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Cultural Organization



Diversity of
Cultural Expressions

POLICY &
RESEARCH

Culture & working conditions for artists

Implementing the
1980 Recommendation
concerning the Status
of the Artist

This study, consolidated by the 2005 Convention Secretariat, is based on an analysis of submissions to the 2018 global survey on the implementation of the 1980 Recommendation concerning the Status of the Artist by UNESCO Member States, non-governmental organizations (NGO) and international non-governmental organizations (INGO). The analysis was carried out by Garry Neil (Canada), a leading international cultural policy expert and former Executive Director of the International Network for Cultural Diversity (2000-2011). In his career, M. Neil has also been CEO of the Association of Canadian Publishers (ACP) and ACTRA (Alliance of Canadian Cinema, Television and Radio Artists). He recently authored *Canadian Culture in a Globalized World* (Lorimer, 2019).

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**UNESCO-Aschberg Programme
for Artists and Cultural Professionals**

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Introduction

Creativity and innovation. The unique and renewable resources that are fuelling our knowledge-based societies, generating new forms of revenue and employment, in particular among youth. This is what the data tells us. It shows that the industry sectors making up the creative economy generate annual revenues of US\$2.250 billion, global exports of over US\$250 billion, often generate up to 10% of national GDP, provide nearly 30 million jobs worldwide and employ more people aged 15-29 than any other sector. Nearly half of the people working in the cultural and creative industries are women and the majority have attained a tertiary level of education higher than the number of people in non-cultural occupations. Influencing income generation, job creation and export earnings, the cultural and creative industry sectors making up the creative economy have become a major driver of economies and trade strategies in developed and developing countries. But this is only one part of the story.

At the heart of the cultural and creative industries are people. Artists and creators who innovate, challenge norms, inspire and entertain. Their works generate new social energy, confidence and engagement that can improve the everyday lives of people. Their innovations and creative expressions drive development processes that can widen people's choices and inspire them to imagine alternative futures. As such, the cultural and creative industries can contribute to the promotion of peace, democracy, human rights, fundamental freedoms, gender equality and the rule of law.

Indeed, the milestone United Nations General Assembly Human Rights Council report by Special Rapporteur, Farida Shaheed, recognized that artistic expression and creativity are the cornerstones of the functioning of democratic societies. She argued that artists and creators need laws and regulations that promote artistic freedom, provide for their economic and social rights, that public sector financing is essential to make space for a diversity of cultural expressions.

Shaheed warned that a new form of “market censorship” imposed by corporate consolidation was reducing the diversity of funding sources that could guarantee artistic autonomy and open spaces for all creative productions.¹

Inspired by Shaheed’s report, others have been published² that continue to uncover new challenges for artists and creators that need to be addressed by cultural policy makers around the world, especially in many countries of the global South where there continues to be a deep reliance on informal cultural systems, processes and institutions. Such environments leave many artists and cultural professionals beyond the reach of governance, regulation and investment opportunities, which is particularly harmful when considering the precarious state of artists’ employment and social status.

As reported by UNESCO³, one fifth of those employed in cultural occupations (20%) work part time and the gender difference is substantial with around 28% females compared to 18% men in part time culture sector jobs. They work primarily on a contractual, freelance and intermittent basis and their income continues to decline, fluctuate and remain uncertain. The result is lower tax contributions, leading to lower access to social security, pensions and other welfare provisions. Indeed, the largest subsidy for the arts comes not from governments, patrons or the private sector, but from artists themselves in the form of unpaid or underpaid labour. This requires new thinking to revise labour and social protection frameworks that take into account the unique and atypical manner in which artists work, especially female artists.

The digital environment has brought major changes to the way artists create and the way artistic works are made available to audiences, both domestically and globally. This has been further complicated by the rise and market concentration of large platforms as well as a monopoly on artificial intelligence (AI). Together this opens many new questions for the protection of artists rights and freedoms, the discoverability, recognition and fair remuneration for their

1. Shaheed, F., *The Right to Freedom of Artistic Expression and Creativity*. United Nations General Assembly, Human Rights Council, 2013.

2. UNESCO, *ReShaping Cultural Policies: Advancing Creativity for Development*, 2018.

3. See “Precarious Situation for Women Working in the Field of Culture” (UNESCO, UIS, 2017). See also “Challenges and opportunities for decent work in the culture and media sectors” (ILO, 2019).

creative works, especially for women given the persistent gap between women and men in terms of salary levels, access to funding and key creative decision-making positions in all sectors of the creative economy. The gender pay gap means that independent female artists are even more prone to pension poverty than independent male artists since low incomes mean low pensions.

The considerable escalation of migratory flows and refugee crises has resulted in new global security concerns and new restrictions on freedom of movement and transnational mobility of artists that is being used in some countries as a tool of repression and censorship. This is to the detriment of obligations governments take when they ratify the UNESCO *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* (2005). Becoming a Party to the 2005 Convention means a commitment to putting in place policies and measures that facilitate equitable access, openness and balance in the flow of cultural goods and services as well as that promote the free movement of artists and cultural professionals.

Lastly, there has been an increase in threats to human rights and artistic freedoms that are weakening the fabric of democratic societies. For artists and cultural professionals, particularly those living in conflict situations, these threats range from censorship by governments, corporations or political, religious or other groups, to imprisonment, physical threats, and even killings. The digital environment has also brought new threats to rights and freedoms. Among them is online “trolling”, where threats from other users can intimidate artists into withdrawing their work. Growing digital surveillance is also having a corrosive effect on artistic freedom.

New policy solutions need to be found to address these and other emerging challenges to the status of artists, to their rights to create without censorship or intimidation. To their right to have artistic work supported, distributed and remunerated. To their rights to freedom of movement and of association. To their rights to social protection and to citizens’ rights to participate in cultural life of their choosing.

UNESCO undertook an investigation to track down such policy solutions or innovations through a global survey it launched in 2018.⁴ This global survey was designed to capture what UNESCO Member States are doing to address challenges artists and cultural professionals are facing in three areas: the digital environment; transnational mobility and human rights and fundamental freedoms including social and economic rights, gender equality and freedom of artistic expression.

Policy direction to help address these challenges are proposed in the *Recommendation concerning the Status of the Artist* universally adopted by UNESCO Member States in 1980 (1980 Recommendation) and in the UNESCO 2005 Convention. Both instruments call upon governments to introduce policies and measures that would: improve the employment, working and living conditions of artists, especially to counter the prejudicial effects of new technologies; recognize the international dimension of their work and provide all artists and creators with the means possible for free international movement; and enable them to exercise their profession free from censorship and gender based discrimination.

As we approach the 40th anniversary of the adoption of the 1980 Recommendation and the 15th anniversary of the 2005 Convention, the global survey offers a renewed opportunity to assess its impact, evaluate trends and challenges over time, and hopefully inspire future cultural policies⁵. More to this, the results may also offer evidence to demonstrate how the implementation of this Recommendation can contribute to attaining several of the United Nations' 2030 Sustainable Development Goals, in particular those relating to "Gender equality" (SDG 5), "Decent work and economic growth" (SDG 8⁶) and "Reduced inequalities" (SDG 10).

4. A global survey was sent to UNESCO Member States in June 2018, ending on 31 January 2019. Fifty-two Member States, 39 non-governmental organizations and two international non-governmental organizations responded. When relevant, additional desk research was conducted to complement information and data collected.

5. The Global Survey on the implementation of the 1980 Recommendation is launched every four years. It addresses Member States, non-governmental organizations (NGOs) and international non-governmental organizations (INGOs). Previous consultations took place in 2011 and 2015. See text of the 1980 Recommendation in Annex 1 and Survey Questionnaire in Annex 2.

6. Sustainable Development Goal (SDG) Target 8.5, more specifically, seeks to "By 2030, achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value".

The response rate to the survey remains (too) modest and calls for caution in the analysis. One notes with great surprise, for example, the extent to which “artists” are actually often absent from the various cultural policies or programmes that are referred to, covering cultural expressions, arts institutions, cultural entrepreneurship or cultural and creative industries. And yet, the present report provides valuable information that helps to put artists and creative professionals back at the heart of cultural policy-making.

The evidence collected through the global survey reveals that while there is a growing number of Member States that have developed specific legislative frameworks to address artists’ issues, through explicit Status of the Artist legislation, most continue to develop specific measures through their national cultural policies. This means, unfortunately, that the decades-long calls for integrated or transversal approaches to the status of artists legislation that would involve the ministries of labour, social affairs, culture, education, communication, foreign affairs and justice, taxation and domestic affairs have been left unheard by the majority of countries around the world.

But it is not all bad news. The results of the survey show that progress has been made in four main areas:

- Design of new or revision of existing copyright laws and tax measures that seek to fairly remunerate artists in the digital environment;
- New programmes in the global South extending, for the first time, social benefits for artists including retirement pensions, health insurance and medical care, and even unemployment insurance;
- Multilateral and regional economic agreements as well as new cultural cooperation agreements and initiatives in Latin America, Asia and throughout Africa that have led to some improvements in travel and work opportunities for artists. The main challenge remains for countries to revise their visa regulations that currently do not allow any kind of paid work. This means artists from the global South can travel to study, hold an exhibition, and participate in a residency. But they cannot perform for money, for example;

- Advances are being made to promote gender equality and women's empowerment, including new programmes mandating equal pay for equal work, with some countries working to achieve a 50-50 balance in creative decision-making positions by 2030.

Progress towards the implementation of the 1980 Recommendation and the 2005 Convention calls for continued action to collect information on cultural policies and measures aimed at promoting the status of the artist; and also, to provide technical assistance to countries to revise their legislation, policies and measures to recognize the professional status of the artists, to secure their economic and social rights and promote artistic freedom.

Efforts have already been made in this direction. Reporting areas under the two normative instruments have now been aligned and streamlined. The Aschberg Programme for Artists and Cultural Professionals has provided an opportunity for UNESCO to strengthen its support to countries that are committed to translating the provisions of the 1980 Recommendation into policies and measures for their artists. It is currently assisting countries like Mauritius or Costa Rica in developing legislative frameworks for the valorization of artists' work and the establishment of systems of social protection for artists. Lastly, it is facilitating a better global monitoring of this 1980 Recommendation, as illustrated by this new report In partnership with professional organizations and sister United Nations agencies, such as the International Labour Organisation (ILO), more can be done.

Artists do not claim for special rights, but equal rights. May this study help governments around the world to advance the rights and working conditions of artists, based on principles of human rights and fundamental freedoms, and support UNESCO's efforts towards the achievement of this shared objective.

Inspired by the Recommendation concerning the Status of the Artist adopted in Belgrade in October 1980 by the UNESCO General Conference, Senegal very early on embarked on the preparation of a legislative text aimed at providing the country with a legal framework regulating artistic creation and culture professions.

The Law on the Status of the Artist aims to complement achievements such as freedom of association and trade union rights, which are recognized by the Constitution. It intends to remedy the weak structuring of the cultural sector, which reflects the lack of status allowing artists and other cultural professionals to enjoy the benefits and advantages that the Labour Code grants to almost all other categories of professions in terms of social benefits, protection against risks or the right to health, among others.

While the determination of different governments to develop and introduce this instrument into the legislative process has never wavered, the expected text has remained in draft form for decades. By ordering its finalization according to a precise timetable, the President of the Republic has now made it possible to complete the process.

After drafting by a multidisciplinary committee of experts, the draft law went through various stages of validation by the artistic community and the ministerial departments concerned. The draft law resulting from this process has been submitted to the government on 10 October 2019, before onwards transmission to the National Assembly for adoption. The law essentially deals with the following items:

- recognize the important role of artists in society;*
- protect the freedom of expression of artists and recognize the rights of professional and trade union organizations;*
- develop texts and programmes that encourage artistic expression;*
- implement an arts education and training policy;*
- promote copyright and related rights;*
- regulate the employment, working and living conditions of artists;*
- grant artists a social status equivalent to that of other workers, particularly in terms of health and insurance.*

I hope that with this new law, Senegal will open, on the basis of fair and equitable principles, a new chapter in its relations with artists and cultural professionals.

Abdoulaye Koundoul

Director of Arts, Ministry of Culture and Communication (Senegal)



Policy and legislative
frameworks to improve
the status of artists

1

In 1980, 35 years prior to the adoption of the 2030 Agenda for Sustainable Development, UNESCO's Member States identified the need for a framework to create and sustain "a climate encouraging freedom of artistic expression" and "the material conditions facilitating the release of this creative talent" for arts "in their fullest and broadest definition" to become an integral part of life. The 1980 *Recommendation concerning the Status of the Artist* (1980 Recommendation) recognizes that "the vigour and vitality of the arts depend, inter alia, on the well-being of artists both individually and collectively", and sets out recommendations to improve the status of the artist, both in terms of the freedoms and rights (moral, economic and social) they should enjoy and in the place they should hold in society, in view of the important role they play.

The 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 organizations that can represent and defend the interests of their members. The 1980 Recommendation does not call on States to grant artists specific privileges, but rather to grant them analogous rights as any other socio-professional group whose work has specific characteristics that need to be addressed through special measures. Such efforts would help to address the continuing lack of decent employment opportunities (Sustainable Development Goal 8) in the cultural sector, particularly due to austerity measures in the public financing of cultural institutions and in the digitisation of production, distribution and consumption of cultural expressions⁷.

**The 1980
Recommendation
calls upon Member
States to improve
the professional,
social and economic
status of artists**

7. *Challenges and opportunities for decent work in the culture and media sectors*, ILO Working Paper No. 324, 2018, available at https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_661953.pdf.

Some States group all measures explicitly targeting artists under a law dealing entirely with the status of the artist, others opt for targeted legislation establishing specific provisions for professional artists, and many devote distinct sections of their cultural policies to this issue. Dedicating a law specifically to the status of the artist, rather than scattering provisions in different legislation, is likely to reinforce the message sent by governments to their citizens about the importance they attach to the role of professional artists in their countries. However, such laws require inter-ministerial consultation processes that are, as will be seen later in this study, often slow and complex.

The 1980

Recommendation does not call on States to grant artists specific privileges but rather to grant them the same privileges as any other socio-professional group

Status of the artist laws

The general purpose of status of the artist laws is to define who is an artist (and often to establish a registration system), to regularize their status as a professional, and to acknowledge the atypical way in which they work. Most contain provisions which recognize artists' associations and authorize the negotiation of agreements on compensation and working conditions. The most comprehensive laws include a wide range of concrete policies and measures that address specific issues and challenges faced by artists. Below are examples that illustrate how countries have (a) brought several components under one legislative framework and/or (b) been working to create new status of the artist laws.

Existing laws

Morocco's Status of the Artist legislation (2003) remains one of the most comprehensive, with a wide range of practical provisions, including the registration of artists, the requirement for a written contract between the artist and employer, with terms that respect minimum wage requirements and that include remuneration and termination provisions. It also ensures that performing artists with term contracts are considered employees under labour law.

The legislation also: authorizes artists to form professional associations and grants them the right to conclude collective bargaining agreements; regulates talent agents/managers, including their rates; regulates the employment of children in the arts and entertainment industry, and addresses the unique health and safety issues faced by certain artistic professions.

New measures continue to be added, including through amendments made in 2016. These amendments were intended to consolidate the achievements resulting from the original legislation introduced in 2003, which had granted the artist a symbolic and moral status, and created favourable conditions for the regulation of the profession. It is significant that the 2016 amendments make its guiding principles explicit: (i) artists' fundamental social mission and their role in enriching cultural, artistic, social and economic life and in developing individual

and collective awareness; (ii) the effective contribution of cultural and creative industries to development; (iii) the strong involvement of artists and cultural professionals in strengthening cultural rights, consolidating cultural diversity and developing creative and cultural industries. The 2016 amendments include several provisions which bring the 2003 law into line with the provisions of the Moroccan Labour Code. Main provisions extend social benefits protection for performing artists to other cultural professionals, in order to reduce their generally precarious work situation, provide support for an artist who is in a difficult financial situation, and ensure freedom of artistic creation.

The 2011 Korean Artists Welfare Act was designed to protect the professional status and rights of artists as a means of contributing to the promotion of arts development. The endorsement of this law is significant in that it recognizes the contribution of professional artists to the development of society and guarantees their social benefits. The Artists Welfare Act calls on national and local authorities to design and implement measures for promoting artists welfare within their budgets. Oral contracts, still the most common contract in the art world, often put artists in a vulnerable position in protecting their rights and interests. In 2016, the Artists Welfare Act was amended to address this issue and requires those who use artistic services to enter into a written contract with artists. The Korean Ministry of Culture provides 56 model contracts in nine different artistic fields, which set out each party's obligations and responsibilities, the scope of work, and the agreement on compensation. The Korean survey on the status of the artist shows a significant improvement in the number of artists who have obtained a written contract for their services, increasing from 26% in 2015 to 37% in 2018.

The Korean Artists Welfare Foundation was also established in 2013 under the Artists Welfare Act. In 2018, its annual budget of KRW 27,463 million (US\$23.4 million) made it possible to insure more than 3,000 artists and to provide individual subsidies for 4,500 unemployed artists. In June 2019, the government announced a plan to offer emergency loans to a maximum of 1,200 artists for health emergencies, tuition or personal issues. The total amount cannot exceed KRW 5 million (US\$4,150), with an interest rate of 2.2%.

The general purpose of status of the artist laws is to define who is an artist, to regularize their status as a professional, and to acknowledge the atypical way in which they work

The Ministry of Culture is reviewing the introduction of unemployment insurance for self-employed artists in close cooperation with the Ministry of Labour by granting special treatment under the Labour Insurance Law.

One of the most recent developments in status of the artist legislation is found in Spain. After a vigorous advocacy campaign spearheaded by leading artists' associations, in September 2018 the Congress of Deputies unanimously adopted 75 measures to improve the status of artists and other cultural professionals, particularly with regard to tax, labour and social protection issues. Measures were presented in the form of a report⁸, which included a detailed diagnosis of the sector's challenges. Royal Decrees 26/2018 and 302/2019 established urgent measures for artistic creation and cinematography. While Royal Decree 26/2018 recognizes the intermittence, heterogeneity and instability of artistic professions; addresses fiscal (including the reduction of the VAT rate) and social security measures by regulating contributions during periods of inactivity and providing protection to pregnant women or breastfeeding mothers, up to nine months after birth; Royal Decree 302/2019 establishes compatibility between the retirement pension and the collection of rights derived from intellectual property, which had been a very controversial issue in previous years.

Laws under discussion

Status of the Artist laws are currently being developed in Bolivia (Plurinational State of), Comoros, Cyprus, Djibouti, Mauritius, Namibia and South Sudan. As it requires wide consultation with professionals working in the cultural and creative sectors and complex inter-ministerial consultation processes, the development of this type of law is time consuming. Discussions surrounding the development of an Artist Law in Bolivia began in 2017, when commissions were created for all of the country's artistic sectors. Although the draft law has not yet been put to the artistic community for comments, the Ministry of Culture has indicated it is committed to continuing the consultation process, to reaching a consensus with the different artistic sectors and to sending a draft Law on the Status of the Artist to the Legislative Assembly.

