



# Challenges and opportunities for decent work in the culture and media sectors

# **Challenges and opportunities for decent work in the culture and media sectors**

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**International Labour Office  
Geneva**

*Working papers are preliminary documents circulated to stimulate discussion and obtain comments*



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## Preface

There are nearly 30 million culture and media workers globally, and their work makes a significant contribution to their respective countries' social and economic development.<sup>1</sup> The creative and collaborative nature of their work – compounded by continuous technological developments – has resulted in a proliferation of diverse working arrangements for culture and media workers, including freelance, self-employment, and part-time work. Such arrangements can offer independence, flexibility and employment opportunities, but can also affect their working conditions, their ability to participate in collective bargaining or fully enjoy freedom of association, as well as their access basic social protection.

It is against this backdrop that, in March 2015, the Governing Body requested the Office to collect and analyze data on employment in the culture and media sectors in order to better describe and understand the specific problems faced by governments, employers and workers with regard to labour relations in these sectors.<sup>2</sup>

The present study examines employment in culture and media in 16 countries, from four regions, and covering the very diverse world of the media and culture. This encompasses: musicians, actors, dancers, journalists, screenwriters, technicians and creators of audio-visual and live performances, and visual artists.

The present analysis brings to light the extremely diversified employment conditions and decent work issues within these sectors. It also highlight gaps and policy options to ensure that specific types of employment relationships, and the need for flexibility and independence among the workers in the culture and media sectors, do not undermine these workers' right to equitable treatment, regardless of their contractual relationship. It also provides concrete guidance around measures needed to ensure that workers in the media and culture sectors can adapt to the work of the future, including actions to adjust the market and (re)training these workers in the light of technological developments.

Finally, while the study calls for greater understanding regarding the various employment regimes applicable to workers in the media and culture sectors, as well as on their implications for taxation, social security and competition, it also recalls the importance of the international labour standards on freedom of association and the right to bargain collectively, which should apply to all workers, whatever their employment relationship.

We believe that this analysis is a good starting point to inspire a more comprehensive debate on the future of work of such important and diverse sectors.

Alette van Leur  
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<sup>1</sup> UNESCO: *Cultural Times: The first global map of cultural and creative industries* (Paris, 2015), p. 8.

<sup>2</sup> ILO: *Sectoral and technical meetings in 2014 and proposals for sectoral work in 2016-17*, Governing Body, 323rd Session, Geneva, Mar. 2015, GB.323/POL/4.

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## 1. Context and methodology

In March 2015, the Governing Body of the International Labour Organization (ILO) approved a proposal to collect and analyse data on employment in the culture and media sectors in order to better describe and understand the specific problems faced by governments, employers and workers with regard to labour relations in these sectors.<sup>3</sup>

### *Purpose of study*

The purpose of the present study is to map the legal and political landscape in which culture and media workers operate and to explore policy options for expanding and promoting decent work and the formalization of labour relations in these sectors.

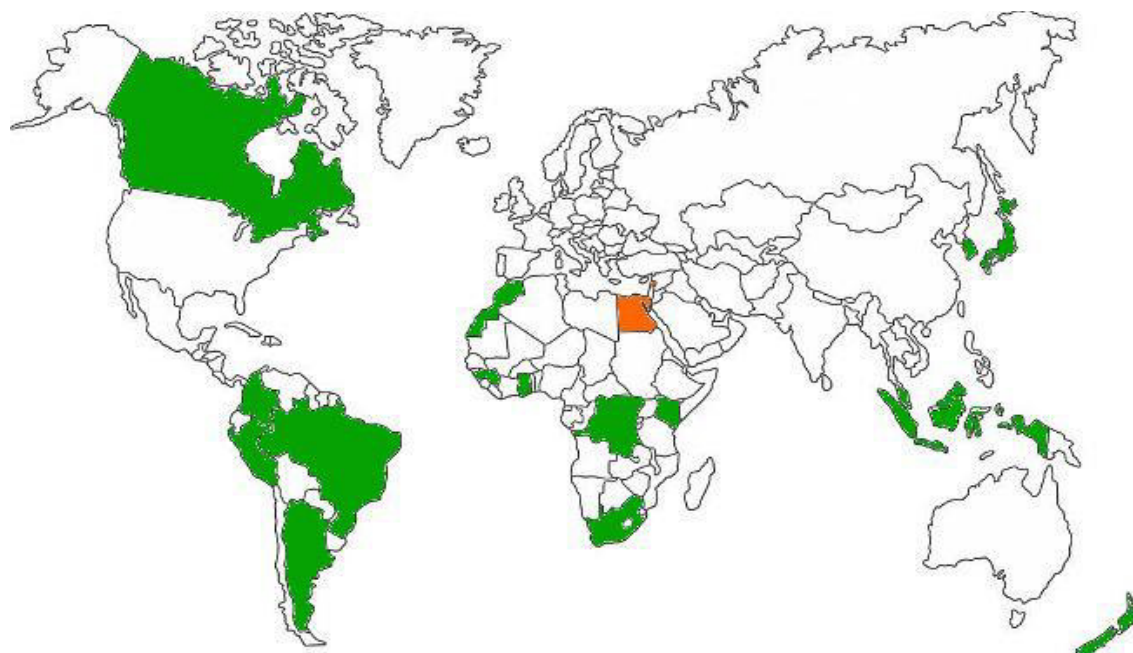
### *Methodology*

In consultation with the trade union federations in the culture and media sectors, the ILO identified 18 countries from four regions for the purpose of this study (see Table 1 and Figure 1).

**Table 1. Regions and countries selected**

Region	Countries
Africa	Côte d'Ivoire, Democratic Republic of the Congo, Kenya, Morocco, Senegal, South Africa
The Americas	Argentina, Brazil, Canada, Colombia, Peru
Asia and the Pacific	Indonesia, Japan, Malaysia, New Zealand, Republic of Korea
Arab States	Egypt, Lebanon

**Figure 1. Regions and countries selected**



<sup>3</sup> ILO: *Sectoral and technical meetings in 2014 and proposals for sectoral work in 2016-17*, Governing Body, 323rd Session, Geneva, Mar. 2015, GB.323/POL/4.

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These regions are very different from one another and there is significant variation within each region owing to the history of the countries selected (for example, Commonwealth membership or a history of colonialism). It was decided to focus on countries from which information on labour conditions in the culture and media sectors was not readily available. For this reason, the study did not include the United States and Western Europe in its scope. Countries were selected given the significance of their cultural industry.

All of the trade unions and members of international trade union federations<sup>4</sup> in the sectors received a questionnaire (see Appendix 1) comprised of 13 questions, both quantitative and qualitative, on the characteristics of the unions themselves and the four primary topics of the study:

- laws and collective agreements governing labour relations;
- conflicts, if any, between the right to bargain collectively and competition law;
- social protection for non-standard workers;
- specific legislation on freelancers/self-employed workers.

In some countries, it proved difficult to obtain the desired information because none of the trade unions were members of international sectoral federations. In those cases, it was necessary to conduct the study through general research. For two of the countries on the initial list, Egypt and Lebanon (identified in orange in Figure 1), however, sufficient data could not be collected in this manner.

The section on policy trends is largely based on responses to the questionnaire. This methodology presents both advantages and disadvantages.

#### *Advantages*

- a single questionnaire, administered in English, French and Spanish, making it possible to compare subsectors, trade unions and countries;
- direct contact by email, telephone or person-to-person interview;
- independence of the study's author from both the ILO and the international sectoral federations, allowing for freedom of opinion and freedom in the transmission of information.

#### *Disadvantages*

- the length of the questionnaire and the inclusion of questions that do not apply to all trade unions (for example, on representation in the case of occupationally specific public audiovisual unions);
- significant diversity in the organization and size of trade unions (see Paragraph 2.2), which can make it difficult to compare results;
- the difficulty of communicating with trade unions and their representatives in some countries owing to language barriers, differences in time zones or work schedules;

<sup>4</sup> UNI MEI (division of UNI Global Union that represents workers in the media, entertainment and arts sectors), International Federation of Actors (FIA), International Federation of Journalists (IFJ) and International Federation of Musicians (FIM).

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- the need to use a language that is not necessarily the official language or *lingua franca* of the country, as in the Republic of Korea, Indonesia, Malaysia, Brazil and the Arabic-speaking countries.

## *Terminology*

### *Non-standard forms of employment*

According to current operational definitions used by the ILO,<sup>5</sup> “non-standard forms of employment” refers to an employment relationship that deviates from the standard model: full-time, indefinite and in a subordinate relationship. The following forms of work are considered “non-standard”:

- temporary work;
- part-time and on-call work;
- multi-party employment relationships;
- disguised employment<sup>6</sup> and dependent self-employment.

### *Freelance work*

For the purposes of the present study, a freelancer is defined as someone who is “pursuing a gainful activity on their own account, under the conditions laid down by national law”<sup>7</sup> and “can be seen as falling somewhere between dependent employees and self-employed workers”.<sup>8</sup>

### *Self-employment*

This term refers to work performed under a commercial or civil contract that does not constitute an employment contract. Self-employment is, in principle, a subcategory of freelance work but may be the only type of freelance work in a sector where there are no indefinite employment contracts.

<sup>5</sup> ILO: *Non-standard employment around the world: Understanding challenges, shaping prospects*, Geneva, 2016, p. 10.

<sup>6</sup> On ambiguous employment relationships, see ILO: *Non-standard forms of employment*, Report for discussion at the Meeting of Experts on Non-Standard Forms of Employment, ILO Conditions of Work and Equality Department (Geneva, 2015): “Ambiguous employment relationships may arise when the respective rights and obligations of the parties concerned are not clear, or when inadequacies or gaps exist in the legislation, including regarding the interpretation of legal provisions and their implementation. One area that sometimes lacks legal clarity is dependent self-employment, where workers perform services for a business under a civil or commercial contract but depend on one or a small number of clients for their income and receive direct instructions regarding how the work is to be done. Dependent self-employed workers are typically not covered by the provisions of labour or social security laws, although a number of countries have adopted specific provisions to extend some protection to them”.

<sup>7</sup> Directive 2010/41/EU of the European Parliament and of the Council of the European Union of 7 July 2010 on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity and repealing Council Directive 86/613/EEC, article 2(a).

<sup>8</sup> Ibid.



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*The concept of ‘worker’*

The definition of a ‘worker’ varies from one country to another; however, the ILO’s Committee on Freedom of Association has had occasion to recall that the mere absence of an employment relationship does not preclude one from being defined as a worker, meaning that self-employed workers should enjoy the right to organize.<sup>9</sup>

<sup>9</sup> See ILO: 211th Report of the Committee on Freedom of Association, Case No. 1053, para. 163; ILO: 241st Report of the Committee of Association, Case No. 1285, para. 213.

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## 2. Description of sectors and general trends

### 2.1 Wide variety of sectors

The culture and media sectors comprise several subsectors which, in turn, include a wide variety of job descriptions. This segment of the economy includes cultural workers in the broad sense: musicians, actors, dancers, journalists, screenwriters, technicians and creators of audiovisual and live performances, and visual artists. Each of these subsectors is, in turn, diversified. For example, media includes the Internet, television, newspapers, magazines, books, films and radio, as well as the editing, production and distribution of audiovisual content. Live performances include the performing arts, theatre, dance, ballet, music concerts and festivals, opera, comedy and circuses. Music encompasses not only performance, but also composition and recording.

Lastly, culture and media sectors in the broadest sense also include video games, electronic publishing and print industries.

Superimposed on this variety of activities is a wide range of occupational statuses and contractual relationships. In some countries, media, orchestra and public theatre workers are equivalent to public servants whereas the vast majority of actors and musicians are self-employed workers and precarious.

