what conditions are appropriate given that the business models are not yet well developed and budgets are often small.
- The blurring of lines between professional and amateur productions.
- The underlying performance is changing and the demands on the artists are increasing. For example, motion capture techniques are widely used, and leading artists must now be heavily involved in social media.

La Unión de Asociaciones de Artistas Visuales (UAAV), which represents visual artists in Spain, reports that the challenges are “First, the balance between the possibilities offered by the Internet as a tool for communication and dissemination of the work of the artist, and the protection of copyright (to ensure) the control of reproduction and public communication and the corresponding remuneration. Second, the development of the Internet as a tool for marketing artworks.”

The Etopia Centre for Art and Technology in Zaragoza, Spain is a facility which works with digital media artists and artists from other media who wish to explore new possibilities. In its response, it stated simply that, like their colleague artists in older media, “the main challenges (for digital media artists) are related to job insecurity, intermittent incomes and weak institutional support for their work.”

In order to examine the impact of digital technologies on artists, the survey explored several issues.

Policies regulating the distribution of artistic works on the Internet

Concerns around the diversity of cultural expressions on the Internet tend to focus on:

- The fact that many languages are missing, an issue on which UNESCO has played a leading role.
- The continuing digital divide which means, in part, that artists in some countries do not have the capacity to make their works available digitally.
- The role of Internet Service Providers, content aggregators and search engines in providing the means through which people can find the rich diversity of cultural expressions that are available online.

A major research paper prepared in 2011 for UNESCO, the *Internet Society* and the *Organisation for Economic Co-operation and Development* looked at the amount of local content on the Internet and found: “This empirical research shows there is a strong correlation between the development of network infrastructure and the growth of local content, even after controlling for economic and demographic factors. The statistically significant relationship is evident using several different measures of local content (the number of visible top-level domains in use per country code, per capita; Wikipedia articles per language per capita; and blogs per capita), and several measures of Internet development (broadband penetration rates, autonomous systems per capita, international bandwidth per capita and routed IPv4 network addresses [private networks] per capita).”⁷

While this 2011 research did not specifically consider the presence of local artists on the Internet, it may be assumed that the same rule applies. If you build and improve the network infrastructure locally, the local artistic content will follow. Perhaps as a consequence, Member States are generally not regulating the distribution of artistic works over the Internet through the use of mechanisms, such as content quotas or distribution policies, which favour local artists.

There are some framework policies related to content on the Internet. Notably, with regard to on-demand audiovisual media services the European Union (hereafter “EU”) *Audiovisual Media Services Directive* provides: “Member States shall ensure that on-demand audiovisual media services provided by media service providers under their jurisdiction promote, where practicable and by appropriate means, the production of and access to European works. Such promotion could relate, inter alia, to the financial contribution made by such services to the production and rights acquisition of European works or to the share and/or prominence of European works in the catalogue of programmes offered by the on-demand audiovisual media service.” Thus, Croatia reports specifically that the rule that private broadcasters must allocate 10 percent of their airtime to independent European productions and public broadcasters must spend 15 percent of their annual programming budget on the same material applies to their online presence. Further, online broadcasting services, including Over-The-Top services (OTT services, such as Netflix, provide access to programming independent of a network – such as a cable company – that is dedicated to its delivery) “must declare their share of domestic works” to Croatia’s content regulator.

Chile reports that it is currently processing a bill on digital media which could have important impacts on the flow of artistic works on the Internet. It includes measures to support new markets, “particularly for the music industry, through legal download platforms (paid), and downloads of independent music where there are alternative licenses (creative commons).”

Hungary reports that in a newly released plan the government is committed “to using copyright to ensure the development of creative industries. As part of this pillar, the government will promote the legal online distribution of artistic works.”

⁷ The Relationship between Local Content, Internet Development and Access Prices, 2011, pg. 4 http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/news/local_content_study.pdf

Another approach is found in Canada where the broadcasting and telecommunications regulatory authority has decided to proceed on the basis of an exemption order for digital media. While some of these entities fall under the definition of broadcaster or distributor, “broadcasting services...that are: a) delivered and accessed over the Internet; or b) delivered using point-to-point technology and received by way of mobile devices,” are not required to meet the regulatory obligations that apply to conventional broadcasters or distributors. However, these entities are obligated to refrain from providing an undue advantage (for example, to a programming service which a distributor owns) and they must report to the authority as required.

In answering this question in the survey, some Member States and NGOs chose to concentrate on how copyright is dealt with on the Internet, since this is essential to protecting the rights of those who create the works and fundamental to the collection of royalties or other payments to which artists may be entitled for online distribution. Others discussed various programmes and portals which highlight the work of their artists. Some highlighted the challenges faced by artists in the global South in making their works available electronically. Some of these answers are incorporated into other elements of this report.

Policies regulating Internet Service Providers (ISP)

The most relevant policies on Internet Services Providers in relation to artistic works are those which are aimed at ensuring equal treatment of all content, or Net Neutrality. In February 2015, the United States Federal Communications Commission decided that ISPs should be treated as a “public utility,” similar to telephone and gas companies. Thus, ISPs must treat all content equally, which will prevent them from giving priority to any content, particularly where they may have a proprietary interest.

In April 2014, the European Parliament adopted changes designed to ensure providers treat all Internet traffic equally, regardless of its content. The changes would, for example, prevent ISPs from slowing the download speed of films, or mobile carriers blocking access to Skype, because it affects their calling and text-messaging revenues. The package explicitly includes amendments that define and protect net neutrality. The new laws are being considered by the Council of the EU.

Chile reports a law under which ISPs have a duty not to “block, interfere, discriminate, hinder or restrict the right of any Internet user to use, send, receive or offer any content, application or service, which is legally on the Internet, and any other activity or use made legal through the network.” Moldova reports it is considering a law on net neutrality.

In Canada, ISPs are considered to be analogous to telephone companies, and the regulatory authority applies certain standards of conduct which inhibit their ability to give preferential access to the programming of content carriers which they own. The ISP policy related to the treatment of content must be publicly available.

With respect to the protection of copyright material on the Internet, several EU Member States and the United States have a “notice-and-takedown” provision under which the ISP is obligated to forward a notice of copyright infringement to the end user. If the infringement does not cease, the ISP is required to remove the material from the offending site. In the United States, 95 percent of the takedown notices Google receives relates to copyright infringement (rather than, for example, law enforcement) and it complies with 97 percent of them.⁸

Other Member States have adopted a “notice-and-notice” system under which the ISP must cooperate with the copyright owner, but that owner is responsible for seeking a remedy through the courts. Others report analogous measures requiring ISPs to cooperate with copyright holders.

Comparative treatment of domestic and foreign artistic works distributed via the Internet

There was little pattern to the responses to the survey question about whether there is equal treatment of domestic and foreign artists whose works are distributed through the Internet.

Several developing countries, including Moldova, Namibia, Sri Lanka, and Suriname reported that foreign works have an advantage because they are perceived to be of higher value. This is not just a problem in developing countries, as the Canadian Arts Coalition, a coalition of the larger arts service organisations, reports that foreign digital audiovisual distribution services have a competitive advantage over Canadian ones since they are better developed than the Canadian counterparts, and have more robust libraries.

On the other hand, El Salvador reports that domestic works have an advantage over foreign ones due to customs charges, although this presumably relates only to products, such as books, that may be physically shipped across the border.

Moldova reports there is no Value Added Tax on foreign works while domestic works are subject to the tax. This issue may be far more widespread than the survey results would indicate. For example, where an OTT service such as Netflix does not have a physical presence in the country in which it is selling subscriptions, it may be impossible for that country to collect VAT. This is the case for Canada, since subscriptions to Netflix are usually sold without adding the consumption taxes that must be charged by Canadian services, although the Canadian government reports that consumers should be “self-assessing and remitting” in cases where the supplier is not registered in the Canadian tax system. According to Netflix, its service is currently available in 13 European countries.

Several Member States and NGOs highlight that artists in the global South, particularly in the least developed countries, generally lack the equipment and technical capacity to produce and record their works, and to make them available online. Thus, it is impossible for them to compete with foreign artists in this medium.

⁸ MacKinnon, R., Hickok, E., Bar, A. and Lim, H. eds. *Fostering Freedom Online: The Role of Internet Intermediaries*, UNESCO Publishing, Paris 2014, pg. 114

The African Arts Institute, a Cape Town, South Africa-based NGO whose overall objective is to promote participatory democracy, respect for fundamental human rights and freedoms, and equitable social and human development in African countries by affirming the cultural dimension of development put it this way: Challenges "... include problems of intellectual property protection, shortcomings with respect to skills development, and technical, recording and performing industry skills, and difficulties of financing. There is also significant competition from imported music products and services, especially from the United States and the United Kingdom."

There were also some responses which touched on the role of Internet intermediaries, which are increasingly globally dominant firms. As American author Tim Wu has written in *The Master Switch*, every new communications technology has been seen as a free and open space that would unleash citizen creativity and connectivity, only to become closed and centralised as corporations took control of the "master switch." This same transition appears to be taking place with the Internet as American firms Facebook, Google, Amazon and Apple, together with their Chinese counterparts Tencent, Baidu and Alibaba, are increasingly in control of the social media, Internet search and e-commerce digital space.

In relation to search engines, several respondents noted that, even when diverse materials are available online, search engines may not make them available to large numbers of people. Certainly, an individual who is motivated to search out new and diverse materials will be able to find a treasure trove of interesting cultural expressions from many cultures around the world. However, the algorithms and methods used by the dominant search engines are not conducive to providing a rich range of options, particularly those from outside the dominant cultures, to the typical Internet user.

Impact of electronic distribution of artistic works on the income received by artists

Unfortunately, there is little hard data about whether digital distribution has a positive or negative impact on artists' earning. Evidence tends to be anecdotal.

On the one side, there are reports of a **positive** impact:

- Botswana – More positives than negatives, increases in music royalties.
- Brazil – Positive growth in certain areas, particularly the licensing of music for use in "video games, social networks, blogs, and YouTube."
- Burkina Faso – Generally positive, particularly for artists "who have signed an agreement with the mobile phone company."
- Columbia – "... collection of revenues from the sale of works in electronic media generally has been positive for rights holders and artists, especially in the field of music..." While there has been a decrease in physical sales and there is piracy, the Internet has also "... promoted the export of domestic works."
- Costa Rica – "Artists may benefit from electronic distribution of their works, (they can) create new revenue options that go beyond the conventional ... (they can) promote themselves to different parts of the world ... In this sense, digital media has democratised the distribution and sale of digital content and provides an opportunity."

- Democratic Republic of the Congo - Electronic distribution of artistic work (movies, music and book) has had a positive impact on income of artists who have signed partnership agreements.
- Lithuania – Royalties for music and books have increased. The government is planning a study to quantify.
- Namibia – It is presumed slightly so, due to the reduced costs of physical production of works, however no research has been undertaken to investigate this.
- Peru – Despite the difficulties, the electronic distribution of works has a positive impact on the income of the artist using this medium. This is particularly the case for Peruvian music in the mid-term.
- Sri Lanka – Artists benefit from electronic distribution and revenues are increasing.