8. http://www.congreso.es/backupoffice_doc/prensa/notas_prensa/61825_1536230939806.pdf

In the past decade, many West African countries have developed Status of the Artist legislation that recognizes the artist's professional status and includes additional measures. Building on existing laws and following the creation of the Steering Committee for the Status of the Artist in 2013, Senegal is in the process of finalizing a Status of the Artist Law that will apply to artists and cultural professionals. The objectives of the law include recognizing the important role of artists, protecting their freedom of expression, recognizing the rights of artists' associations, implementing a new arts training policy, promoting copyright and neighbouring rights, improving the working conditions of artists, and ensuring artists have social rights equivalent to other workers through the extension of health and social systems. The main provisions of the law will focus on the introduction of the presumption of employee status, the creation of a social security scheme for artists, the creation of a "House of the Artist", a special tax system and a set of sanctions. A workshop was held in July 2019 with cultural professionals, and officials from the Ministry of Culture, the Presidency of the Republic of Senegal, the Economic, Social and Environmental Council, the National Assembly and other ministries to finalize a preliminary draft that will be presented to artists and cultural professionals before its transmission to the General Secretariat of the Government to initiate the institutional process.

The Republic of Mauritius' Ministry of Arts and Culture, with support from UNESCO, launched the Status of Artist Law Project in 2016 to draft new legislation enabling the professionalization of artists in Mauritius, Rodrigues and the outer islands. The draft legislation will: establish their professional status; improve their economic, social and working conditions through the introduction of preferential treatment measures; and recognize their role in the sustainable development of the islands. Supporting the country's cultural and creative industries to reach their full potential is key to the project's success. Another aim is to create an enabling environment for the professionalization of artists as they move from the informal to the formal economy. The draft law proposes the establishment of the National Body for Professionals in the Arts (NBPA) under the Ministry of Arts and Culture. NBPA would be independent in order to ensure that the registration and promotion of artists, as well as the allocation of funds, follow the 'arm's length' principle based on expertise and peer assessment, in a process involving both the artistic community and the Ministry of Arts and Culture.

Targeted Legislation Establishing Specific Provisions for Artists

While more States are passing omnibus legislation on the status of artists, the majority continue to develop legislation targeted at specific artist issues. In Latin America, Eastern Europe and North Africa, States have specific laws governing the registration of artists which generally operate in parallel to rules governing social security systems and thus can extend benefits of various kinds to artists, typically with public subsidies and contributions from the artists and their employers. Below is a series of cases that illustrate the different economic and social security measures introduced by States in recent years.

Income and Tax Measures

While some artists, including leading Hollywood, Bollywood and Nollywood stars, and the foremost names in music, literature, visual arts, design and other cultural sectors, can earn substantial income, the overwhelming majority of artists earn less than most other workers. The largest subsidy for the arts comes not from governments, patrons or the private sector, but from artists themselves in the form of unpaid or underpaid labour.

Definitive data collected over many years in the global North consistently show that while artists tend to be well educated, they earn 20-30 % less than other workers. Surveys and anecdotal data from every continent and every region, particularly from artists' associations, confirm this general conclusion.

The 1980 Recommendation invites States "to take into account, in their taxation system, the particular conditions of artists' work and activity" in response to the "uncertainty of artists' incomes and their sudden fluctuations, [...] the special features of artistic activity and [...] the fact that many artistic callings can be followed only for a relatively short period of life".

States providing exemptions or special rates for artistic income including Algeria, Austria, Lithuania, Montenegro, Norway and Slovenia. Perhaps the most famous measure that benefits artists is Ireland's tax exemption for creative income, introduced in 1969. Prior to 2006, the exemption applied to all earned income, but it is now capped at €50,000 per annum. It applies to books and other writings, musical compositions, plays, paintings and sculptures that are original and creative, and that are recognized as having cultural or artistic merit. Earnings from these works are exempt from income tax from the year in which the claim is first made.

In Canada, the province of Québec, has an exemption for income derived from copyright royalties, including neighbouring rights and the public lending right. The exemption is a sliding scale to a maximum of CAD 60,000 and applies exclusively to Québec's income tax and not to the federal Canadian income tax. Above this amount, copyright income is taxed normally. Setting a reasonable upper limit of non-taxable copyright income ensures that only those professional artists most in need of the incentive benefit from the deduction.

In many States, grants paid to artists from public agencies and arts' councils are specifically exempt from income tax. In other countries, all public grants, including those received by artists, enjoy an exemption depending on their purpose and duration. Aside from Least Developed Countries, most States have public programmes that provide grants to artists.

Building on its 1996 Law on the status of an artist and the status of an organization of artists (amended in 2010), Lithuania implemented a range of legislative acts and programmes specifically targeting artists. These include tax relief for a studio/workshop, access to social benefits, the right to qualify for a special pension and the right to be sponsored by tax-free income from permanent residents in Lithuania. From January 2017, Lithuanian residents are thereby able to donate up to 2% of their income tax not only to organisations eligible for sponsorship, but also to individual artists. Eligible artists include writers, painters, composers, authors, translators, interpreters, designers, architects, popular artists and photographers. This sponsorship is tax-exempt and must be used for artistic creation.

The largest subsidy for the arts comes not from governments, patrons or the private sector, but from artists themselves in the form of unpaid or underpaid labour

In a number of States, artists are exempted from consumption taxes (Value Added Tax, Goods and Services Tax, etc.) or may enjoy a preferential rate. However, there is no general pattern and the situation can be complicated. Artists may enjoy exemptions or special rates equivalent to other categories, such as small traders, or to socially beneficial goods or services. Artists may otherwise be exempted explicitly from the system. For some, this may not be advantageous, as they are still required to pay tax on supplies and services they acquire to create their work. The situation may even vary between cultural sectors within States.

The income of artists can fluctuate greatly from year to year. For example, a writer may spend several years researching and writing which will only generate income when it is later published or made into a movie. While this income is compensation for many years of research and writing, in many States it is fully taxed in the year it is received. As most income tax systems have progressively higher tax rates as income increases, the result is that artists pay more taxes than if the same total income had been divided into equal amounts over each of the years of research/writing and distribution. Income averaging can thus be a valuable mechanism to reduce the tax burden, in response to the atypical manner in which some artists earn their income. Australia, Bulgaria, Czechia, Denmark, Finland, France, Germany, Hungary, the Netherlands, Norway, Spain and the United Kingdom each have income averaging measures that apply to artists with fluctuating incomes, either specifically or as a measure applicable to all taxpayers with a similar income pattern. In the Canadian province of Québec, a self-employed artist may purchase an income-averaging annuity, which allows them to spread, over a maximum period of seven years, the tax applicable on artistic income in excess of CAD\$60,000 received in any year.

***The income
of artists can
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The 2018/2019 Spanish Royal Decrees provide that, in regards to taxation, artists can average their fluctuating income over time to reduce their total tax burden, can enjoy special treatment in relation to the Value Added Tax, and can benefit from special rules concerning expenses which also reduce the tax they are required to pay. While those in receipt of a public pension generally cannot continue to work, artists are now exempt and thus may continue to earn creative income and collect royalties while receiving a public pension. Social benefits,

including maternity and parental leave, have been extended to artists and they may continue in the public benefit system on a voluntary basis even during periods of non-working.

Sweden's income averaging system is slightly different, whereby creative artists and writers with exceptionally high sales, or higher than normal royalties generated from copyright (greater than 50% higher than in either of the two preceding years), to open a special bank account and use this income in the following six years, with taxes paid only on withdrawal.

Social Benefits

Recognizing artists as workers means giving them comparable legal, social and economic benefits to those enjoyed by other workers, while considering the particular circumstances of their activity. In many countries, artists who are struggling can benefit from public systems that support all citizens, regardless of their occupations. In some cases, however, an artist's circumstances can be taken into consideration through special provisions that allow the artist to continue creating and selling their work or through special programmes that apply only to artists.

In Austria, improving the status of artists is included as a core principle in the Federal Arts Promotion Act's guidelines. The federal government has enacted two laws: the Artists' Social Security Fund Act (2000) and the Artists' Social Security Structure Act (KSVSG) (2011) which establish social security programmes for artists. These are funded by the State, the artist and their employer. The Artists' Social Insurance Fund (KSVF) was set up to support self-employed artists. It awards grants for social insurance contributions by self-employed artists and, in cases of special hardship, also pays benefits. Self-employed artists can also apply for a grant to fund their health contributions, accident insurance and pension. To be eligible for the KSVF, artists must be insured through the Social Insurance Institution for Commerce and Trade (SVA). The 2011 Artists' Social Insurance Structure Act extended the scope of the SVA's responsibilities to include legal responsibility for all social security inquiries. SVA employees in all offices provide artists with comprehensive information regarding contributions, health, pension, and accident insurance, as well as unemployment insurance. In addition, a special legal advisory service for artists was re-established in 2015.

***An artist's circumstances
can be taken into
consideration through
special provisions***

In 2017, the Ministry of Culture of Albania released the report *Culture 2013-2017*.⁹ It provides an overview of projects supported by the Ministry in different cultural fields. Among the initiatives listed as contributing to the revitalisation of the cultural sector are a draft law on pensions for artists. Pension supplements would be given to artists recommended by a body of experts from the Ministry of Culture. Other initiatives include a new social benefits scheme and measures to facilitate the development of arts professions and to ensure a system of career progression and competitiveness for artists.

9. https://issuu.com/min_kultures/docs/layout_albiona

In accordance with the 1980 Recommendation concerning the Status of the Artist, the Spanish Government approved a set of measures to support artistic creation (Royal Decree Law 26/2018 of 28 December and Royal Decree 302/2019 of 26 April) in 2018. It establishes a legal framework that ensures the necessary conditions for the respect and development of artistic works, as well as the economic guarantees to which artists are entitled as cultural workers, as stipulated in the Recommendation.

This new framework addresses three main demands made by representatives of the cultural sector over the years: a taxation scheme within the sector, labour and social security protection and compatibility between pension benefits and copyright income. In so doing, it improves the living and working conditions of our creators while recognizing their contribution to the cultural identity and spiritual heritage of our societies.

For the first time, we have addressed the possibility of aligning the retirement pension with creative artistic activities for which intellectual property rights are collected, a legitimate claim that has been reiterated in recent years. In addition, among other fiscal measures, indirect taxes have been reduced on certain essential services in the cultural industries, in order to encourage artistic creation, the growth of the cultural industries and the dissemination of and access to culture for citizens.

We believe that these first steps are essential and mark the path we must follow for improving the working conditions of Spanish creators, for professionalizing the sector and for contributing to the development of our cultural and creative industries.

Adriana Moscoso del Prado Hernández

Director General of Cultural Industries and Cooperation
Ministry of Education, Culture and Sport (Spain)

Distinct sections of national cultural policies

While some States have specific measures that address artists' unique circumstances, many integrate status of the artist measures into their national cultural policies. Yet, all too often cultural policies make extensive reference to cultural expressions, arts institutions and cultural industries without explicitly referring to the status of artists. Below is a series of cases that illustrate more specific references to the status of the artist in general cultural policy frameworks.

Although Pakistan has not yet ratified the 2005 Convention, the country's first comprehensive film and culture policy, announced in 2018, was inspired by the 1980 Recommendation and contains guidelines and direct funding schemes to secure artists' social and economic benefits, including through Artist Assistance and Artists Welfare Funds. The main objective of the Fund is to provide financial help to artists who are impoverished due to old age, health condition, or otherwise handicapped from accident or disease. The President of the Republic chairs the Steering Committee for the Artists Welfare Fund and approved a PKR 10 million (around US\$65,000) budget in 2018. In 2019, the Punjab government launched an Artist's Health Insurance Card to provide coverage for chronic illnesses. Artists can receive free medical treatment worth PKR 400,000 (around US\$2,500) every year. Artists aged 30 years and over who have least 10 years' experience in a relevant field, are eligible to apply for the health coverage. In the first phase, 10,000 artists will be issued health cards.

Jamaica is currently finalizing a national cultural policy that builds on policy recommendations from its 2003 National Cultural Policy *Towards Jamaica the Cultural Superstate* and its National Development Plan Visions 2030.

While some States have specific measures that address artists' unique circumstances, most integrate status of the artist measures into their national cultural policies

The current policy recognizes the need to provide artists with control of their own creations and revenues. It encourages the modernisation of centres/institutions responsible for professional training in the arts, and advocates international agreements to attract foreign expertise and investment in cultural industries. It also encourages partnerships with local and foreign artists, co-production agreements and residencies to develop Jamaican artists. The Jamaican Ministry of Culture, Gender, Entertainment and Sport provides an e-registry of entertainment practitioners and companies. Registration is not mandatory and its main purpose is to provide information on those registered, giving them greater exposure and facilitating contact with hiring and booking agents.

Colombia's 1997 General Culture Law establishes that the State shall consider the creator when it formulates cultural policies. The law contains articles related to social security and pensions for artists and cultural managers, as well as copyright and the right to share royalties for reproduction of works. One of the main strategies of Colombia's 2008 arts policy¹⁰ is the professionalization of artistic fields.

In this context, Colombia launched Colombia Creativa in 2008. It was a national programme, run by the Ministry of Culture, the Colombian Institute for Student Loans and Study Abroad (Icetex), the Ministry of Education, the National Training Service (Sena) and Acofartes (Colombian Association of Arts Faculties), that promoted the well-being of artists by recognizing their professional status, the dignity of the artistic professions and developing their capacity. In partnership with universities, the programme, which was designed to increase the opportunities of artists who do not have a professional degree but do have a recognized artistic career, through flexible curricula that allow students to remain connected to their work while increasing their quality of life, employability, and work alternatives. The professionalization component of the Colombia Creativa Programme relies on higher education adapting and adjusting their curricula to address the circumstances of cultural professionals, with a view to facilitating the training process. Thanks to curricular flexibility, and to forgivable educational loans and support grants, practicing artists had the possibility of

10. http://www.mincultura.gov.co/ministerio/politicas-culturales/politica-de-artes/Documents/01_politica_artes.pdf

pursuing undergraduate programmes in artistic fields. Agents in the artistic and cultural sector, who were trained and who had a career, could thus obtain a professional degree. While Colombia Creativa is no longer active, the Ministry now supports the management of resources with departmental (Gobernaciones) and local governments (Alcaldías) which can cover a portion of tuition costs and support grants.

Through its 2009 Policy on Culture and Heritage, the Kenyan Government reaffirmed its commitment to the protection of artists' intellectual property rights to promote creativity and provide fair remuneration. The policy also provides the development of partnerships with the private sector to promote visual artists and their work particularly through tax facilities in compensation for the private sponsorship of Kenyan artists. Through this policy, the government also committed to fighting against piracy or any fraudulent practice that would deprive artists of their income. Kenya is also working on a draft National Culture Bill to guide the country's cultural and artistic development. The bill specifically proposes a Culture and Arts Council, which would mobilise financial resources to support creativity and ensure the social and economic status of artists. The proposed Council would coordinate international arts exchange programmes, facilitate visa applications, ensure fair tax treatment and provide financial support to artists and their projects.

Artists do not enjoy the same benefits and rights as other workers and the prosperity of the cultural sector requires that the wellbeing of artists be considered. This concern is inspiring extensive debates on the status of the artist in Europe, particularly in the Nordic countries. In 2016, a special government investigator in Sweden reviewed the current working conditions of professional artists in order to provide an overview of challenges and recommendations. As a result of the review, regional policies for artists have already been generated, and additional actions are anticipated. In Finland, several working groups have been established to review different issues relating to the status of artists such as income, social benefits and working conditions. In May 2019, the Finnish Ministry of Education and Culture issued a report on the *Indicative Guidelines for Arts and Artists Policy*¹¹

***The prosperity of
the cultural sector
requires that the
wellbeing of artists
be considered***

11. <http://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161370/okm05.pdf>

which places the question of the status of the artist at the heart of the country's cultural policy. One of the three key messages is that "art is work and it must be treated as such". The report's proposals to improve the status of the artist include: progressively moving from a grants scheme to an employment scheme, increasing the number of artists receiving a pension, facilitating the compatibility of income from different sources, and promoting life-long opportunities, including in matters related to copyright. While Norway's most recent white paper on cultural policy *The Power of Culture: Cultural Policy for the Future*¹², 2018-2019 did not focus explicitly on the status of the artist, the Norwegian Ministry of Culture is committed to creating "conditions that allow individual artists and cultural institutions to continue improving the quality of their work" in order to promote a free and independent cultural sector.

French cultural professionals are increasingly alarmed about the deterioration of their economic and social conditions, and the rise of poverty. As a result of their advocacy, in March 2019 the French Ministry of Culture commissioned a reflection on the author and the act of creation over the next 20 years. Many artists in France see the gap widening between the time they devote to creation and the income they derive from it. The income received by creators (graphic designers, painters, sculptors, photographers, writers, comic strip designers, illustrators, authors of audio-visual and musical works, etc.) from sales of their works and copyright remuneration is variable: in 2017, only 2-3% had income above €50,000, 75% received income below €5,000. The report, to be made public before the end of 2019, will cover copyright, tax law and social law issues. This study was launched at the same time as a major initiative to reform social protection of artists in France. Self-employed artists are, today, subsumed into employment status so they can be covered by the general social security system. Self-employed artists make contributions to the general scheme and the employer's share is a combined contribution from broadcasters, exhibitors or others who engage artists. This combined contribution amounts to only 1.1% and is significantly lower than the 22.75% employer's contribution for employees as part of the general social security scheme.

12. <https://www.regjeringen.no/contentassets/9778c28ab1014b789bbb3de0e25e0d85/en-gb/pdfs/stm201820190008000engpdfs.pdf>

Luxembourg also embarked on a prospective analysis of the cultural sector, during which there has been discussion of the situation of independent artists. Following extensive consultations, the government developed a Cultural Development Plan 2018-2028¹³ outlining 61 recommendations that better structure the cultural scene and prepare it for future challenges. One part is devoted to “Enhancing cultural work and professionalization” and recommends reforming the 2014 law on social measures for professional and independent artists and artistic promotion. The areas covered include the introduction of a “cultural VAT”, the creation of a one-stop shop for advice and information, lifelong training of artists and cultural actors, and strengthening the professional artists’ federations and associations. These recommendations result from a series of observations, whereby artists requested that laws targeting them use a more adequate terminology – not aid terminology – that contributes to the recognition of their status as professionals; enhancements to their status in law; and regulation of working hours. Artists also called for differentiated VAT rates, for having their years of experience considered for social benefits. They deplored the lack of professional structures to allow them to collectively address the circumstances of their professions. They finally demanded an economic policy that would foster creativity in the arts, culture, entertainment and cinema, and provide opportunities for professional development, the mobility of artists, and the increased distribution of creative works and traveling exhibitions.

The many initiatives taken around the world to address the atypical way in which artists work and improve their economic and social status have not all resulted in comprehensive legislation or policies. In some cases, detailed legal or policy texts are still awaiting implementation, due to lack of regulations or funding. The Status of the Artist is a transversal issue that draws on several legal areas and numerous institutional competencies. Yet, the variety of more-or-less comprehensive, more-or-less implemented approaches described above reflect a growing awareness of the fragility inherent in the working conditions and career of artists and cultural professionals. Some States are trying to respond to artists’ atypical working environment by attempting to absorb it within existing frameworks, while others take the leap by designing a dedicated framework.