The other primary characteristic of the culture and media sectors is the highly informal and unstable nature of cultural work in virtually every country, with the exception of state media and cultural institutions that may account for a significant percentage of workers. This is particularly true in Africa and the Asia-Pacific region, where there is a clear dichotomy between State employees and private or voluntary sector workers. Moreover, in some countries, such as Indonesia, the Labour Code states that employment contracts may be “written or verbal”.<sup>10</sup> The existence of an informal culture and media economy may lead to discrimination between typical and other forms of employment, thus contributing to ineffectiveness in labour law whereby:

The coexistence within the same economic and social structures of a market economy operating to international standards, and of less competitive activities that nevertheless involve the majority of the active population, creates a legal and socio-legal pluralism that excludes the poorest people from social protection.<sup>11</sup>

There is little reliable quantitative data over the long term, complicating any attempt to accurately measure employment in the sector over the past few decades. Moreover, the culture and media sectors are governed by a regulatory framework (legal, administrative and institutional) that varies widely from one country to another and are heavily dependent on public financing. Therefore, the revenue and employment data vary according to national systems concerned.

### 2.2 A trade union landscape as varied as the sectors themselves

In order to conduct the present study, 69 trade unions in 16 countries were contacted (see Appendix 2). It is interesting to note the extreme diversity of these unions in quantitative terms: their membership varies from 120 to 40,000, with representation of workers in the relevant

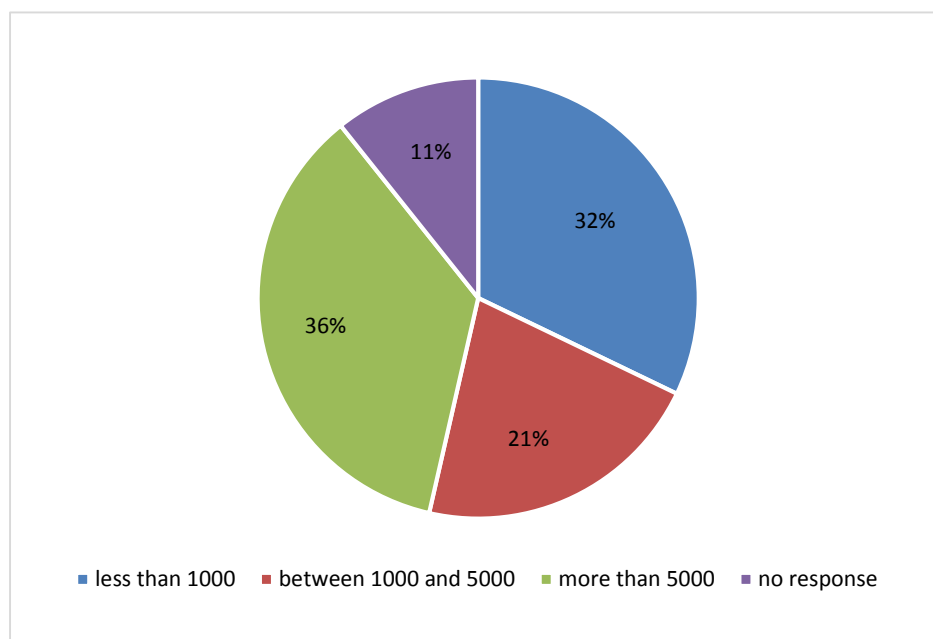
<sup>10</sup> Act of the Republic of Indonesia concerning Manpower, No. 13, 2003, section 52.

<sup>11</sup> R. F. Meknassi: “The effectiveness of labour law and decent work aspirations in the developing countries: A framework for analysis”, in T. Teklè (ed): *Labour law and worker protection in developing countries* (Geneva, ILO, 2010).

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subsector ranging from less than one per cent to almost 100 per cent. Furthermore, some unions represent only employees of cultural institutions or the public media, while others represent only private sector workers. Trade unions' action also depends on the country's political structure. For example, in Brazil, a federal country, unions are modelled on political and administrative entities. Journalists alone have 31 trade unions (regional and local) within a federation (the Federação Nacional do Jornalistas (FENAJ)) that oversees their activities. There is a federal Act on the overall working conditions of journalists, but collective agreements are negotiated and implemented on a state-by-state basis.

**Chart 1. Percentage of trade unions that responded, by size**



Lastly, many other trade unions are not affiliated with national groups or international sectoral federations and were therefore difficult to include in the study.

### **2.3 Constantly-changing sectors**

The culture and media sectors influence trends, but they are also heavily influenced by economic fluctuations because they are dependent on both private (advertising, subscriptions and sponsorship) and public (subsidies, fees and public support at the national or local level) financing.

They also accompany and even anticipate societal changes while being shaped by technological changes, such as the digital revolution of the early 2000s. While technological developments, changing regulations and the emergence of new business models offer new opportunities, they also pose new challenges for the culture and media sectors.

At the international level, we see two opposing trends. On the one hand, there has been slow growth and even a decline in employment owing to austerity measures in public financing of cultural institutions and production, and their impact on public media and culture. On the other hand, broad restructuring programmes have resulted from the digitalization of production and consumption and have impacted on working methods in the sector. In Canada, for example, the

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labour market in the culture and information sectors is on the decline with a net loss of 9,000 jobs – 1.2 per cent of the sector as a whole – between November 2016 and November 2017.<sup>12</sup>

The economies of emerging countries in the Asia-Pacific region and Africa and the recovering economies of some South American countries have enabled job growth in recent years, including in the audiovisual production sector. In Brazil, a study by the National Film Agency (ANCINE) shows that the number of jobs created by audiovisual production and post-production companies more than doubled between 2007 and 2015 (from 5,358 to 11,252).<sup>13</sup>

Thus, a study that seeks to reflect all of the ongoing changes in the international situation faces a considerable challenge.

In this economic sector, jobs, sustainable employment and potential career success require not only skills, but also talent, creativity, qualification and specialization. In culture and the media, as in other sectors, “[t]he supposedly ‘atypical’ has become typical; the ‘standard’ has become the exception”.<sup>14</sup> And, more than in any other sector, a significant proportion of workers are turning more or less spontaneously to self-employment in search of flexibility and independence in their creative work. Some, however, have self-employment ‘imposed’ on them by their employers, while others, although self-employed, are economically dependent on a single employer.

In Western Europe, media workers have minimal trade union representation and are quite often covered by collective agreements. In Africa, Asia and Latin America, however, most workers in the sector are extremely vulnerable. As a rule, they lack job security and, as self-employed, often do not qualify for social security. The advantage of the present study is precisely to identify examples in practice.

## 2.4 Importance of interns and volunteers

The often-informal nature of the culture and media sectors encourages the development of internships and other types of unpaid work, including in the form of youth volunteerism. It is important to distinguish between situations that are agreed to by the workers and informal employment relationships that are imposed on them. This is particularly true in countries where much of the work is carried out in the informal economy, as is the case in some of the African countries covered by the present study. The issue of an informal economy in which professionals are forced to work without contracts must therefore be addressed separately from that of volunteers in a regulated setting.

If we limit ourselves to situations in which workers agree to be volunteers or interns, there is indeed a genuine practice of volunteerism in some countries’ cultural sectors.

The issue of internships, including unpaid ones, is very important. While internships can be an opportunity for young people to enter the labour market, they can also result in unpaid or low paid work that can be protracted over time. In media, for example, Canadian trade unions have reported unfair practices to the Ontario Ministry of Labour, which amended the province’s

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<sup>12</sup> Statistics Canada: [Labour Force Survey, November 2017](#), in *The Daily*, 1 Dec. 2017, Table 2, p. 9.

<sup>13</sup> Agência Nacional do Cinema (ANCINE): “[ANCINE divulga estudo sobre o perfil do emprego no setor audiovisual](#)”, 26 Jun. 2017.

<sup>14</sup> ILO: *Towards the ILO centenary: Realities, renewal and tripartite commitment*, Report of the Director-General, International Labour Conference, 102nd Session, Geneva, 2013, para. 71.

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Employment Standards Act to regulate such practices.<sup>15</sup> In Canada, roughly 1 million volunteers<sup>16</sup> hold the equivalent of over 50,000 full-time positions per year, valued at almost 2 billion Canadian dollars based on the average hourly wage. An interns' rights association has reported unfair practices through the media.<sup>17</sup>

In New Zealand, too, volunteer activities account for a significant portion of the culture sector as over 6,000 institutions and enterprises use volunteers.<sup>18</sup> In South Africa, 3,562,000 hours were devoted to volunteer activities in the culture and entertainment sectors in 2014,<sup>19</sup> and in Brazil, although their exact number is not available, the culture and education sectors account for 21 per cent of all volunteers.<sup>20</sup>

In many countries, it is difficult to obtain data on volunteer work and internships, however, workers and trade unions raise common issues:

- Volunteers and interns play an important role in the sectors' activities, which is based on specific skills, informal structures and variable working hours.
- There is potential for competition between workers, on the one hand, and volunteers and interns, on the other. In some cases, the latter may be seen as holding disguised jobs, creating a social dumping situation.
- In many cases, interns' working conditions are not regulated with regard to wages, working time and social security, giving rise to complaints by trade unions or specific associations.

<sup>15</sup> D. S. Fuechtmann: "What impact will proposal to eliminate unpaid internships in federal industries have on media workers?", in *J Source*, 4 May 2017; T. Baluja: "Updated: Ontario Labour Ministry cracks down on unpaid internships at Toronto Life, The Walrus", in *J Source*, Mar. 2014.

<sup>16</sup> K. Hill: *Volunteers and donors in arts and culture organizations in Canada in 2013* (Ontario, Hill Strategies, 2016).

<sup>17</sup> Canadian Intern Association: "Wall of Shame: The Hill Times", 19 Apr. 2016.

<sup>18</sup> Statistics New Zealand: *The contribution of non-profit institutions in New Zealand*, New Zealand Government, 2016.

<sup>19</sup> Statistics South Africa: *Volunteer Activities Survey 2014*, 10 Sept. 2015.

<sup>20</sup> OECD: *How's life in Brazil?* (Paris, OECD, Better Life Initiative, 2017).

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### 3. Contextual trends

Culture and media are, in a sense, the “precursors” of technological developments and changes in the organization of work. On the latter point, the use of non-standard forms of employment may be viewed as a tool for labour market flexibility. However, the workers in question are often falsely self-employed or economically dependent and do not enjoy the same rights and social protections as employees.

#### 3.1 Digitalization and its impact on work

The media and culture sectors are undergoing sweeping changes owing to the digitalization of some subsectors, such as the media, the audiovisual industry and much of the music industry. Digitalization has an impact on, among other things, regulation, sources of financing, business models, employment levels, and work practices. The profession of television reporter, for example, now has little to do with the 1980s teams comprised of a reporter, a soundman, a cameraman and a network engineer. These days, it is common for the same person to be responsible for the entire editing and technical process, as well as for editing written texts to be posted on the Web, with follow up on social media.

The digital revolution has had the same impact on the production of fiction and music, as production and dissemination methods and the consumption of musical and audiovisual works have been digitized. Digitalization affects not only working methods, but the entire cultural ‘ecosystem’, including online intellectual property. Despite the steady expansion of on-demand services, particularly music and audiovisual streaming, performers are not always fairly compensated when their performances are offered online. The International Federation of Musicians (FIM) and the International Federation of Actors (FIA) are involved in the Fair Internet for Performers campaign,<sup>21</sup> which is calling for legislative amendments that would entitle performers to equitable remuneration for each on-demand use of their performances. This campaign is underway in the European Union and Asia.<sup>22</sup>

There are, however, several ‘digital paradoxes’ in these sectors, including with respect to books and music. In 2015, 80 per cent of the books sold worldwide were paper copies, including in developed countries where electronic readers are struggling to find a wide audience, while the music industry is largely based on revenue-generating concerts and live events. In Europe, for example, the sale of concert tickets generates 16 billion euros in revenue as compared with 6 billion for recorded music.<sup>23</sup>

Not only does digitalization affect working methods in traditional workplaces, it also has a direct influence on the places where people work. There has been a dramatic increase in teleworking, which should not be confused with working from home since the former term applies primarily to employees and because telework is not necessarily carried out in the home. In Canada, a 2008 study showed that 36 per cent of people working in the fields of information,

<sup>21</sup> The [Fair Internet for Performers](#) campaign is run by four international organizations representing over half a million performers in Europe – AEPO-ARTIS, the European group of the International Federation of Actors (EuroFIA), the FIM and the International Artist Organisation of Music (IAO). The goal of the campaign is “to create a sustainable cultural and creative sector where performers get a fair share of online revenues, through an unwaivable remuneration right for digital uses of their work, collected from the users who make the performances available on demand and subject to mandatory collective management”.

