



## **Revitalising the UNESCO Recommendation concerning the Status of the Artist**

### **Survey of Non-Governmental Organizations and other civil society organizations, October 2014**

Non-Governmental Organizations and other civil society organizations are invited to send to the UNESCO Secretariat information on their implementation of the 1980 Recommendation concerning the Status of the Artist.

Please send the completed survey, by **15 January 2015** at the latest, to: [status.artist@unesco.org](mailto:status.artist@unesco.org)

#### **Background and Context**

Adopted by the UNESCO General Conference in 1980, the *Recommendation concerning the Status of the Artist* calls upon Member States to improve the professional, social and economic status of artists through the implementation of policies and measures related to training, social security, employment and tax conditions, in particular for self-employed artists. It also recognises the right of artists to be organised in trade unions or professional associations that can represent and defend the interests of their members.

UNESCO Member States monitor the implementation of standard-setting instruments, including the 1980 *Recommendation concerning the Status of the Artist*. The latest consolidated report on the implementation of the Recommendation was submitted by the 187<sup>th</sup> session of the UNESCO Executive Board (Document 187 EX/20 Part VII) to the 36<sup>th</sup> session of the UNESCO General Conference (Document 36 C/57).

Following examination of this report, the General Conference invited the Director-General to transmit to its 38<sup>th</sup> session in 2015 the next consolidated report on the implementation of the Recommendation (36 C/Resolution 103).

In addition, the fourth ordinary session of the Conference of Parties of the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions* raised questions of artistic freedom, and the social and economic status of the artist in relation to periodic reporting on the implementation of the Convention.

The UNESCO Secretariat is pursuing synergies to monitor these two standard setting instruments on common issues related to the status of the artist, situating them within the larger context of efforts to integrate culture into the post-2015 United Nations development agenda and the WIPO Internet treaties.

#### **Purpose of the Survey**

In order to prepare its monitoring reports to the 38<sup>th</sup> session of the General Conference and the fifth ordinary session of the Conference of Parties to the 2005 Convention, this survey requests Non-Governmental Organizations and other civil society's organizations to provide information on policies and measures on contemporary developments and key issues related to the status of the artist.

For the purpose of this survey, the following definitions of ‘artist’ and ‘status’ have been adopted on the basis of the 1980 Recommendation.

“Artist” includes authors, creators, performers and interpreters working in the following fields:

- Literature and publishing;
- Performing and dramatic arts (including puppetry, circus and mime);
- Dance;
- Music (composers, musicians, singers, choirs, arrangers, conductors, etc.);
- Visual arts (painting, sculpture, graphic arts, photography, multimedia, etc.); and
- Audiovisual media (cinema, television, radio, interactive multimedia, etc.).

The word “status” signifies:

- The standing given to artists in a society based on the important role they play in it; and
- Recognition of the liberties and rights which artists should enjoy, including moral, economic and social rights, particularly income and social security.

## **Contemporary Issues**

While the Recommendation covers a wide range of issues that can affect the social and economic status of the artist, this survey concentrates on the most significant contemporary issues.

### **1. Digital technologies and the Internet**

Digital storage and distribution technologies are changing fundamentally the relationship between artists and their audiences. These forces are also changing the economics and relationships in the cultural industries. Even in the music industry, where the impact has perhaps been the most profound, new business models are still emerging. Internet distribution has enabled some artists to gain new audiences around the world, while some artists experience difficulty protecting their work against unauthorized uses.

### **2. Transnational mobility of artists**

Some successful artists are able to cross borders easily while others may be unable to obtain the necessary visa even if they are an established professional. When artists do tour, they may be confronted with challenges such as withholding taxes, double taxation, lack of benefits, etc.

### **3. Social protection**

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

### **4. Freedom of artistic expression**

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

In March 2013, the Special Rapporteur in the field of cultural rights submitted a report “The Right to Freedom of Artistic Expression and Creativity” to the UN Human Rights Council. This Report recognized UNESCO related instruments including the 1980 *Recommendation concerning the Status of the Artist* and the 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*. It observes that these instruments help to create and sustain a climate encouraging freedom of artistic expression and the material conditions facilitating the release of creative talents. It stresses that artists are to benefit from the rights and protection provided for in international and national legislation relating to human rights, in particular, fundamental freedoms of expression, information and communication.

### **Important notes for completing the survey**

This survey is in Word format. Please complete the survey by typing answers directly into this form electronically, save it and email it to the following address: [status.artist@unesco.org](mailto:status.artist@unesco.org). The survey should be emailed no later than **15 January 2015**.