On the other side, we have some reports of a **negative** impact:

- Croatia - “Incomes of domestic sellers of books and music, as well as cinemas, certainly did erode, which reflected on the artists' income to a certain extent...”
- Cuba – Impact in film has been negative on the revenues of authors and producers of audiovisual works because every time the Cuban productions are published on the Internet without authorisation, the producer’s sales decrease.
- Denmark – Netflix and Spotify generally pay lower compensation than the traditional CD/DVD market. While book royalties are the same, the selling price is lower. Visual arts not yet as well organized.
- Ethiopia – The threat “has the upper hand.”
- Spain – “From an economic standpoint, the (Internet) distribution of works can have an effect of reducing the income of the holders of intellectual property rights.”
- Sweden – Erosion of income in audiovisual market, despite Spotify and Netflix being well established in Sweden. E-book sales are much smaller. Piracy is also greater in music and films.

And in the middle, we have some reports of **both positive and negative** consequences:

- Australia – There may be new sources of revenue, but there are “vulnerabilities” around copyright protection.
- Bolivia – Some artists use the Internet to promote their works, but there is no data about the impact on income.
- Czech Republic – No authoritative data, but, in general, distribution by the Internet, both legal and illegal, can lead to a decline. Using the technology for promotional purposes, may lead to an increase.
- Ecuador – While the music is more accessible, it is not a source of income and its value is primarily for promotion.
- Finland – A study by the Musicians’ Union indicates a decline due to lack of CD sales, a study by the Writers’ Union indicates that the median fee they receive for an electronic book sale is greater than for a hardcover book.
- France – The development of online legal offers may be an opportunity for artists to diversify their income, but it affects the division of the value between the artist, producer and distributor ... Illegal download of cultural content has, on the other side, a very negative impact on the economy of music, film industry and, in a less visible way, the book industry.

- Hungary – The availability of digital content has led to widespread illegal use, which has eroded the income of artists. In the musical field, the existence of legal services has increased revenues for rights holders.
- Japan – It depends on the situation.
- New Zealand – “Overall New Zealand artists have tended to respond positively to changing consumption patterns and to the opportunities ... While revenue earned from some sources is likely to continue to decline (e.g. CD sales), the costs of production, distribution and marketing of many artistic works is also lower and the potential to reach bigger and more diverse audiences greater.”
- Nigeria – Yes, for those who can take advantage. No, because of increase in piracy.

Among the civil society groups that responded, there was a consistent concern about the problems related to piracy. The British Musicians Union reports that piracy is a major issue and “musicians (are) suffering from reduced sales and payments as a result.” The Danish Actors’ Union reported its concerns about piracy, as did the Danish Council of Artists. The Peruvian Union of Artists, Authors, Composers, Folklorists and Allied Workers of Peru; the Union of Musicians, Composers and Singers of Peru, and; the Federation of Performing Artists and Allied Workers of Peru report that “the scourge of piracy has decreased the income of artists.” Many Member States share the concern.

Like Member States, the NGOs were mixed on the issue of whether the Internet has had a positive or negative effect on the income of artists.

The Danish Council of Artists reported “the general trend is that the artists (filmmakers, composers and musicians) get less. The Council of Creative Unions of Latvia shared a similar observation that “for most, the income from different usage rights of artwork has diminished.”

On the other side, British Equity reported “In the UK the ability to consider these multiple forms of compensation, including royalties, residuals and collective licences in the audiovisual sector in response to the electronic distribution of works provides flexibility for businesses and fair rewards for performers. Combining these various payments enables performers who have itinerant and unpredictable working patterns to build sustainable careers. In this respect it can be said that the electronic distribution of artistic works has had a positive impact on the income received by performers.” Paraguay’s Centro de Investigación y Educación Cultural y Participación reports that young musicians in particular have been able to take advantage of the Internet and other artists have gained important exposure. Those who have grown up with digital technologies and the Internet are far more likely to take advantage of them.

The Danish Actors’ Union reported electronic distribution has had neither a positive nor a negative impact on revenues. The Writers’ Guild of Canada, which represents screenwriters reports that “it is too soon to see an increase” related to the electronic distribution of movies and television shows, meanwhile “budgets for many made-for-digital productions are very low and cannot pay a professional writer a suitable fee.”

The African Arts Institute reports, “One view is that digital revolution has expanded the marketplace and marketing potential of the creative industries...; (for example, in the) Music industry, concerts are the money spinner, and digital sales the means to get people to listen and then attend the concert. It is the same with YouTube. Due to the uncontrollable (and viral) nature of digital, artists need to leverage this as an opportunity to redirect their audiences to other innovative events/streams of revenue.”

In this connection, we can note the recent announcement by some of the American music industry’s leading stars to launch Tidal as an online streaming service which will charge a monthly subscription fee for the right to download their music. This is conceived as a way these artists can increase their income from Internet distribution.

The Central African Observatory of Cultural Policies interestingly notes that English-speaking Cameroonian artists are far more successful in promoting their music and other forms of artistic expressions online compared to their French-speaking counterparts. This likely applies more generally as English continues to be the dominant language on the Internet.

Le Syndicat français des artistes interprètes, which represents French actors in media and live performance, reports that legal downloads of music compensate only a small part of the loss of sales of physical copies, which “because of piracy and illegal downloads have been considerably diminished.” The effect on audiovisual services is “zero.”

According to newspaper articles published in 2014 in the United Kingdom and Canada, it is increasingly difficult to earn a living as a writer. In July, The Guardian reported on a study undertaken by the University of London which found that “the median income of the professional author in 2013 was just £11,000, a drop of 29 percent since 2005 when the figure was £12,330 (£15,450 if adjusted for inflation).” This means “that the average professional author is now making well below the salary required to achieve the minimum acceptable living standard in the UK.”⁹ The Toronto Star article reported similar news for Canadian authors, whose “average income is about \$10,000 a year,” which means for most people “writing is no longer a full time job.”¹⁰ In each case, a leading cause of the decline is the rapid change in the publishing business model brought about by Internet distribution of books, both digital and physical copies.

The Slovak Republic reminds us that Internet distribution is still a small part of the overall picture, despite its rapid percentage increases. “Audiences have broad choice and artists are challenged to attract them.” According to the International Telecommunications Union, in 2013 just less than 40 percent of the world’s population is using the Internet, ranging from a high of 75 percent in Europe to a low of 16 percent in Africa. The rate of growth is strong in every region. But another statistic is a proxy for how digital media are becoming more important as carriers of cultural content. According to a recent Hollywood Reporter story, the United Kingdom is on track to become the first country in the world where more than one-half of advertising spending will go to digital media in 2015.¹¹

⁹ <http://www.theguardian.com/books/2014/jul/08/authors-incomes-collapse-alcs-survey>

¹⁰ http://www.thestar.com/entertainment/books/2014/11/08/can_you_afford_to_be_a_writer.html

¹¹ The Hollywood Reporter, 17 February 2015, Los Angeles

Costa Rica provided useful data in response to the survey. In 2012, 2,321 book titles were published, of which 87 percent were in physical format and 13 percent in digital format. The National Survey of Culture 2013 showed that 96 percent of Costa Ricans read books in print and 17 percent read books in digital format. In the audiovisual sector, only 1.9 percent of the population purchased films or television series online (Netflix is available but has a limited library) and 18.3 percent viewed films or television series online for free; 10.6 percent purchased games online and 15.5 percent played free games. Also in 2013, seven percent of Costa Ricans purchased music from stores, five percent from street vendors and two percent purchased music online. However, 58 percent of Costa Ricans downloaded music for free.

Hungary also reports concrete data. While the online sale of books increased between 2011 and 2012 by 30.2 percent, online sales in 2012 represented only 0.9 percent of total book sales.

While it offered no statistics, Austria may have provided the most succinct summary when it reports, “It is too early to assess seriously the impact of the electronic distribution of artistic works on the income received by artists ... artist associations in general express concerns about declining incomes, as earnings from digital distribution cannot (yet) compensate for declining physical sales.”

Supporting artists to create works digitally and to make them available on the Internet

Almost all of the reporting Member States have programmes or funds which support the creation and distribution of digital works.

A recent analysis of the Quadrennial Periodic Reports on the implementation of the 2005 Convention indicates there are “numerous measures focused on digitising national literary, cinematographic, musical, theatre, heritage, etc. and publishing it online” from Denmark, Egypt, European Union, Finland, France, Germany, Greece, Hungary, Italy, Jordan, Mexico, Lithuania, Poland, Romania, Slovenia, Sweden and the United Kingdom. There are efforts to record songs and pictures of endangered cultural expressions in Bangladesh and Mongolia.¹² The International Fund for Cultural Diversity associated to the 2005 Convention has supported a number of projects which are directed at training and networking initiatives to build capacity in digital media.

In Chile there is funding for innovative projects from the National Council for Culture and the Arts. In response to the rapid changes in the distribution of music, the Council has incorporated new lines of financing for Web platforms aimed at the promotion and dissemination of national music and enterprises which promote and distribute national music. Costa Rica reports that its publishing programme allocates a portion of its budget for the publication of the works of national writers in digital format. The programme covers the cost of publishing, distributing and marketing the works.

¹² Kulesz, Octavio, Analysis of Parties’ Periodic Reports and Contemporary Digital Trends, UNESCO CE/14/8.1IGC/INF.5, 18 November 2014, pg. 5

Through the National Plan for Cultural Equality, Argentina is equipping cultural centres with technological equipment and training tools for documentation, projection and display of digital cultural content. Funding and support programmes enable artists and producers in music, audiovisual and publishing to bring material online. There is also a programme to encourage theatre and dance professionals to experiment and integrate new technologies into works.

Brazil reports federal, State and city funding for over 3,500 Culture Points, which offer a multimedia kit including a computer, video camera, speakers and a printer. The Cultura Viva programme encourages these centres to work together in their region or specific focus area. Peru reports a similar programme.

Spain has adopted a portal approach in the area of visual arts. The Oral Memories project is a platform for the promotion and distribution of emerging artists and Spanish media, both nationally and internationally. The site is “one of the most important for knowledge of contemporary Spanish artists.” Venezuela (Bolivarian Republic of) similarly established El Registro Nacional Voz de los Creadores in 2013 as a virtual space where artists can record, store and preserve their sounds, photographs and audiovisual materials. It includes all categories of artists.

Ecuador reports that, in the absence of an updated law on culture and public policies for online artistic works, the Ministry of Culture has developed several portals which showcase Ecuadorian culture and artists. A platform for the distribution of Ecuadorian music will launch in 2015. Madagascar has funded a website about and for artists of Madagascar, through which one may purchase works.

Since 2000, African Colours, an NGO based in Kenya, has served as a comprehensive guide to contemporary African visual arts. African Digital Arts is a new collaborative initiative which provides information and links to digital media artists throughout Africa.