<sup>22</sup> FIM: “[The Fair Internet campaign reaches Asia](#)”, 19 Feb. 2016.

<sup>23</sup> UNESCO: *Cultural Times: The first global map of cultural and creative industries* (UNESCO, Paris, 2015).

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culture and recreation worked from home.<sup>24</sup> While it is true that telework and working from home provide a degree of flexibility and independence, they also entail risks of overwork, stress and blurring of boundaries between private and professional spheres of life. This is particularly the case for journalists and other media workers, who, even at home, are constantly connected to social networks and news feeds.

The last stage of the digital revolution is the replacement of human beings by computers and the production of ‘creative’ content by machines. While this concern does not yet affect singers, instrumentalists have been confronted with it for a long time. Journalists and some radio and television technicians are also concerned. In journalism, for example, robot-generated content is already used in sectors such as sports (scores) and finance (prices on the worldwide stock exchange). In sports, robots are now capable of creating short videos based on photos and a three-paragraph text, which is also robot-generated. By sampling an actor’s voice and even digitizing his or her appearance, movements and gestures, virtual clones capable of new interpretations completely unrelated to the actor’s performance and physical changes over time can be created.

Further innovations that are anticipated in the years to come include: the Internet of Things and image recognition, which will require a new approach to representation; conversational interaction, which will allow the public to ask robots questions about the content of programmes, films or articles; and mixed reality, which merges journalism and fiction in an immersive environment. These innovations will be both technological and professional since they must be developed, programmed and *a priori* controlled by human beings.

### **3.2 Non-standard forms of employment: freelancers, self-employed workers and single entrepreneurs**

While employment in the culture and media sectors has always been, to a great extent, insecure due to the time-limited nature of the work, digitalization and new business practices have been increasing this insecurity since the 1990s. The status of freelancers and self-employed workers makes them, in the eyes of critics, not *freelancers* who work voluntarily for many employers or contractors, but *forcedlancers* who have self-employment imposed on them but in reality work for only one employer, or *fakelancers* who perform the same work under the same conditions as full-time employees.

This non-standard form of employment is characterized by an economically dependent relationship disguised for tax purposes, in order to avoid social protection costs, or to circumvent labour laws. Officially, these individuals are self-employed; however, in reality, they work under conditions similar to those of employees, including with regard to the choice of workplace and tasks to be completed.

In 2015, the European Foundation for the Improvement of Living and Working Conditions (Eurofound) identified ‘new forms of work’, including:

- employee sharing, where an individual worker is jointly hired by a group of employers to meet the [...] needs of various companies, resulting in permanent full-time employment for the worker;
- job sharing, where an employer hires two or more workers to jointly fill a specific job, combining two or more part-time jobs into a full-time position;

<sup>24</sup> Statistics Canada: [Chart 2: Professionals’ tendency to work at home varied by industry, 2008](#), 7 Dec. 2010.

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- interim management, in which highly skilled experts are hired temporarily for a specific project or to solve a specific problem, thereby integrating external management capacities in the work organisation;
  - casual work, where an employer is not obliged to provide work regularly to the employee, but has the flexibility of calling them in on demand;
  - ICT-based mobile work, where workers can do their job from any place at any time, supported by modern technologies;
  - voucher-based work, where the employment relationship is based on payment for services with a voucher purchased from an authorised organisation that covers both pay and social security contributions;
  - portfolio work, where a self-employed individual works for a large number of clients, doing small-scale jobs for each of them;
  - crowd employment, where an online platform matches employers and workers, often with larger tasks being split up and divided among a “virtual cloud” of workers;
  - collaborative employment, where freelancers, the self-employed or micro enterprises cooperate in some way to overcome limitations of size and professional isolation.<sup>25</sup>

The general trend in the countries covered by the present study, regardless of continent, level of development or type of employment relationship, shows an increase in the number of freelancers and misclassified self-employed workers. This situation is characterized by low income, job insecurity, insufficient or non-existent social protection and little or no access to benefits normally reserved for employees. While the high level of flexibility may benefit some of these workers, most of them would prefer to have greater continuity and stability.

The following examples are derived from questionnaire responses:

- In South Africa, according to one of the trade unions that participated in the study, all actors in the audiovisual sector have been employed as self-employed workers since the 1990s: “permanent employment is in steep decline in the culture and media sectors”, whereas “new production methods [...] are less labour-capital intensive”.
- In Côte d’Ivoire, while journalists are full-time employees, the trade unions’ replies suggest that “the number of freelancers is skyrocketing because several media companies are going out of business or experiencing financial problems”. In the music industry, the job market has been expanding since the 1990s, but “most of the contracts are oral”.
- In Kenya, according to the Communications Workers Union of Kenya (COWU(K)), “there is decrease of full time employees” in the sector. The Kenya Musicians Union (KeMU) reports that “the number of musicians is increasing exponentially, but musicians ARE NOT categorised as employees”.
- In the Democratic Republic of the Congo, according to the Union nationale de la presse du Congo (UNPC) [Congolese National Press Union], “there are more freelancers and self-employed workers than employees”.

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<sup>25</sup> Eurofound: *New forms of employment* (Luxembourg, Publications Office of the European Union, 2015).



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- In Malaysia, the media workers’ union reports that “[f]rom the past 10 years companies are recruiting more part time or contract workers with a clause agreed that both parties can terminate their contract with 24 hours’ notice”.
  - In Japan, the following employment relations apply to actors: members of a self-governing theatre company (gekidan) have no employment contract and are paid per performance; those contracted with a single agent (jimusho) have no employment contract, but instead have a fixed monthly wage with the jimusho entitled to receive any other income from the actor’s work; those contracted with an entertainment (geinou) production have fixed-term contracts with a wage; and freelancers are paid per artistic project/performance. Thus, there are no actors with stable employment relationships: all are dependent workers or freelancers.
  - In New Zealand, the trade union Equity states: “Fifteen years ago there might have been a few actors with employee status [...]. However now, [all actors] are employed as self-employed workers [...]”.
  - In Argentina, according to the culture and media workers’ union, the Sindicato de la Industria Cinematográfica Argentina (SICA-APMA), “there has been exponential growth in self-employment over the past ten years”.
  - In Peru, the trade unions report that the number of regular full-time jobs has fallen in proportion to the increase in the number of intermittent and freelance jobs.
  - In Colombia, the media workers’ union, SINPRISA, reports “a significant increase in the outsourcing of work; about 30 per cent of workers are hired by temporary employment agencies and there has been a decline in the number of permanent workers and an increase in the number of service contracts”. A recent study by the Organisation for Economic Co-operation and Development (OECD) shows that Colombia has by far the largest number of self-employed workers, who account for over 51 per cent of the active population.<sup>26</sup>

It should be noted that no trade union or country has reliable, accurate statistics on freelancers in the sectors as a whole. In response to the question on statistical information or sources of data, the New Zealand trade union, Equity, replied that “[t]his information is anecdotal, as statistics aren’t kept”. The musicians’ union in Argentina also noted that “there are no statistics on the employment rate from official or private sources. We have to rely on our own data”.

The third section of the study will clarify the legal framework governing freelancers in the selected countries. Available data on the journalism sector in countries where accurate statistics are kept are revealing. In Germany, one trade union’s membership includes about 43,000 employed journalists and 26,000 freelancers<sup>27</sup>, and in United Kingdom, the number of freelance journalists rose from 18,000 in 2015 to 34,000 in 2016.<sup>28</sup> This situation clearly demonstrates that “the supposedly ‘atypical’ has become typical”.<sup>29</sup>

<sup>26</sup> OECD: [Self-employment rate \(indicator\)](#), 2018.

<sup>27</sup> U. Kaiser: „[Arbeitsmarkt und Berufschancen](#)“, in *Deutscher Journalisten-Verband*.

<sup>28</sup> D. Ponsford: “[One in three freelance journalists in the UK are on state benefits](#)”, in *Press Gazette*, 15 Feb. 2017.

<sup>29</sup> ILO: [Towards the ILO centenary: Realities, renewal and tripartite commitment](#).

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Furthermore, even individuals who are working as employees often do not have a written contract. Workers' status varies widely (regular employment, public servant or similar, freelancer, self-employed worker, authors and artists paid on a performance basis) in a sector where a significant proportion of workers are unable to live of their earnings. For example, a third of British freelance journalists qualify for social benefits<sup>30</sup> and a third are obliged to supplement their income with a second job.

### 3.3 From amateurs to 'citizen creators': the increasing importance of non-professionals

The non-standard nature of employment relationships in the culture and media sectors is accompanied by contributions from amateurs and ordinary people engaged in artistic creation. Such contributions are so significant that during the 2000s, they gave rise to expressions such as 'citizen journalist', which were rejected by professionals and replaced by the term 'user-generated content'. The latter term raises the issue of professionalism and quality, but has also changed the media economy. As soon as it became technologically feasible (since 2008 in Europe, North America and most developed countries), some traditional media began to use non-professionals in order to diversify their sources and vary their content, as well as to save money on wages. At the same time, other 'citizen' media emerged, including Canada's *MyNews*, Indonesia's *Bale Bengbong* and Brazil's *Midia Ninja*.

The use of non-professionals may also stem from a desire for pluralism. France's *Bondy Blog* was established in a Parisian suburb in 2005 in order to compensate for a lack of information during the 'riots' in some parts of the city. This approach also led to the development of the *Zinester* website in poor neighbourhoods in Nairobi, Kenya. These are examples of initial experiments; however, the use of non-journalistic content in traditional media has become, to a great extent, so common as to be viewed as normal.

In the live performance sector, the use of amateurs is also on the rise, not as a result of technological developments, but as a means to make the employment relationship more flexible (although amateurs are not necessarily precluded from contractual relationships), including with regard to the payment of social security contributions and wages.

### 3.4 Cultural economics: market value and the wage bill

While the number of individuals employed in the media and culture sectors in the study countries cannot be accurately estimated, extrapolation from the European Union suggests that media and culture jobs account for more than one per cent of the workforce at the international level.<sup>31</sup> For example, according to a report prepared by Morocco's Economic, Social and Environmental Council in 2016, the print and publishing industry alone accounts for 1.8 per cent of all jobs.<sup>32</sup> The report also states that creative industries account for 5.2 per cent of GDP and about 5.3 per cent of all jobs in Africa. The sector survived the 2008 financial crisis, including in terms of the number of jobs. A 2014 study reports that in South Africa, the culture sector employs 2.93 per cent of the workforce (about 444,000 people), more than the mining industry that is

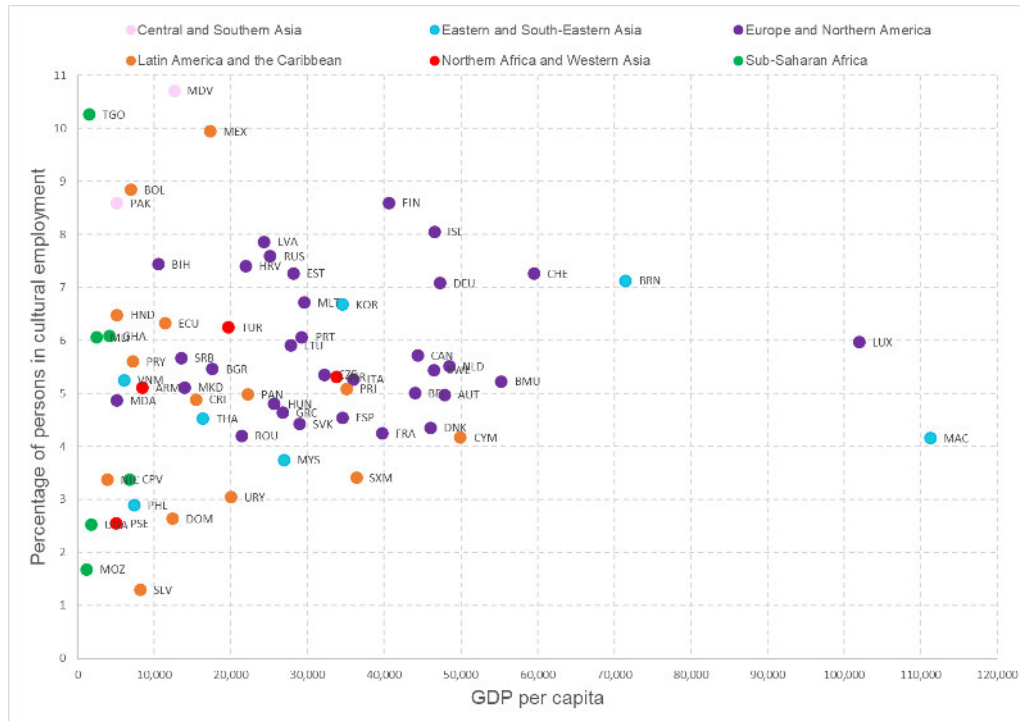
<sup>30</sup> D. Ponsford: "One in three freelance journalists in the UK are on state benefits".