13. https://issuu.com/agenceculturelle/docs/mc_kep_2018_issuu?e=14357044/62774369

Arts and culture serve as a source of happiness and consolation for many. It is also a sector that makes significant contributions to the national economy. The estimated value of the cultural industries in the global market is US\$2.3 trillion, and the Republic of Korea has 2.6% of the market share, which is the 7th highest in the world. In recent years, the arts and culture sector, including the cultural industries, has made remarkable progress in terms of both quality and quantity. However, many professional artists still experience hardships due to low wages, irregular income and unfair working conditions.

Artists are the foundation of a sustainable art ecosystem. With respect for the social role and value of the artist, the Korean government has implemented several initiatives that enable artists to focus on their creative practices. In addition to supporting individual arts projects, we have created an environment that promotes creativity, so that artists can freely explore their artistic endeavors.

We are currently introducing a new employment insurance scheme for freelance artists, whose professional rights have not yet been properly recognized. In addition, we have established the right to investigate unfair practices suffered by artists. As such, we are supporting and investing in a model that converges art and technology, in response to the Fourth Industrial Revolution.

In the future, the Korean government will continue to make every effort to promote a creative environment where artists can realize their full potential. I sincerely hope that this report leads to further discussion about the status of the artist.

Park Yang-woo

Minister of Culture, Sports and Tourism (Republic of Korea)



Artists and the digital environment

2

In considering the contemporary situation of artists and how their economic and social status has evolved since the implementation of the 1980 Recommendation, it is critical to consider the impact of digital technologies on artists and cultural expressions.

With the digital shift, artists began to change the way they created cultural expressions. Musicians could use synthesisers, and no longer needed expensive equipment to record or store their work electronically rather than on physical media like vinyl records, cassettes or CDs. Sophisticated hand-held cameras, with digital sound and editing capacity, began simplifying filmmaking. New software reduced the time and cost of production in publishing and other cultural sectors.

More fundamentally, the Internet has changed fundamentally how cultural expressions are distributed and is rapidly becoming the leading conduit through which creative works of all kinds are made available to consumers. Music, books, periodicals, movies, television, radio programmes, video games, photographs and other creative works are now widely available in electronic format.

Australian academic Julianne Schultz writes about the profound cultural implications of this so-called Fang phenomenon (Facebook, Amazon, Apple, Netflix, and Google). She argues that technology companies are making unprecedented amounts of money from the marriage of culture with technology, creating an economic imbalance:

“As a result we are seeing a massive redistribution of wealth from the cultural sector, where meaning is created, to the technology sector, which has figured out how to market, distribute, reach and make money out of it in ways the cultural industries never imagined possible ... in the Age of Fang there are a handful of global companies shaping tastes, distributing and exploiting information we didn’t even know we generated.”

The Internet has changed fundamentally how cultural expressions are distributed and is rapidly becoming the leading conduit through which creative works of all kinds are made available to consumers

In the process creating a new world which generates unprecedented wealth, yet which gives us enough of an illusion of choice and being in control to feel we are free agents, global citizens even.”¹⁴

Below, we explore contemporary issues related to the impact of the digital environment on the economic and social status of artists, and the emerging policy responses to these challenges.

14. <http://theconversation.com/australia-must-act-now-to-preserve-its-culture-in-the-face-of-global-tech-giants-58724>

The digital shift: value gap and fair remuneration

The first cultural sector to be dramatically affected by Internet distribution was the music industry. The old business model was based on the sale of a physical recording, pressed on vinyl, or recorded on a cassette tape or compact disc. Consumers bought all the songs on the album even if they were interested in only one or two tracks. Radio made the music widely available and the primary purpose of the artist's tour was to generate publicity to increase sales of their albums or CDs. This model changed with the development of the MP3 format, which greatly compressed the size of the digital music file, and allowed them to be easily copied and shared. The launch of the iPod in 2001 and the iTunes store two years later meant that one could legally acquire music, one song at a time, and at a low cost. Streaming services followed soon after, with Spotify launching in 2008.

The effect of this shift has been cataclysmic for the music industry. Between 1999 and 2014, global music revenues plummeted 44%. While revenues have grown since 2014, total revenues in absolute terms in 2018 were US\$6.7 billion lower than in 1999. Almost 59% of the \$19.1 billion in total 2018 revenues now comes from digital sales and streaming. However, the rapid rise in these revenues since 2010 has come nowhere close to overcoming the decline in CD and record sales.¹⁵ The artist's tour is now organized as a way for the artist to directly monetize their music.

15. www.ifpi.org/downloads/GMR2019.pdf

In 2016, the global music industry began referring to the “value gap.” The amount of money consumers and advertisers spend on streaming and downloading music has increased phenomenally while the amount received by the artists who write, compose, sing and produce this music has decreased. In a July 2016 letter to the European Commission President, Jean-Claude Juncker, almost 1,300 artists from across Europe or artists who regularly perform in Europe claimed that the future of music was jeopardised by this “value gap” and by user-upload services, like Google’s YouTube, that facilitated unauthorized use of music. In her speech in the State of the Global Music industry panel at Canadian Music Week in May 2016, Frances Moore, CEO of the International Federation of the Phonographic Industry (IFPI) argued that “the value gap is not something our business can fix ... it is for policy makers to legislate”¹⁶. The International Music Council reports that, today, 5% of artists are receiving 95% of the royalties from streaming services: previously, 20% of artists were receiving 80%. This leads to the conclusion that diversity is disappearing. In addition, a number of user-upload services do not return fair revenues to artists. The International Music Council estimates that artists annually earn US\$20 per user from Spotify and only US\$1 per user from YouTube.

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While some singers, composers and musicians have gained access to new audiences through the Internet, both at home and around the world, the major actors in the music industry continue to dominate. The top 25 most viewed YouTube videos in March 2019 are of leading recording artists or videos from traditional audio-visual production companies. While it is positive and notable that a number of these are not from the global North, they do not yet reflect the overall rich diversity of cultural expressions that exist around the world. While it is positive that some artists receive substantial revenues from touring and streaming, these are primarily the world-known stars.

16. « The value gap - the missing beat at the heart of our industry » speech delivered by Frances Moore, CEO, International Federation of the Phonographic Industry (IFPI) on 5th May 2016, available at <https://www.ifpi.org/news/The-value-gap-the-missing-beat-at-the-heart-of-our-industry>.

“What’s at stake is not so much the survival of artists like me, but that of emerging artists and those who have only a few records under their belts (such as St Vincent, my current touring partner, who is not exactly an unknown). Many musicians like her, who seem to be well established, well known and very talented, will eventually have to find employment elsewhere or change what they do to make more money. Without new artists coming up, our future as a musical culture looks grim. A culture of blockbusters is sad, and ultimately it’s bad for business. That’s not the world that inspired me when I was younger. Many a fan (myself included) have said that ‘music saved my life,’ so there must be some incentive to keep that lifesaver available for future generations”¹⁷.

While the music industry is still struggling to develop sustainable business models for the digital environment, the publishing industry has also been influenced by the digital shift. Sales of hard copy magazines, periodicals and newspapers have fallen dramatically, as have print advertising revenues, due to the shift toward social media advertising. Many publications now make content available online, some for a fee, others for free in the hope of increasing their page views and advertising revenues. Despite these efforts, their total ad revenues are negligible compared to Internet giants like Facebook, Google and YouTube. The average length of articles in online publications is much shorter, thus the freelance writer receives less compensation per article than in the past.

While consumers are increasingly purchasing books online, rather than at traditional bookstores, they are only slowly starting to read electronic books. Overall sales of physical books are stable, while e-book sales increase modestly. In 2015, printed books still represented 80% of all book sales¹⁸. There are also considerable differences, regionally, locally and year-to-year. According to Booknet, a non-profit organization that serves the Canadian book industry, e-books accounted for 16.9% of total book sales in 2016 and this was a 19% decline from 2015.

17. <https://www.theguardian.com/music/2013/oct/11/david-byrne-internet-content-world>.

18. *Cultural times : the first global map of cultural and creative industries*, International Confederation of Authors and Composers Societies (CISAC), 2015.

In most areas, writers are only beginning to experiment with writing directly for the e-book market. A recently announced initiative will use augmented reality to add value to Penguin Random House's vast collection of classic children's books for the digital screen.

The sector where the effect of the digital shift has undoubtedly been the most complex is the film and television industry. The obvious trend is that audiences are increasingly consuming audio-visual content online, either through computers or mobile devices. The past few years have witnessed the extraordinary growth of services exclusively distributed online, like Netflix and other on-demand movie/television services. Advertisers are gradually abandoning linear television and radio formats, while public service broadcasters must ensure their continuing relevance in the digital environment by adapting the way in which they offer their programming.

U.S. technology company Sandvine provides regular reports on Internet traffic. For these purposes, it divides the world by region: Americas (North and South America, and the Caribbean) – EMA (Europe, Middle East and Africa) – and Asia Pacific. In its October 2018 report, Sandvine highlighted that Netflix is now responsible for 15.0 % of worldwide traffic by megabytes, followed by YouTube at 11.4 %. While Netflix is first in the Americas, it is ranked second in EMA and third in Asia Pacific. YouTube is first in EMA and Asia Pacific.¹⁹ While consumer habits and infrastructure vary widely across the Asia Pacific region, it has the highest rate of growth for online videos and the trend is expected to hit the Americas over the next five years, led by Chinese companies such as iQiyi (Baidu), Tencent Video and Youku (Alibaba)²⁰.

The 2014 UNESCO Status of the Artist survey revealed that roughly one-third of respondents (primarily from the global South) reported that artists had modest additional income from new markets; one-third (a mix between the global South and North) reported that artists had lost income as a result of digital distribution; and one-third (again mixed) reported that some categories of artists had gained, while others had lost.

The sector where the effect of the digital shift has undoubtedly been the most complex is the film and television industry

19. <https://www.sandvine.com/hubfs/downloads/phenomena/2018-phenomena-report.pdf>

20. <https://www.hollywoodreporter.com/news/asian-online-video-market-projected-hit-48-billion-by-2023-driven-by-china-1136293>

The 1980 Recommendation calls upon Member States to “assist artists and organizations of artists to remedy, when they exist, the prejudicial effects of new technologies on their employment or work opportunities”. While the consultation results from 2014 reflected a significant divergence of views about whether the digital shift has a positive or negative impact on the income received by artists, in the 2018 consultation, this balance has shifted to a global consensus that artists have lost income overall. On the civil society side, most now believe the digital shift has eroded the income of artists, particularly in artistic fields most susceptible to Internet-based distribution.

The Australia Council for the Arts has received comprehensive surveys of Australian artists’ incomes from Macquarie University for more than 30 years. In November 2017, the sixth survey was released. *Making Art Work: An economic study of professional artists in Australia*, showed that the median income received by all artists from their creative work fell 30 % between 2007-08 and 2014-15. The decline was 34 % for musicians and 40 % for composers. For those artists whose work is most likely to be moving to Internet-based distribution platforms (writers, directors, actors and musicians) average median income received by artists from their creative and arts-related income fell by 39 % in this same period²¹. There is also a growing consensus in the global South that artists have lost income.

Although Colombia still faces challenges in terms of social security and working conditions for artists, Law 1403 (2010) and Law 1835 (2017) conferred artists, performers of audiovisual recordings and authors of cinematographic works the right to receive equitable remuneration for acts of public communication including the provision and commercial rental of the works.

The Kenyan Creative Economy Working Group²², a coalition of civil society organizations working in the culture and creative sectors, summarises the main challenges facing Kenyan artists in the digital environment. The increasing use of the

21. *An Economic Study of Professional Artists in Australia*, David Throsby and Katya Petetskaya, 2017, available at <http://www.australiacouncil.gov.au/workspace/uploads/files/making-art-work-throsby-report-5a05106d0bb69.pdf>

22. <https://www.wabunifu.org>

digital environment to distribute artistic works has not been accompanied by updated copyright policies, leaving artists unprotected from piracy and exposed to copyright infringement. The small number of locally-owned digital distribution platforms, despite adequate information and communication technology (ICT) infrastructure, allows platforms managed by multinationals to dominate and they disproportionately levy income from the online sale of art works. Artists' remuneration also suffers from a lack of structured marketing and revenue collection in the digital environment. The Group also deplores the vulnerability of Kenyan artists who co-produce with foreign artists without knowing their rights, and highlights their low level of digital literacy.

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Copyright, collecting societies and piracy

Appropriate copyright provisions can ensure that artists are fairly compensated for their work in the digital environment. There is evidence that improving copyright laws increases income for artists. The International Music Council reported that global royalty collections increased by 23 % from 2012 to 2017, although it was unequally distributed. Of the €9.6 billion collected in 2017, only 0.8 % went to African collecting societies, and 6.4 % to Latin American societies. Still, these regions saw greater growth rates in the previous year – 11.4 for Africa and 22.7 % for Latin America. It is important to note that these royalties are shared by all those with rights in music, including, more recently, algorithms registered with collecting societies.

Advocacy and awareness-raising programmes for artists, consumers and legislators on what copyright laws mean for the use and distribution of cultural content on the Internet and how they can be used to promote fair remuneration for artists in the digital environment are expanding all over the world. Yet, there remains a persistent concern about piracy and the largely unpaid dissemination of copyright works on content sharing platforms. Digital technologies make it easy to copy and manipulate creative works. Many feel that existing copyright laws are inadequate to deal with the new environment. According to piracy data specialist MUSO, there were more than 189 billion visits to piracy sites in 2018. While almost half the visits were to sites offering television programmes, the other leading sites provided access to films, music, publishing and software. The top 10 countries with the most visits to piracy sites, in ranking order were: United States, Russia, Brazil, India, France, Turkey, Ukraine, Indonesia, United Kingdom and Germany.²³ According to Google's transparency report, it has removed most of the 4.1 billion URLs that copyright owners have reported for containing infringing content from its search results.²⁴

23. <https://www.muso.com/>

24. <https://transparencyreport.google.com/copyright/overview?hl=en>

A relevant attempt to strengthen artists' bargaining power to help them increase their remuneration is the European Directive on copyright and related rights in the Digital Single Market²⁵ adopted in April 2019, whereby Member States must implement the necessary legislation within two years. The Directive includes measures that would require Facebook, YouTube, Google and similar platforms to ensure that copyright holders are compensated for cultural expressions or news content used or accessed on their sites, and to implement systems to detect and block unauthorized copyright material before it appears online. There are exemptions for small platforms, non-commercial online encyclopaedias, and open-source software platforms. Other Articles in the Directive seek to improve the bargaining power of authors and performers, particularly in cases where their remuneration is disproportionately low. The Fair Internet Coalition, representing more than 500,000 musicians, singers, actors, dancers and other performers, supported the Directive, noting that it is the "first encouraging step in the right direction," particularly because it establishes that "remuneration for performers must be proportionate to the revenues generated by the exploitation of their work".

Similar efforts to align copyright law with the current era of streaming can be found in other parts of the world. In October 2018, the United States' Music Modernization Act was signed into law. This act streamlines the process by which music rights holders are remunerated for streamed songs through a single mechanical licensing database overseen by music publishers and songwriters. The cost of creating and maintaining this database will be paid for by digital streaming services. It also includes an Allocation for Music Producers, which improves royalty pay-outs for producers and engineers from SoundExchange when their recordings are played on satellite and online radio. This is the first time producers have been mentioned in the United States' copyright law. Finally, it allows for payment of royalties for songs written before 1972, to both songwriters and performers.

On 30 December 2018, copyright protection in Japan was extended from 50 years to 70 years after the author's death. Extending the copyright term should allow rights holders to generate more income. The law also includes a piracy deterrent

Appropriate copyright provisions can ensure that artists are fairly compensated for their work in the digital environment

25. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.130.01.0092.01.ENG

measure, whereby anyone “with an interest” in a particular work – not necessarily the rights holder – can sue for “perceived” copyright violation.

In 2014, Morocco enacted a law on copyright and related rights, which supplemented the 2000 law and that instituted remuneration for private copying, making it possible to financially compensate copyright and related rights holders for the private and legal reproduction of their works for personal use. This contributes to fair remuneration for all creators and to the fight against counterfeiting and piracy. This resulted in an increase in the amounts granted by the Moroccan Copyright Office (BMDA) between 2017 and 2018. The year 2018 was marked by a significant increase in BMDA collections. The music, dramaturgy and literature sectors benefited from more than 13.9 million dirhams (US\$1.44 million), granted to 6,482 authors, against 5.4 million dirhams (US\$560,000) for 2,278 authors in 2017. African States such as Burkina Faso, Nigeria, and Côte d’Ivoire have also established a compensation system similar to Morocco’s. In 2018, the African Union adopted an implementation strategy for the 2006 Charter of African Cultural Renaissance. Chapter 4 (articles 23 and 24) of the Charter aims specifically to promote the protection of the rights of artists, through copyright measures and encouraging artists to create Internet enterprises. But many collecting societies, especially from the global South, report that artists are insufficiently trained to correctly register metadata, which often prevents the societies from paying royalties.

There have recently been renewed efforts to implement the WIPO Internet Treaties as a primary response to the rapid expansion of digital distribution, although the WIPO Audio-visual Performances (Beijing) Treaty has not come into force seven years after it was signed. There are also new efforts to educate artists, consumers and legislators in what copyright laws mean for the use of cultural expressions on the Internet and how these laws can be used to promote fair remuneration for artists whose work is now regularly circulated online.

As copyright protection becomes more robust, the data for ensuring musical artists, composers and record labels are compensated should be widely available. Official music charts in Argentina, Brazil, Chile, Colombia, Malaysia, Mexico and Singapore are now provided by BMAT (bmat.com) a private data company focusing exclusively on music. It monitors one trillion digital transactions yearly on behalf of its clients, primarily collecting societies, record labels and music publishers.

Finding artists in the digital environment (availability and diversity of content)

For artists to be fairly compensated for their work in the digital environment, it must be accessible. In a context where online platforms have become the primary intermediaries for the dissemination of cultural content, issues related to copyright and remuneration call for targeted measures.

In most developed countries, national audio-visual contents, particularly films and television programmes, and public service broadcasters, are widely available online. Some national suppliers are turning to on-demand services to compete with Netflix.

Regulatory developments in Europe have gone further than anywhere else. A revised German law on film financing went into effect in 2016. It requires on-demand video suppliers to contribute a percentage of their revenues to the German Federal Film Board, which funds local film and television production. France soon followed by extending the 2% video tax to all digital platforms, whether paid or free, or whether established in France or abroad. Revenue from this tax is allocated to the National Centre for Cinema and Animated Image and is used to finance audio-visual productions. Netflix contested the application of the levy obligation specified in the German Film Law. It argued it is not technically a German company as its European headquarters is in the Netherlands. However, in 2018, the European Court of Justice dismissed Netflix's suit as inadmissible. Streaming services are required to pay a levy to the German Federal Film Board if their net revenues from streaming films in Germany exceed more than 500,000 euros annually. The levy amounts to 1.8% of annual revenues to 20 million euros, and 2.5% for revenues over 20 million euros.