BEST PRACTICES

Working with their artists, several Member States, including Argentina, Ecuador, Madagascar, Spain, and Venezuela (Bolivarian Republic of) have developed portals of information about domestic artists. This helps them to become more visible in the plethora of material available on the Internet. Other Member States, including Chile and Hungary are developing digital media strategies to encourage the legal downloading of music and other artistic expressions by their artists. Some non-governmental organisations similarly provide an online presence for groups of artists, which increases their potential to reach audiences.

Austria reports it has a substantial number of measures in every artistic discipline. It has innovative programmes in video and new media arts, “which (are) characterised by conceptual and technological innovative approaches to media and new developments at the crossroads between technology, science, art and society.” Austria is home to Arts Electronica, a leading player in the field of media and digital art, which annually organises one of the most important festivals. There is also the Pixels, Bytes & Films programme which encourages and supports

artists/filmmakers to develop new experimental audiovisual formats exploring the possibilities offered by digital technologies and interactive, non-linear media. Another initiative is the Impulse programme for the experimental development and first market application of products by businesses in the creative industries, pilot projects and awareness measures. Target areas include video games, music distribution, audiovisual and film distribution, and the art market.

The Democratic Republic of the Congo and Togo each reported that funds are made available to artists who wish to create digital works and make them available on the Internet. France reports a number of programmes including a Ministry of Culture programme for contemporary arts and a major initiative of the Centre national de la cinématographie, which funds roughly 100 innovative and experimental digital media projects annually.

Lithuania sets aside 25 percent of the private copying levy for programmes, and institutions wishing to digitise their collection may apply. Botswana has a special fund called the Arts and Culture Grant which supports artists to document, digitise and distribute their works online. Sri Lanka has a project directed at digitising folk music. The Slovak Republic reports its audiovisual funding includes support for Internet distribution, as well as training and education. Croatia, Cyprus and Japan have programmes for digitising films. Moldova reports a new programme in development. Canada reports numerous initiatives, including the Academy Award winning National Film Board, which has digitised its entire collection and offers it online.

Virtually every respondent Member State which did not have a specialised programme reports that regular government and agency funding programmes can be used to support digital production, the conversion of analogue works and making them available online.

Leading examples include programmes which target the new technologies, and encourage innovation and collaboration between different cultural sectors. Sweden has a National strategy for digitising collections of the heritage institutions, as well as schemes which support digitisation of other artistic expressions. Denmark reports that digitisation is a key component of government cultural policy, “digital production and distribution is inherent within support schemes for literature, music, performing arts, visual arts, etc.” Creative New Zealand ... “is introducing a new priority across all its funded art forms to support the innovative and cost-effective use of digital technologies to create work and/or to engage with audiences” The Film Commission has established a fee-based video-on-demand service for New Zealand films. Québec, Canada reports that it adopted a digital media plan in September 2014 that contains three focus points: the creation of digital cultural content; innovation to adapt to the digital world, and; distribution of the content and ensuring it can be found by consumers. Grants are available for the various sectors to create new material or to repurpose existing material in a digital format.

Copyright Treaties

The survey asked Member States to report on the state of implementation of the World Intellectual Property Organization (WIPO) Internet treaties: the WIPO Copyright Treaty, the WIPO Performances and Phonograms Treaty and the WIPO Audiovisual Performances Treaty. The responses contained little concrete information about how these treaties are being

implemented, the impact they have on artists' income, or the reasons that some Member States have refrained from ratifying them. As noted above, the survey did capture valuable information about copyright and the Internet.

Peru reports that the principal challenge for Peruvian artists are the illegal markets and the pirated copies of works that are sold at low prices both physically and online. It is trying to deal with this situation through copyright laws. Burkina Faso, France, Nigeria and others reported efforts to fight piracy. Many others reported on efforts to promote understanding of copyright.

The British Musicians Union (BMU) reported that "artists are not fairly remunerated when music is digitally downloaded or streamed." While the problem is primarily related to the fact the record companies generally control copyright and have decided to import unreasonable charges from the analogue world (such as packaging, breakage and distribution), the BMU does state that legislative changes are necessary "if performers are to actually receive meaningful remuneration for the making available of their performances via on-demand services...."

In March 2013, the Special Rapporteur in the field of cultural rights submitted a report, *The Right to Freedom of Artistic Expression and Creativity*, to the United Nations Human Rights Council. It stated, "... the Special Rapporteur understands the concern that piracy and file sharing may threaten the potential of artists to earn their living, she also stresses the need to acknowledge the percentage of royalties that go to publishing houses/copyright holders rather than to the artists themselves. Concern has been expressed about coercive contracts that authors and artists identify as a primary obstacle to fair remuneration. Under such contracts, which are frequent, creators sign away all their rights to their creation in order to gain a commission for creating a work. Consequently, they lose control over their creation, which can be used in contradiction to their own vision."¹³

British Actors' Equity Association summarized the issue this way: "The preservation of a strong and effective copyright law framework in the face of demands by groups and interests wishing to access content without payment through new technologies and services is also a significant challenge for performers' organisations.... Ultimately performers can only benefit from the employment and remuneration opportunities created by new technology if there is a secure framework for content to be used by businesses and monetised, allowing returns to be reinvested in the content which drives the digital market."

RECOMMENDATION

The Internet is rapidly becoming the most important vehicle for the distribution of a wide range of cultural expressions, from literature, to music, to movies, to interactive digital media. UNESCO may wish to organise a conference of Member States and other relevant bodies including artists' associations that would focus exclusively on how to ensure: a) there is a rich diversity of cultural expressions available on the Internet; b) there is reasonable access for everyone to this content; c) artists are fairly compensated when their material is used.

¹³ UN Document A/HRC/23/34; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

Section 4 – TRANSNATIONAL MOBILITY OF ARTISTS

Some successful artists are able to cross borders easily while others may be unable to obtain the necessary visa even if they are an established professional. When artists do tour, they may be confronted with challenges such as ever changing visa requirements, double taxation, lack of benefits, substantially different requirements for different countries in the same tour, etc. Artists may also have considerable difficulty in finding reliable and accurate information.

Digital technologies have made it possible for more artists to reach markets outside their home region, including artists from developing countries. This can lead to opportunities for these artists to bring their works directly to audiences in other countries. But, there are significant impediments to the mobility of artists and other cultural professionals, and these problems became much worse with the rising security concerns since 2001.

Almost universally, the NGO respondents listed challenges which face artists who wish to work abroad. Many highlight the challenges faced by artists from developing countries seeking to work in developed countries. But it does not end there, as several reports outline, for example, the challenges for European artists moving around Europe, as well as challenges for artists moving between other developed countries.

The survey explored issues relative to both the OUTWARD and INWARD mobility of artists.

OUTWARD MOVEMENT OF ARTISTS

Public and/or private sector touring funds for artists who have been invited or wish to work abroad

Most survey respondents have public programmes to support their artists working abroad. Many report multiple programmes across the full spectrum of artistic activity. Some report that private funds are also available.

Only Ethiopia and Suriname report they have no programmes which support their artists to work abroad. Latvia, Moldova and Nigeria report that artists must rely primarily on private funds, or the foreign entities through which they have been invited.

Like most others, Croatia reports a broad range of programmes through which artists can be funded, but the report also noted “the State budget for culture has declined significantly in the past three years.” NGO respondents noted that Canada had eliminated a major programme which supported foreign touring as part of the government’s austerity agenda.

Bolivia reports it provides institutional support, such as certification, visas and paperwork, as well as support from its missions abroad. Niger reports similarly that government support for its artists who wish to work abroad can be administrative in nature.

Columbia reports it has a specific law which promotes international cultural exchanges, and has public programmes to help finance these exchanges. Additionally, the Ministry of Culture has incentives to encourage the movement of artists abroad. Morocco's law on artists specifically establishes as an objective that its artists be part of a global dialogue. Andorra reports there are specific funds for their artists to work internationally.

France reports that it has an extensive system of programmes which support French artists abroad. The work is primarily organised around the Institut Français, which promotes French culture and artists around the world, working with the foreign affairs ministry and the Alliance Française. Germany provides funding through Foreign Affairs and the Goethe Institute and also has an excellent Internet site which provides information for artists working abroad. The United Kingdom provides funding through the British Council and other initiatives.

BEST PRACTICES

Several Member States report they provide comprehensive information for artists who work abroad. Germany's Touring Artist site (www.touring-artist.info) provides comprehensive information on visa/residency requirements, taxation, social security, transport/customs rules, insurance, copyright, etc. The portal's focus is primarily visual and performing artists. The information is designed both for foreign artists who work temporarily in Germany and for artists who live in Germany and who work abroad for a limited time.

The Institut Français uses a variety of programmes to globally promote francophone artists from many countries, including assistance for emerging local artists.

Civil society also plays a role in this area. A leading example is www.on-the-move.org, the website of a network for cultural mobility, which provides resources, guides, lists of opportunities and other information of interest to artists who work in other countries.

The African Arts Institute reports the key challenges respecting the outward movement of artists are "high costs and visa process(es), strict immigration laws, xenophobic sentiments and sometimes violence within South Africa, (and) political and social instability."

Legal requirements for artists intending to work abroad

No survey respondent reports legal restrictions for artists working abroad. The only requirement of note is that some Member States require an invitation letter or other formal documentation.

Costa Rica has an artist positive measure, which is to exempt arts groups from the obligation to pay a departure tax, although they also report that citizens may not leave if they owe taxes.

International Pen is an organisation of writers which, among other things, works to assist writers who may be imprisoned or otherwise restricted in their home countries. Freemuse is the world's leading organisation advocating for freedom of expression for musicians. Both groups point out that it is impossible for some artists to leave their home countries, even if they sell works abroad and have an established international reputation. This is primarily related to artists who may be seen as challenging to the status quo or to the government of the day.

Cuba reports that its system features a Professional Services Agency for Art and Culture, through which protection is offered to the artist when s/he is hired by a foreign entity, including a signed contract outlining the responsibility of the employer.

Double taxation on income earned abroad

Ethiopia, Niger, Sri Lanka and Suriname report that artists are not responsible for paying domestic taxes on income they earn abroad. Kuwait and Monaco report they do not have personal income taxes and thus there are no charges on domestic or foreign artists.

Generally, most Member States require their residents to pay taxes on all income they earn, regardless of where the work took place. The best case scenario is that artists who pay taxes abroad can receive credit for that payment when they file their domestic tax return, but typically this requires the existence of a bilateral tax treaty. Hungary reports that while the objective is to avoid double taxation through bilateral tax treaties, "these treaties have different provisions... (and) detailed rules vary in virtually all countries." Turkey also noted "we have so many different treaties."

There are some important differences. Botswana reports that artists must declare all of their worldwide income and are not entitled to a credit for foreign taxes paid. FAPAE, the association of film and television producers of Spain, reports that artists must report all income and cannot receive credit for the foreign taxes they pay. With respect to work done abroad, Lithuania reports that domestic taxes are paid, but this supports the social welfare measures and pension available to artists.