<sup>31</sup> ILO: *Employment relationships in the media and culture industries*, Issues paper for the Global Dialogue Forum on Employment Relationships in the Media and Culture Sector, ILO Sectoral Policies Department, (Geneva, 2014).

<sup>32</sup> Economic, Social and Environmental Council of Morocco: *L'économie de la culture*, Opinion No. 25, (Rabat, 2016).

emblematic of the country. The most recent UNESCO statistics (2017) show that the percentage of persons in cultural employment varies from one to 11 per cent, depending on the country (see Figure 2).<sup>33</sup>

**Figure 2. Percentage of persons in cultural employment by GDP per capita, 2015 or latest year available**



Source: UNESCO Institute for Statistics

The culture and creative sectors account for a significant proportion of the global economy. A study carried out by a private company, EY, and published by UNESCO, shows that the nearly 30 million jobs that these sectors produce generate an annual revenue of 2,250 billion USD, accounting for three per cent of world GDP (see Table 2).<sup>34</sup> Based on this estimate, the number of jobs in these sectors is higher than those in the automobile industry in Europe, Japan and the United States (25 million). The study also states that the informal economy generated an estimated three billion dollars of cultural revenue in emerging countries and employs about 1.2 million people informally. It should be noted that several of the Latin American countries covered by this study, including Brazil, Argentina and Colombia, are among the top five international exporters of television programmes. Audiovisual production is a key industry in those countries, where, in addition to the soap operas that they export worldwide, over 400 feature-length films per year are produced.

<sup>33</sup> UNESCO: *Precarious situation for women working in the field of culture* (Paris, UNESCO Institute for Statistics, Fact Sheet No. 47, 2017).

<sup>34</sup> UNESCO: *Cultural Times: The first global map of cultural and creative industries*.

**Table 2. CCI sectors by revenue (US\$b) and jobs**

CCI sectors	Revenues (2013, US\$b)	Employment (2013, number of jobs)
Television	477	3,527,000
Visual arts	391	6,732 000
Newspapers and magazines	354	2,865,000
Advertising	285	1,953,000
Architecture	222	1,668,000
Books	143	3,670,000
Performing arts	127	3,538,000
Gaming	99	605,000
Movies	77	2,484,000
Music	65	3,979,000
Radio	46	502,000
Total (before removing double counting)	2,285*	31,524,000*
<b>Total (minus double-counting)</b>	<b>2,253</b>	<b>29,507,000</b>

Source: Cultural times: the first global map of cultural and creative industries, EY, 2015

\* Rounded figure

### 3.5 Gender: stereotypes, the pay gap and harassment

As noted in the 2014 ILO issues paper *Employment relationships in the media and culture industries*:

Women play an important role in the media and culture industries, although they still face discrimination and lower pay. Some audiovisual occupations remain largely the preserve of men while others (such as those relating to make-up, costumes and hair) are dominated by women. Women are often in “non-standard” employment relationships, while men are disproportionately represented in standard employment relationships.<sup>35</sup>

Thus, the sector is characterized by a stereotypical distribution of roles in which most part-time or non-standard jobs are held by women. Women actors, including in the audiovisual industry, are offered far fewer roles after they reach a certain age. The prevalence of job insecurity for women in the cultural sector was confirmed by a recent UNESCO report.<sup>36</sup>

For additional information on this problem in the countries covered by the present study, see section 4.4 below.

### 3.6 Young people: indispensable and vulnerable

Young people are attracted by the culture and media sectors and account for a significant portion of the workforce, but recent graduates also face recurrent problems, including multiple unpaid internships and traineeships. While internship experiences are important for young people

<sup>35</sup> ILO: *Employment relationships in the media and culture industries*.

<sup>36</sup> UNESCO: *Precarious situation for women working in the field of culture*.

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to acquire needed experience, the proliferation of internships could result in precarious forms of work, unfair competition and downward pressure on employees' wages.

Many trade unions also complain of a structural imbalance between the number of university graduates entering the labour market each year and the number of available positions. For example, the Musicians' Union of Japan (MUJ) reports that "[t]here are at least 10 music universities with well-known names in the vicinity of Tokyo alone. Every year, some thousands of students graduate there. [...] Because the music market is limited there is naturally a saturated situation and the oversupply causes the lowering of the wages. [...] To break out of such conditions protective policies of unions are impossible [...]".

### 3.7 Changing cultural policies

National and international cultural policies are based on a number of priorities such as adaptation to the digital environment, the exchange of cultural production and the mobility of creators, culture as an instrument of economic and social development, artistic freedom and freedom of expression, and equal opportunity with a focus on gender equality.

The implementation of these policies reflects individual countries' ideological and financial choices: public support for creation and free access to culture versus increased privatization and competition, a legal and economic framework for public media, the involvement of civil society in policy-making, and the protection of artistic freedom and artists' rights.

One of the study countries, the Republic of Korea, clearly illustrates the direct impact of a changing cultural policy. Since the 1990s, the culture industry has been viewed as a source of wealth for the country. The information technology and culture sectors and the gaming industry have been expanded proactively in order to make them a growth market at the local and international levels. During the first decade of the 21st century, cultural policy continued to focus heavily on the sector's commercial potential. While this development has been the subject of debate, a significant portion of public spending has been allocated to the promotion of the culture industry. The field of digital content has been incorporated into the industry, giving the Ministry of Culture greater budgetary discretion. In addition, Arts Council Korea (ARKO) was established in 2005 as a decision-making body that both cooperates with civil society and manages subsidies for the arts. This dual system comprises both a strong governmental body and a public non-governmental body (the Council), which coexist in order to support arts and culture.

While the Republic of Korea has expanded the culture industry in several areas (cinematographic production, music and gaming), Morocco has focused on the film sector and, for the past ten years, has been a genuine hub of regional and international cinematographic production. This also represents a policy choice by public bodies such as the Moroccan Cinematographic Centre and the Higher Institute for the Audiovisual and Film Industries.

South Africa has also endeavoured to attract film productions through the Foreign Film and Television Production and Post-Production Incentive, along with incentives for local production, particularly the South African Emerging Black Filmmakers Incentive.<sup>37</sup> While these measures may not have created more jobs for actors, they have nonetheless strengthened the cultural services industry.

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<sup>37</sup> Department of Trade and Industry, Republic of South Africa: "[Financial assistance \(incentives\)](#)".

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## 4. Employment policy trends

The employment policy trends discussed below fall into four areas. In the course of this study, it became clear that there was no consistency between selected regions, and that countries' situations reflected their history, including colonial pasts and, in some countries, association with Commonwealth traditions.

### 4.1 Legislation on employment relationships and freelancers/self-employed workers

Both the questionnaire responses and the research conducted show that there is very little specific legislation on freelancers in the media and culture sectors. There are competition laws that apply to all enterprises, including single entrepreneurs and self-employed workers, but they are not sector-specific.

Some countries have, however, adopted legislation on the status of the artistic professions, including as envisaged in the 1980 UNESCO Recommendation concerning the Status of the Artist,<sup>38</sup> which, among other things, invites States to “endeavour within their respective cultural environments to provide the same social protection for employed and self-employed artists as that usually granted respectively to other employed and self-employed groups”.

In practice, no country has legislation that focuses specifically on freelancers in the sector, but some have specific legislation on the professional status of workers, or a category thereof, that covers some contractual issues.

Canada is the first of the countries covered by this study to have adopted legislation on the status of the artist<sup>39</sup> in 1992 in the spirit of the 1980 UNESCO Recommendation. The explicit purpose of which is “to establish a framework to govern professional relationships between artists and producers [...]” (Article 7). The Act is divided into two parts: in the first, the Canadian Government recognizes the professional status of artists and several fundamental rights that are granted to them, while the second sets out a system of professional relations for artists and producers who “engage one or more artists to provide an artistic production”. The federal Act is supplemented by provincial legislation. In Quebec, for example, there are two relevant pieces of legislation: the Act respecting the professional status and conditions of engagement of performing, recording and film artists, and the Act respecting the professional status of artists in the visual arts, arts and crafts and literature, and their contracts with promoters.

In Brazil, Act No. 6533/78 regulates the status of artists and technicians in the sector in terms of qualifications and labour relations and makes the status of artists contingent on registration with the competent authorities. It should be noted that the new labour legislation, adopted in 2017 and in force since 11 November 2017, states for the first time that collective agreements apply to all workers and take precedence over the law even where they are less advantageous to workers, for example, with regard to weekly working hours.

Colombia recently adopted legislation on the status of actors,<sup>40</sup> which, like Brazil's legislation, envisages the establishment of a national registry. A previous Act on social security

<sup>38</sup> Recommendation concerning the Status of the Artist, adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization in 1980.

<sup>39</sup> Status of the Artist Act (S.C. 1992, c. 33), most recently amended on 19 June 2017.

<sup>40</sup> Act No. 163/2016 ensuring the enjoyment of labour and cultural rights by men and women actors in Colombia (15 Jun. 2016).

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for artists<sup>41</sup> was adopted in 1982. However, these pieces of legislation do not concern the various types of employment relationships.

The purpose of Peru's Act No. 28131 (2003) on performers<sup>42</sup> is to regulate "the recognition, protection, exercise and defense of, among other things, moral, economic, trade union and social security rights" (section 3).

New Zealand's legislation on employment relationships in film production (the Employment Relations Act, also known as the "Hobbit Act", given that its purpose was to ensure that Warner Brothers studio remained in the country throughout the production of the *Hobbit* film series) was amended in 2010<sup>43</sup> to stipulate that, unless otherwise stated in their contracts, film production workers are excluded from the definition of the term "employee". In October 2017, the Government undertook to review this legislation.

In the Republic of Korea, the Artist Welfare Act was promulgated in 2011 in order to provide social protection to artists recognized by the Artist Welfare Foundation, which is responsible for registering professional artists.

In South Africa, the 1967 Performers' Protection Act,<sup>44</sup> amended in 2016 and currently under review, regulates the intellectual property of actors, musicians, singers and dancers, but does not establish their professional status.

Morocco has had legislation on the status of the artist since 2003 - amended in 2016<sup>45</sup> - and adopted a Status of the Journalist Act in 2016.<sup>46</sup> Both artists and journalists must obtain a professional card. The Status of the Artist Act distinguishes between "artists who work on a continuing basis", "artists who work intermittently" and "self-employed artists", who must pay a business tax. The Status of the Journalist Act distinguishes between "professional journalists" and "self-employed journalists", who do not receive a standard wage. These Acts require that payment be made and that a written contract between the artist or journalist and the employer be signed. They also stipulate that all formally employed workers shall be considered employees covered by the Labour Code, without prejudice to any more favourable provisions of laws or collective agreements. Every artist is also entitled to establish or join a representative professional body or trade union, both of which are empowered to negotiate collective agreements. These Acts also provide for healthcare coverage and other benefits through a national mutual insurance scheme for artists. In addition, the Status of the Artist Act expressly provides that public administration employees may carry out artistic work and receive up to 15 days of special leave per six-month period.

The Democratic Republic of the Congo has had a Status of the Journalist Act<sup>47</sup> in place since 1981, but it merely distinguishes between "journalists on the staff of a publication" and "self-

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<sup>41</sup> Act No. 25/1985 on the basis for the establishment of a social security fund for Colombian artists (18 Jan. 1985).

<sup>42</sup> Performers' Act (2001).

<sup>43</sup> Employment Relations (Film Production Work) Amendment Act 2010 (29 Oct. 2010).