Regulatory developments in Europe have gone further than anywhere else

A 2018 amended European Union Directive on audio-visual media services ²⁶ requires each Member State to enact, by 2021, the necessary regulations to ensure that each digital on-demand service has no less than 30 % European content in its catalogue, which means that Amazon, Netflix and others will have to acquire European content and hopefully contribute to its production. France has already established rules requiring that this content be highlighted appropriately on the relevant webpage. Member States are free to raise this requirement to 40 %, and they may include sub-quotas for productions from their own countries. The European Union Member States will also be free to follow the German and French models of applying a levy on revenues to support national production. Netflix has announced that it will reluctantly adhere to the new European rules respecting taxes, contributions to local production and European content. The logic behind such reforms is that if web-based services are replacing television broadcasting and competing for the same audiences, they should be subject to obligations analogous to the legacy broadcasters.

Amazon, Netflix and others will have to acquire European content and hopefully contribute to its production

The continued growth of e-commerce and the boom in the provision of cross-border digital services around the world has led States to establish mechanisms and rules to ensure effective collection of VAT. Against this background, the Organization for Economic Cooperation and Development/G20 Base Erosion and Profit Shifting Project (BEPS) prioritises the tax challenges raised by digitisation. In order to implement a consistent and coherent system to tax services in the digital economy, the VAT/GST Guidelines provide that the destination principle should apply, i.e. the obligation should be imposed on non-resident suppliers to register, declare and pay VAT/GST in the jurisdiction of consumption. A number of European States have also begun to apply corporate taxes on digital giants based on revenues earned in the relevant jurisdiction. Where such tax is applied to cultural services, it could represent a source of additional revenue for domestic cultural expressions.

26. Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities available at <https://eur-lex.europa.eu/eli/dir/2018/1808/oj>.

In Latin America, different governments are modifying their tax schemes to include audio-visual content providers²⁷. Effective July 2018 in Colombia, foreign digital platforms providing services in the country are taxed at a rate of 19%. Following Argentina's 2017 Tax Reform, banks began collecting 21% VAT for digital services through credit cards. During the first four months of implementation, Argentina's Federal Administration of Public Revenues (AFIP) collected US\$19 million in VAT from foreign providers of digital services, including audio-visual over-the-top (OTT) services, such as Netflix. The companies are now passing on the cost to users: Netflix, for example, added a surcharge (US\$ 0.74) to its basic subscription.

The tax collected does not systematically benefit local creators of cultural content. Unlike Argentina or Colombia, Paraguay created the Paraguayan Audiovisual National Fund (FONAP) in July 2018²⁸. It provides grants to projects or programmes generated or supported by the Paraguayan National Audiovisual Institute (INAP). Support can be provided for: the promotion, distribution and dissemination of national audio-visual works or those produced under co-production or cooperation agreements with other countries; professional training of artists and technicians and; the development of national audio-visual festivals. Among other resources, the Fund will be financed by 50% of the tax withholdings derived from foreign online audio-visual services. Since 2015, a vigorous debate on regulating Brazil's VOD services is on-going. The only proposal to achieve consensus is the Consejo Superior de Cine (CSC)'s proposal to establish a hybrid taxation model for on-demand service operators to contribute to the national audio-visual fund. While this proposal has not progressed since 2018, the model would allow providers to choose whether they wish to contribute according to the size of their catalogue or through a flat fee based on the number of subscribers or transactions. The proposal also foresees a contribution mechanism that would encourage the production of Brazilian content: the more Brazilian titles in a catalogue, the lower the tax to be paid.

Many States and non-governmental organizations report that search engines may not make diverse materials available to large numbers of people

27. *Audio-Visual Industries and Diversity: Economics and Policies in the Digital Era*, Luis A. Albornoz, Ma Trinidad García Leiva

28. <http://www.bacn.gov.py/leyes-paraguayas/8426/ley-n-6106-de-fomento-al-audiovisual>

Despite a number of measures to improve the exposure of local, national and regional artists on digital platforms, many States and non-governmental organizations report that search engines may not make diverse materials available to large numbers of people. This is becoming a serious public policy challenge. Even when diverse cultural expressions are available online, search engines may not make them largely available. Algorithms used by most search engines to determine patterns are not conducive to a rich range of options. As diverse cultural expressions are increasingly marginalized online, it becomes very challenging for content from a small market to be discoverable not only globally, but also in that market itself. This has direct negative consequences for diverse non-established artists. There is a direct link between an artist's exposure at the local, national and regional level and their capacity to contribute to a global diversity of cultural expressions²⁹.

29. Diversity of Content in the Digital Age, International Meeting organized by the Canadian Commission for UNESCO in February 2019.

Digital creativity: Programmes and funding schemes

Today, States are starting to support the production of diverse digital cultural expressions and using the digital environment to support artists' work. Many have adopted a portal approach to promote national artists and distribute their work. In 2016, the Superintendence of Information and Communication (Supercom) of Ecuador launched Latitud1x1, a digital platform that allows domestic artists to upload their music and for any media registered to the platform to explore the music catalogue. Latitud1x1 was intended to give Ecuadorian artists the opportunity to reach radio stations directly with their work, avoiding piracy and outsourcing. Supercom maintains statistics on music downloads, while artists are responsible for registering in the Collective Management Societies (Sayce, Sarime, Soprofón) to receive royalties.

In 2017, the National Council for Culture and the Arts of Chile (CNCA) launched the Onda Media Platform. It offers to the Chilean public, free of charge, a catalogue dedicated exclusively to national films, television and other cultural expressions. The Directorate of Libraries, Archives and Museums (Dibam) manages the Digital Platform of Chilean Visual Artists, a site utilising digitized works from the National Museum of Fine Arts. Chile's National Culture Policy 2017-2022 recognizes, however, that the significant concentration of mass media ownership means there is still insufficient space to give broad visibility to domestic artistic and cultural creations, especially those of an independent nature. This situation, which affects both freedom of expression and the right of people to access diverse information, understood as a public good, remains an area of pending intervention.

Globally, many existing funding programmes have expanded to support the creation and distribution of digital works. While fewer, an increasing number specifically target artists creating and distributing cultural expressions electronically.

In the global North, most traditional granting bodies will provide funding for projects that incorporate an Internet distribution strategy. In its 2018 Tailored Review Implementation Plan, Arts Council England encouraged all funded organizations to increase the presence of creative digital media content and to increase the access of audiences to that content. Those organizations receiving more than £250,000 per year will be required to include clear commitments and objectives related to the creation and distribution of creative media (including creative content, captured content or cultural learning content).

The Canada Council for the Arts' Digital Strategy Fund encourages an overall approach that supports artists and arts organizations in understanding and engaging with the digital world, and responding to the cultural and social changes it produces. Québec has a digital media plan and offers grants to artists in various sectors to create new material or to repurpose existing material in a digital format. In Denmark, artists with a digital distribution strategy are more likely to secure grants, while Lithuania sets aside 25 % of the private copying levy for digital programmes.

The German Federal Cultural Foundation's *Kultur Digital* initiative aims to motivate and support cultural organizations to independently take advantage of the possibilities of digitalization. A key component of this programme is *Fonds Digital*, a fund dedicated to digital transformation in cultural institutions. This application-based Fund is targeted at cultural organizations in all artistic areas which have already begun developing a digital strategy and have tested and/or implemented digital services, e.g. online collections, social media projects or apps. The Fund enables partnerships for at least two cultural institutions to further develop processes of transformation, to experiment with new digital aesthetics and forms of expression and to enhance their digital profiles. As of July 2019, the *Fonds Digital* has €15,8 million at its disposal.

One of the objectives of Mexico's Digital Agenda for Culture is to promote a favourable environment for the development of national cultural and creative industries in line with modern production, consumption and distribution patterns for cultural goods and services, and thus encourage talent development, entrepreneurship and cultural innovation. Against this backdrop, the Secretariat of Culture, through its General Directorate of Information and Communication Technologies convened a

core group, composed of policy makers from different agencies of federal and State governments, academics and stakeholders from different cultural sectors, to create in 2018 a *Roadmap for Digital Creative Industries*³⁰ that has been guiding federal institutions in supporting and reflecting on new creative forms.

In Colombia, the *Crea Digital* programme has provided incentives for artists from across the country since 2012. The annual call includes economic incentives to support the production of digital content. The programme offers monitoring and tutoring for production processes, and advice on marketing so that productions can be monetized or travel through various cultural and educational circuits. In the last four years, US\$4.57 million were granted for the production of digital content for cultural, educational and entertainment purposes, resulting in 56 videogames, 28 eBooks, 31 media projects, 5 inclusive tools for people with disabilities and 33 animation series. These processes led to creation of 315 business initiatives and, most importantly, to the increasing take-up of information technologies and the generation of new contents production logic in the digital environment.

**Many existing
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In Brazil, within the framework of the National Living Culture Policy, instituted by Law in 2014 and known as the Living Culture Law, the government launched the *Digital Culture Action* programme that consists of equipping more than 4,000 *Culture Points* in 1,000 municipalities that allow for the creation of audio-visual works. These centres are non-profit entities, groups or communities that implement cultural activities in the local community.

The Jamaica Film Commission has a mandate to promote investment opportunities and export opportunities in the film industry. In addition to facilitating national productions and international co-productions, the Film Commission also runs assistance programmes for filmmakers such as the Youth Employment in the Digital Animation Industry (YEDAI) Project, implemented through the Office of the Prime Minister, to support youth employment in the digital and animation industries in Jamaica. The programme provides

30. <http://agendadigital.cultura.gob.mx/documentos/mapaderutaicd.pdf>

access to equipment and spaces for digital experimentation, collaboration and training on the protection and monetisation of intellectual property shared through the Internet.

Artists are beginning to explore the possibilities of virtual reality, augmented reality, extended reality (VR/AR/XR) and the longer-term potential of artificial intelligence (AI). In addition to Penguin's children's book augmented reality initiative, several story-writing applications use analytics that track a range of data about plots, audience profiles and sales. One of these, Wattpad, with 65 million users worldwide, is a space where writers can create stories online and the public can comment on these stories as they develop. Recent television productions on Netflix and Hulu originated as stories on this site. There are also early efforts in the music industry to harness artificial intelligence to compose new music by studying patterns in existing compositions and recombining the chords, notes and timing in novel ways.

Supporting artists' training and professional development on emerging technologies, or incubators, seems essential to maximizing the use of the latest technology as tools to create a rich diversity of cultural expressions.

Finland reports that studios at Aalto University use VR/AR and AI in films and television, games and animation, including user experience testing and sensor data analysis. Barbados' Mirror Image Media and Innovation Labs (MMIL) provide training in animation, filmmaking, app design, coding, robotics, artificial intelligence and computer-aided design for young artists. In Sweden, the Arts Grants Committee has an independent unit called "Kulturbryggan" which allocates funding to new and experimental cultural projects. Austria is home to Ars Electronica, a leading player in the field of media and digital art, which annually organizes one of the most important new media festivals. Besides the festival and the competition, the Ars Electronica Centre is a year-round venue that hosts Futurelab, an atelier and laboratory for art and research that has been doing research and development at the interface of art, technology and society since 1996. Artificial intelligence, robotics, media architecture, interactive technologies, new forms of aesthetic expression, and swarm intelligence are some of Futurelab's main topics of interest.

Since 2014, the Republic of Korea's Government has run 10 incubators called *Content Korea Lab*, which provide artists/creators with mentorship, technical equipment, recording studios, editing suites and office spaces. It also plans to open production facilities in Seoul for VR, XR, etc. In September 2019, the Korean government invested in the immersive content industry, which capitalizes on 5G networks, AI, and virtual and augmented reality. They will also launch a co-investment venture worth US\$375 million from 2019 to 2022, targeting independent artists and early stage SMEs in digital media.

In Morocco, as in the rest of Africa and in other countries around the world, many artists face difficulties based on their status, which is often misunderstood and poorly defined. As a result, they do not enjoy many of the rights granted to them by national laws and international conventions. They do not benefit sufficiently from their copyrights, and lack social security and pension coverage. Often, their work is not protected.

Moroccan legislation on the status of the artist promulgated in 2003 and the law on the status of the artist and the arts professions adopted in 2016 provide a wide range of practical provisions for artists and cultural actors on issues relating to contracts, remuneration, social security, etc.

Laws and statutes are certainly necessary to structure the sectors in a society. But if artists do not have places to work or perform, if they are not sufficiently supported or accompanied to create and develop their projects, if they are not free to express themselves or travel, if their copyright is not respected, then their living conditions will not improve. And they will be even less able to produce quality artistic projects.

A platform such as Visa For Music facilitates mobility and supports artists by structuring the profession, at least in the music sector, and by offering visibility to artists. But if there is no legal or political will, the status of the artist will remain as ill-defined as it is poorly considered. It is time for this to change, by informing and raising awareness among artists, whether or not they are already firmly established. The ultimate challenge is to ensure that the various cultural actors can defend their opportunities and rights.

Brahim El Mazned

Director of Visa For Music (Morocco)



Transnational
mobility of artists

3

The 1980 Recommendation calls on Member States “to provide those engaged in artistic activities with all the means, in particular, travel and study grants, likely to enable them to establish lively and far-reaching contacts with other cultures” and “to take all appropriate steps to promote the free international movement of artists”. Yet, challenges to the transnational mobility of artists remain very present and artists continue to face a number of administrative and financial barriers to travel. Despite commitments made by many Parties under *Preferential treatment for developing countries*, Article 16 of the 2005 Convention³¹, there are few cases of preferential treatment granted to artists and cultural professionals from developing countries in the context of major international migration flows. Inequality in mobility undermines the status of the artist. For example, an average (Western) European passport allows an artist to travel to more than 150 countries without a visa, while an average African passport will restrict an artist to less than 75 visa-less countries.³² While not yet available, the African Union Passport which was announced in 2016 will be a common passport that will replace existing national passports issued by the 55 AU Member States. It shall permit visa-free travel for the continent’s one billion people.

While the expansion of regional cooperation agreements has made it easier for some artists to travel to and within the global South, the past decade has added new challenges for artists from the global South who wish to travel and work in the global North. The forces that are making it more challenging for global South artists are also restricting North-to-North movement for artists. International stars have always been able to cross borders. But even these few, and other artists who can work abroad, are confronted with practical challenges, including complicated and expensive application processes, ever-changing visa requirements that vary from country to country; myriad tax rules, regulations and treaties that can lead to disadvantageous treatment, including double taxation on earned income; high travel costs; difficulties travelling with instruments, essential equipment and supplies, and; challenges related to social benefits and pensions, even in economic integration areas such as the European Union that provide complete labour mobility.

31. “Developed countries shall facilitate cultural exchanges with developing countries by granting, through the appropriate institutional and legal frameworks, preferential treatment to artists and other cultural professionals and practitioners, as well as cultural goods and services from developing countries.”

32. *Beyond Curiosity and Desire: Towards fairer international collaborations in the arts*, ITEM Toolkit, 2018.

Below we will present several of these challenges in more detail and share some of the emerging policy responses from States and regional institutions.

A growing international commitment to mobility

The need to integrate the mobility of artists and cultural professionals into national and regional cultural programmes is becoming increasingly apparent. The European Union is well aware of the need to facilitate the mobility of artists within and outside its borders, as evidenced by its 2017 *Towards an EU strategy for international cultural relations*³³. In this text, Member States recognize the need to establish mechanisms to facilitate access to visas for artists and cultural professionals and call for the development of a visa policy specifically for them. They also call for the creation of a cultural visa programme, along the lines of the existing Scientific Visa Programme, for third-country nationals, artists and other professionals in the cultural field. Similarly, the 2019-2022 *Work Plan for Culture*, adopted on 27 November 2018, includes the creation of “an ecosystem supporting artists, cultural and creative professionals and European content” as one the five main priorities for European cooperation in cultural policy-making. It also recognizes the mobility of artists and cultural professionals as an issue “of specific interest for research and exchange at European level”, together with “the circulation and translation of European content, training and talent development, fair pay and working conditions, access to finance and cross-border cooperation”³⁴.

The need to integrate the mobility of artists and cultural professionals into national and regional cultural programmes is becoming increasingly apparent

33. http://www.europarl.europa.eu/doceo/document/TA-8-2017-0303_FR.html

34. Draft Council conclusions on the Work Plan for Culture 2019-2022 available at <http://data.consilium.europa.eu/doc/document/ST-13948-2018-INIT/en/pdf#http://data.consilium.europa.eu/doc/document/ST-13948-2018-INIT/en/pdf>.

In this context, the French Institute and the Goethe Institute are supporting the European Union throughout 2019 in conceiving and testing a system that can support artistic mobility in Europe. The two institutions were commissioned to carry out a study on mobility policies within the European Union and the implementation, on an experimental basis, of a first programme for European mobility³⁵.

Since 2009, the *Agreement on Residence for Nationals of States Parties to Mercosur, Bolivia and Chile* provides citizens, including artists, a right to live and work in another of these countries for two years. Since mid-2018, the Mercosur Parliament plenary has been considering a draft recommendation that seeks to simplify migration procedures to facilitate the mobility of artists and the circulation of artistic works in Mercosur countries. The draft recommends that the Common Market Council (CMC) generate regional strategies to promote the mobility of artists and foster professional exchanges between cultural workers in MERCOSUR. Although the recommendation has not yet been implemented, the joint Communiqué of the 44th Summit of the Presidents of Mercosur States in July 2019 notes the need to adopt concrete measures to facilitate the mobility of artists and the free circulation of cultural goods and services.

The development of the Ibero-American Cultural Charter in 2006 laid the foundation for broader cultural cooperation between the 23 Ibero-American Member States, including the European nations of Andorra, Portugal and Spain. Its programmes include music, film and television, performing arts, visual arts and literature and many of these promote and fund the mobility of artists. From 2013 to 2015, the Organization of Ibero-American States for Education, Science and Culture (OEI) carried out the Ibero-American Mobility Programme for Artists and Cultural Managers, recognizing the importance of making aid available and of supporting the internationalisation of artists' work. Through this programme, provided a total of 200 scholarships were offered to OEI Member States annually, including expenses for international travel of a maximum period of 15 days.

35. Operational study Mobility Scheme for Artists and Culture Professionals in Creative Europe countries, 2019 available at www.i-portunus.eu/wp-fuut/wp-content/uploads/2019/04/OS-final.pdf.

In 2015, the East African Community *Creative Industries Bill* established the Creative and Cultural Industries Fund to provide artists and cultural entrepreneurs with grants to participate in local and international events, workshops and seminars, and to provide training for marketing, export and product development. Although much hope was placed in the Bill's ability to support artists, the Fund has not been established to date.

The ASEAN Economic Community (Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand and Vietnam) was created in 2015 with the ultimate goal of supporting the "free movement of goods, services and investments, as well as a freer flow of capital and skills." Mobility is offered to professionals in eight economic sectors: accounting, architecture, dentistry, engineering, medicine, nursing, surveying and tourism. But it continues to be limited by labour market tests, requirements for minimum years of experience and health clearances, and does not yet cover artists.

Similar patterns are also found at the level of bilateral cooperation. A significant number of countries have reciprocal relationships and cultural cooperation agreements that facilitate the movement of artists between partners. One example: Kenya has signed bilateral agreements with China, Ghana, India, Nigeria, the Republic of Korea and Venezuela (Bolivarian Republic of), among other countries, to foster cultural cooperation and promote the mobility of artists. These include provisions to support the mobility of artists and cultural professionals to and from Kenya, as well as the flow of cultural goods, notably film and music production equipment, through tax reductions.