Cyprus and Japan report that domestic taxes are paid on worldwide income, but artists can claim credits for taxes they paid abroad. Andorra reports that a credit may be claimed up to the amount of tax that is payable had the income been earned in Andorra. Mauritius reports that credits for foreign taxes paid are available even in the absence of double taxation treaties. Argentina reports that earned income must comply with the current regulations in each country and "we will take into account deductions and taxes levied abroad." Cuban artists and creators should declare all income earned in the year whether in Cuba or abroad, but "the artists generally do not make any payments to foreign governments on income they receive." If they are required to make such a payment and they send proof, such payment will reduce the amount payable in Cuba.

Denmark's observation is perhaps the best summary of the challenges which artists face in this area. Artists must pay taxes on income they earn abroad, but there is an attempt to reduce the double taxation burden. "In practice however, it is often difficult and costly for the artist to avoid double taxation, and in some cases it is not possible to avoid completely."

Social security coverage for artists working abroad

The situation of artists with respect to social security is perhaps the most complicated issue of all. On the national level, there may be variables relating to the general social security situation of all workers and citizens; variables relating to the work status of the individual artist, for example whether they are registered or not, and/or whether they are independent contractors, employed or other; as well as variables relating to whether they are a creative or interpretive artists and/or to the medium in which they work.

When you introduce into this complicated matrix the cross-border movement of artists, it is very difficult to ascertain the trends. This is particularly the case for touring companies which may have artists of many different nationalities, citizenship and residency.

Thus, Cyprus, Hungary, Latvia, Moldova, Nigeria, Sri Lanka and Turkey all answered simply that their artists are not disadvantaged when they work abroad. Moldova tied this issue to the fact that artists must pay domestic taxes on their foreign earnings, and Hungary reports that artists can voluntarily pay the “specified fee” to maintain their coverage. Croatia, Namibia and the Russian Federation state that artists are fully covered for social programs when they work abroad if their travel has been supported by a State agency.

Several Member States simply report that artists are treated the same as other nationals working abroad. Ethiopia acknowledges that their artists are disadvantaged with respect to social programmes.

With the passing of the 1993 Treaty of Maastricht, EU citizens gained an unrestricted right of mobility. After 22 years, there is progress in the area of social programmes, but some challenges remain. Many EU Member States report that their social protections apply to all EU citizens, and Austria reports that its programme for self-employed artists does cover artists working abroad if it remains the “competent State” by virtue of the artist remaining a resident of Austria notwithstanding the foreign work. An area of continuing challenge in the EU is eligibility for pensions, since self-employed are not entitled to general retirement pensions in some Member States.

France reports that its artists who work in other States of the EU may continue their benefits in the French system, including pensions. This also applies to forty other countries with which France has concluded bilateral conventions on social security collaboration, although they may be limited to some aspects of the system.

Several NGOs highlight this is a problem for artists and report there can be a significant difference between programmes which are statutory and available to all citizens and those which are contributory. In the former case, they likely continue to be covered unless they change their residence, while they may have difficulties in the latter case unless they are able voluntarily to make the contribution.

Perceptions concerning the outward movement of artists

Most survey respondents were highly positive about their artists working abroad because it highlights their own culture(s) globally. A few expressed some reservations.

Ethiopia expressed a concern about artists leaving the country, and Moldova reports that many of the best artists are leaving and “this is a threat to the national repertory.” The Slovak Republic says that low remuneration of artists in some professions (opera and dance) forces artists to go abroad. Latvia highlights that its musicians who work in orchestras are being attracted abroad by higher fees.

On the positive side, Chile reports that “public policy today aims to internationalise our artists, as a way of strengthening the national creative industry.” Portugal says that there are efforts to promote artists and their projects abroad, “to disseminate Portuguese culture ... so that the international movement of Portuguese artists can be a positive factor.” Spain says “the Government is pleased that Spanish artists are working abroad as it contributes to improving the country's image and improving their artistic excellence.” Morocco also aims to have their artists be part of a global intercultural dialogue.

France reports that it protects and promotes the diversity of cultural expressions, as vehicles of creativity, values and meaning. It promotes exchanges and interaction between cultures, particularly through artistic cooperation. Burkina Faso states that freedom of movement is protected in the Constitution. “Since cultures are not static, there is mutual benefit from interacting with different perspectives and influences.” Luxembourg reports that, “the export of our artists is essential for artistic and professional development.”

Québec, Canada also notes that its market is small and so it promotes the export of artists and their works, and they have implemented a multi-year strategic plan to accomplish this objective. Artists and cultural producers benefit from additional revenues and exposure.

Finland reports, “successfully accessing international markets enables Finnish talent to flourish.” The Danish Government “recognizes that many artists get inspiration and skills when (they go) abroad. It is seen as a positive necessity for development and is encouraged.” The New Zealand Government “encourages artists to create, study, perform and/or exhibit work offshore and to benchmark their work on a world stage.” Hungary “ensures the free movement of artists, and expressly encourages and supports it.”

A 2006 declaration adopted by the European Parliament at the end of the European Year of Workers' Mobility stated that mobility has been an essential element “for artists and other cultural professionals over the ages.”¹⁴

¹⁴ Reported in *Mobility Matters*, an ERICarts Institute Study for the European Commission, Bonn, October 2008

INWARD MOVEMENT OF ARTISTS

Visas for foreign artists

The issue of obtaining the necessary permission to enter another country and to work continues to be of concern. Every country has a visa system that applies to some or all other countries. Many also have work permits that can limit the ability of artists to perform, exhibit or otherwise “work.” There may also be different visa requirements in neighbouring countries of a multi-nation tour, as well as different requirement for members of a touring company who have different nationalities, citizenship or residencies.

For all artists, particularly those in the developing world, the entire process can be challenging and expensive, requiring substantial paperwork and often travel to a distant embassy or consulate.

But the problem is not just one related to South to North travel. The British Musicians Union highlights that artists seeking to work in the United States “often face significant difficulties, delays and costs.... There is evidence of artists, advised they could attend a showcase event under the Visa Waiver Programme, being turned away by border guards for having the wrong visa with devastating consequences for those musicians. The costs of purchasing a work visa are prohibitively expensive for musicians, who by nature of the work they do are not necessarily in the highest income brackets.”

Several Member States report they have cultural exchange agreements which promote the movement of artists. Costa Rica notes that “temporary work permits can be issued for cultural exchanges.” Columbia has a special visa for the temporary entry for artists or cultural groups providing “public entertainment.” Niger reports it respects reciprocity in the issuance of visas for artists.

Spain reports that, among the applicants exempt from obtaining authorisation to work or undertake a professional activity in Spain, are artists who come to Spain to perform specific activities that are temporary. Included are people who perform an artistic activity directly to the public or intended for recording of any kind for broadcast in any media. Paraguay reports that “artists can have a temporary visa... this applies also to members of a touring company.” Austria has a similar rule. While artists must apply for a visa if they intend to work, there is an exemption to take account of the special employment situation with artistic performances and productions. Artists holding a nationality which allows them to enter Austria as tourists without a visa, do not require a visa if they are “short-term employed” as part of an overall artistic production. New Zealand has similar rules, and Canada facilitates entry for workers in film and television. Moldova and Turkey each report some special treatment for those who are undertaking “scientific or cultural activities” which are short-term. Serbia reports that a “foreigner who personally carries out temporary educational, sporting, artistic, cultural, and other similar activities” for fewer than 90 days in a six month period is exempt from the procedures applied to other foreign workers.

France reports it has three types of visas/work permits for foreign artists. The first is for artists (as well as sportspersons and scientists) who are internationally known. The second is a visa which is specific to cultural professions, under which an artist on contract may work for a period between three months and one year. The third is the temporary work permit for stays of less than three months which is common to all professions. A bill currently being drafted by the Interior Ministry would provide more flexibility for the specific arrangement for artists.

On the other hand, El Salvador reports that “any person entering the country to work, whether artist or not, must have a work permit.” Hungary reports that if a foreign artist arrives “with the intention of being employed,” then their employers will have to obtain a work permit. This policy does not apply to artists from EU member States.

Argentina reports on an agreement made in November 2014 among the MERCOSUR Ministries of Culture to promote the mobility of artists. They are working to develop more flexible standards to facilitate the movement of artists and productions, and measures concerning standardisation of visa procedures to “continue promoting the creative economy and cultural industries through research, innovation and support for the circulation of cultural goods and services, and resolve limitations to this movement, such as with the issue of visas for artists.” Peru reports on special visas which permit Latin American artists to work temporarily abroad.

In its 2008 White Paper on mobility challenges for musical artists, Freemuse wrote: “... many tour, concert and festival organisers, agents, management companies, cultural organisations and others face increasingly non-transparent, time consuming and costly application procedures when they organise concerts and tours in Europe with artists from non-EU countries. European artists trying to tour the U.S. face many of the same problems. Some festivals have stopped inviting artists from particular countries due to the unpredictable nature of their visa application procedures. Others continue to struggle, but experience huge financial losses.”¹⁵

Denmark reports that it has an extensive visa waiver system. It also notes “the discussions on a Schengen touring visa that are taking place in the EU Commission might alleviate” the difficult situation reported by Freemuse in 2008.

With respect to funding opportunities for incoming artists, they appear to be limited to developed economies such as Austria, Croatia, Denmark, France, Japan and Sweden, which were the only ones to report they have public funds available for this purpose.

British Equity expresses openness to foreign artists coming to the United Kingdom with important caveats, “... migrant workers in the entertainment industry should have the opportunity to come to the UK as they can make a valuable contribution to our industries, however they must be properly protected through decent working conditions and enforcement of their employment rights. We also believe that the use of migrant workers in the creative sector must not cause a race to the bottom in terms of pay, terms and conditions or limit the opportunities available to resident workers.” British Equity also reports on its reciprocal agreement with American Equity under which equal numbers of performers are able to work in the live theatre in the other country.

¹⁵ www.freemuse.org/graphics/Activites/Campaigns/PDF/VisaWhitePaper.pdf, October 31, 2008, page4

Temporary entry of support personnel

Generally, there do not appear to be any special arrangements for support personnel who may be accompanying a touring artist. At best, the same rules apply to these individuals as to the artist. At worst, they may face exclusionary rules designed to protect work opportunities for domestic technicians.

Austria reports that it has an exemption from work authorisation for short-term employment as part of an overall artistic production and this covers all foreign nationals participating in the overall production, even if their individual work is not of an artistic nature. Sweden also reports that some artists, as well as their technicians and other tour personnel, can enter without a work permit if the organisers are included on an official list.

Lithuania reports that “all foreigners who come to Lithuania with a purpose of employment must obtain a work permit and there are no exceptions for artists.” A work permit may be issued to a foreigner only if no Lithuanian specialist is found who meets the qualification requirements by an employer. Thus, it may be very difficult for the technicians and support personnel.

Most other Member States report that the regular rules applying to all individuals seeking entry for work purposes apply to these support personnel.

Taxation of foreign artists

Most Member States report that artists are required to pay income taxes on the money they earn while they are a guest in that State. Only Cuba, Moldova, Suriname, and Togo report that taxes are not paid by foreign artists. Kuwait and Monaco have no personal income tax.

As noted above, the situation for artists with respect to double taxation is very complicated.