<sup>44</sup> Act 11/1967 to provide for the protection of performers of literary and artistic works (10 Feb. 1967).

<sup>45</sup> Act No. 68/16 on the artist and the status of artist (15 Dec. 2016).

<sup>46</sup> Act No. 1/16 on the status of professional journalists (27 Apr. 2016).

<sup>47</sup> Act No. 81-012 on the status of journalists working in the Republic of Zaire (2 Apr. 1981).



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employed journalists” without entering into details on contractual relationships and the rights therein.

In Lebanon, an Act adopted in 2008 regulates artistic professions; however, it was not available in French or English when the present study was being carried out.<sup>48</sup> The Act sets out the criteria for recognition of professional status but does not entitle the people in question to social protection.

Lastly, it should be noted that in Senegal, draft legislation on the status of the artist is being prepared by a committee that was established by the Minister of Culture in 2013. Its mandate was renewed in 2016. The draft legislation is expected to be adopted in 2018.

In the countries covered by the present study, there is only partial legal recognition of culture and media professionals – whether employees or non-standard workers – and their employment relationships. It is, however, important to note that Canada, Morocco and several South American countries have adopted legislation that could demonstrate good practice for other countries.

## **4.2 Collective bargaining by self-employed workers and competition law**

In some countries, self-employed workers and single entrepreneurs in the culture and media sectors are faced with a particularly restrictive application of competition law and the prohibition of cartels. It is, in practice, difficult to address the decent work issues that affect self-employed workers in these sectors because they are viewed as both workers, with respect to freedom of association and collective bargaining, and independent businesses, with respect to competition law.

Anti-cartel campaigns opposing the right of ‘independent’ workers in the culture and media sectors to bargain collectively have been carried out, for example, in Australia, Denmark, Spain, the Netherlands and Ireland.<sup>49</sup> In 2016, the International Labour Conference Committee on the Application of Standards considered, among other things, a case concerning the application of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) in Ireland with regard to the right of self-employed workers in the culture industry to bargain collectively. On 31 May 2017, the Irish case culminated in the adoption of an amendment to the Competition Act, authorizing exceptions for specific categories of self-employed workers in the culture and media sectors. At present, this amendment applies to actors, musicians and freelance journalists.<sup>50</sup>

The responses to this study’s questionnaire show that most trade unions accept self-employed workers as members. However, some unions, particularly in Africa, report that intimidation by employers and the public labour administration’s ineffectiveness in administration and dispute resolution have dissuaded many potential union members from joining.

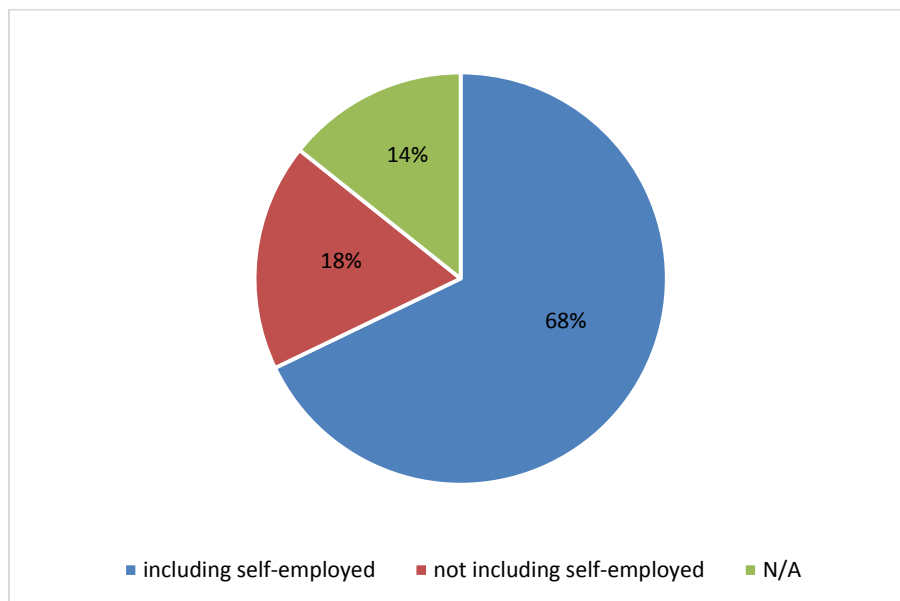
<sup>48</sup> Agenda Culturel: *Culture in Lebanon by 2020: State of play* (Beirut, Agenda Culturel, 2016).

<sup>49</sup> C. Rubiano: *Collective bargaining and competition law: A comparative study on the media, arts and entertainment sectors* (Paris, FIM, 2013).

<sup>50</sup> Government of Ireland: Competition (Amendment) Act 2017.

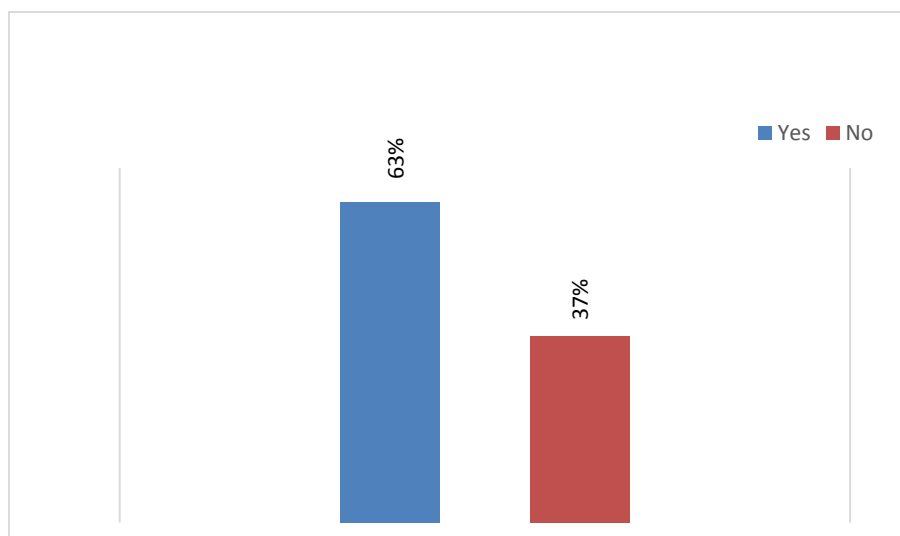


**Chart 2. Percentage of unions (that responded) that include self-employed workers**



Most of these trade unions also state that they are able to bargain on behalf of self-employed workers (see Graph 1).

**Graph 1. Collective bargaining on behalf of self-employed workers (unions that responded)**



The general trend for all sectors and regions is towards trade union representation for self-employed workers and freelancers, with the significant and logical exception of trade unions that are mandated to organize public media, or orchestra workers who have employee status, or in the case of some countries' state television stations, are even equivalent to public servants.

A closer examination of collective bargaining issues provides the following information, derived from responses to the questionnaire.

New Zealand is a country in which the conflict between competition law and the right of freelancers to bargain collectively is clearly an issue. Trade unions in the culture and media sectors, and other sectors (such as healthcare), have neither the right nor the opportunity to take collective action on behalf of self-employed workers. According to section 30 of the Commerce

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Act,<sup>51</sup> all self-employed, regardless of sector, are affected by strict application of the Act. Even as members of trade unions, they are prohibited from engaging in collective bargaining and are not entitled to set minimum prices:

In this Act, **price fixing** means, as between the parties to a contract, arrangement, or understanding, fixing, controlling, or maintaining, or providing for the fixing, controlling, or maintaining of, —

- (a) the price for goods or services that any 2 or more parties to the contract, arrangement, or understanding supply or acquire in competition with each other; or
- (b) any discount, allowance, rebate, or credit in relation to goods or services that any 2 or more parties to the contract, arrangement, or understanding supply or acquire in competition with each other.

In Canada, the relationship between competition and collective bargaining is governed by provincial legislation and the positions taken by employers. Most of this legislation distinguishes between employees, dependent contractors and self-employed workers. The distinction between the latter two is sometimes made on a case-by-case basis in relation to, among other things, the fiscal preferences of the employers or workers themselves. Self-employed workers who are recognized as such under the Status of the Artist Act may bargain collectively, which is not the case for journalists, who are not covered by the Act. But while these self-employed workers do not have the right to bargain collectively, trade unions engaged in such bargaining, such as the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA), represent all members, regardless of their status and of the competition rules, because bargaining is conducted with the consent of the concerned employer. Thus, in Canada the issue of the conflict between competition law and the right to bargain collectively involves practical questions of whether the individuals concerned have the status of artist, whether the employer consents to the bargaining process and to what extent the trade unions involved in bargaining are representative.

Lastly, there have been a number of court decisions on the issue of collective bargaining. In 2007, the Supreme Court of Canada adopted an important judgment confirming that the right to bargain collectively was a fundamental constitutional right.<sup>52</sup> The court confirmed that in the case of healthcare workers in the province of British Columbia, “[t]he right to bargain collectively with an employer enhances the human dignity, liberty and autonomy of workers [...]” and that the Canadian Charter of Rights and Freedoms affirms the right to freedom of association, which “protects the capacity of members of labour unions to engage in collective bargaining on workplace issues”.

However, a more recent judgment in 2011<sup>53</sup> states that the right to bargain collectively is a right to a process, not a result. This means that this right does not impose on employers the duty to bargain in good faith, or even to bargain, with trade unions.

The situation is more convoluted in other countries. In South Africa, for example, self-employed actors do not have a collective agreement and the actors’ union considers that there is a ‘grey area’ of uncertainty regarding the possibility of collective bargaining, given that the competition law would certainly have an impact on the ability to bargain. In fact, this issue has not yet been settled because no test case has arisen. Moreover, the journalists’ union adds that, in practice, any collective bargaining would be restricted by strict conditions currently included in employment contracts.

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<sup>51</sup> Government of New Zealand: Commerce Act 1986, Section 30A (2).

<sup>52</sup> Supreme Court Judgments, [Health Services and Support Facilities Subsector Bargaining Assn. v. British Columbia](#), 2007 SCC 27.

<sup>53</sup> Supreme Court Judgments, [Ontario \(Attorney General\) v. Fraser](#), 2011 SCC 20.

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In Côte d'Ivoire, the Syndicat National des Professionnels de la Presse de Côte d'Ivoire (SYNAPPCI), which represents journalists and technicians, considers that there are “no legal restrictions” on collective bargaining by self-employed workers, whereas the Union Nationale des Journalistes de Côte d'Ivoire (UNJCI), which represents journalists, states that there has, in fact, been no such bargaining to date.

In Kenya, the issue is linked to the existence of trade unions and to unionization. The Musicians Union (KeMU) and the Communication Workers Union (COWU(K)) both note that while the law does not prohibit freelancers from engaging in collective bargaining, this would require that there be a duly registered union and that workers be members of that union. This is far from the case in, for example, the music sector. Moreover, the competent Kenyan authorities have not yet granted KeMU formal recognition as a trade union on the grounds that musicians are generally not bound to their employers by employment contracts, placing their employment status in doubt. The union's registration has been pending for almost ten years.

A similar situation exists in the Democratic Republic of the Congo and Malaysia, where it is not the competition law prohibiting self-employed workers from bargaining, but rather the fact that the conditions for bargaining are not met. There is little trade union representation and no social partnership on the employers' side. Although the Congo is not officially covered by this study, its journalists' trade union – the Fédération Syndicale des Travailleurs de la Communication (FESYTRAC) – reports that by law, freelancers and self-employed workers are classified as ‘unpaid’ workers who have the right to form associations in order to claim rights, but only in order to “attempt to achieve employee status and become public servants”.

In Morocco, no obstacle associated with competition law and no conflict between that law and the right to bargain collectively have been reported. On the contrary, the Status of Artist Act establishes a presumption of employee status. Thus, every artist is entitled to establish or join a professional association or trade union. Unions have the right to negotiate industry-specific collective agreements in order to improve the social status of artists. Artists' contracts may be individual or common to all of the artists involved in an artistic endeavour, provided that each party's wage is mentioned and that each party is given a copy of the contract.