A significant number of countries have reciprocal relationships and cultural cooperation agreements that facilitate the movement of artists between partners

Barriers to mobility and the circulation of artistic works

Restrictions, arising from public security concerns and ongoing terrorism threats and the global refugee crises, most particularly the flow of people across the Mediterranean Sea to Europe, are making it harder for artists to travel and work abroad. The growing restrictions on mobility to and within the global North are not focused specifically on artists and cultural practitioners, but affect them in direct and indirect ways.

In 2017 and 2018, a number of international dance stars saw their visa requests to perform in the United States denied. For DanceUSA, the national organization for professional dance, this refusal was not particularly aimed at these dancers but was rather the result of an overburdened United States Citizenship and Immigration Services (USCIS) process. The two most common types of visas (O and P) requested on behalf of touring dancers and companies require petitions that include extensive documentation and the process takes at least six months. The U.S.-based sponsors or presenters can opt for an accelerated process, but for an additional fee of more than US\$1,200 per dancer. With growing uncertainty about tours, the demands for accelerated processing are increasing and, in turn, traditional processing time slows down. Legislation to address this problem and to reform the performer visa process was introduced in 2018. The *Artists Require Timely Service Act* would require USCIS to provide a 15-day turnaround free of charge for any arts-related O or P visa petition it fails to adjudicate within the 14 days established by law.

It is generally more difficult for artists from the global South to travel to the global North today than it was in 1980, despite some positive developments and limited preferential access. One of the main barriers to the transnational mobility of artists is posed by visa application procedures.

Many artists encounter problems when applying for visas because consulates are not always present in the artist's locale, the nearest may be many hours travel in a distant city. Artists also report unfair treatment as consular staff consider their profession to be economically insecure. Visa costs also pose impediments to the transnational mobility of artists.

The number of countries that can be accessed visa-free by global South passport holders continues to increase, but it remains roughly half the number enjoyed by global North passport holders. Visa free travel is an important metric for artists as it facilitates their ability to meet artists abroad, to take on residencies, or to attend conferences, workshops, artistic events and fairs where they can interact with other artists, producers and distributors from around the world.

However, the calls in the 1980 Recommendation and the 2005 Convention for "free international movement" and "preferential treatment" for artists are intended to go beyond the ability to visit another country. They are more fundamentally about an artist's ability to obtain approval for the sale of their work, to perform, and otherwise to practice their art abroad. There are only a handful of countries that permit a standard visa holder to take on any kind of paid work, including as an artist.

An illustration of this difference is the implementation of the CARIFORUM-European Union Economic Partnership Agreement and its Protocol on Cultural Cooperation, signed in 2008. Many had anticipated that the Protocol's commitment to freer movement for artists and cultural practitioners, as required by the preferential treatment obligation accepted by the European Union as a Party to the 2005 Convention, would make it easier for Caribbean artists to travel to Europe for work purposes. While there was talk initially of an "artist visa" or a "touring visa," the concrete outcome, to date, has been limited to extending visa-free travel to the Schengen area for CARIFORUM countries. However, under European rules, this short-term visa does not apply to persons travelling for the purpose of carrying out a paid activity.

The growing restrictions on mobility to and within the global North are not focused specifically on artists and cultural practitioners, but affect them in direct and indirect ways

In France, for artists who are not exempt, three types of visas exist: a short stay visa, a long stay visa and a residence permit, with the mention “talent passport”, given on the basis of the artist’s international reputation (“a foreigner whose international reputation is established who comes to France to exercise an activity in a scientific, literary, artistic, intellectual, educational or sporting field”), or a visa for performing artists under certain conditions (including the duration of contracts, financial resources, etc.). France set up an Artists’ Visa Committee in 2009 to respond to the growing difficulties in obtaining visas encountered by professional organizations in the music sector working at international level. The Committee comprises trade unions, networks, resource centres, international organizations, such as the International Organization of the Francophonie, and works closely with the Ministry of Europe and Foreign Affairs and the Ministry of Culture. It is worth noting that the Ministry of the Interior joined the Committee in 2015. In December 2016, Zone Franche, the world music network mandated to manage the Committee, launched the first edition of the *Practical Guide to Visas for Cultural Professionals*³⁶, which reports, among other things, on recent legislative and regulatory developments related to the adoption of the 2016 law on the *Rights of Foreigners in France* that simplifies administrative measures with a direct impact on the practice of professionals working with foreign for professional artists.

In Austria, any activity by a foreign artist, by way of employment or similar contractual relationship (e.g. quasi-freelancers, ‘freier Dienstnehmer’), requires authorization under the *Act Governing the Employment of Foreign Nationals* (Ausländerbeschäftigungsgesetz, AuslBG). Under the Act, foreign nationals who are concert or stage artists, or members of such occupational groups as variety artists, film, radio and television workers or musicians, may be employed without an employment permit for one day, or for up to four weeks within an overall artistic production to ensure the presentation of a concert, an event, a performance, an ongoing film production, or a television live broadcast. Such employment shall be notified by the event organizer and/or producer on the first day of work to the competent regional office of the public employment service.

36. Available at <http://www.zonefranche.com/fr/comite-visas-artistes/guide-pratique-des-visas-practical-guide-to-visas>.

Some countries offer special treatment for various classes of applicants which may include artists and cultural professionals. New Zealand allows performers and their immediate support crews who are invited to take part in an officially designated arts or music festival to travel on an Arts and Music Festival Visitor Visa for up to three months, without a work permit. For an arts or music festival to be approved, its organizer must submit a proposal to Immigration New Zealand showing that the festival has been hosted in New Zealand for three or more years, and ten or more overseas performers and/or crew will take part.

Importantly, a number of countries in every region have special rules for those working in performing arts companies. Most have simplified and less expensive arrangements for actors, directors and other artists in movies, as it is a highly mobile industry that can generate positive economic benefits to the host country.

Administrative and financial challenges linked to customs regulations, Value Added Tax and income taxation have become barriers for artists when operating internationally. In addition, some measures taken to overcome such constraints may trigger adverse effects. For example, in West Africa, the efforts of the West African Economic and Monetary Union have resulted in bank borrowing facilities for cultural entrepreneurs, particularly in the film sector. However, the removal of customs barriers for cultural products between these countries seems to favour multinationals more than local cultural entrepreneurs.

The Performing Arts Employers' Associations League Europe (PEARLE) maintains a body of texts that cover the administrative and legal aspects that artists and cultural managers need to know in relation to mobility in or to the Schengen area and/or the European Union. While PEARLE publishes practical guides for artists and cultural professionals, more consistent administrative support to artists from the global South is needed to address the diverse and varied challenges they face. Similarly, the ATA Carnet is an international customs document that replaces import and export papers, and duties and taxes, in the roughly 75 countries which participate. This system is of real value for artists who travel with equipment and musical instruments, and for touring companies, but the fees attached to the system are an impediment for some less established artists.

Funding and collaboration opportunities

Virtually all States have public programmes to support their artists when working abroad, across the full spectrum of cultural activity. However, in a few Least Developed Countries, artists rely primarily on private funds, or on foreign entities that have invited them abroad. Fiji's Department of Heritage and Arts and the Fiji Arts Council provide financial support to performing artists who travel overseas to participate in events and exhibitions, mainly in Australia and New Zealand. However, funds are limited and both agencies also work to facilitate sponsorships from the private sector or other public organizations.

There are a large number of foundations and development initiatives that provide funding for artists, particularly from the global South. Specific mobility funding schemes in certain regions of the world are key to supporting the mobility of artists. Africa Art Lines is a mobility fund, exclusively supported by African Funds, that allows artists and cultural operators developing artistic projects between Morocco and other African countries to benefit from grants for travel expenses. First dedicated to the music sector, Africa Art Lines later expanded to the performing arts. Art Moves Africa is a civil society organization that facilitates exchanges by providing travel funds to artists, and cultural professionals living and working in Africa, to allow them to travel within the African continent. MuseAfrica, based in Ghana, works to showcase urban music to African millennials. IGODA (Zulu word for "bind together") is the Southern African Music Festival Circuit that facilitates the movement of artists and supports collaboration among them, while celebrating music and culture.

In 2017, to commemorate its 20th anniversary, the Asia-Europe Foundation (ASEF) launched Mobility First! This cultural mobility initiative supports the movement of Asian and European artists and cultural professionals in Asia-Europe Meeting (ASEM) partner countries. In its pilot year, Mobility First! invited 73 artists and cultural practitioners in the ASEM region to participate in a

wide range of cultural activities, including networking, capacity building (training, study visits, partnership meetings), creation (artistic and writing residencies) and public presentations (festivals, biennales, conferences). An equal number of men and women were supported from various sectors, including film, visual arts, contemporary dance, and theatre.

While artists and cultural professionals who face the most significant barriers are those from the global South seeking to travel and work in the global North, there are significant and growing challenges to travel within the global North or across the global South. There have been minor improvements in travel and work opportunities as a result of economic development and multilateral agreements, and there are important initiatives in virtually every region, including Latin America, Asia and throughout Africa. Yet, in addition to the challenges confronting all artists, those from the global South face additional travel costs. In some instances, it can be more convenient and less expensive for African artists to travel to Europe, and Latin America artists to travel to North America, than to travel to a neighbouring country in the global South.

The Arab region is no exception and the mobility of its artists is increasingly hampered by restrictions. *Al Mawred al Thaqafy (Cultural Resource)* has been awarding the *Tajwaal Mobility Grant* since 2016. This grant provides up to US\$8,000 for artists to present their creations internationally. The *Mawa3eed* programme also provides mobility grants of up to US\$5,000. In 2019, the two programmes were merged under the *Wijhat (Destinations)* programme, which was designed to support artists and cultural actors in the Arab region to travel within and outside the Arab region, thus enabling beneficiaries to present their work to new audiences and participate in new and diverse cultural exchanges between and within Arab countries. The programme offers 25-30 grants per year in three rounds and it covers the cost of tickets, visas, and accommodation and living expenses. It also includes a recommendation letter to the relevant embassy in order to support the visa application.

Cultural entrepreneurship is essential to international artistic cooperation today. Indeed, most artistic development policies now mention the indispensable role of cultural entrepreneurship. The mobility of cultural entrepreneurs is thus an essential condition for the development of equitable

There are a large number of foundations and development initiatives that provide funding for artists, particularly from the global South

international cultural and artistic exchanges. In this context, the *Roberto Cimetta Fund* opened a fund in March 2017 dedicated to the mobility of cultural entrepreneurs from Europe, North Africa and the Middle East as part of the Creative Tracks global collaboration programme, an initiative launched by the European Parliament and financed by the European Union. Twenty cultural professionals have already been supported.

Artistic residencies are also a means for artists, particularly from the global South, to benefit from working and learning opportunities. Many States and civil society organizations, particularly in Europe, report active involvement in such programmes, which can offer funding, time, contacts and a physical space to develop one's artistic practice or to concentrate on a particular work or topic. The Artist-in-Residence programme at the Academy of Fine Arts Vienna grants artists from non-EU countries a three-month residency. The programme is funded in part by proceeds from the Academy Auction. Since 2017, the programme has welcomed artists from Argentina, Brazil, Chile, Colombia, Ethiopia, Japan, South Africa and Zimbabwe.

A large number of German programmes, such as artists' residencies and grants from local authorities, Länders, federations and foundations, support international exchanges. The TURN programme run by the German Federal Cultural Foundation has been promoting artistic cooperation between Germany and African countries since 2012. To date, 85 projects have received funding. To respond to the ongoing interest in cooperation and to firmly anchor African engagement in German institutions, the German Federal Cultural Foundation has extended the Fund to run until September 2020. German cultural institutions from all sectors are encouraged to try new forms of artistic cooperation with African partners and to set joint cultural projects in motion. The aim of the programme is to offer incentives to the institutions and stakeholders (museums, theatres, dance companies, art associations, composers, writers, publishers etc.) and to expand their profile to include new topics and work approaches. Funding is awarded to artistic projects that make an innovative contribution to the study of contemporary artistic work in African countries, are of a high artistic quality and have a public impact in Germany. The minimum amount that each project can apply for is €50,000 euros.

Greater visibility for mobility support programmes

While access to funding and international opportunities are a large challenge for artists worldwide and imbalances in funding opportunities are very real, a core challenge is that information about international opportunities is scarce, and many artists do not know where to find it. Most information platforms are not properly funded and rely on extra-contractual investments to operate on a quasi-voluntary basis. This is an unsustainable ecosystem. Yet, there are many organizations working to promote travel for artists, including a number that provide contemporary and relevant information about travelling across borders to pursue an artistic practice.

The Cultural Mobility Information Network (www.on-the-move.org), is a website that evolved into a non-governmental organization focused on facilitating cross-border mobility in the culture sector and advocating for freer movement. There are currently 43 organizations in the network. *On the Move* provides 13 Mobility Information Points, 12 in Europe and one in the United States, which provide information and assistance on administrative challenges faced by artists and cultural professionals, who live in or are planning to travel to Austria, Belgium, Czechia, Finland, France, Germany, Poland, Portugal, Russia, Sweden, the Netherlands, the United States and the United Kingdom. Artists seeking to work temporarily in the United States under a P2 visa (available to artists, entertainers, and athletes) require a “petitioner” to sponsor the application, and Tamizdat, the U.S. *On the Move* partner fulfils that role. Overall, of the nationalities eligible to apply to the funding programmes reported on the website, the majority are from the global North. However, most of these organizations do not benefit from sufficient public support to function properly and support the mobility of artists in an adequate way.

Information about international opportunities which do exist is scarce, and many artists do not know where to find this information

Working with *On the Move* and *Dutch Culture*, the International Network for Contemporary Performing Arts (IETM) published, in 2018, a valuable toolkit³⁷ that promotes fairer international collaboration in the arts by considering the often substantially different working methods and expectations in the global South and global North.

ResArtis, a worldwide network of artist residencies, brings together more than 650 centres, organizations and individuals in 70 countries dedicated to representing and supporting the needs of residency programmes. Since 2011, ResArtis has undertaken the task of comprehensively mapping residencies. It also gathers information about grants and funding resources from regional and international organizations that provide structural help and resources for artist residencies.

This type of collaborative and free tool can also be found at the regional level. The Mercosur Map of Artistic Residences³⁸ contributes to the development of creative processes across Latin America, through the socialization of experiences and knowledge as a form of exchange. Both public and private organizations (ministries, foundations, agencies, etc.) can upload information about their aid programmes and mobility policies to the platform. Registered artists and cultural professionals have the possibility of establishing dynamic searches according to their profiles and interests.

Civil society organizations in the global South are creating new knowledge sharing platforms and are advocating for the development of legal frameworks and professional infrastructure that they consider imperative at a time when many freedoms, including freedom of movement, are at stake. While all global North countries have international exchange programmes and grants to support the outward and inward mobility of artists, and many of them have comprehensive online platforms where foreign artists can obtain information on the conditions of entry to their territories, it is difficult or impossible to find programmes targeted at artists from developing countries, as required of Member States from the global North, who are Parties to the 2005 Convention, in accordance with Article 16.

37. <https://www.ietm.org/en/publications/beyond-curiosity-and-desire-towards-fairer-international-collaborations-in-the-arts>

38. <http://residencias.mercosurcultural.org/>



Human rights and fundamental freedoms

4

The 1980 Recommendation aims to ensure that artists benefit from “the rights and protections provided for in international and national legislation relating to human rights”. Moral, economic and social rights form part of the bundle of human rights provided for in the preamble of the 1980 Recommendation with particular reference to income and social security that would grant professional artists “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”.

When assessing the 1980 Recommendation’s state of implementation, ensuring that there is a continuous improvement to the social situation of artists is crucial. Artists face important social challenges: low and fluctuating income, job insecurity, insufficient or non-existent social protection and little or no access to benefits normally provided to employees. It is also important to acknowledge that, in some countries and regions, artists do not have social benefits of any kind, either because the State lacks the economic capacity to provide programmes, or because war or insecurity prevent them from being developed or maintained.

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Social and economic rights

Artists as citizens and workers

As citizens, artists are entitled to universal benefits. Accordingly, in many countries artists are covered by the same public programmes as other citizens, regardless of the differences in their employment structures. Artists may be covered for basic health care, parental leave and retirement pensions when these are provided as a universal public service. The generally low and fluctuating income received by artists may negatively affect the quantum of their benefits where these are based on contributions from participants.

While fewer than ever before, some artists are still employed for their work. These tend to be artists who work in the performing arts, such as opera, dance and orchestras, or in major media companies. A few may have this status when they are working on an ongoing and successful television series or in public sector institutions. Generally, employed artists have benefits comparable to other employed workers for purposes of health care, insurance, income interruption and pensions.

But universally, the number of employed artists is very low compared to the total population of artists. Overwhelmingly, artists are independent or work on short-term contracts, and are thus self-employed, independent contractors or freelancers. According to an International Labour Organization study published in 2019³⁹, there is very little, if any, legislation focusing specifically on freelancers in the broader culture sector. Artists in every country and region have lived with “precarious work” since before that term came into common use. In those very frequent cases where “universal” public programmes require significant and regular contributions

As citizens, artists are entitled to universal benefits

39. *Challenges and opportunities for decent work in the culture and media sectors*, ILO Working Paper

from participants, whether in the form of taxes or premiums, a large number of professional artists, whose income is inconsistent, may be excluded.

There are a number of ways in which benefits are extended to independent, contractual or freelance artists. In some cases, the existing public social benefits schemes are adapted to account for an artist's unique circumstances. States can develop or sponsor a comprehensive parallel programme, or implement special provisions for artists. A complementary non-State system can also be implemented, usually by artists' associations or copyright collecting societies.

Artists covered under existing social benefit systems

In some countries, artists are included in the public system by taking into account their unique circumstances. Social benefits available in the United Kingdom are funded through contributions made by employers and deductions taken from employee salaries. Employed workers have Class 1 benefits, while freelancers pay for their own benefits in other classes. Actors have a dual status, whereby their employers are required to make contributions on freelance income for Class 1 benefits, while they continue to be considered freelancers for tax purposes. 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.

Despite the introduction of universal health coverage in Senegal, artists and cultural professionals were not receiving a level of health care similar to other workers. The Ministry of Culture, in collaboration with the Universal Health Coverage Agency (CMU) and the Ministry of Health and Social Action sought to address these inequalities by setting up a mutual health insurance scheme (*Mutuelle nationale de Santé des Acteurs Culturels du Sénégal – MNSAC*). Its objective is to enable access to health care for artists and cultural professionals, thereby contributing to the economic, social and cultural enrichment of the country and to social cohesion. The scheme will be organized at a national level, with artists signing agreements with community health insurance companies to address the

needs of artists and cultural professionals in rural areas and in the informal sector. These mutual health insurance companies operate on the basis of an annual fee of 7,000 CFA per person (approximately US\$12). The contribution is subsidized up to 50% by the State, with artists and cultural professionals receiving a second subsidy from the Ministry of Culture.