The Canadian Arts Coalition, which represents all of the major Canadian arts companies reports:

“... the Income Tax Act sets out a process by which Canadian employers must withhold 15 percent of fees, commissions, and any other amount paid to non-resident individual artists or companies for services rendered in Canada. Foreign artists and companies may apply for a waiver, but the process is so cumbersome, the standards for compliance are so high, and the assistance from the Canada Revenue Agency so lacking, that many foreign companies and artists no longer bother applying for a waiver. When a waiver is granted and no tax is withheld... the foreign artist or company is still required to file a tax return in Canada.

As a consequence, many foreign artists and companies are no longer interested in touring to Canada unless the Canadian engager is willing to pay a higher fee to offset the tax withheld. This is bound to create additional issues, as foreign artists and companies who don't file a Canadian tax return will be prevented (from returning) to Canada for further engagements.”

Bulgaria was clear that foreign artists are required to pay income, social security and health taxes, presumably subject to the mobility rules for residents of other EU States. El Salvador requires foreign artists to pay 20 percent as Income Tax and 13 percent for Value Added Tax. Brazil reports “Like any taxpayer, artists are subject to tax and must submit tax returns.”

Paraguay reports that foreign artists are not taxed, although the local producer must pay the 10 percent VAT and a 10 percent municipal tax, “which may be reduced by one-half if a local group participates in the show.” Mauritius reports that foreign artists must pay income tax on what they earn in the country, except where there is a double taxation agreement, and must register for and collect VAT.

Other countries use a withholding approach like Canada’s. In Cyprus, 10 percent of the fees are withheld, in Finland it is 15 percent.

On the other hand, Denmark reports that “employers must report on the fees they pay to artists and Denmark will forward that information to the artist’s home country.”

The responses generally did not touch on the fact that foreign artists may well be contributing other taxes to the local economy. For example, if a major global musical act is appearing in a local venue, there may well be taxes on the tickets, and local suppliers and partners will be paying additional taxes.

British Equity reports on the campaign of the International Federation of Actors which is advocating for amendments to Article 17 of the OECD Model Tax Treaty. That Article authorises States to tax the earnings of entertainers and sportspeople temporarily working in that State without providing a guarantee against double taxation of that income by the State in which the entertainer or sportsperson resides.

Tariffs or restrictions on the importation of equipment required by an artist

There were no reports of prohibitions on the importation of equipment, although responses relating to the payment of tariffs or fees varied.

Bulgaria, Cyprus, Czech Republic, Japan, Latvia, Lithuania, Namibia, Sri Lanka, Suriname and Turkey all report there are no tariffs or fees paid on the importation of equipment, although there may be registration requirements to ensure the equipment is exported when the artists leave.

On the other hand, Argentina, Botswana, Burkina Faso, Central African Republic, Costa Rica, Democratic Republic of the Congo, El Salvador, Madagascar, Moldova, Nigeria and Serbia report that some fees (tariffs/VAT) are due although, in the case of Argentina and Botswana, these are reimbursed when the equipment is exported.

Several respondents to the survey report they are part of the ATA Carnet system, which is based on an international agreement to allow the temporary import of goods for up to one year. The ATA Carnet is a customs document that replaces the import and export papers, and duties and taxes in the 74 countries which participate in the scheme. This system is of real value to artists who are successful economically and for touring companies, but the fees attached to the system may be an impediment for emerging artists or those who have not yet achieved economic success.

Interestingly, only Madagascar mentioned the 1950 Florence Agreement and 1976 Nairobi Protocol, whose purposes are to “(lower) customs barriers and (reduce) other economic restrictions” on the importation of a wide range of cultural goods because these “impede the exchange of ideas and knowledge.”

The British Musicians Union reports great difficulties in relation to instruments, including inconsistent rules of airports and airlines. “In addition, new legislation introduced in 2013 to combat the illegal trade in endangered species (CITES) affects musicians whose instruments may contain such species as Brazilian rosewood, mother of pearl, or ivory. Musicians are advised to carry as much documentation with them as possible to enable identification of date of purchase and the composite parts of the instrument, but this is extremely difficult for some antique instruments.”

Perceptions of foreign artists

Bolivia reports on a public perception that Bolivian artists working abroad must meet tougher conditions than foreign artists working in Bolivia. Paraguay reports that foreign artists are not paying the taxes which support the domestic cultural infrastructure. Some express concerns about declining work opportunities for domestic artists or merely about being overshadowed by the foreign artists, including Croatia, El Salvador, Namibia and Sri Lanka. Several also report they make efforts to protect work opportunities for domestic artists.

But most Member States are highly positive about the effects of the movement of artists across borders.

“Welcoming foreign cultures in France is a founding mission of the Ministry of Culture ... (It) is part of a strong tradition of dialogue between cultures and promotes international cultural cooperation. The work of foreign artists in France, since it contributes to the dialogue between cultures, is mutually enriching.”

From the perspective of the Costa Rican Ministry of Culture, “foreign artists represent a source of knowledge to be seized by national artists, who in turn, are a source of knowledge for those artists.” Portugal reports that this interchange “contributes to the sharing of experiences and new concepts in contemporary art in a way that contributes to the development of artists.” With regard to performing arts and music, the Government of Spain “welcomes foreign artists working in Spain, because it contributes to mutual enrichment and enhances artistic excellence.”

Austria observes that “as art thrives on international contacts, cross-border exchange and cultural encounters, Austria’s cultural policy supports and promotes the international exchange of creative artists.”

Preferential treatment and the impact of Article 16 of the 2005 Convention

The 2005 Convention Article 16 provides that developed country parties “shall facilitate cultural exchanges with developing countries by granting ... preferential treatment to artists and others cultural professionals ... as well as cultural goods and services from developing countries.” Unlike most measures in the Convention, this is a positive obligation on Member States in the global North to implement programmes which achieve the objectives, including “preferential treatment” for artists.

In response to the survey, many Member States report having bilateral cultural exchange agreements, some of which involve the movement of artists. But, only Moldova reported that it is “benefitting from new cultural agreements.” In the 2013 Periodic Reports, only Armenia, China, Dominican Republic and Vietnam reported on measures which promote the importation of foreign cultural goods.

The most positive steps have been taken by the EU which concluded an Economic Partnership Agreement with CARIFORUM States in 2008 and an *Agreement establishing an association* with Central American States in 2012. These agreements contain a cultural cooperation protocol which explicitly cites the 2005 Convention, as well as provisions aimed at the implementation of Article 16. But, on the European side there continue to be concerns about the lack of harmonisation among Member States, and the lack of awareness among officials in charge of visa procedures of the specificities of cultural mobility. Denmark reports there are discussions in the EU Commission on a Schengen touring visa and there may be hope that some of the challenges will be alleviated.

Argentina, Brazil and others report that Ministries of Culture of MERCOSUR are working together to develop more flexible standards to facilitate the movement of artists and productions across their borders. In particular, they are considering common administrative procedures for issuing visas to “continue promoting the creative economy and cultural industries sector through research, innovation and support for the circulation of cultural goods and services.” This includes the possibility of a MERCOSUR visa for artists.

A report on implementation and impact of Articles 16 and 21 of the 2005 Convention presented to the June 2015 Conference of Parties, takes a more optimistic view. “A great deal of evidence is emerging demonstrating how Parties have taken steps to amend their national legislation (while others are in the process of doing so) in order to allow a relaxation of procedures for obtaining visas by artists from developing countries who wish to perform overseas.”¹⁶ It cites particularly the New Zealand visa, the continuing work in the EU, the creation of an

¹⁶ Document CE/15/5.CP/11, 23 April 2015 ; https://en.unesco.org/creativity/sites/creativity/files/5CP_11_report_on_articles_16_and_21_en.pdf

interdepartmental working group on visas in France (2010) and the German information portal. It also reports on some South-South developments such as the MERCOSUR visa and some bi-lateral cultural agreements.

RECOMMENDATION

Most survey respondents express openness to the cross-border movement of artists, as a way to promote cultural diversity, intercultural dialogue, and to enrich all of the artists involved. But, in many cases, there is a gap between this objective and the reality that even artists who are successful can find it difficult to cross borders. In order to facilitate cross-border movement, Member States and UNESCO may wish to work collaboratively with the artists' associations and relevant NGOs and INGOs. These associations share the objective and have access to local information, such as the professional standing of an artist, which can help inform effective decision-making.

RECOMMENDATION

Artists are the creators of the cultural expressions that are the subject of the 2005 Convention. Measures aimed at promoting the status of artists, including those in the 1980 Recommendation, are both called for in, and would help achieve the objectives of, the 2005 Convention. UNESCO and Member States should seek ways to achieve synergies in the implementation of these instruments. They should engage artists, their associations and other relevant NGOs and INGOs in this process since these groups understand the nuances that arise in the relatively complex issues.

SECTION 5 – SOCIAL PROTECTIONS

The 1980 Recommendation urges Member States to “endeavour to take the necessary steps to see that artists enjoy the same rights as are conferred on a comparable group of the active population by national and international legislation in respect of employment and living and working conditions, and see that self-employed artists enjoy, within reasonable limits, protection as regards income and social security.”

In the survey, respondents were asked to look at a range of social programmes and to specify whether and how artists who are self-employed, independent contractors or freelancers (that is, not employed for purposes of their artistic work) are covered by the different social protection programmes, according to the following matrix.

<i>Social programme</i>	<i>Variables to report</i> <i>Categories of artists covered by the programmes.</i> <i>Legal basis for the programme.</i> <i>Funding (e.g. by the artist, the person who contracts for their services, and/or tax revenues)</i>
<i>Basic medical care</i>	
<i>Health insurance (e.g. for medication, non-covered medical services, etc.)</i>	
<i>Workers compensation (coverage for work place injuries)</i>	
<i>Income protection during periods in which they are not working</i>	
<i>Insurance schemes for illness, parental leave or disability (please describe)</i>	
<i>Retirement benefits</i>	
<i>Career transition</i>	

The survey results indicate that progress has been made in respect to extending social protections to artists in the period since the last comprehensive review of the state of implementation of the Recommendation.

The vast majority of artists are not employed for purposes of their artistic work. Most work on an independent, contractual or freelance basis. Consequently, there can be challenges in relation to social security, health insurance, retirement benefits and other social programmes which are available to other workers. This is an area where some Member States have developed innovative measures and successful programmes, and associations of artists have developed significant complementary measures.

As citizens, artists are entitled to benefits that are universal. Accordingly, many are covered for their basic health care needs, including in some countries that are less developed. For example, Paraguay and Sri Lanka report that universal public systems include artists. Nigeria's system, which requires registration, is open to artists. Basic health care is universal in most developed countries, and some provide basic pensions or support systems for all seniors, including artists who may have worked independently for their entire career.

ARTISTS WHO ARE EMPLOYED

Some artists are employed for their work. This is particularly the case for interpretive artists in the performing arts and recorded media, such as opera, ballet, orchestras, choirs, television series, theatres and dance companies. Where artists are employed they typically enjoy benefits the same as other employed workers for purposes of health care, insurance, income interruption and pensions.