While Japan has competition legislation, trade unions such as the Japan Federation of Commercial Broadcasting Workers' Unions (MINPOROREN) and the public Japan Broadcasting Labour Union (NIPPORO) are empowered to negotiate on behalf of self-employed workers. This is also the case in the music sector; however, private sector employers are not required to bargain. The courts have filled gaps in labour and general law. In 2011, the Supreme Court ruled that a New National Theater chorus member was a worker as defined by the Labour Union Act, rather than an individual contractor to be paid a fee per appearance. The grounds for the judgment were that: (1) the worker was fully incorporated into the organization of the enterprise; (2) the employment contract was unilateral; (3) the work carried out was remunerated; (4) the worker undertook to fulfil the conditions of the contract; and (5) the worker was bound by the enterprise's chain of command.<sup>54</sup>

It should be noted that in Japan, trade unions may bring complaints, including with regard to unfair labour relations, before a Labour Relations Commission.<sup>55</sup> The members of the regional Commissions are appointed by the prefectures, while those of the Central Commission are appointed by the Prime Minister.

Generally speaking, the issue of competition laws does not arise in the South American countries. In Argentina, for example, the terms of employment and wages of freelancers and self-employed workers are governed by collective labour agreements. For example, Act No. 27203

<sup>54</sup> Judgment of the Supreme Court of Japan, 12 April 2011, Case No. 2009 (Gyo-Hi) 226.

<sup>55</sup> Ministry of Health, Labour and Welfare, [Central Labour Relations Commission](#).

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provides that actors and dancers in Argentina are presumed to be in an employment relationship, despite the intermittent nature of their work. Among other things, the Act entitles actors and dancers to social security and retirement benefits under the general Argentine scheme.

In Peru, the issue is covered by the Status of Artist Act and trade unions, including the actors' union, sometimes offer mediation services which do not, however, constitute official bargaining.

This overview shows that while the regional picture is not consistent on this issue, some countries take common approaches. In those countries with an Anglo-Saxon tradition, competition law prohibits all bargaining on behalf of self-employed workers, while in other countries, they are included in collective bargaining almost automatically. There are also many intermediary positions in terms of both legislation and the ability of the unions themselves to play this role, which is nonetheless crucial.

### 4.3 Social protection of workers

One universal principal should apply to all workers, regardless of their status, in order to ensure that even self-employed workers can benefit from social protection. It will be recalled that the ILO defines “social protection floors” as follows:<sup>56</sup>

National social protection floors should comprise at least the following four social security guarantees, as defined at the national level:

- access to essential health care, including maternity care;
- basic income security for children, providing access to nutrition, education, care and any other necessary goods and services;
- basic income security for persons in active age who are unable to earn sufficient income, in particular cases of sickness, unemployment, maternity and disability;
- basic income security for older persons.

Such guarantees should be provided to all residents and all children, as defined in national laws and regulations, and subject to existing international obligations.

The results of the present study vary significantly on this issue and may be divided into four categories.

Situations in which workers, regardless of their employment relationship, are covered by a universal, public and national social protection system that provides access to at least some forms of social protection. This is especially true in Côte d'Ivoire, Japan and New Zealand. In New Zealand, for example, all workers are covered by the Accident Compensation Commission (ACC) and may apply for the job-seekers benefit. In Morocco, artists, including self-employed, have healthcare coverage under a national artists' mutual scheme that was established in 2008. There are also plans to establish a public risk management fund to provide artists and their families with old age, accident and death benefits.

Situations in which self-employed workers are not entitled to any form of social protection, which is the case in Malaysia, South Africa and the Democratic Republic of the Congo.

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<sup>56</sup> ILO: [Social protection floor](#).

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Situations in which self-employed workers are covered by a specific social protection system established by the public authorities.

New Zealand, for example, has both a Multi-Employer Collective Agreement and KIWI Saver,<sup>57</sup> a supplemental retirement scheme administered directly by the State and available in practice to freelancers and self-employed workers.

In Côte d'Ivoire, self-employed musicians, some of whom are registered with the Ivorian Copyright Office (BURIDA), are entitled to apply for and receive a retirement pension and healthcare insurance, regardless of age or status, upon request. In addition, an annuity of 450 euros is paid monthly to some retired musicians by the Office of the President of the Republic (about 300 euros) and the Ministry of Culture and Francophonie (about 150 euros). Specific measures are taken in the event of the death of a beneficiary, spouse, parent or child. The Musicians' Union (SAMCI) states, however, that "the regulatory framework governing these provisions would benefit from being reviewed and strengthened by the inclusion of strong, impartial provisions".

In the Republic of Korea, according to the Ministry of Culture, Sports and Tourism,<sup>58</sup> approximately 57,000 artists are covered by industrial accident insurance under the Artist Welfare Act (KAWA), which entered into force in November 2012.

In Peru, the Artists' Social Rights Fund<sup>59</sup> covers all culture sector workers, regardless of their employment relationship. It is administered by the national social security and healthcare services.

In Lebanon, legislation adopted in 2012 (Act No. 7535/2012) provides for the establishment of a Mutual Aid Fund for artists, to be administered by representatives of the artists' trade unions and of the Government. The annual contributions would be based on a two per cent tax on tickets to all types of cultural and artistic events. However, the Act has not yet entered into force.

Situations in which trade unions or other representative organizations have established specific social protection schemes for their members. This type of social protection scheme is perhaps the most interesting because it illustrates the breadth of the services that unions can offer their members in order to compensate for an absence of public protection or for discrimination between employees and freelancers in the sector.

In Kenya, COWU(K) reports that its freelance members enjoy minimal social protection – essential healthcare, maternity leave and retirement benefits – but does not provide any details on these benefits. It should be noted that the Kenyan authorities hope to extend social security and health insurance to include single entrepreneurs and informal-sector workers.<sup>60</sup>

In Canada, there is no unemployment insurance for self-employed workers, but the unions have developed their own social protection system that entitles their members to a number of benefits:

- ACTRA has established a Fraternal Benefit Society, which provides artists with insurance and a retirement programme.

<sup>57</sup> For more information, see: [Kiwi Saver](#).

<sup>58</sup> K. Yoon-mi: "57,000 artists to be insured against accidents", in *Korean Herald*, 2 Nov. 2012.

<sup>59</sup> For more information, see: [Fondo de Derechos Sociales del Artista](#).

<sup>60</sup> Ministry of Gender, Children, and Social Development, Republic of Kenya: *Kenya National Social Protection Policy* (Nairobi, 2011).

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- The Canadian Actors' Equity Association (CAEA) sponsors a supplemental insurance programme to which each of its working members is required to contribute. This insurance covers the additional costs of an accident or illness, including a weekly income benefit; however, it does not cover maternity or paternity leave. CAEA also manages a contribution-based retirement scheme for its members.
  - Through multi-employer benefit plans, trade unions manage social programmes that allow an individual to work for many different companies in the course of a year, but to pay their contributions to a single scheme. Unions administer health insurance and retirement programmes in this manner.

In Argentina, the trade unions themselves have filled gaps in the general health insurance scheme for self-employed workers. For example, the musicians' union, the Sindicato Argentino de Músicos (SADEM), has established a protection scheme for its members and their families, while the Obra Social de Músicos (OSDEM), offers full medical insurance at a low contribution rate, regardless of employment relationship or professional status. Beneficiaries are entitled to full maternity coverage, health insurance for themselves and their families, accident insurance and ongoing treatment of health problems resulting from an accident, including disabilities, as well as leisure and holiday services in view of the importance of rest for health. Workers in the entertainment industry have the option of joining the Obra Social del Personal de Espectáculos (OSPEP) and a mutual fund, the Asociación Mutual del Espectáculo de la República Argentina (AMERA), in order to qualify for social security. It should be noted that, by law, intellectual property rights are not counted as wages and thereby not subject to social security contributions. However, Government Decree No. 616/2016, adopted in 2016, establishes that social security and retirement fund contributions must be calculated on the basis not of actual income, but of the minimum amounts set in the applicable collective agreements. This Decree could have implications for performers in Argentina, including with regard to retirement and social security benefits. It might also affect the mandatory contribution to the healthcare fund administered by the union. The actor's union, the Asociación Argentina de Actores (AAA), is currently appealing this Decree before the courts.

It is difficult to assess the effectiveness of the various forms of social protection for self-employed workers and freelancers, depending on whether they are enrolled in a general scheme, or in a specific social security scheme. However, it is clear that many countries are far from providing social security benefits, including unemployment insurance, sick leave and retirement pensions. It is therefore essential to explore ways to fill these gaps, for example, by providing all workers, regardless of employment status, with a floor of rights or by expanding trade unions' capacities to offer members adapted social security services.

#### **4.4 Equity policies: gender equality is still of great concern**

The pay gap is still a reality in most countries and the glass ceiling is omnipresent. In Brazil, a recent survey carried out by the filmmakers' union, the Sindicato dos Trabalhadores na Indústria Cinematográfica e do Audiovisual dos Estados de São Paulo, Paraná, Rio Grande do Sul, Mato Grosso, Mato Grosso do Sul, Goiás, Tocantins e Distrito Federal (SINDCINE), is clear proof of this problem. It shows that 74 per cent of management posts in the audiovisual industry are held by men and that the pay gap for the industry as a whole is 13 per cent in favour of men.<sup>61</sup>

In addition to the pay gap and the glass ceiling, one of the main problems related to gender equality in the culture and media sectors is that of sexual harassment. The issue is raised by women workers and trade unions on a regular basis, with some unions maintaining that it is a factor in the underrepresentation of women in some fields, such as private media in the Democratic Republic of the Congo (according to the questionnaire response from the journalists'

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<sup>61</sup> ANCINE: "[ANCINE divulga estudo sobre o perfil do emprego no setor audiovisual](#)".



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union the Syndicat National des Professionnels de la Presse (SNPP)). However, some unions also report good practices. In Senegal, for example, there are plans to establish “a counselling service in the music sector so that women can report and file violence and harassment complaints. An equality and parity charter will [soon] be adopted and women-only meetings will give them an opportunity to speak out initially without the presence of men if they wish to do so”.<sup>62</sup> It should be noted that in 2016, Senegal also undertook to implement an action plan for gender equality in the media sector.

A recent International Federation of Journalists (IFJ) survey of 400 women journalists in 50 countries<sup>63</sup> confirmed that almost one in ten women have been subject to sexual harassment, psychological abuse, cyber-bullying and other forms of sexist violence while at work.

Lastly, many trade unions state that owing to irregular hours and the need for frequent work-related travel (film shoots, news reports and tours) in the culture and media sectors, women find it more difficult than men to balance their family and professional lives. For women performers, age discrimination is also a factor in hiring for on-screen roles, including in television and advertising.<sup>64</sup>

In reply to the question: “Are there specific employment equity policies in place for the recruitment, retention, and promotion of women, underrepresented groups, and/or persons with disabilities?”, trade unions in eight countries – Malaysia, New Zealand, South Africa, Côte d’Ivoire, Morocco, Senegal, Argentina and Canada – explicitly mention general laws or non-binding incentives introduced in order to increase women’s representation. In all of these countries, the issue is addressed only from the point of view of general and national legislation.

In order to remedy this situation, countries such as Canada have decided that, as a condition for financing from the Canada Media Fund (CMF), “broadcasters must allocate 25 per cent of the support received (in Canadian dollars) to projects that employ a sufficient number of women in the following key positions: producer, screenwriter, announcer and director (or a combination thereof)”.

In Morocco, in addition to the Constitution, which calls for the establishment of an equality authority to combat all forms of discrimination, a gender equality in the communications industry programme was established in 2006, which was followed in 2008 by a Ministry of Communication unit on the promotion of gender equality. In 2012, a partnership with the women journalists’ network was established with a view to their appointment to management positions in different media outlets.

It should be noted that in Japan, the public broadcasting organization, Nippon Hōsō Kyōkai, (NHK), gives women “who find it difficult to work during their menstrual periods” two days of paid leave per month.

Lastly, with regard to ethnic diversity, the statistics published in South Africa for 2014 demonstrate that in cultural occupations, 66.9 per cent of workers were black, 11.9 per cent were coloured (of mixed race), 2.2 per cent were Indian/Asian and 19 per cent – eight points higher than the average for all sectors combined – were white. Whites are thus significantly overrepresented in the sector.<sup>65</sup>

<sup>62</sup> FIM: “[Senegal: Towards collective agreements in the music sector](#)”, Apr. 2017.