Kenya faces a similar situation. The National Social Security Fund (NSSF) and the National Hospital Insurance Fund (NHIF) have been in place since the 1960s. Both the government and individual workers make monthly contributions. For the NSSF, workers make monthly contributions, while the employer contributes a certain percentage of the employee's monthly contribution; for the NHIF, both the government and individual workers make monthly contributions at a fixed percentage. The Kenyan Government has recognized the need to extend social security and health insurance to informal sector workers and increase the range and adequacy of NSSF benefits, including maternity, unemployment insurance, and work injury compensation⁴⁰. Unlike salaried workers, informal sector workers, which includes most artists, can join the NHIF on a voluntary basis through low contributions.

In Nicaragua, independent artists have the right to basic medical care provided by the public health system, which is free throughout the country. In the case of artists who work for a public or private institution, they must be registered with Social Security and receive medical coverage through this system. However, there are no illness, paternity/maternity leave or disability insurance systems for independent artists and the artists employed must subscribe to special regimes.

The establishment of a social security system for artists and cultural workers is one of the main axes of Venezuela's 2014 *Integral Social Protection of the Artist and National Cultural Practitioners Law*. The law gives artists access to the same social protection as other workers. The law also calls for the creation of a National Fund for the Development and Social Protection of Cultural Workers, to facilitate the entry of independent, low-income cultural workers into the Social Security System.

**States can develop
or sponsor
a comprehensive
parallel programme,
or implement special
provisions for artists**

40. Ministry of Gender, Children, and Social Development, Republic of Kenya: *Kenya National Social Protection Policy* (Nairobi, 2011) available at <https://www.socialprotection.or.ke/images/downloads/kenya-national-social-protection-policy.pdf>.

The legal framework also promotes the creation of a registry system to collect data on all cultural workers. This registry can identify artists and cultural professionals who may be in vulnerable situations, provide access to information on the country's various cultural and artistic groups, and promote their direct and active participation in cultural public policymaking. Public consultations on the law's regulations began in January 2019.

Costa Rica's social insurance system, which is managed through the Costa Rican Social Security Fund (Caja Costarricense de Seguro Social), is also universal. For many years, only a few types of insurances existed for: salaried employees, independent workers or voluntary insured. Many workers, including artists, were unable to enter the system due to its inflexibility. Recent studies report that 25% of artists in Costa Rica have no insurance. For the remaining 75%, a large part consists of insurance from other types of employment (e.g. teaching) or is accessible through their spouse or family. Social insurance for artists and cultural professionals often relies on their capacity to pay premiums as independent workers, and the system is not designed for discontinuous work. In 2016, the Fund agreed to explore new formulas that would allow the protection of groups that are difficult to insure, such as agricultural workers, coffee pickers, micro-entrepreneurs and domestic workers. These specific regimes are unsuitable for artists, mainly because of the diversity of their working conditions and environments (discontinuity, multiplicity of projects and tasks, and diversity of employers). But, this openness to targeted approaches allowed the Ministry of Culture and Youth to engage in a dialogue with the Social Security Fund concerning the challenges of the cultural sector. One of the models currently in discussion, inspired by other Latin American countries, would be to delegate the management of the social security scheme to a cooperative. Artists would be required to make payments only when they are working and these would be lower than the standard rates over a period of five years.

Benefits are extended to artists in many European countries such as Cyprus, Denmark, Finland, Luxembourg and Sweden, through universal systems that are adapted, as necessary, to the particular circumstances of professional artists. As well as basic health and pensions, artists are eligible for support if their income is low, and some may qualify for income protection during periods in which they are without a contract. The Latvian *Law on the*

Status of Creative Persons and Professional Creative Organizations provides State support for creative persons who may be without income or temporarily disabled, as well as medical expenses for retired artists. Self-employed artists with “creative person” status may apply for a grant for up to 10 days of illness. In 2015, 4,000 persons in 28 creative organizations were entitled to this benefit.

Pensions are also an important element of standard social benefits systems. There are many countries in the Middle East, Europe, North America and Latin America that provide at least some pension for artists. General pension programmes in Finland, Norway and Sweden provide a basic pension and artists who have contributed may be entitled to higher retirement income. Freelance artists in Canada participate in the public system, although they are required to pay both the employer and employee premiums. There is also a means-tested supplemental pension for all poor seniors, including artists.

In Japan, artists qualify for the universal, public and national social protection regardless of their employment relationship, but according to some Japanese artists’ associations, this is not enough to ensure a reasonable living. As most artists are not able to participate in voluntary schemes, due to low and unstable income, they are only entitled to small pensions.

State-sponsored parallel systems

A number of European States have developed or sponsored a comprehensive programme for artists that operates in parallel to the system covering employed workers, or have special individual provisions for artists.

In France, basic medical care is universal. For additional social benefits, artists who work a minimum period of time are subsumed into employment status. Thus, self-employed performers and other artists in the theatre, film and television (*intermittents du spectacle*) enjoy minimum pay rates and a comprehensive benefits package of supplemental medical care, protection for workplace accidents, unemployment benefits, professional training, 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.

There are many countries in the Middle East, Europe, North America and Latin America that provide at least some pension for artists

Writers and creative artists have analogous programmes. These schemes are administered by *La Maison des Artistes* (for visual artists) and the *Association pour la Gestion de la Sécurité Sociale des Auteurs* (Association for the Management of Social Security for Writers). The scheme covers illness, maternity, disability and pensions, with contributions coming from both artists and their employers.

Belgium has a social security system for all professional artists, offering a comprehensive range of benefits (sickness, disability, health care, family benefits, unemployment, vacation, pension, employment injuries and occupational diseases). A 13% deduction is taken from the artist's fees and a 35% contribution is paid by the producer/employer. 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 must make all of the social security payments themselves and they will be eligible for a far less comprehensive package of benefits, but will retain greater scope in deducting business expenses from their income.

In Germany, the *Künstler Sozialkasse* (KSK) was established to provide independent artists with social security protection. It now covers more than 186,000 artists for health insurance and pensions, and some receive unemployment benefits. Roughly half of the contributions come from artists themselves, and the remainder comes from the federal government and those who employ artists. Employers include publishing houses that contract writers, producers that hire actors and musicians, and art galleries and firms that commission artists for design work.

In Austria, employed artists are covered by the Austrian Social Insurance system. The following categories of self-employed artists are covered by the Artists' Social Insurance Fund Act (*Künstlersozialversicherungsfondsgesetz*): visual artists, dramatic artists, musicians, writers, filmmakers and contemporary artists. The programme is funded by contributions from the artists and subsidies financed by levies on cable companies and retailers of satellite-receivers and decoders.

In Switzerland, the Government was involved in the launch of *Réseau prévoyance culture*, which supports artists through disability, retirement and death benefits. The programme is operated by *Suisseculture*, an umbrella association whose members include 23 artists' associations and, through them,

about 60,000 professional artists. The *Réseau prévoyance culture* network offers cultural entrepreneurs the possibility of paying pension contributions for the artists from whom they commission work or with whom they agree a mandate. It also allows intermittent and independent artists who are members of one of the professional associations of the network to join a pension institution and to insure the full amount of their income.

In Lebanon, a law providing for the establishment of a Mutual Aid Fund for Artists was passed in 2012. The Fund was to be run by trade unions and government representatives and members were required to belong to one of the specified unions and fulfil other technical and financial conditions. The Fund resources were to consist of annual subscription fees from members, 2% deducted from tickets for all cultural and artistic performances, and a 10% fee on contracts with foreign artists, collected by the Ministry of Finance. However, the law has not yet entered into force.

Some State-sponsored parallel systems apply to certain artists on the basis of excellence criteria or their contribution to their country's creativity. This is the case with the Aosdána Register run by the Arts Council of Ireland for artists who have created a significant body of work (in the field of visual arts, literature or music), and who have been an Irish resident for at least five years. Such eligibility criteria imply that membership is not done by application but rather by peer nomination. The Arts Council determines the total number of Aosdána members, currently limited to 250. An artist is elected to Aosdána by peers and carries that honour for life. Members have the right to pay into a special pension fund, and their contributions are matched by the Aosdána programme with the Arts Council paying half the premium. Pensions paid out to artists are based on the number of years they have subscribed to the scheme. Members of Aosdána are also eligible to apply to the Arts Council for a *Cnuas*, a means-tested annual stipend, exempt from income tax, provided to Aosdána members with the objective of honouring and supporting individual artists who would otherwise not be able to earn a living from their artistic work. The annual stipend is capped at €17,180 per annum offered to Aosdána members whose total income (including *Cnuas*) does not exceed €42,000.

Some state-sponsored parallel systems apply to certain artists on the basis of excellence criteria or their contribution to their country's creativity

In accordance with the 2009 Serbian Law on Culture, a person who has acquired the status of “outstanding artist or outstanding cultural expert” or “a person who performs an independent artistic or other activity in the field of culture” are entitled to a pension and health insurance. For the former, contributions are made with funds from the budget of either the Republic of Serbia or the autonomous province or local government. The status of “independent artist” is granted by the representative cultural association. Such associations apply the criteria that are set in the law including the requirement that the artistic activity be the artist’s only profession. In the case of dance, about 25-30% of the total number of professionals are registered in the Association of Ballet Artists for these benefits. In 2018, 43% of the members of the Association of Film Artists of Serbia, 30% of the members of the Applied Artists and Designers Association of Serbia (ULUPUDS), and about 20% of the members of the Association of Musical Artists of Serbia (UMUS), participated in the programme.

Non-State systems

In some countries, artists have organized specific social protection schemes through their unions, associations, or other non-profit societies. These cases illustrate different ways in which trade unions seek to compensate for the lack of public protection or discrimination between employees and freelancers in the culture sector.

The 2019 ILO study⁴¹ illustrates this situation with the Argentine case. Musicians affiliated to the Sindicato Argentino de Músicos and their families may benefit from a protection scheme while those affiliated to the Obra Social de Músicos may benefit from full medical insurance at a low rate, regardless of employment relationship or professional status. Workers in the entertainment industry have the option of joining the Obra Social del Personal de Espectáculo and a mutual fund, the Asociación Mutual del Espectáculo de la República Argentina, in order to qualify for social security. While in many countries around the world, collecting societies may subsidise or provide some insurance coverage to members, in Argentina, by law, intellectual property rights are not counted as wages and therefore not subject to social security contributions.

41. *Challenges and opportunities for decent work in the culture and media sectors*, ILO Working Paper

In Costa Rica, the Union of Music Workers established in 2015, which has approximately 370 members, has managed to negotiate a collective life insurance policy with the National Insurance Institute, which basically provides future economic benefits in cases of accident, illness, disability, old age, health care, unemployment, death, widowhood and orphanage, thus providing a broader mechanism of social security coverage in the area of occupational risks.

In the United States and Canada, artists' unions in every artistic discipline operate successful programmes that can provide health insurance coverage for members and pensions/retirement incomes for those who worked consistently throughout their career. For those in music, film, television and performing arts, premiums are contributed by engagers under the various collective bargaining agreements and deducted from earnings received by the artist. The largest of these union-initiated funds now cover hundreds of thousands of artists and have billions of dollars of assets.

A potential advantage of systems that are artist-centred and artist-run is that they can more easily deal with the unique health needs of artists. While they may have difficulty collecting benefits in traditional systems, the artist-centred and artist-run systems accommodate unique needs without difficulty.

A concrete international example concerns professional dancers. Dancers share certain characteristics. In order to become a professional, they must receive focused and intensive training from a very young age. As highly trained as athletes, leading dancers earn an income that is far less than that of even moderately successful professional athletes. Given the physical demands of the profession, a dancer's career is limited and for many dancers, the transition process can be daunting due to financial and other challenges. Centres launched independently in four countries to assist dancers with these transition challenges joined together in 1993 to form the International Organization for the Transition of Professional Dancers (IOTPD). Thanks to IOTPD, most dance schools now offer a comprehensive curriculum and an appropriate academic degree for their students. IOTPD now brings together 10 programmes in nine countries: Canada, Czechia, France, Germany, the Netherlands, Poland, the Republic of Korea, Switzerland and the United States.

In some countries, artists have organized specific social protection schemes through their unions, associations, or other non-profit societies

Some are funded by governments, some are funded by members or by contributions from philanthropists and artists' associations and others rely on a mix of public/private revenue sources. All IOTPD members offer specific programmes to support professional dancers. This can include extensive career counselling services, support for the development of parallel careers, funding for university or professional career training, and other concrete measures.

Although this study does not claim to assess the effectiveness of the different forms of social protection for employed, self-employed or freelancers artists, it is clear that artists worldwide do not enjoy the same social security benefits, including unemployment insurance, sick leave and retirement pensions as other workers. Declining income has a direct impact on the social protection of artists in terms of health benefits, parental leave and retirement. In general, most artists live in insecurity about their future income and their ability to make a living from their work. But, as many countries are dealing with the rise of the "gig economy" and "precarious work", some are beginning to look again at the situation of artists.

The Swedish Ministry of Culture highlights another noteworthy consequence on the diversity of the social economic backgrounds of artists. In the 2018 Swedish Government public inquiry report entitled 'Artist – whatever conditions?'⁴² the recruitment bias of arts professions is addressed. The report *Artists in Sweden: Demographics, Earnings and Social Status 2016* describes that the artist group has at least one parent with a high level of education to a considerably greater extent than the entire population. While 22% of the Swedish population are of non-Swedish background (born abroad or with two parents born abroad), the proportion in the artist group is 16%. These figures clearly show that recognizing the specificity of the artists' work and the need to provide them with a floor of specific economic and social rights is imperative not in the name of any special treatment but in the name of equal opportunities to develop a professional career in the arts and culture.

42. Available only in Swedish at <https://www.regeringen.se/496594/contentassets/9e77d09ab00c405bb0998490511ff2f4/konstnar--oavsett-villkor-sou-201823.pdf>.

Gender Equality

Gender equality was not at the forefront of the global cultural policy agenda when the *Recommendation concerning the status of the artist* was adopted in 1980. However, UNESCO Member States had the foresight in the Recommendation to call upon States to support equal opportunities for women in the arts and culture sector, as well as their access to education and vocational training programmes. Twenty-five years later, the 2005 Convention further advanced the responsibilities of governments around the world to pay particular attention to the special circumstances and needs of women as creators and producers of diverse artistic expressions and facilitate their participation and access to cultural life. Policies and measures that States may develop on the basis of these two standard setting instruments bring them closer to achieving the targets set under the Sustainable Development Goal #5 on gender equality by combating all forms of discrimination and ensuring equal rights and equal opportunities for artists irrespective of their gender.

While it is widely recognized that a gender gap exists in the creative and cultural sectors, reports from Europe and North America indicate there is a rough equality in the number of women and men working as professional artists. In Sweden, women hold 47.5% of jobs and 32% of board positions in listed companies, which is higher than the 23% average in the European Union.⁴³ In looking at all cultural occupations, a report published by UNESCO's Institute of Statistics in 2017⁴⁴ has revealed that in 58% of countries for which data were available, more women were employed in cultural occupations compared to non-cultural occupations. It was also noted that in 2015, women accounted for more than 50% of those employed in cultural occupations in Eastern Europe and South-Eastern Asia.

UNESCO Member States had the foresight to call upon States to support equal opportunities for women in the arts and culture sector, their access to artistic education and vocational training programmes

43. <https://www.theguardian.com/world/2017/jan/12/sweden-rejects-quotas-women-boardroom-listed-companies>.

44. <http://uis.unesco.org/sites/default/files/documents/fs47-precious-situation-women-working-field-culture-2017-en.pdf>.

However, while artists are covered in these cultural occupations data, the conclusions cannot be automatically transposed to this subset. Reports from Europe and North America tend to indicate overall that there is a rough equality between women and men working as professional artists. In these reports, the proportion of women to men who are professional artists is generally in the 45-55 per cent range, with some important differences for certain cultural sectors and artistic categories.

In *Making Art Work: An Economic Study of Professional Artists in Australia*, researchers found that, of the 48,000 professional artists in Australia in 2016, 51% were women, the same figure as in 1993⁴⁵. In 2013, it was estimated that 433,000 people worked in the Australian cultural and creative industries. Thus, artists represent 11-12% of that total. In Germany, of the 186,220 artists who were, at the beginning of 2018, members of Germany's *Kunstlersozialkasse*, 48% were women. There is rough equality between women and men across the 30-60 age groups. In 2016, it was estimated that 1.6 million people worked in the German cultural and creative industries and thus artists once again are 11-12 % of that total. A 2016 study in Sweden found that 48 % of artists in 2014 were women, up from 45 % a decade earlier, and across the 20-66 age categories the results showed virtual equality.

Significant imbalances can be found within sector-specific data. In the Australian and German data, women were under-represented in the music category (45% in Australia, 40% in Germany) and over-represented in the writing category (65% in Australia, 54% in Germany). The Swedish data show a similar underrepresentation of women in music, but showed virtual equality in the writing category. Data submitted by Denmark reveals an even greater imbalance in the music industry, where only 2% of albums released in 2017 involved women, a significant decline from 24% a decade earlier. Billboard's list of the top 100 musical artists of 2018 reflects a similar trend, as it shows that only 20 are women (including groups with at least one female member).

In comparing the available data on cultural occupations, it is nevertheless important to recall that the overwhelming majority of professional artists in the world today are *not*

45. <https://www.australiacouncil.gov.au/workspace/uploads/files/making-art-work-throsby-report-5a05106d0bb69.pdf>

employed for their art. They work on a freelance, independent or contractual basis. Even those who spend all of their work-time on their art are *not* employed for this purpose, except in rare circumstances. The gender gap among artists is not primarily about the numbers of practicing professional artists – where it appears there is a rough overall balance between men and women – but rather about other key indicators such as income inequality, inequality in decision-making, gender portrayal, and sexual harassment and personal safety.

It should be noted that the 2018 UNESCO Global Survey on the implementation of the 1980 Recommendation asked countries to review gender issues for the first time and the data provided was limited to the female and male genders, and thus did not cover the multiplicity and fluidity of gender.

A multi-faceted inequality

In the cultural sector, women consistently earn less than men. In North America, female museum directors earn only US\$0.75 for every dollar earned by a male museum director⁴⁶. The same pattern exists when you look at professional artists. According to data from Germany's *Kunstlersozialkasse*, the average annual income of women enrolled in the programme was over 25% lower than the average income of men. Women in every category earned less than men, with the largest gap in the performing arts, where women earned over 35 % less than men. In April 2018, the Brandenburger Tor Foundation, the Institute for Strategy Development, together with the Berlin association of visual artists, published the results from a study on the situation of artists in Berlin. The study shows that the gender pay gap for visual artists in Berlin is 28%, above the national average of 21%. The average income from art is €9,600 per year and half of all artists earn less than €5,000 from their art. While men earn €11,662 a year, women earn only €8,390. Neither is a living wage. The gender pay gap means that independent female artists are even more prone to pension poverty than independent male artists since low income means low pensions⁴⁷.

The overwhelming majority of professional artists in the world today are not employed for their art

In the cultural sector, women consistently earn less than men

46. *ReShaping Cultural Policies : Advancing creativity for development*, 2018

47. *Women in Culture and the Media*, a study by the German Culture Council, 2016, only available in German at <https://www.kulturrat.de/wp-content/uploads/2016/12/Frauen-in-Kultur-und-Medien.pdf>.