Because of the nature of their profession, artists may be unable to collect benefits for periods when they are not working even if they are otherwise qualified. This is the case because artists typically must continue to practice their profession to remain employable. The dancer, singer and musician must spend many hours practicing each day whether or not they are presently employed or contracted.

Bulgaria reports that actors, musicians, ballet and other dancers, as well as the technical staff of the cultural institutes are covered for all programmes and this is paid by the State. Kuwait reports that "all artists have social protections paid by the appropriate institution." Hungary reports there are even special rules for ballet artists to receive a lifetime annuity in recognition of the early age at which they must retire. The Czech Republic reports that "generally employed artists are fully covered."

ARTISTS WHO ARE INDEPENDENT, CONTRACTUAL OR FREELANCE

However, in most Member States, the number of employed artists is very low compared to the total population of artists. There are generally four approaches in this situation. These are not mutually exclusive and several may operate within the same State for different categories of artists.

1. The artist has no possibility for coverage, or it is left entirely to the individual to obtain appropriate private insurance.
2. The artist is subsumed into employment status and comes to benefit from analogous coverage to that available for employees.
3. The State has developed or sponsored a comprehensive programme that operates in parallel with the system covering employed workers, or has individual special provisions for artists.
4. There is a complementary or parallel non-State system usually implemented by the artists' associations or copyright collecting societies.

1. No coverage is available.

Eight of the Member States which responded to the survey, the Central African Republic, Chile (outside the audiovisual sector), Costa Rica, Cyprus, Ethiopia, Namibia and Suriname reported that artists are entirely on their own in these matters. Togo reported that "In the absence of the adoption of status of the artist (legislation), Togolese artists don't have the benefit of any social protections."

2. The artist is subsumed into employment status

In France, basic medical care is universal. For the additional social benefits, some artists are subsumed into employment status, providing they work a minimum period of time. Thus, self-employed performers and other artists in the theatre, and film and television industries enjoy minimum pay rates and a comprehensive benefits package providing supplemental medical care, protection for workplace accidents, limited wage continuation in the case of illness or disability, unemployment benefits, professional training, holidays and vacations, maternity leave and a pension plan. The programme is funded by contributions made by the artists, as well as by contributions from producers, distributors and exhibitors of the works, including the State and other public institutions.

Writers and creative artists have analogous programmes. These schemes are administered by the Artists' House (for visual artists) and the Association for the Management of Social Security for Writers. Contributions come from the artists and others. This social protection scheme covers illness, maternity and disability, and pensions. In 2013, the programme was extended to cover professional development, with additional contributions from the participants.

Belgium has a social security system for all professional artists, offering a comprehensive range of benefits (sickness, disability, health care, family benefits, unemployment, annual holidays, pension, employment injuries and occupational diseases). Effectively, the scheme is premised on artists being deemed to be employees. A 13 percent deduction is taken from the fees of the artist and a 35 percent contribution is paid by the employer/engager. Artists have access to public subsidies for their share of the costs. If an artist certifies that they are providing services on a self-employed basis, they will be required to make all of the social security payments themselves and they will be eligible for a far less comprehensive package of benefits, but will have greater scope in deducting business expenses from their income.

The social benefits available in the United Kingdom are funded by contributions made by employers and deductions taken from employees. Employed workers have Class 1 benefits, while freelancers pay for their own benefits as either Class 2 or Class 4. Actors have a dual status, since their employers are required to make contributions on freelance income for Class 1 benefits, while they continue to enjoy the ability to deduct legitimate expenses against their earned income and have certain legal rights in their performance, which typically are available only for self-employed professional. Class 1 benefits include a full range of protections, from basic health care, disability insurance, unemployment insurance, to pensions. Other self-employed artists pay both portions of the National Insurance Contributions for a reduced level of benefits. Some of the unions in the United Kingdom operate programs to supplement the public scheme for such freelance artists.

Finland reports that artists are generally covered by the public system, with some supplemental special rules. Japan reports that artists are covered for health care, illness and disability, as well as pensions in the general public systems, although they are not entitled to unemployment insurance.

3. State developed/sponsored parallel systems

In Germany, the *Künstler Sozialkasse* (KSK) was established to provide independent artists with social security protection. Over 150,000 artists are covered for health insurance and pensions, and some receive unemployment benefits. Membership is comprised roughly as follows: 39 percent visual artists; 26 percent musicians and composers; 24 percent authors, journalists and translators, and; 11 percent performing artists. One-half of the contributions come from the artists, and the remainder comes from the federal government and those who engage artists. Engagers include publishing houses that contract writers, broadcasters that hire musicians, and art galleries and firms that commission a commercial artist for design work.

In Austria, in principle all artists in gainful activity are covered by the Austrian Social Insurance system. Artists are covered by the general insurance schemes against old-age, sickness, industrial accidents and occupational diseases, as well as unemployment. Additionally, the following categories of self-employed artists are covered by the Artists' Social Insurance Fund Act [*Künstlersozialversicherungsfondsgesetz*]: Persons creating pieces of art, because of their artistic skills and in the context of an artistic activity, and; visual artists, dramatic artists, musicians, writers, filmmakers, and contemporary artists. The programme is funded solely by contributions from the artists. There are subsidies if the artist earns between €4.743 and €23.718 (2014) annually. The subsidies are financed by levies on cable broadcasting companies and retailers of satellite-receivers and decoders.

In Switzerland, the Government has been involved in the launch of Réseau prévoyance culture, which supports artists through retirement, disability and death benefits. It is considered a "second pillar" of support which complements the general State pension program (the "first pillar"). Few artists have the resources to invest in private pension or insurance schemes (the "third pillar"). The programme is operated by Suisseculture, an umbrella association whose members include 23 artists' associations and, through them, about 60,000 artists and creators.

In Croatia, independent artists have the right to retirement, disability payments and to health insurance, and the contributions are paid by the State budget. But, the standards for entry are high and in the recent survey Croatia reports that only 10 percent of professional artists in the country are covered by this system. Serbia has a similar system.

In the Slovak Republic, artists contribute two percent of their income for social programmes beyond universal public healthcare. Engagers also contribute. "Artistic funds provide social support upon request to artists – in lump sum or monthly payments – in the case of death or need, in old age and illness. It also provides a contribution for medical treatment of artists," either partially or fully depending on the circumstances.

In Italy, stage and cinema professionals, including artists, as well as visual artists, musicians and writers may qualify for benefits based on how many days they have worked. Actors and singers would need to work for 120 days to receive social security coverage for the year. The system is based on laws stipulating that engagers may only hire artists who are members of the relevant social insurance program.

Under the Lithuanian Status of the Artist Act, all recognized artists are covered by social programmes, paid for by the State budget. There is no workplace injury insurance, but all other programmes, including “creative idle” coverage “where the artist has no work for objective reasons beyond the control of the artist.”

Under the Burkina Faso Status of the Artist Act, artists are covered for a range of benefits, with funds coming from the artists and the State. As reported above, Québec, Canada, Morocco, the Republic of Srpska (Bosnia and Herzegovina) and Slovenia all provide a range of relevant benefits to artists. Artists in the Democratic Republic of the Congo who are registered with the Ministry of Culture may benefit from the Fund of Social Assistance for Congolese Artists and Writers.

Guatemala has coverage for employed artists and has also created the Social Welfare Institute of Guatemalan Artists to provide certain benefits to artists who are self-employed. Peru has regulations which attach medical coverage to copyright laws.

Cuba has a special scheme for artists and related professionals, which provides a full range of benefits. The scheme receives eight percent of its funding from the individuals and 12 percent from those who engage their services.

Monaco reports that theatre workers have the same rules as in France. Other self-employed artists may receive coverage for health care, social benefits and pensions. Certain professional self-employed artists may also benefit from support related to the launching of their professional activities.

Luxembourg has set up a special system of time-based financial assistance for artists whose income falls below the minimum wage. This is part of a comprehensive system of social and financial support for self-employed artists, including special tax measures. Under certain conditions, artists can claim financial assistance from the Cultural Social Fund, which is subsidised by the State, during months when their income is less than the minimum wage. The Association of Visual Artists of Luxembourg thus reports that recognised artists receive a full range of social benefits, including healthcare, workplace accidents, disability, unemployment and pension.

Spain reports there is a Special Scheme for the Self-Employed, which includes artists. The funding comes from the individual and those who engage them. The programme has an equivalent range of benefits to the programme which covers employed workers, including basic healthcare, insurance for illness, disability and parental leave, as well as pensions.

El Salvador also has a programme which covers all self-employed professionals, including those artists who agree to participate. In Costa Rica, artists may participate in the basic systems, with the fees being paid by the employer if the artist is employed, and by the artist if s/he is independent.

Chile reports that “while there is currently no social protection programme for the self-employed artist, the regulation and social coverage for dependent workers of arts and entertainment is now under review.”

In Mexico, basic medical care is available to all authors and performers “associated with collecting societies” that are authorized by the copyright agency and the premiums are paid by the society. Similarly, Paraguay is developing a system that would be funded by the collecting societies which receive and pay copyright royalties to the artists and other copyright holders.

While there are no specific programmes for artists, Argentina has a set of measures for all citizens, which are available to artists as “unpaid workers”.

In Pakistan, poor artists may receive medical services through the Artists Relief Fund of the Ministry of Culture. Bangladesh has an analogous system. In Sri Lanka, the Ministry of Culture has a range of unique programs for artists, including purchasing a car, special insurance or retirement benefits for “needy” artists or those in their “twilight” years, purchase of works from authors for distribution to schools and libraries, loans for houses, etc.

Pensions

A distinct subset of the State-sponsored parallel schemes exists in the area of pensions. Egypt and Tunisia have pension systems for some artists. Azerbaijan has pensions for “persons engaged in creative activity.” Sri Lanka has awarded pensions to roughly 100 artists who are 60 years or older. Lithuania provides State pensions to certain artists. In Portugal, there are special pensions “for professionals of classical and contemporary ballet.”

Freelance artists in Canada participate in the Canada Pension Plan, although the CPP requires that the freelancer pay both the employer and employee premiums. The Québec Pension Plan is similar. In each case, the resulting pension is insufficient to fund a reasonable retirement and independent professionals, including artists, must find other means to save for retirement. There is means-tested supplemental pension for poorer seniors.

Denmark provides special pensions to some artists, and the general granting programs in Norway, Sweden and Finland, may be used to provide an equivalent of a pension for some senior artists. Finland awards 51 artist pensions annually. Austria has a scheme which can grant artists a supplement to their pension.

Artists who have made an outstanding contribution to the culture of Ireland in the fields of visual arts, literature or music, may be inducted into the Aosdána program which matches artists’ contributions to create a pension fund for them. Hungary provides Artist of the Nation Awards to outstanding professionals, “who are over 65 years old, or dance and circus artists over 50 years old, in order to ensure (they are acknowledged publicly) and to provide (them with) worthy living conditions.” The amount of the lifetime annuity is twenty-three times the minimum amount of the current old age pension per month.

Argentina’s Ministry of Culture has a system of national awards that provides an annuity at retirement. Paraguay may grant honorary pensions “for recognized artists who are in a vulnerable position.”