If you have any particular difficulty in completing this survey electronically, please contact the UNESCO Secretariat for assistance: Rochelle Roca-Hachem, tel.: (33) 1 45 68 44 55 or email: [r.roca-hachem@unesco.org](mailto:r.roca-hachem@unesco.org)

Feel free to attach additional information relevant to a comprehensive understanding.

In each case where there is a reference to “government” please also provide information about sub-national levels of governments where these have authority in the relevant field.

In many countries, different categories of artists can experience different treatment. In particular, creative artists, who tend to work alone (such as visual artists, authors and composers), have different conditions from interpretive artists, who tend to work in groups (such as musicians, singers, actors, dancers and directors). Similarly, there can be significant differences for artists who create on their own and then seek to sell their works, those on short term contracts and those whose contracts may be ongoing (such as television actors contracted to a daily programme). Please provide details where different conditions apply to different categories of artists.

As part of the Report, best practices will be identified in each of these areas, and from each region. If you believe your policy or program is a best practice, or are aware of best practices from elsewhere, please highlight them in your response.

It is very important for UNESCO to understand how its standard setting-instruments are being implemented globally, and to do so we require your support. While we appreciate that resources are stretched, we would be deeply grateful if you could contribute to this process by responding to this survey, as it will help us all to understand the related trends, challenges, and successes. With more complete results, our Member States can use the information for their future policies and actions.

Thank you for your assistance.



## **Status of the Artist 2014 Survey of Non-Governmental Organizations and other civil society organizations**

### **Please describe your organization:**

Established by artists for artists, DACS is a not-for-profit visual artists' rights management organisation. Passionate about transforming the financial landscape for visual artists through innovative new products and services, DACS acts in the UK as a trusted broker for 80,000 artists worldwide. Founded over 30 years ago, DACS is a flagship organisation that has and continues to campaign for artists' rights, championing their sustained and vital contribution to the creative economy. DACS collects and distributes royalties to visual artists and their estates through three rights management schemes: Individual Copyright Licensing (primary licensing), Payback (collective or secondary licensing) and Artist's Resale Right (droit de suite).

DACS will be answering section 1 of this survey on Digital Technologies and the Internet and section 4.1 on Freedom of Artistic Expression.

### **What is your relationship with professional artists? Please be specific about the medium (media) and the category(ies) of artists.**

Visual artists who want to join DACS will sign direct membership agreements or mandates depending on the rights management scheme they are joining. Copyright licensing members grant an exclusive licence in their rights to DACS so that DACS can collect royalties on their behalf. DACS also has 32 sister societies in 28 countries worldwide, who represent UK artists in their territory whilst DACS represents their direct members in the UK.

In addition DACS has a very close working relationship with trade bodies representing artists of different practice areas, like photographers or illustrators. Through these relationships and through direct mandates DACS also represents visual artists for the secondary use of their works on a collective basis.

DACS represents visual artists whose works are eligible for licensing, and therefore the works would need to be considered 'artistic works' under section 4 of the Copyrights Designs and Patents Act (CDPA) 1988 – the UK legislation governing copyright and incorporating the EU Copyright Directive 2001. DACS also represents artists whose works are eligible for Artist's Resale Right, and therefore these works would comply with section 4 of the Artist's Resale Right Regulations 2006 implementing the EU Directive 2001/84/EC.

DACS campaigns for artist's rights through consultation and lobbying of UK Government and the European Commission. Artists are frequently involved in our campaigns, adding their voice, support and opinions on their access to equitable remuneration and the potential threats to their livelihood. As such, DACS has a close relationship with many of its members. DACS also ensured that at least half of our board members governing the workings of DACS are artists and that artists sit at the core of our activities. In this respect DACS attempts to engage with visual

artists of all practice areas and continues to assess how far DACS can add value to their practice as an artists. One significant achievement in 2014 was the launch of DACS' own image bank called Artimage which works as a resource not only for the actual images of works by our members but also for information about the artists and their practice in general. DACS continues to look for new ways in which the rights of artists can be utilised to ensure a continuous income from the use of their works whilst protecting their rights and their legacy.

## Digital Technologies and the Internet

The questions below pertain to the implementation of section VI, paragraph 6 of the 1980 Recommendation regarding the employment, working and living conditions of the artist recognising "that national and international legislation concerning the status of artists is lagging behind the general advances in technology." Member States are called upon "to ensure that the artist is remunerated for the distribution and commercial exploitation of his work".

What are the major challenges faced by artists today in this field?