<sup>63</sup> IFJ: “[Stop gender-based violence! Support an ILO Convention](#)”.

<sup>64</sup> D. Dean: *Age, gender and performer employment in Europe* (Brussels, FIA, 2008).

<sup>65</sup> S. Hadisi and J. Snowball: *Employment in the cultural and creative industries in South Africa* (Port Elizabeth, South African Cultural Observatory, 2014), p. 12.

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Equity policies in the culture and media sectors in the selected countries are still heavily dependent on national legal frameworks, if any, and there is little in the way of experience or good practice designed specifically to address industry concerns, including with regard to gender equality.



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## 5. Prospects for strengthening decent work for culture and media workers

Following the foregoing examination of the characteristics of employment relationships in the countries covered by the present study, this section will explore, in general terms, possibilities for improving decent work for workers in these sectors.

### 5.1 Freedom of association and collective bargaining

Freedom of association and the right to bargain collectively are guaranteed by many international treaties and instruments, taking into account the specific links between these rights and workers' ability to earn an income under equitable conditions and to benefit from social protection.

According to the ILO, "Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation".<sup>66</sup>

Collective bargaining is defined as "all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for – (a) determining working conditions and terms of employment; and/or (b) regulating relations between employers and workers; and/or (c) regulating relations between employers or their organisations and a workers' organisation or workers' organisations".<sup>67</sup>

Thus, freedom of association and collective bargaining have been recognized as a way of improving and regulating working conditions and promoting social justice because these rights are universal and apply to all workers.

However, the Conventions do not define 'worker' on the basis of employment relationship or existence of a subordinate relationship. Since 1983, the Committee on the Application of the ILO Conventions and Recommendations (CEACR) has considered that since self-employed workers are not specifically excluded from the scope of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), they should benefit from the same rights as other workers. With respect to collective bargaining, the Committee has considered that competition law should not prevent self-employed workers from concluding collective agreements.

In Germany, for example, the unions have successfully negotiated paragraph 12(a) of the Collective Bargaining Act (*Tarifvertragsgesetz*),<sup>68</sup> which makes it possible for freelancers to be fully and officially covered by collective agreements under certain conditions – specifically, if they derive over 50 per cent of their income from a single employer or client. They are also exempt from any competition legislation that prohibits the conclusion of collective agreements on common fees.

More generally, it is important for trade unions to be active and involved in organizing non-standard workers and to take them into account in their recruitment campaigns. Some unions have

<sup>66</sup> Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

<sup>67</sup> Collective Bargaining Convention, 1981 (No. 154).

<sup>68</sup> Federal Ministry of Labour and Social Affairs: [Tarifvertragsgesetz \(TVG\)](#).

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taken effective action in that regard because all or most of their members are freelancers, while others encourage non-standard workers to become members or offer services to them.

## 5.2 Organization of freelancers/self-employed workers and trade union strategies

In light of the foregoing, it is essential for trade unions and States to authorize coverage of all non-standard workers, particularly freelancers, many of whom work in the industry, under collective agreements, even subject to conditions, including and especially where the agreement is negotiated at the enterprise level. Recent years have seen a significant movement towards more decentralized and, in some cases, fragmented bargaining systems in developing countries.

Non-standard workers already account for a significant percentage of trade union membership in the culture and media sectors in all of the countries covered by this study, with the exception of unions that represent only public sector employees (for example, in Japan, New Zealand, Malaysia and Kenya). However, the membership and recruitment of this category of workers calls for different or innovative unionization approaches since traditional approaches may not be suitable. In that connection, the renewal of trade union strategies and the idea of opening membership to self-employed workers (where it is not yet possible) is being discussed. In some cases, allowing them to join unions gives rise to the fear unions might ultimately encourage the expansion of employment relationships that do not fit the standard model. Concerns have sometimes been raised that traditions of solidarity and collective action, which are inherent in the labour movement, may come to include self-employed workers and even entrepreneurs who have followed individualistic career paths. These debates raise important issues with respect to the ways in which unions can work successfully with such workers.

Many of the unions operating in the culture and media sectors have experience in organizing self-employed workers or freelancers and have begun to meet the needs of these members by developing specific organizational structures and service-based approaches, both within and outside a collective bargaining framework. The desire to adapt and respond to changes that have an impact on non-standard and vulnerable workers has led more and more unions to develop recruitment, awareness-raising and membership strategies that better reflect the various job descriptions and interests of workers. The ability of non-standard workers to build a support network within their own group and with other groups is also at the core of this mobilization process.

There are several potential ways forward. One option would be to incorporate freelancers and economically dependent workers into existing trade unions, while another option would be to create new unions that would organize and represent only these workers. In the latter case, however, there is a tendency to establish intersectoral rather than sector-specific unions.

Research carried out by Eurofound<sup>69</sup> has identified several types of strategies and approaches that European trade unions have developed in order to better meet the specific needs of these categories of workers:

- “organising initiatives at the individual level [which] seek to involve workers through the creation or engagement of networks of workers and sometimes of associations, which mobilise around collective goals and thereby recognise the existence of collective interests and identities”;
- initiatives whereby “trade unions [...] emphasise the usefulness and instrumentality of union membership and its capacity to respond to the individual interests of workers”. This approach is different from the collective advantage obtained through

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<sup>69</sup> R. Pedersini: *Trade union strategies to recruit new groups of workers* (Dublin, Eurofound, 2010), p. 21.

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collective bargaining, which seeks to benefit all of the workers in the (enterprise or branch) bargaining unit concerned.

The second of these approaches, which focuses on the individual benefits of belonging to a union is not new. It has played a key role in the unionization strategies of the primary North American trade unions – in the United States and Canada – in the media and culture sectors, where the concept of membership associates collective representation with individual benefits by providing members with healthcare and retirement programmes pursuant to sector-specific collective agreements. These new unionization models are gaining ground due to incentives and a number of membership benefits that are designed to meet the specific needs of non-standard workers and self-employed. In the case of Canada, Argentina, Kenya and Côte d’Ivoire, a number of concrete examples have been provided above. The experiences of these countries can be considered as good practices that could be replicated elsewhere.

### 5.3 Experience of culture and media cooperatives

Cooperatives employ more than 100 million people worldwide, according to the ILO,<sup>70</sup> and 280 million people, according to the International Co-operative Alliance.<sup>71</sup> The only international instrument on the subject defines “cooperative” as “an autonomous association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise”.<sup>72</sup> Thus, according to international standards, cooperatives are indeed enterprises even though they are member-owned.

Cooperative schemes in the media sector are particularly common in South America’s press, audiovisual and graphic arts sectors (for example, the Colmena network in Argentina<sup>73</sup>). The advantage of cooperatives as stakeholders in social and solidarity economies is that they are based on participation by a variety of workers. For example, the Trama Audiovisual cooperative comprises over 39 organizations and solidarity economic stakeholders – cooperatives, mutuals, small and medium-sized enterprises and trade unions – and is the product of over a year’s collective effort by community, cable and television networks.

In Colombia, the cooperative sector is extremely active. In 2016, the country had a total of 3,666 cooperatives with 6,131,010 members, and created 197,330 direct jobs in all industries combined. The Cooperatives Act of 22 July 2008<sup>74</sup> provides a legal framework for social security contributions by cooperative employers.

Generally speaking, there has been significant growth in the number of media and press cooperatives in Europe at a time when economic models are being challenged and the commercial media are facing bankruptcy.<sup>75</sup>

<sup>70</sup> ILO and International Co-operative Alliance (ICA): *Cooperatives and the Sustainable Development Goals – A contribution to the post-2015 development debate: A policy brief* (2014).

<sup>71</sup> ICA: *Fact and figures*.

<sup>72</sup> Promotion of Cooperatives Recommendation, 2002 (No. 193).

<sup>73</sup> For more information, see: *Confederacion Nacional de Cooperativas de Trabajo*.

<sup>74</sup> Act No. 1233 on establishing the foundation for the payment of social security contributions and establishing special contributions by labour cooperatives and pre-cooperatives (22 July 2008).

<sup>75</sup> M. Vilnitzky: “*Meeting of independent media and co-operatives in Paris*”, ICA, 23 Feb. 2018.

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On the one hand, there have been positive experiments with cooperatives in the culture and media sectors, and collaboration between trade unions and cooperatives.<sup>76</sup> On the other hand, fake cooperatives have been used to circumvent the social security contribution schemes and make artists ineligible for social security. In 2013, the ILO's Bureau for Workers' Activities (ACTRAV) published a study on relationships between trade unions and cooperatives,<sup>77</sup> with examples taken from South America, the United States and Africa. However, none of these examples involve the sectors covered by this study. A more detailed analysis of the role of cooperatives in the culture and media sectors and their real implications for decent work – vulnerability and worker protection – is needed.

In addition to the 'classic' cooperatives, recent years have seen the emergence of new forms of organization, generally in the form of membership organizations<sup>78</sup> or 'wage portage' agencies, which represent self-employed in exchange for a percentage of their gross income. In Europe, these developments have been controversial because this type of scheme does not allow workers to organize, negotiate fees collectively or qualify for unemployment insurance. For all of these reasons, this type of cooperative is strongly opposed by trade unions.<sup>79</sup>

## 5.4 Social security systems

Social security has been identified as a fundamental right by the ILO. However, freelancers and non-standard workers do not enjoy some or all of these rights for several reasons, including regulations under which self-employed do not qualify for some benefits, and incomes and working hours that are lower than the required threshold.

Innovative efforts to fill the social protection gaps for self-employed in some sectors through, for example, wage portage are being undertaken; however, these measures are limited in scope and, among other things, do not include live and audiovisual performers.

<sup>76</sup> In the United Kingdom, for example, the Musicians' Union (MU) has published practical guides in order to help its members form cooperatives. See: R. Harvey: "[How to form a co-op: Practical guide launches for music teachers](#)", in *COOP News*, 18 Sept. 2015.

<sup>77</sup> ILO: "Trade unions and worker cooperatives: Where are we at?", in *International Journal of Labour Research* (2013, Vol. 5, Issue 2, April).

<sup>78</sup> See, for example: [SMart](#).

<sup>79</sup> See: "[SMart, La Flexibilité Mensongère](#)", 10 May 2017.

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## 6. Conclusions

This study has aimed to provide an analysis of issues arising in employment relationships in the culture and media sectors in selected countries. Keeping in mind the limitations of the study, and its reliance on union perceptions, this final section offers some reflections on possible further research that may be needed and potential ways forward with regard to decent work in the media and culture sectors.

The application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) and of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) provides a normative tool that can be used to fill legal gaps that make it impossible to ensure that workers are accorded equitable treatment, regardless of their contractual relationship. Freedom of association and the right to bargain collectively must apply to all workers, whatever their employment relationship. In particular, artists who work in culture and media and carry out non-standard work or are self-employed must be treated equitably with respect to their social rights, whether through cross-cutting measures under the Labour Code or through specific measures that target self-employed. To that end, it is at times necessary to have recourse to the law, as with Ireland in 2017, or to court decisions, as with Japan.

The 1980 UNESCO Recommendation concerning the Status of the Artist provides a firm, indisputable basis for recognition of the social rights of culture and media workers, as seen in the countries that have officially incorporated it into domestic law. The Recommendation could be better used by States and by organizations that represent artists, culture workers and journalists as a support framework for national laws and policies with an impact on the working conditions of artists. The global survey on the implementation of the 1980 Recommendation that UNESCO has undertaken to conduct in 2018-19 offers an opportunity to help some countries develop their own legislation on the status of the artist.

Employment relationships are not the only issue in the sectors in question. Among other things, there is an imbalance between the supply of and the demand for work, and a high percentage of workers have no contract or have left the field due to instability or insufficient income. For this reason, the focus could also be on adjusting the market and retraining workers in the light of technological developments and, in some professions, age. In particular, this will require ensuring that training is available to all workers, regardless of their employment relationship. The culture and media sectors are undergoing sweeping technological and social changes and it is therefore urgent and necessary to give serious consideration to the issue of training, both initial and continuing, and to develop training strategies that reflect the characteristics and needs of the sectors. This training could be offered both to people who are young or are entering the field, and to those who are already working.