4. Non-state systems

In some countries, artists have organised insurance plans through their unions and associations of artists, or other non-profit societies. The Russian Federation reports that members of artists’ unions have coverage for social benefits. Argentina reports that supplementary insurance and

other social benefits are offered by various artists' trade unions and copyright collecting societies. Mexico and Mauritius report that copyright collecting societies provide insurance coverage to members. Sweden reports supplemental insurance is available through the artists' associations.

In the United States, artists' unions, including Screen Actors' Guild/American Federation of Television and Radio Artists, Writers Guild of America (East and West), American Federation of Musicians, American Actors Equity Association and Directors Guild of America, operate large and successful programs to provide health insurance coverage for members and pensions for members who worked consistently throughout their career. Premiums are contributed by engagers under the various collective bargaining agreements and deducted from earnings received by the artist. Similar programmes in Canada and Québec for performers, musicians, scriptwriters and some other artists, includes a supplementary retirement system.

The Central African Observatory of Cultural Policies reports that freelance artists in the region are not covered for social benefits and some artists' associations in Cameroon have been attempting to create their own system. The effort resulted in a commitment from the government to take action, although there are not yet any concrete results from this campaign.

BEST PRACTICES

In providing social benefits to artists there are a range of best practices depending on the Member State and the specific situation of the artists. It is beyond the scope of this report to analyse the efficacy of any of the systems.

Employed Artists: Covered under the general social protection programmes which apply to all workers. This also includes Member States such as Cuba and Kuwait which have universal systems. But, the schemes can also take into account the particular nature of the artist's work, such as the pension offered to dancers in Hungary to account for the early age at which they must leave their profession.

Self-Employed Artists: There are several ways to provide benefits to artists who are self-employed, independent or freelance:

- a) **Subsumed into Employment Status.** This is the case for some artists in Belgium, France, and Monaco.
- b) **Government-sponsored/supported Parallel Programmes:** This is the case for artists in a wide variety of countries, with the leading example being the comprehensive programmes in Germany. Many countries offer some systems, including Austria, Burkina Faso, Congo, Costa Rica, Croatia, El Salvador, Guatemala, Italy, Lithuania, Luxembourg, Mexico, Morocco, Paraguay, Slovenia, Srpska (Bosnia and Herzegovina, and Switzerland. Another variation on this theme is "special recognition" systems that benefit individual artists and can be found in Azerbaijan, Bangladesh, Egypt, Hungary, Ireland, Pakistan, Sri Lanka, and Tunisia.
- c) **Non-State Systems:** These can be funded by engagers, collecting societies and/or partially by the artists themselves and can be found in Argentina, Canada, Mauritius, Mexico, Sweden and the United States.

MORE WORK TO BE DONE

In the 35 years since the 1980 Recommendation was approved, there have been major improvements in providing social protections to artists, in every part of the world. But, the reason this remains a matter of concern is best encapsulated by the response of Latvia to the survey. “The Ministry of Culture of Latvia is working on a new law which would protect self-employed artists and would cover their social needs – health care, old-age pension, temporary unemployment, one-time allowance, etc.... meanwhile, Latvian general laws on social protection *in principle* cover all who are working – (including) freelancers, and self-employed artists.” *(emphasis added)*

RECOMMENDATION

While artists work in an atypical manner, they should be treated equitably to other workers for purposes of social programmes. As this report shows, there are many different ways to provide appropriate social protections for artists, depending on the state of development of each society. Member States should explore the appropriate best practices from elsewhere as they consider new policies in this field.

Section 6 – FREEDOM OF ARTISTIC EXPRESSION

The 1980 Recommendation states “Since freedom of expression and communication is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights.”

In March 2013, the Special Rapporteur in the field of cultural rights, Farida Shaheed, submitted a report entitled *The Right to Freedom of Artistic Expression and Creativity* to the United Nations Human Rights Council¹⁷. This Report recognised UNESCO related instruments including the 1980 Recommendation and the 2005 Convention. It observes that these instruments help to create and sustain a climate encouraging freedom of artistic expression and the material conditions facilitating the release of creative talents. It stresses that artists are to benefit from the rights and protection provided for in international and national legislation relating to human rights, in particular, fundamental freedoms of expression, information and communication.

In exploring this issue, the survey asked whether artists enjoy statutory protection of freedom of artistic expression, or whether there are official policies relating to artistic freedom. It also considered what national challenges may limit freedom of artistic/creative expression.

Most respondents report that freedom of expression is in the Constitution or other significant public instrument. A few report that it is enshrined in complementary policies.

France reminds us that the Declaration of the Rights of Man, adopted by its National Assembly in 1789 proclaims that “The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law.”

Article 19 of the Universal Declaration of Human Rights provides, “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.” Many States have adopted a variation of this language. For example, New Zealand’s Bill of Rights proclaims that “Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.” Canada’s Charter of Rights and Freedoms provides for “fundamental rights,” which include, “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”

Fewer Member States explicitly protect freedom of **artistic** expression, or **artistic creation**, or freedom from censorship, each of which is a powerful statement for artists who may express themselves in ways that are avant-garde, or in a manner out of the mainstream of a particular society. Most would agree that the artist has an important role in reflecting a society to itself and others. While Bertolt Brecht famously went much further when he said “Art is not a mirror to hold up to a society, but a hammer with which to shape it,” many may agree more modestly that the role of the artist can also be to challenge a society to consider what it can become.

¹⁷ UN Document A/HRC/23/34; <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

In her 2013 report, Ms. Shaheed, put it is this way, “Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres.” She went on to add, “prior censorship should be an exceptional measure, taken only to prevent the imminent threat of grave irreparable harm to human life or property... Classification bodies or procedures may be resorted to for the sole purpose of informing parents and regulating unsupervised access by children to particular content...”

BEST PRACTICE

With respect to Freedom of Expression, the best practice is to provide explicitly for freedom of artistic expression/creation and freedom from censorship. A number of Member States provide for freedom of artistic expression in some form, including Argentina, Chile, France, Japan, Hungary, Moldova, Peru, Serbia, South Africa, Spain, Sri Lanka, and Zimbabwe. Several also explicitly prohibit censorship, including Andorra, Columbia, Japan, Paraguay, and Peru.

French national law specifically guarantees freedom of artistic expression. Japan’s Constitution provides that “Freedom of ... speech, press and all other forms of expression are guaranteed. No censorship shall be maintained...” Hungary’s Constitution provides not only for freedom of expression, but also “the freedom of ... artistic creation.” Moldova reports that “freedom of artistic expression is enshrined in a special law and part of Moldova’s Culture 2020 initiative.” Sri Lanka reports that “cultural policy confirms freedom of artistic expression.” Zimbabwe reports that its Constitution guarantees that “every person has the right to freedom of artistic expression ... and creativity.”

Chile reports that the Constitution provides for, "The freedom to create and disseminate the arts, as well as the right of authors over their intellectual and artistic creations of any type, for the period that the law specifies and which will not be less than that of the life of the entitled owner. The right of the author comprises the ownership of the works and other rights, such as (the moral rights) of the work, all this in conformity with the law." Argentina has similar provisions respecting artistic freedom and the right to copyright protection, and also reports that the censorship agencies that previously existed in the country were abolished after 1983.

Peru’s Constitution explicitly protects “freedom of intellectual (and) artistic creation,” and provides that freedom of expression includes “by any means of social communication whatsoever, and without previous authorization, censorship or impediment...” Andorra, Columbia and Paraguay also have a provision expressly prohibiting censorship.

South Africa’s Constitution also provides a broader right in Section 16, “Everyone has the right to freedom of expression, which includes freedom of the press and other media; freedom to receive or impart information or ideas; freedom of artistic creativity...” The Constitution of the Russian Federation provides “Everyone shall be guaranteed the freedom of literary, artistic, scientific, technical and other types of creative activity...” The Serbian Constitution provides for “freedom of artistic creativity” and the Law on Culture protects “freedom of expression in cultural and artistic creation.”

Spain's Constitutions proclaims "The following rights are recognized and protected: A) The right to freely express and spread thoughts, ideas and opinions through words, in writing or by any other means of reproduction. B) The right to literary, artistic, scientific and technical production and creation. "

LIMITATIONS ON AND CHALLENGES TO FREE EXPRESSION

Most Member States responding to the survey acknowledge there are limitations on the right of freedom of expression, certainly in respect of criminal behaviour, including hate speech that incites violence; libel and slander; and protection of children. Nigeria reports that freedom of expression is "moderated by responsibility."

Article 19 of the International Covenant on Civil and Political Rights expressly provides for limitations related to "respect of the rights or reputations of others," and "protection of national security or of public order, or of public health or morals." Article 20 provides that certain expressions should be prohibited by law, "propaganda for war," and "advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence."

As the Special Rapporteur pointed out, "A wide range of actors may create obstacles or impose restrictions to freedom of artistic expression and creativity. These include States, but also non-State actors in their own spheres of influence, such as mass media; broadcasting, telecommunications and production companies; educational institutions; armed extremists as well as organized crime; religious authorities; traditional leaders; corporations; distribution companies and retailers; sponsors; as well as civil society groups such as parents' associations."

Denmark notes that "fear of terrorism" is a challenge to freedom of artistic expression. This was highlighted by the fatwa against Salman Rushdie, as well as the recent horrific events at Charlie Hebdo in Paris and at a free speech public meeting in Copenhagen where terrorists specifically targeted artists who created works they found to be offensive. The Ministers of Culture of the 28 Member States of the EU issued a joint statement with regard to the tragic events at the Charlie Hebdo editorial office in Paris on 7 January 2015. Freedom of expression for artists was the core message:

"We, the ministers of culture of the European Union, do not accept terrorists' attempts to impose their own standards. Since time immemorial, the arts have been an inspiration for reflection giving rise to new ideas and fighting against intolerance and ignorance. It is the freedom of expression in a culturally diverse environment that brings these ideas into meaningful dialogue.

We, the ministers of culture of the European Union, stand in solidarity to defend the freedom of expression and vow to protect the rights of artists to create freely. "

Other Member States report other challenges. Botswana reports on the “challenges of a developing economy with poverty, a ‘negative perception’ of artists, and heavy reliance on mining and manufacturing.” In a similar spirit, Namibia outlines how the country lacks facilities such as theatres, art centres and art galleries (except in the capital city), limited resources of all kinds, and lack of capacity. Cuba reports that the long-standing U.S. economic blockade “limits freedom of artistic expression.” Paraguay reports that its major challenge was to find the means to promote a diversity of cultural expressions rather than relying on market forces alone. Burkina Faso reports that “the working conditions of artists” is a challenge to freedom of artistic expression. A number of the NGO respondents put forward a similar position that the difficult financial position of artists is an impediment to freedom of artistic expression.

Finally, some point to challenges faced by many regions or languages, including Sweden which noted the small market for works in the Swedish language.

On the civil society side, there are indications that expression may not be quite as free as stated in governing laws. In its latest Case List, January-June 2014, Pen International described 810 individuals in 90 countries who were the victims of harassment, imprisonment or worse. The majority of the cases involve journalists, but perhaps 20 percent are artists. Of this number, only a few were the subject of abuse as a consequence of their artistic expression, for the remainder the issues involved political commentary or writing that was only indirectly related to their artistic expression.