The Australian income data are similar, with the average annual income of female professional artists 25% lower than their male counterparts for all arts-related income. The Swedish data show that the median income of female artists was 15% lower than their male counterparts, which is less than Sweden's 19% wage gap across all employment. It is important to note that, in the World Economic Forum Global Index, Sweden was the 9th most equal country in terms of economic participation and opportunity. In that category, Germany ranked 26th and Australia 46th.

In 2017, Brazil's film and television workers union (SINDCINE) carried out a survey that showed a pay gap in the industry as a whole, of 13% to the disadvantage of women⁴⁸. Similarly, a report on gender equality for directors in the European film industry between 2006 and 2013, carried out by the European Women's Audiovisual Network⁴⁹, found that female directors earned almost 30% less than male directors and female scriptwriters earned 10% less than male scriptwriters.

The gender gap takes several forms and it is important to recall that the United Nations Sustainable Development Agenda sets out to ensure "equal opportunities for leadership at all levels of decision-making in political, economic and public life".

Unfortunately, the cultural industries are no exception to the prevailing global evidence and women are under-represented in key creative and decision-making roles. In the audio-visual industry, there are fewer women who are directors, cinematographers and scriptwriters, producers or executive producers. On the other hand, in some technical fields such as make-up, hairdressing and wardrobe, women outnumber men. In Europe, only one in five films is directed by a woman, and only 16% of women directors receive grants for their work.

Two of the world's largest movie industries, Hollywood⁵⁰ and Bollywood⁵¹ are in similar stages of development and each has a significant imbalance between female and male filmmakers.

48. <https://www.ancine.gov.br/pt-br/sala-imprensa/noticias/ancine-divulga-estudo-sobre-o-perfil-do-emprego-no-setor-audiovisual>

49. https://www.ewawomen.com/wp-content/uploads/2018/09/Complete-report_compressed.pdf

50. <https://womenandhollywood.com/resources/statistics/>

51. <https://www.hollywoodreporter.com/news/how-female-filmmakers-are-transforming-indian-cinema-1006036>

According to Women and Hollywood, an initiative and website that educates, advocates, and agitates for gender diversity and inclusion in Hollywood and the global film industry, of the top 100 grossing films of 2018, women represented only 18% of producers/executive producers and only 15% of writers⁵². In September 2018, the European Platform of Regulatory Authorities presented a report to the European Commissioner for Digital Economy and Society that examined the representation of women in the audio-visual media industry today⁵³. The report clearly shows that women appear less on-screen across a range of genres and are typically subject to more stereotypical and degrading portrayal than men. In off-screen creative roles, women are generally underrepresented, but most significantly in senior and technical positions. For example, in the United Kingdom, women make up only 26% of technical and engineering roles, pointing to a “glass ceiling” that prevents women from moving to decision-making roles. Other figures find that, in France, female on screen representation is 42% on average, and drops to 29% during peak programming. In Hungary, the number of female presenters/hosts decreases by more than 60% past the age of 40.

***Women represented
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In Billboard’s 2018 ranking of the most important people in the global music industry (primarily executives), only 31 of the roughly 175 people listed are women⁵⁴. The Keychange international movement is leading the call for change in the European music sector. Based on findings such as of the 600 most popular songs only 2% were produced by women or that only 15% of labels are majority-owned by women, Keychange is committed to highlighting female underrepresentation in the music industry and to demonstrating the positive impact of targeted investment in female talent. It is encouraging festivals to achieve a 50:50 gender balance by 2022 and is harnessing the demand for change among the current generation of artists and music industry professionals.

52. <https://womenandhollywood.com/resources/statistics/>

53. Achieving greater diversity in broadcasting – special focus on gender: Benefits and best practice approaches, Comparative background for the European Platform of Regulatory Authorities, available in English at <https://cdn.epra.org/attachments/files/3356/original/EPRA-Gender-Report-FINAL.pdf?1537262554>.

54. <https://www.billboard.com/articles/business/8096144/billboard-2018-power-100-list>

Another initiative is Women in Music Index by the Music Cities Network⁵⁵, which provides an overview of initiatives for and from women in music. It maintains an updated index of studies, panels, research, networks, conferences, events, policies, festivals, mentoring, funding programmes, and collectives with a female focus in the creative and music industries.

Policies promoting gender equality

National policies and initiatives that promote women's empowerment, including in the cultural and creative sectors, vary significantly across Member States. We find measures ranging from national legislation promoting gender equality, including in the cultural sector, to more targeted measures mandating equal pay for equal work, and some working to achieve a 50-50 balance in decision-making positions in the cultural and creative industries.

Ranked as the 5th most equal country by the World Economic Forum Global Gender Gap Index, Nicaragua has been promoting equal opportunities in the cultural and creative sectors through the implementation of its 2008 law on equal rights and opportunities. This legislative framework includes a chapter dedicated exclusively to the cultural field that requires both the State and the regional and municipal governments to promote equal opportunities for women and men in three areas: (1) technical and financial support for the development of creativity and artistic talent and for the presentation of cultural or artistic works, publications, exhibitions and concerts; (2) real and equal access to promotion and training in all cultural and artistic disciplines; (3) wide dissemination of knowledge of women artists. Several programmes by the Ministry of Family Economy and the Nicaraguan Institute of Culture are dedicated to prioritizing women in artistic activities where they have not had a leading role, as for example in the field of music. Moreover, in Nicaragua, 50% of public funds are allocated to female artists and cultural producers; there must be equality in decision-making positions in the public cultural and media institutions and a minimum of 40% of artists exhibited and screened in major arts and cultural industries festivals (cinema, book publishing, music, etc.) must be female artists.

55. <https://www.musiccitiesnetwork.com/projects-details/women-in-music>

Countries such as Mali have taken similar initiatives. In 2015, Mali's National Assembly adopted a National Gender Policy to promote a gender approach across policies and programmes, to recognize women's rights in all socioeconomic and professional spheres, including the role played by women artists – craftswomen, musicians and choreographers, storytellers, writers – in creation, production, staging, transmission, dissemination and marketing. The policy considers women artists as key partners in promoting gender equality beyond the arts and culture sphere. In addition, the 2016 decree on the status of the artist guarantees gender equality in the protection of artistic works and the implementation of the social and economic rights of artists.

In other countries, ministries of culture as well as arts and culture councils have designed specific programmes to set benchmarks for equal opportunities in funding, provide targeted financial support to women as entrepreneurs, investments in their creative works, or to producers who provide women with a platform to showcase and distribute their works. This is the case in Cyprus, where the Ministry of Energy, Commerce, Industry and Tourism operates a scheme providing financial incentives to women entrepreneurs starting their own business, including women artists and cultural professionals. In Germany, programmes at both the federal and Länder level have been designed to give special support to women as artists and cultural professionals. These aim to ensure fairer pay or a stronger women's presence in festivals. In Sweden, the Arts Grants Committee policy provides that there should be no more than a 60-40 gender split in awarding grants to artists in every artistic discipline (except dance, where it can be no more than 70-30 given that women dominate in this sector).

Sector specific programmes exist, particularly in fields such as music or cinema, to address the particular challenges to these sectors. For example, in Jamaica, the Fi Wi Masters-in-Residence Global Competitiveness Training programme initiated *GURLES in Music* to support women in the music industry. In 2017, it produced a first album entitled *Big Woman Tingz* featuring 10 tracks from female artists at varying stages of their careers which, according to its producers, contained "powerful statements about gender equality and the strength of women".

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In the field of film, many programmes have been created in the recent past. One of the first was the policy of the Swedish Film Institute in 2013, requiring that funding to directors, scriptwriters and producers be distributed equally between women and men. The SFI produced an action plan, *Towards a Gender Equal Film Production*, including a mentoring programme to help women filmmakers develop leadership skills and career strategies and set as one of its goals to establish gender equality both in front of and behind the camera by 2020.

Initiatives towards achieving gender equality in the creative sector have also been implemented by professional associations. In Latin America, the *Declaration on Gender Equity in Musician's Unions*⁵⁶ was unanimously adopted by union leaders at a workshop held by the International Federation of Musicians in Bogotá, Colombia in November 2018. Latin American unions agreed to promote the participation of women in the membership and governance of the unions, and to monitor differences in professional development and remuneration between men and women. A similar declaration was agreed at African musicians' unions meetings in Dar-es-Salaam in 2017 and in Dakar in 2018. The International Music Council also reports on the launch of the Women in Music Forum⁵⁷, a platform to connect and promote women musicians, first in Kenya and then throughout the continent.

Gender portrayal

The portrayal of women in all forms of popular culture can perpetuate dominant views on gender, and reflect the negative stereotypes of women and girls that prevail. For artists, the imbalanced and stereotypical on-screen portrayals of women directly and negatively affect the quantum and nature of work opportunities for female actors in film, television, digital media and advertising.

A University of Southern California study, published in 2010, examined the prevalence of speaking or named female characters in popular films across 11 countries and found that only one woman appeared for every 2.24 men, over a 40-month period. The lowest number of speaking or named

56. <https://www.fim-musicians.org/bogota-seminar-2018-11>

57. <https://www.womeninmusic.org/>

female characters were found in co-productions between the United States of America and the United Kingdom (23%), while the highest number of female characters (38%), was found in films made exclusively in the United Kingdom. China's casts were the most gender-balanced overall, at only 30%⁵⁸. Data from the Geena Davis Institute on Gender in Media suggest that programming geared toward younger viewers tends to have an even more disproportionate number of male protagonists.

In 2016, the Canadian Broadcasting Corporation (CBC), National Film Board and Telefilm Canada committed to achieving gender parity in key roles by 2020. While the number of women in key creative roles in all films in 2017 was only 28%; in 2018, the percentage of Telefilm projects featuring a woman in one of the key roles increased to 44%. In its current schedule, CBC English-language television has 15 series, and women direct 50% of the episodes.

Where there are fewer women characters on our screens, there are fewer work opportunities for female performers; where there is a stereotyped portrayal of women as sexualized and less interesting/independent than the stronger male characters, there is discrimination against female performers. As with most other artistic categories, female performers earn less than their male counterparts, but they also have fewer opportunities overall, and these diminish significantly with age.

In response to those who may believe film producers are merely reflecting audience tastes, a recent report suggests otherwise. The Bechdel test provides that a film is female-led if: (1) the film has at least two women in it; (2) the women speak to one another in the film; and (3) they speak about something other than a man. The analysis examined the 350 top-grossing films released between 2014 and 2017. The female-led films outperformed those that did not meet this minimum standard, in each of the five categories analyzed, and every film that earned more than US\$1 billion in global box office receipts passed the Bechdel Test.

58. Smith L., Stacy; Choueiti, Marc; Pieper, Katherine (2014). *"Gender bias without borders: An investigation of female characters in popular films across 11 countries"*

Sexual harassment and personal safety

Abuses of power in the arts and the different forms they may take in terms of harassment and personal security have attracted increased attention at the international level. Sexual harassment and bias intersect with other experiences of oppression, influenced by gender, among other factors.

The audio-visual and performing arts sectors in many countries have led campaigns to address gender inequalities, and to expose sexual misconduct and harassment and glass ceilings. Examples include the Guerrilla Girls, and the #MeToo and #MaintenantOnAgit movements. Unions and professional associations are playing a leading role globally. In the last few years, film festivals have been important spaces for advancing these campaigns and exposing specific issues. At the 2018 Cannes Festival, a group of 82 women (symbolically representing the total number of female filmmakers whose movies had appeared in competition in its 71-year history – compared to 1,645 male directors) walked in silence along the red carpet before stopping halfway up the steps of the entrance to the Palais des Festivals. The gesture symbolized the difficulties for women to climb the professional ladder. A collective statement from the group called for institutions to provide safer working conditions for women, and for governments to uphold equal pay laws. Responding to this movement, the Cannes Film Festival counted the number of directors who had submitted to the festival in 2019. There were 1,845 feature film submissions from 39 countries, of which 26 % were directed by women. In its official selection of 69 films (both features and shorts), 27.5 % were directed by women. In the same year, the Toronto International Film Festival (TIFF) responded with a wide range of initiatives including the *Share Her Journey*⁵⁹ women's rally, a 24-hour hotline and an emphatic and highly visible code of conduct, prominently displayed not only in every venue but on adjacent city streets, making it clear that TIFF is an inclusive

Sexual harassment and bias intersect with other experiences of oppression, influenced by gender, among other factors

59. <https://shareherjourney.org/>

and safe space with zero tolerance for harassment. In 2019, a round table entitled *50 years of FESPACO: 50-50 for women* was held during the Pan-African Film and Audiovisual Festival of Ouagadougou (FESPACO) during which the Yennegas Association of female filmmakers from across Africa presented a list of recommendations to the UNESCO Director General and several African Ministers of Culture. Recommendations included the need for seminars on the history of women in African cinema, establishing quotas for women in film selections, setting criteria for funding African cinema that give priority to films in which women hold key creative positions, and others.

Governments have responded to the safety concerns with initiatives designed to allow more victims to come forward in order to challenge inappropriate behaviour and to create safer work places.

A 2019 amendment to the Korean Artists Welfare Act requires the State and local governments to prepare measures to protect artists from sexual harassment and sexual violence. In May 2019, the Ministry of Culture reported that a survey found 46.8% of female artists and professionals in the performing arts, compared with 7.9% of male respondents, reported they have experienced sexual harassment or violence. It therefore established a new department dedicated to gender equality and published training manuals for artists and cultural professionals to prevent sexual harassment and violence. The government operates three sexual assault hotlines in public institutions including the Artists Welfare Foundation, the Korea Film Council and the Korea Creative Content Agency to encourage artists and cultural professionals to report incidents of sexual harassment and provide them with consultation services, legal guidance, and even medical and legal costs under certain circumstances.

Artists' associations, in collaboration with other partners, are also taking an active role. In Québec, 44 organizations in the cultural sector adopted a code of conduct to prevent psychological and sexual harassment in the workplace. The organizations also launched *L'Aperté*, a place where artists and cultural workers can receive confidential support and legal assistance.

Governments have responded with initiatives designed to allow more victims to come forward in order to challenge inappropriate behaviour and to create safer work places

Freemuse is an organization that advocates for freedom of artistic expression, initially in the field of music but now in every artistic genre. In a recently released report, entitled *Privatising Censorship, Digitising Violence: Shrinking space of women's rights to create in the digital environment*,⁶⁰ which is based on interviews with 16 artists who have experienced censorship and/or online harassment, Freemuse documents how women artists interact within the digital environment. The report examines the worrying nature and frequency of threats directed towards women artists who are becoming increasingly susceptible to misogynistic online abuse and threats. The report also documents how the inconsistent application of community guidelines, adopted by social media platforms governing nudity and obscenity, combined with online abuse, discourages creativity. Online harassment is driving some of these women artists off the platforms and away from online spaces, despite how essential they are for their art.

The need to address gender inequality in the cultural and creative sectors is gaining support, and States are responding accordingly. Yet, as pointed out in the ILO Report on *Challenges and opportunities for decent work in the culture and media sectors* (2019), equity policies in the culture sector in most countries are still heavily dependent on national legal frameworks. There is little in the way of experience or good practice designed specifically to address cultural industry concerns, including with regard to gender equality. In order to inform future policies and measures on gender equality, comprehensive and systematic sex-disaggregated data is urgently required. Steps are being taken in this direction. In 2019, the Centre national du cinéma de l'image animée (CNC) published a comprehensive study on the status of women in the film and audio-visual industry in France⁶¹ *La place des femmes dans l'industrie cinématographique et audiovisuelle* presents data starting in 2008 on the status of women working in the sectors and examines its own structure and grants allocations. Costa Rica is also making

60. Available at https://freemuse.org/wp-content/uploads/2019/09/Digitising_Censorship_Privatising_Violence_2019.pdf.

61. *La place des femmes dans l'industrie cinématographique et audiovisuelle*, Les études du CNC, available at <https://www.cnc.fr/documents/36995/927212/La+place+des+femmes+dans+l%27industrie+cinematographique+et+audiovisuelle.pdf/80d9741a-dbbf-c8b6-5fb6-545272bcc393>.

significant efforts in this direction. The Secretariat of Planning for the Ministry of Culture and Youth measures indicators by gender, both on attendance at cultural activities and the number of artists by cultural sector. In Mexico, the Secretariat of Culture has been monitoring the distribution of the support granted by the National Fund for Culture and the Arts (FONCA) by gender since 2013. From 2013 to 2018, of the incentives granted by the National System of Art Creators programme, which grants economic incentives for artists to devote themselves exclusively to creation, only 33% went to female artists. The rate of successful applications by women was a dismal 11.5%. More work needs to be done to support women in designing projects submitted to FONCA if gender parity in the distribution of incentives is to be achieved. Such parity is the first step towards achieving gender equality.

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Historically, the creative and cultural sector has played a crucial role in cultural diversity. In recent years, the sector has experienced accelerated progress in trade relations and, consequently, in the structuring of the labour market.

According to the Costa Rica Satellite Account, it is estimated that 2% of the working population are employed in the cultural sector. It is in this context that the Ministry of Culture and Youth (MCJ), with the support of the UNESCO-Aschberg Programme for Artists and Cultural Professionals, has carried out an analysis of social security coverage for workers in the sector.

In Costa Rica, for the most part, artists and cultural professionals are informal or self-employed workers who are therefore not covered by the social security system. The analysis revealed that more than 25% of workers are in this situation.

This reality is now leading the country towards the adoption of a special insurance system that responds to the particular characteristics of artists and cultural professionals and defines a coverage regime that addresses the specificities, causes and implications of cultural work. To this end, it is necessary to identify eligible professions, the State's capacity to cover the economic cost and viable contribution periods for workers; to establish a regulatory base for average income as well as to assess the sector's capacity to form unions and perform administrative functions.

It is in this sense that it is necessary to promote public policies. The MCJ has set up a working group with the Costa Rican Social Security Fund and the Ministry of Labour and Social Security to design, within the framework of existing legislation, an appropriate coverage solution to meet these challenges. It is a process that takes time because of the complexity of finding solutions, but there is no doubt that having a clear understanding of the sector now allows us to establish and build effective inter-institutional dialogue.

Alejandra Hernández Sánchez

Deputy Minister of Culture, Ministry of Culture and Youth (Costa Rica)

Freedom of artistic expression

Both the 1980 Recommendation and the 2005 Convention are recognized as standard-setting instruments that “help to create and sustain a climate encouraging freedom of artistic expression and the material conditions facilitating the release of creative talents”⁶². The 1980 Recommendation stresses that artists must benefit from the rights and protection provided for in international and national legislation relating to human rights, in particular in the area of freedom of expression and communication. In turn, the 2005 Convention understands promoting respect for human rights and fundamental freedoms of expression, information and communication as a pre-requisite for the creation, distribution and enjoyment of diverse cultural expressions.

Legal and policy frameworks relating to freedom of artistic expression

In most States, freedom of expression is guaranteed in the Constitution or other significant legal instrument. Most States base their protections on Article 19 of the Universal Declaration of Human Rights: “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.” In a few countries, freedom of expression is enshrined in complementary policies. Fewer States explicitly protect freedom of artistic expression or artistic creation, or freedom from censorship, each of which is a powerful statement particularly for artists who may express themselves in ways that are avant-garde, or outside the mainstream of a particular society.