Priority should continue to be given to gender equality and efforts to promote underrepresented groups. The available data show that few countries and enterprises are actively promoting these groups in the culture and media sectors. The relevant issues are wage equality, access to management posts and sexual harassment, which is deeply rooted in these sectors, as seen from the most widely-publicized examples, and from the experience of thousands of anonymous women across the world. This issue could be made a central concern for all stakeholders in the near future by, for example, drafting and promoting a charter for the sector in which all relevant stakeholders would undertake specific actions to promote gender equality and combat sexual harassment. A sectoral approach would make it possible to identify good practices and to develop common instruments, including policies, codes, and mechanisms.

This study also shows that workers and employers need greater clarity and more information regarding the various employment regimes and all of their implications for taxation, social security and competition. The study indicates that there is a widespread lack of understanding of these issues, as well as uncertainty and disparities in the situation of self-employed with regard to collective agreements and competition rules. In the latter case, States and the competent

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authorities could consider ensuring that competition rules do not hinder the free exercise of freedom of association and the right to bargain collectively.

Social protection systems for workers in the culture and media sectors should take into account the specific characteristics of the sectors and the specific needs of workers, including alternation between periods of work and periods of job-seeking, often at regular intervals. The various social protection measures established for workers in these sectors throughout the world should be studied more closely with a view to the exchange of good practices.

The lack of comprehensive data on the status of workers and the nature of employment relationships makes it impossible to measure their progress in a systematic, uniform manner. It would be useful to support and develop systems for the systematic collection of data on:

- the number of workers;
- the distribution of these workers by employment relationship and access to social benefits;
- the sector's awareness of issues such as gender equality, youth employment and ethnic diversity;
- market dynamics, in order to compensate for data fragmentation between industries or enterprises.

It would also be useful to collect data that would facilitate appropriate monitoring of trends in wages and other forms of remuneration, such as fees and royalties, and to identify new research methods in order to measure the impact of digitalization over the short, medium and long terms.

Lastly, capacity-building for trade unions in the culture and media sectors is needed so that they can meet the challenges raised by non-standard forms of employment. Country-level strategies might include both organizing freelancers and self-employed within existing trade unions or setting up appropriate new or innovative unions, and exploring legal remedies at the national or international level in the event of a conflict between competition law and freedom of association and the right to conclude collective agreements. It would also be beneficial for trade unions and employers to exchange information within the framework of international sectoral federations on social, legal, administrative and fiscal services that unions provide to non-standard workers.

## Appendix 1: Questionnaire sent to trade unions

General questions	
1. In which sectors does your trade union organise culture and media workers?	<input type="checkbox"/> <u>Acting (cinema/television)</u> <input type="checkbox"/> <u>Acting (theatre)</u> <input type="checkbox"/> <u>Dance</u> <input type="checkbox"/> <u>Music</u> <input type="checkbox"/> <u>Audiovisual technician</u> <input type="checkbox"/> <u>Journalism</u> <input type="checkbox"/> <u>Other</u> (please indicate)
2. Approximately how many workers does your trade union represent?	Please indicate below an approximate number:  Does this number include freelance/self-employed workers?
3. What percentage of media/culture workers does your union represent (estimated)?	

4. What trends have you observed in the types of employment contracts of culture and media workers over the last decade? For example, has there been an increase or decrease in the relative numbers of full-time permanent staff? An increase in part-time and fixed-term contracts, or the use of freelancers and self-employed? Is the sector growing or declining?
5. What legislative or regulatory frameworks determine conditions of employment in the culture and media sector? Have there been any significant reforms in this regard over the last decade?
6. Do freelancers/self-employed have the right to form and join a trade union? Are there any limitations on this right? What are the obstacles to bringing in self-employed workers into unions (legal restrictions, lack of interest, lack of awareness of unions, etc.)?
7. Can freelancers/self-employed engage in collective bargaining? Are there restrictions based on competition law?
8. What, if any, collective bargaining agreements covering the culture and media sector? Can you provide information on their scope, duration and contents? Have there been any significant changes over the last decade? Are freelancers and fixed-term staff covered by the agreement? Do you have any examples of good practice you could share?
9. In your view, are salaries and benefits of culture and media workers similar to other comparable professionals? Are there any trends over the last decade that you can detect in this regard?
10. Are there any social protection arrangements (pension, unemployment, maternity, sickness, accident, death, family, disability) for independent/freelance cultural and media workers?
11. Can you identify any major changes to access to social protection for cultural and media workers on regular employment contracts?

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12. Are there specific employment equity policies in place for the recruitment, retention, and promotion of women, underrepresented groups, and/or persons with disabilities? Do you have any examples of good practice you could share?
  13. Are there other trends or challenges concerning decent work in media and culture on which you would like to comment?



## Appendix 2: List of trade unions in the countries studied

Country	Trade union	Federation
Japan	Japan Actors' Union (JAU)	FIA
	Japan Broadcasting Labor Union (NIPPORO)	UNI MEI - IFJ
	Japan Federation of Commercial Broadcasting Workers' Unions (MINPOROREN)	UNI MEI
	Musicians' Union of Japan (MUJ)	FIM
	NIPPORO Media Forum Japan	IFJ
	Nihon Shimbun Rodo Kumiai Rengo (Shimbun Roren)	IFJ
Republic of Korea	National Union of Media Workers (NUMW)	UNI MEI
	Journalists' Association of Korea (JAK)	IFJ
Malaysia	TV3 Malaysia Employees' Union (Kesatuan Sekerja Kakitangan Sistem Televisyen Malaysia Berhad - KSKSTMB)	UNI MEI
	KPM/MMC/PRISM Berhad	FIM
	National Union of Journalists Malaysia (NUJ)	IFJ
New Zealand	Equity New Zealand	FIA
	New Zealand Public Service Association – Te Pūkenga Here Tikanga Mahi (PSA)	UNI MEI
	E tū Incorporated	FIM
Indonesia	Asosiasi Pekerja Indonesia (Aspek Indonesia)	UNI MEI
	Singers, Songwriters and Music Record Producers Association of Indonesia (PAPPRI)	FIM
	Aliansi Jurnalis Independen (AJI)	IFJ
South Africa	South African Guild of Actors (SAGA)	FIA
	Communication Workers' Union of South Africa (CWU)	UNI MEI
	South African Commercial, Catering and Allied Workers Union (SACCAWU)	UNI MEI
	Media Workers' Association of South Africa (MWASA)	IFJ
Côte d'Ivoire	Syndicat National des Professionnels de la Presse de Côte d'Ivoire (SYNAPPCI)	UNI MEI
	Syndicat des Artistes Musiciens de Côte d'Ivoire (SAMCI)	FIM
	Union Nationale des Journalistes de Côte d'Ivoire (UNJCI)	IFJ
Kenya	Communication Workers Union of Kenya (COWU(K))	UNI MEI
	Kenya Musicians Union (KeMU)	FIM
	KCA	IFJ
	Kenya Union of Journalists (KUJ)	IFJ
Senegal	AMS	FIM
Morocco	Syndicat Marocain des Professionnels des Arts Dramatiques (SMPAD)	FIA

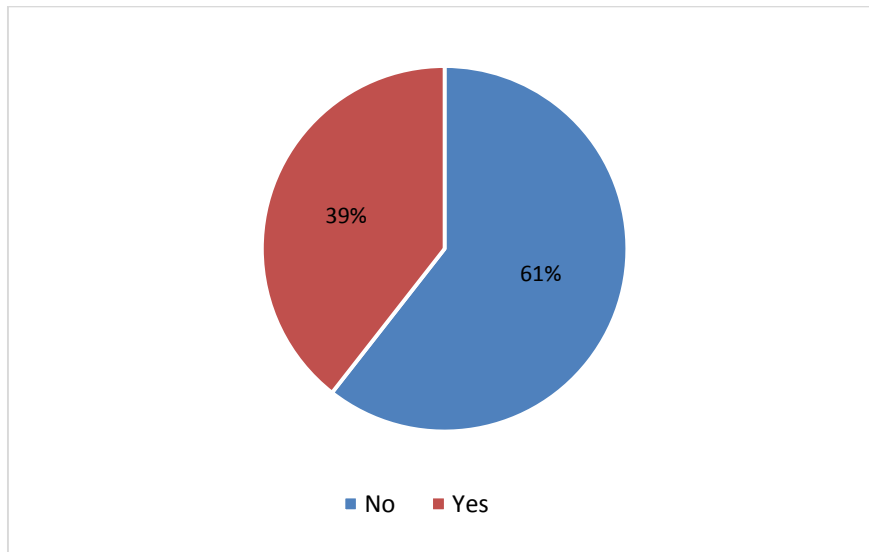
	Union Marocaine du Travail (UMT)	UNI MEI
	Syndicat Marocain des Professions Musicales (SMPM)	FIM
	Syndicat National de la Presse Marocaine	IFJ
Democratic Republic of the Congo	Organisation des travailleurs du Congo (OTUC)	UNI MEI
	Fédération Syndicale des Travailleurs de la Communication (FESYTRAC)	IFJ
	Syndicat National des Professionnels de la Presse (SNPP)	IFJ
	Union nationale de la presse du Congo (UNPC)	IFJ
Argentina	Sindicato Argentino de Televisión, Telecomunicaciones, Servicios Audiovisuales, Interactivos y de Datos (SATSAID)	UNI MEI
	Sindicato Unitario de Trabajadores en la Educación del Perú (SUTEP)	UNI MEI
	Sindicato de la Industria Cinematográfica Argentina (SICA-APMA)	UNI MEI
	Asociación Argentina de Actores (AAA)	FIA
	Sindicato Argentino de Músicos (SADEM)	FIM
	Sociedad Argentina de Locutores (SAL)	UNIMEI
Canada	Alliance of Canadian Cinema, Television and Radio Artists (ACTRA)	FIA
	Canadian Actors' Equity Association (CAEA)	FIA
	Union des Artistes (UDA)	FIA
	Directors' Guild of Canada	UNI MEI
	Directors' Guild of Canada - Ontario	UNI MEI
	International Alliance of Theatrical Stage Employees (IATSE)	UNI MEI
	Communications Workers of America/Syndicat des communications d'Amérique (CWA/SCA)	IFJ
	Unifor [private sector union]	IFJ
	Fédération nationale des communications (FNC)	IFJ
Colombia	Círculo Colombiano de Artistas (CICA)	FIA/ UNI MEI
	SINPRISA	UNI MEI
	UNO-A	FIM
	Federación Colombiana de Periodistas (FECOLPER)	IFJ
Brazil	Sindicato dos Artistas e Técnicos de Espetáculos e Diversões do Estado de São Paulo (SATED – SP)	FIA
	Sindicato dos Artistas do Estado do Rio de Janeiro (SATED – RJ)	FIA
	Sindicato dos Artistas e Técnicos de Espetáculos e Diversões do Estado de Minas Gerais (SATED – MG)	FIA
	Sindicato dos Artistas e Técnicos de Espetáculos e Diversões do Estado de Ceará (SATED – CE)	FIA
	Sindicato dos Artistas e Técnicos de Espetáculos e Diversões do Espírito Santo (SATED – ES)	FIA
	Sindicato dos Trabalhadores na Indústria Cinematográfica e do Audiovisual dos Estados de São Paulo, Paraná, Rio Grande do Sul,	UNI MEI

	Mato Grosso, Mato Grosso do Sul, Goiás, Tocantins e Distrito Federal (SINDCINE)	
	Federação dos Radialistas (FITERT)	UNI MEI
	Sindicato dos Musicos de Rio de Janeiro (SINDMUSI)	FIM
	Federação Nacional do Jornalistas (FENAJ)	IFJ
Peru	Sindicato de Artistas Intérpretes del Perú (SAIP)	FIA
	Sindicato de Músicos Compositores y Cantantes del Perú (SIMCAP)	FIM
	Asociación Nacional de Periodistas del Perú (ANP)	IFJ
Egypt	–	
Lebanon	–	

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## Appendix 3: Profile of trade unions that responded to the questionnaire

Percentage of trade unions that replied to the questionnaire



Percentage of sectoral representation of trade unions (that responded)