The Central African Observatory of Cultural Policies reports that artists throughout Central Africa are under pressure to support the mainstream political views, making it difficult for them to take an independent position, either in speeches or in their art. El Comité de Cuenteros de Medellín reports that while Columbia has freedom of expression, “in many cases this is ignored....” UAAV reports there are cases of censorship of visual art works in Spain. Other NGOs report there are constraints or pressures on artists to conform to a certain approach.

Launched in 2000, Freemuse is an organisation which advocates for freedom expression specifically for musicians. In 2014, Freemuse registered a total of 90 attacks or other serious violations of the right of musicians to freedom of artistic expression in 13 countries. According to Ole Reitov, Freemuse Executive Director “Silencing musicians with violence, imprisonment and intimidations not only violates the individual’s right to freedom of expression, it robs local and global communities of the joy and critical perspectives expressed through music.” Since it only reports on recorded and verified attacks, the absolute number is likely higher. The Freemuse report also raises the serious issue of self-censorship which can arise from the fear of repression or violence.¹⁸

PEN America Center recently conducted an international survey of writers to investigate how government mass surveillance influences them. The responses included a high percentage of writers of fiction, non-fiction and poetry. In the 2015 report, PEN found that concerns about

¹⁸ In a recent case in Canada, the Toronto Symphony Orchestra cancelled concerts of Ukrainian-born pianist Valentina Lisitsa over comments she made on Twitter about the situation in Ukraine. Civil rights advocates in Canada were alarmed at the decision and highlighted how this could lead to self-censorship. Other Canadian venues went ahead with scheduled performances of Ms. Lisitsa. The Canadian Press, April 8, 9, 2015

this surveillance were just as high (75 percent) among writers living in democracies as among writers living in non-democracies (80 percent). Self-censorship was high, with the following percentages of respondents reporting that “they had avoided writing or speaking on a particular topic, or had seriously considered it, due to concerns about surveillance”

Free Countries	34
Partly-Free Countries	44
Not-Free Countries	61

According to PEN America Center, “The levels of self-censorship reported by writers living in liberal democracies are astonishing, and demonstrate that mass surveillance programs conducted by democracies are chilling freedom of expression among writers.”¹⁹

The African Arts Institute acknowledged the strong Constitutional guarantees of freedom of creative expression, but reported a worrisome trend in South Africa. “In practice, there are constant attempts to shut down freedom of expression, leading to self-censorship. There are also actual attempts at censorship of artworks. (There is an) increasing perception that to benefit from public resources and opportunities, one has to silence one’s critical voice.” It also reports that, “the Protection of State Information Bill (2011), known as the Secrecy Bill – works to contradict the protection guaranteed by the Constitution as the Bill is focused on protecting state secrets and does not protect whistleblowers.... This vulnerability of state critics poses a serious problem for artists.”

In a 2014 book published by UNESCO and the Internet Society, *Fostering Freedom Online: The Role of Internet Intermediaries*, the authors reported on how government regulations, as well as company policies and regulations, are impacting on freedom of expression and privacy. Except in relation to the treatment of copyright protected material in the case of alleged infringement, the framework of the report is primarily around the right to express ideas and opinions, rather than artistic expression. Still, the report did note that “ISPs can be a single point of failure for expression online particularly when content or entire services are filtered (blocked from being accessed by the user) or networks are shut down locally or nationally. Because ISPs must be physically present in a country ... the extent to which they facilitate or restrict freedom of expression is most directly affected by laws, regulations and government actions compared to the other intermediaries” Further, the report noted “while search engines carry out content restriction on government request, they also restrict or modify search results for many other commercial and self-regulatory reasons...”²⁰

If implemented, the recommendations in the report for adequate legal frameworks that are developed collaboratively, further transparency, protection of privacy, accountability, education and the right for an aggrieved person to obtain redress, will have a positive impact on the freedom of artistic expression online.

A report on a 2013 conference on *Censorship, Taking the Offensive: Defending Artistic Freedom of Expression in the UK*, the range of interrelated factors was highlighted. “(The Conference) explored how social factors such as concerns about giving offence and public order have led to a

¹⁹ Global Chilling, http://www.pen.org/sites/default/files/globalchilling_2015.pdf, pg. 10-11

²⁰ Ibid MacKinnon, pgs 10-11

growing conservative climate. This, colliding with very current external factors such as reduced public funding and the drive towards private sector sponsorship, has made and may continue to make organisations, funders, artists and stakeholders increasingly risk averse in terms of cultural production.”²¹ Similar pressures are evident in Canada, most particularly around federal funding.

Le Syndicat français des artistes-interprètes in France reports there are growing pressures from diverse lobbies attempting to forbid certain exhibitions or performances for moral or religious reasons, and these are succeeding with some local authorities, which may use subsidies as a tool of censorship.

Public funding and artistic content

In public funding programmes, there can be rules that affect the nature of the content, including special target areas, gender equality and marginalised communities. Sweden reports rules around children and innovative culture. Denmark reports conversations around gender equality, whether immigrants or some communities have equal opportunities, or whether older and well-established artists have advantages or disadvantages. Argentina reports that legislation attempts to ensure there is appropriate content for children and minorities, as well as gender equity.

Paraguay reports, “Regulations for support to the arts have certain minimum requirements, but there is freedom of application, and decisions are based on principles of equality and non-discrimination, with the ultimate objective being recognition of the public interest in relation to art projects funded ..., in practice (we are working) to improve the criteria to create equal opportunities for artists who are outside urban centres, as well as indigenous communities.”

Most Member States reported there are strict rules which attempt to ensure equality of access and treatment, and prohibit discrimination. According to many responses, the most effective way to guarantee non-discriminatory access to funding programmes is to have a process that is public, and where decisions are made by experts or peers and are at “arms-length” from public officials. These elements were reported by Austria, Canada, Finland, Lithuania and New Zealand. Some report there is a right of appeal against a decision. It should be noted that one respondent reports that a peer assessment system is open to abuse if the peers simply take turns being the judges and recipients of support.

RECOMMENDATION

As recommended by the UN Special Rapporteur in the field cultural rights, Member States “should review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions and in cooperation with representatives of independent associations of artists and human rights organizations.”

²¹ <https://www.a-n.co.uk/news/conference-report-taking-the-offensive>

SECTION 7 – CONCLUSION

The *Recommendation concerning the Status of the Artist* was approved by the UNESCO General Conference at its twenty-first session in Belgrade, in October 1980. The Compact Disc, which would change the music industry significantly, was two years away from commercial use, and the competition between cable television and Direct-to-home satellite television to bring consumers in North America and Europe the “500 channel universe” was only starting.

Given the pace of technological changes that have revolutionised the production and distribution of virtually every form of artistic work in every cultural sector, it is perhaps remarkable that the *Recommendation* remains relevant 35 years after its adoption. By most accounts, it is as relevant as it was in 1980. In the past few years, at least two Member States have implemented Status of the Artist legislation and a number of others report active discussions focused on ways to improve the economic and social status of artists. More importantly, 87 percent of the survey participants indicated the 1980 Recommendation is a tool for ongoing policy development.

In the past decade, there has been substantial progress on some of the issues, on others the progress has been more modest.

Initiatives for social protections for artists have occurred in every corner of the globe and for every type of artist. There are examples of new systems which extend general social programmes to freelance artists, government sponsored parallel schemes, and programmes organised by artists’ associations. There are new “special recognition” systems that benefit individual artists, importantly in least developed and developing countries. Some positive initiatives to promote artists’ mobility have also been implemented, including special artist visas, and these have been particularly encouraged by the 2005 Convention.

But, there is much more that remains to be done to achieve the objectives of the Recommendation. Some of the special social programmes are at risk of austerity measures, and the reality for most artists today is that it is very difficult to cross borders to pursue their profession.

Given the huge importance of the Internet for arts and culture, there are however, few policy measures designed to ensure there is a rich diversity of cultural expressions available through the Internet. While it is true at the moment that, when you roll out the digital infrastructure the local content follows, the increasing corporate control of key parts of the Internet will lead to homogenisation unless there are strong counter measures. Finally, there is an urgent need for stronger efforts to ensure that artists are properly compensated when their works are made available through the Internet.

SECTION 8 – RECOMMENDATIONS

Section 1

1. The *Recommendation concerning the status of the artist* remains as relevant today as it was in 1980. Given the complex and nuanced nature of the issues it addresses, the impact of technological change on the world's artists, and the complicated and interrelated nature of governments, a training module specifically on the Recommendation could be envisaged. Given the potential synergies with the 2005 Convention, this could be done as part of the capacity building initiatives related to the Convention. When developing policies which may touch on the circumstances of artists, Member States should collaborate with artists and their associations and relevant non-governmental organisations to help ensure their laws and policies are as supportive as possible for professional artists.

Section 2

2. Status of the Artist is fundamentally about acknowledging the important role that artists play in every society, and promoting laws and policies that encourage creative expression and ensure equitable treatment for artists by responding to their unique circumstances and the atypical manner in which they work. Member States should continue to use the Recommendation as a reference when they are developing cultural policies (as defined in the 2005 Convention)

Section 3

3. The Internet is rapidly becoming the most important vehicle for the distribution of a wide range of cultural expressions, from literature, to music, to movies, to interactive digital media. UNESCO may wish to organise a conference of Member States and other relevant bodies including artists' associations that would focus exclusively on how to ensure: a) there is a rich diversity of cultural expressions available on the Internet; b) there is reasonable access for everyone to this content; c) artists are fairly compensated when their material is used.

Section 4

4. Most survey respondents express openness to the cross-border movement of artists, as a way to promote cultural diversity, intercultural dialogue, and to enrich all of the artists involved. But, in many cases, there is a gap between this objective and the reality that even artists who are successful can find it difficult to cross borders. In order to facilitate cross-border movement, Member States and UNESCO may wish to work collaboratively with the artists' associations and relevant NGOs and INGOs. These associations share the objective and have access to local information, such as the professional standing of an artist, which can help inform effective decision-making.

5. Artists are the creators of the cultural expressions that are the subject of the 2005 Convention. Measures aimed at promoting the status of artists, including those in the 1980 Recommendation, are both called for in, and would help achieve the objectives of, the 2005 Convention. UNESCO and Member States should seek ways to achieve synergies in the implementation of these instruments. They should engage artists, their associations and other relevant NGOs and INGOs in this process since these groups understand the nuances that arise in the relatively complex issues.

Section 5

6. While artists work in an atypical manner, they should be treated equitably to other workers for purposes of social programmes. As this report shows, there are many different ways to provide appropriate social protections for artists, depending on the state of development of each society. Member States should explore the appropriate best practices from elsewhere as they consider new policies in this field.

Section 6

7. As recommended by the UN Special Rapporteur in the field cultural rights, Member States “should review critically their legislation and practices imposing restrictions on the right to freedom of artistic expression and creativity, taking into consideration relevant international human rights law provisions and in cooperation with representatives of independent associations of artists and human rights organizations.”