Few States explicitly protect freedom of artistic expression or artistic creation, or freedom from censorship

62. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, *The right to freedom of artistic expression and creativity*, 2013, A/HRC/23/34, paragraph 17, available at <https://www.ohchr.org/EN/Issues/CulturalRights/Pages/ArtisticFreedom.aspx>.

According to Article 16 of the Finnish Constitution, “the freedom of science, art and higher education is guaranteed.” Freedom of art is considered as a primary tool to increase citizens’ welfare⁶³. The rationale behind freedom of art is that art creates a platform for discussions within civil society, and civil society dialogue prepares the way for further development of the democratic constitutional rights. Freedom of art prevents the State from interfering in artistic processes (production, distribution and consumption); it obligates the State to protect this against interference by a third party and; on a general level, it obligates the State to secure the availability of adequate material resources for the production, distribution and consumption of art. Freedom of art prohibits prior censorship and other types of State manipulation, with the exception of censorship of children’s films, which is authorized by a special restrictive constitutional provision relating to freedom of expression. Freedom of art also limits legislators’ power to enact criminal sanctions that seek to regulate the form, shape or content of artistic expressions (e.g. legislation concerning obscene or blasphemous expressions).

In Germany, artistic freedom is anchored in Article 5 (3) of the Basic Law. The Federal Constitutional Court sees artistic freedom as one of the fundamental rights of communication and so its scope cannot be restricted. It is therefore prohibited to interfere in artistic methods, content or trends. The 2018 German coalition government agreement expressly underlines artistic freedom:

“Policy on culture and science, the media and education is a policy for an open society, for freedom of opinion and for scientific and artistic freedom. Given the danger to artists, intellectuals, journalists, scientists and scholars worldwide who dare to voice criticism, but also owing to our historical responsibility, we support an initiative to ensure artistic and scientific freedom, freedom of the press and freedom of opinion and expression, including with regard to exiles’ experiences.”

63. Pauli Rautiainen, Freedom of the arts as a fundamental right under the Finnish constitution, 2007, Arts Council of Finland, Publication No. 34.

This commitment was reinforced by the German Association of Cities, which in a 2018 position paper *Eintreten für eine offene Gesellschaft – mit Kultur und Kulturpolitik Demokratie stärken* (Advocating for an Open Society – Strengthening Democracy through Culture and Cultural Policy), emphasised that

“... art and culture not only have an artistic and aesthetic dimension; they have always also been political. The task of cultural policy is to create and preserve (free) spaces and possibilities for development. The presidency emphatically rejects all attempts to exploit art and culture for political purposes of any kind. Artistic freedom documents the value of a free, open and pluralistic society in which diverse interests, lifestyles and forms of expression have their place.”

Freedom of artistic expression is also constitutionally guaranteed in Czechia. The 1993 Charter of Fundamental Rights and Freedoms stipulates that: (1) freedom of scientific research and artistic creation are guaranteed; (2) freedom of expression and the right to information are guaranteed; and (3) everyone has the right to express their opinion in speech, in writing, in the press, in pictures or in any other form, as well as to freely seek, receive, and disseminate ideas and information irrespective of State borders. The Charter explicitly prohibits censorship, although freedom of artistic creation is limited by certain laws, mainly in the field of criminal and administrative law, in the name of the protection of certain public interests such as public order or the moral development of children.

Nicaragua's Constitution provides that “artistic and cultural creation is free and unrestricted, with cultural workers having full freedom to choose forms and modes of expression”. In addition, the Nicaraguan Constitution includes access to training and the right to form artistic organizations as cultural rights.

Freedom of expression is also one of the principles of the Law on the Advancement of Culture, approved by the Republic of Indonesia's House of Representatives in 2017, the corollary being that ensuring freedom of expression is one of the obligations of central and regional governments.

A comparative study of the Constitutions of 21 countries in Asia, Africa, America and Europe that mention the principle of freedom of creation was presented to the French Senate in January 2016⁶⁴. The study observes differences between these countries concerning the principle of freedom of creation in each Constitution. Examples include South Africa's Constitution that recognizes the "right to freedom of artistic creativity", within the right to freedom of expression, and associates it to freedom of the press and other media, freedom to receive or impart information or ideas and academic freedom and freedom of scientific research. The study notes that freedom of "artistic creation" is not explicitly mentioned in the European Union's Charter of Fundamental Rights, although Article 13 of the Charter states that "the arts and scientific research are free".

This comparative study contributed to the debate preceding the adoption of the July 2016 law on freedom of creation, architecture and heritage. The law enshrines and guarantees in domestic law the principle of freedom of creation, as a corollary to the already guaranteed freedom of expression. This principle was previously recognized in scattered international texts. The law also provides that this freedom must be exercised in compliance with freedom of expression and the Intellectual Property Code (copyright and neighbouring rights). The combination of these two articles does not reduce creation to the creator's act alone, but also introduces the collective right of the public to take part in cultural life, while respecting freedom of artistic expression and respect for copyright and neighbouring rights.

Even where constitutional provisions concerning freedom of artistic expression exist, they are not necessarily articulated in cultural policies

In 2015, Latvia, Uruguay and the United States led a statement to the Human Rights Council on *Reaffirming the Right to Freedom of Expression, including the Right to Artistic and Creative Expression*. Sixty States claimed that "in addition to being an integral part of the protected human right to freedom of expression, artistic and creative expression is critical to the human spirit, the development of vibrant cultures, and the functioning of democratic societies". However, it should be noted that signatories represented only 30% of the 193 United Nations Member States.

64. Available in French at <https://www.senat.fr/lc/lc261/lc261.pdf>.

Furthermore, even where constitutional provisions concerning freedom of artistic expression exist, they are not necessarily articulated in cultural policies and cultural policy actors do not often make use of them. Exceptions include Sweden's national cultural policy, established in 2009, which reads "Culture is to be a dynamic, challenging and independent force based on the freedom of expression. Everyone is to have the opportunity to participate in cultural life.

Creativity, diversity and artistic quality are to be integral parts of society's development". The Swedish Government also adopted an Action Plan in July 2017 entitled *Defending free speech – measures to protect journalists, elected representatives and artists from exposure to threats and hatred* which aims to enhance knowledge, offer support to victims and strengthen the justice system. In line with this action plan, the Swedish Government has increased efforts to prevent and manage threats against journalists, politicians and artists, as key actors in the democratic debate.

*"In culturally diverse societies, artistic freedom translates into the diversity of cultural expressions. Protecting and promoting the diversity of cultural expressions is to maximize culture's contribution to democracy and development."*⁶⁵

Mechanisms for transparent decision-making

It is with a view to improving the social recognition of artists that the 1980 Recommendation invites States to "stimulate public and private demand for the fruits of artistic activity in order to increase the opportunities of paid work for artists, inter alia by means of subsidies to art institutions, commissions to individual artists, or the organization of artistic events, and by establishing art funds". Thus, the issue of economic security and access to social benefits for artists and cultural professionals is inextricably linked to freedom of artistic expression.

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65. Declaration by the Nordic Ministers of Culture on Promoting Diversity of Cultural Expressions and Artistic Freedom in a Digital Age, available at <https://www.norden.org/en/declaration/declaration-nordic-ministers-culture-promoting-diversity-cultural-expressions-and>.

With good reason, the former Rapporteur in the field of cultural rights, Farida Shaheed, recalls in her 2013 report that “artists’ autonomy can only be guaranteed through a diversity of funding and a good balance between public and private sponsorship, both of which may open space for artistic creation”.

In Benin, one of the problems plaguing artists and cultural professionals in recent years has been the management of the Fund for Arts and Culture (Fonds des arts et de la culture), formerly the Cultural Assistance Fund (Fonds d’aide à la culture). To prevent the malfunctioning of these mechanisms, the government adopted a decree approving the new statutes of the Fund for Arts and Culture in 2018. According to the Council of Ministers report, the former Cultural Assistance Fund was perceived as free support dedicated to the beneficiaries of its interventions, without applying objective criteria for granting funds or its financial sustainability. Such perceptions and its many dysfunctions had stripped it of all effectiveness in relation to its original mandate. The government is keen for this new Fund for Arts and Culture to play a leading role in promoting arts and culture in Benin with professionalism, transparency and equity. As such, the new institutional mechanism reduces the size of the Board of Directors; includes a Bonus Fund; enhances support for the production and promotion of artists and for the dissemination of their works by the national and international media and simplifies the Fund’s organization chart.

While most artists depend on public or semi-public support to survive, one of the more natural threats to them is that of becoming “mere advertisers”⁶⁶ of corporate or political interests. As acknowledged by the former Rapporteur in the field of cultural rights, Farida Shaheed, “Reconciling public intervention and freedom is not an easy task”⁶⁷. One of the most frequently used guarantees against undue political influence by States is the “arm’s length principle”, which establishes the distance at which the State should remain in relation to financial or legal support for artists or arts organizations. The Cultural Endowment of Estonia

66. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, The right to freedom of artistic expression and creativity, 2013, A/HRC/23/34, paragraph 76, available at <https://www.ohchr.org/EN/Issues/CulturalRights/Pages/ArtisticFreedom.aspx>.

67. Ibid., paragraph 72.

is an autonomous body working at “arm’s length” from the Ministry of Culture in support of the arts, folk culture, sport, and the construction and renovation of cultural buildings. Among its stated values are *reliability*, defined as the competence, impartiality and transparency of its decisions, and *independence*, defined as using expertise and the needs of a cultural discipline, and not political or sectarian interests, as the basis for its decisions. A supervisory board of 11 members directs the Cultural Endowment. These members are the Minister of Culture as chairperson, a representative designated by that Minister, a representative designated by the Minister of Finance, and eight representatives designated by each endowment panel. These are the structural units which distribute money allocated to a specific area by the supervisory board, based on both applications and its own initiative. Each unit is managed by a panel consisting of seven independent experts who are nominated by organizations from the relevant cultural sectors.

In the case of Nordic countries, Canada, Australia, and others, independence and the “arms-length” principle are fundamentals of cultural policy. In order to ensure freedom of expression, grants to artists are awarded by independent arm’s length panels of peers and/or independent experts, and are given with no political strings attached.

Challenges limiting freedom of artistic expression

The most limiting factor to artistic freedom is the low and fluctuating income of professional artists. This observation is almost universally shared regardless of the country’s level of economic development. In some African countries such as Chad, Cameroon and Mozambique, artistic freedom is also limited by the lack of infrastructure for artists, or the existence of moral codes that may restrict what can be performed in the public space. In this regard, it is noteworthy that, according to the handbook for legal practitioners “Protecting the right to freedom of expressions under the European Convention on Human Rights” published by the Council of Europe in July 2017, the conflict between “morals” and freedom of expression has mostly been examined in the context of artistic freedom.

The most limiting factor to artistic freedom is the low and fluctuating income of professional artists

Insecurity may also affect both the diversity amongst artists and the artists' ability and willingness to take risks and fully use their freedom of expression. The lack of employment protection can also be compounded by the lack of legal protection when it comes to hatred and harassment.

Various civil society organizations report growing restrictions, and fears of expanding censorship, in every region. Many of these groups are concerned about how governments, religious authorities and violence can limit freedom of expression and lead to self-censorship. Others report how there is a reluctance in some societies to question authority, and this limits the scope of artistic expression. In 2014, Pen America conducted an international survey of writers that investigated how government-led mass surveillance influenced them. The report found that the levels of self-censorship reported by writers living in liberal democracies were similar to those living in countries with histories of widespread state surveillance. Self-censorship was high, ranging from 34% in so-called 'free countries' to 61 % in so-called 'not-free countries'.⁶⁸

Various civil society organisations report growing restrictions, and fears of expanding censorship, in every region

Freemuse, Index on Censorship and PEN America, among others, also report cases where, despite constitutional guarantees of "freedom of speech and expression", governments introduce legislation that includes requirements for artists to register and to obtain a licence. Some of these new laws require that song lyrics and scripts for film and stage performances be reviewed or that musicians seek government permission to perform outside the countries. Licences can be revoked if the content is deemed offensive.

If artists' voices are silenced, it is not only a tragedy on a personal level, but is a threat to the diversity and sustainability of our societies. In its 2016 report *Hotad kultur?* (Threatened culture?), the Swedish Agency for Cultural Policy Analysis maps artists exposure to threats, harassment, theft, violence or

68. Global Chilling: The Impact of Mass Surveillance on International Writers, PEN America, 2015, http://www.pen.org/sites/default/files/globalchilling_2015.pdf. The category 'Level of Freedom' in this study was determined using Freedom House's classification of countries in its 2014 Freedom in the World report, <https://freedomhouse.org/report/freedom-world/freedom-world-2014>.

vandalism based on professional practice: authors/journalists and visual and design artists. The report found that one in six authors/journalists and visual artists had been exposed to threats, harassment, theft, violence or vandalism over the past year. Almost one in five authors had been exposed to threats or harassment, and about half of all threats were received via the internet. The Swedish Arts Grants Committee's report *Working environment of artists*⁶⁹ (2017) examined the situation of artists within all areas: visual arts and design, dance, film, music, publishing and theatre. It concluded that almost one in ten artists had been exposed to sexual harassment, threats or physical violence in the past year. Among those exposed, more than one-third had refrained from artistic activities such as performances, publication and participation.

Most States have laws that deal with criminal behaviour, including hate speech that incites violence, and laws that protect children. Other laws, such as those dealing with libel, slander and insult; blasphemy; and more recent ones dealing with terrorism and security, can be problematic for artists, particularly as populist and nativist sentiments rise. It is thus positive that a number of States have recently repealed insult laws, and several have repealed blasphemy laws. Since 2016, PEN International and PEN Centres in Africa have carried out a focused campaign to repeal criminal defamation and insult laws in Africa, as they are a serious barrier to freedom of expression across the continent.

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Importantly, as former Rapporteur in the field of cultural rights, Farida Shaheed, points 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"⁷⁰.

69. Available at <https://www.konstnarsnamnden.se/Sve/PDFer/A%20study%20of%20artists%20working%20environment.pdf>.

70. Report of the Special Rapporteur in the field of cultural rights, Farida Shaheed, The right to freedom of artistic expression and creativity, 2013, A/HRC/23/34, paragraph 44, available

Threats to artists can arise not only from governmental authorities, but also from others, as highlighted by the violent attacks on performances in Paris, Manchester, Las Vegas, Istanbul and Kabul carried out by individuals or non-State groups. While there is universal condemnation of such brutal acts, some governments have in turn used security laws against artists who are exploring controversial ideas, or issues of social injustice, democracy, or minority rights. In its 2017 report, *Dangerously Disproportionate: The ever-expanding national security state in Europe*⁷¹, Amnesty International cites “the criminalisation of various forms of expression that fall short of incitement to violence and threaten legitimate protest, freedom of expression, and artistic freedom” as one of key common features of counter-terrorism initiatives in Europe. A debate about artistic freedom was launched in the U.K. in January 2019, when two drill rap artists were sentenced to a (suspended) nine month jail sentence for performing one of their songs at a London concert the previous month. While drill rap is associated with gang violence in the city and some rappers have been jailed for criminal conduct, this is the first time in British legal history that a jail sentence was imposed for performing a song, according to the NGO Index on Censorship.

In its 2019 report, Freemuse examined 673 violations of artistic freedom in 80 countries. It reported that four artists were killed and a further 14 were attacked in 2018 while at least 157 artists were imprisoned or detained in 29 countries. Censorship was practised in at least 60 countries, affecting 1,807 artists and art works. The Freemuse 2019 report *Privatising Censorship, Digitising Violence: Shrinking space of women's rights to create in the digital environment*⁷² also shows how the combined impact of online anonymity, along with the consistency, frequency and nature of threats, can impose forms of self-censorship on women's creativity.

at <https://www.ohchr.org/EN/Issues/CulturalRights/Pages/ArtisticFreedom.aspx>.

71. Available at <https://www.amnesty.org/download/Documents/EUR0153422017ENGLISH.PDF>

72. <https://freemuse.us3.list-manage.com/track/click?u=2bad7529ee81d0af3b80ef4ce&id=16f4855641&e=727817521a>

Initiatives to protect artists at risk

Through their work, artists can potentially put themselves at risk. Sweden has created a specialized body within its police force to receive complaints from artists that suffer from threats and hatred and to monitor violations of artistic freedom. The Swedish Arts Grants Committee has also been entrusted by the Government to develop methods of supporting artists who are at risk or exposed to threats and hatred because of their artistic activities.

A number of countries accept that foreign individuals persecuted for their art may qualify as refugees. In Germany, for example, artists enjoy the same statutory protection in the face of danger as all citizens of and visitors to the country. Many initiatives to protect persecuted artists have been launched in Germany in recent years. The Martin Roth Initiative was launched in 2018 to protect and support artists and culture professionals committed to the freedom of art, democracy and human rights in their home country. The joint project by the Goethe-Institut and the IFA (*Institut für Auslandsbeziehungen* -Institute for Foreign Relations) offers artists at risk a temporary safe residence in their home region or in Germany. Close cooperation with civil society organizations and cultural institutions worldwide is intended to lay the foundations for successful integration into the local scene, or for the opportunity to return home with long-term and positive professional prospects. Also in Germany, since 2015, the online information portal *Touring Artists* contains a *Refugees Welcome* page with information for refugee artists and, since 2018, as part of the *Weltoffenes Berlin* (Cosmopolitan Berlin) project, information, advice and workshops for international artists in Berlin, including professional integration of refugee artists.

The leading global organization in the field is the International Cities of Refuge Network (ICORN), an independent organization of cities and regions offering shelter to writers and artists at risk. Since 2016, more than 70 cities around the globe have joined the network, and no less than 200 writers and artists have found shelter in an ICORN member city. In 2015, the United States International Institute for Education established the Artist Protection Fund

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to provide relief and safe-haven to threatened artist. The Fund makes fellowship grants to threatened artists by collaborating with hosts including academic institutions, arts organizations, and cultural centres from around the world.

Artists may entertain people, but they also contribute to social debates, sometimes bringing counter-discourses and potential counterweights to existing power centres. The vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies.⁷³

Artists at Risk (AR) is an institution dedicated to mapping persecuted art practitioners. Visual artists have been AR's primary focus, although AR has hosted many other artists including musicians, filmmakers and theatre practitioners facing persecution or threats. AR goes beyond what can be provided by advocacy and mapping organizations since it can provide immediate help in times of crisis. As part of a collective effort with its many partners and networks, such as AR's Helsinki Advisory Council, PEN America and Freemuse, AR has taken the first steps towards establishing an association for visual artists, and a new fast-response residency organization for artists at risk. AR also initiated Perpetuum Mobile, a platform and network to support art practitioners in times of need. It includes information on enabling their safe exit from their countries of origin; the procurement of travel documents; legal assistance; and matching with residencies.

73. "Challenges and effects of terror on arts and culture", Freemuse Stakeholder submission to the 2017 Report of the Special Rapporteur in the field of cultural rights, Karima Bennoune, The impact of fundamentalism and extremism on the enjoyment of cultural rights.