Through the last 30 years of working with visual artists, DACS has found that the major challenges affecting artists are:

- Their capacity to earn from their work
- Opportunities to make work
- Ability to gain funding
- Access to educational facilities
- Unauthorised use of their work
- Non-payment or non-compliance with payment structures
- A gradual whittling away of the scope of their rights

1.1 Does your government, or public regulatory agency, have policies or programs which regulate the distribution of artistic works on the Internet (for example, domestic content quotas or preferential access for local artists)? If so, please describe.

UK legislation affecting the regulation of distribution on the internet includes the Communications Act 2003, the Data Protection Act 1998 and the E-Commerce Regulations 2002. These rules broadly govern the way in which people use the internet, are protected as consumers and customers, the manner in which information is protected and good sold or supplied. Therefore the sale of artworks through, e.g. online auction, are subject to these rules where the contract is deemed to have been formed in the UK. The Digital Economy Act 2010 contains several more provisions about the digital dissemination and utilisation of works but has in part not been implemented in a way in which would support the enforcement of rights in the internet.

1.1.1 Does your government, or public regulatory agency, regulate Internet Service Providers in relation to their production and/or distribution of artistic works? Please describe.

Internet Service Providers (ISP) are regulated through the independent but Government approved regulatory body, Ofcom.

The E-Commerce Regulations 2002 provide a safe harbour provision for ISPs in sections 17-19.

- 1.1.2 Where artistic works are sold electronically to residents of your country, are domestic works and those from abroad treated the same, or do domestic works have a competitive advantage or disadvantage (for example, relative to sales, value-added or other taxes)? Please describe.

The type of artistic works that are within DACS' repertoire will usually be sold by auction or through a gallery. This can be done online, as there are emerging online auction markets. In the UK, the secondary sale of an artwork by art market professionals would give rise to a royalty payable to the artist, provided the art work sells for over the sterling equivalent of 1,000 Euro. This is the Artist's Resale Right, which is harmonised in other Member States, apart from Switzerland. Therefore if an art work sells in the UK or in Germany, so long as it meets the criteria to be eligible for Artist's Resale Right in that country, the artist will benefit from the royalty. There are different criteria for the royalty to apply in different countries. As mentioned, it is equivalent of 1,000 Euros in the UK, however it differs in some countries: in Germany the threshold is 400 Euros. DACS therefore petitions for the threshold to be decreased.

DACS is not aware or involved in the actual sales of works so does not hold any further data about the treatment of sales or artistic works regarding VAT or other taxes.

- 1.1.3 Has electronic distribution of artistic works (particularly movies, music and books) had a positive impact on the income received by artists? Has it eroded existing revenue streams? Please explain.

DACS offers an enforcement service to its members who believe the copyright in their work has been infringed. DACS receives around 300 infringements notifications per year. Of these, around three quarters of infringement matters will involve infringement on an electronic or online platform – especially as printed materials such as magazines and journals are frequently reproduced online too. As such, electronic distribution of publications and other artistic works pose a potential revenue threat where they contain unlicensed uses of the works of visual artists.

Whilst DACS successfully licences the use of works both in print and online, especially through established practices such as book publishers and broadcasters, the online environment is harder to regulate as individuals may use our member's work for their blog, or as part of user-generated content. This is not only harder to track but meets another issue of a lack of copyright education in the user who may not understand the need to have a licence to use a work how they want.

Many visual artists will use online platforms to promote their work, however it poses a risk for artists as they may lose control over the work once published and receive no remuneration for uses of their work.

Looking at the additional revenue generated by the licensing of our members' works online, we do not believe that this has at present resulted in a substantial increase as the general perception of the internet is still that content online should be free and licensees are unwilling to pay substantial increases in licensing fees for the online distribution of their products incorporating artistic works due to the lack of increase earning potentials on their part. As a

matter of fact there is an increased pressure on producers of books, films, music, etc. to make their products available online as this may otherwise be used to justify the unauthorised reproduction of their products or for legislators to ensure user satisfaction.

1.2 Does your government, or arts council, cultural agency or other public body, have programs or funds to assist artists to create their works digitally and to make them available on the Internet, including access, marketing and promotion? Please describe.

This is not something DACS is currently dealing with.

1.3 Has your government ratified and implemented the WIPO Internet Treaties? If so, please explain how rights have been implemented where options are provided in the Treaty. Has implementation resulted in additional income for artists? Please provide details. If you have not yet implemented them, are you considering the possibility of implementing each Treaty? Please explain.

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|---|--|
| WIPO Copyright Treaty                   | Compliant with WIPO Copyright Treaty through implementation of the Copyright Directive 2001/29/EC into national legislation (Copyright Designs and Patents Act 1988) |
| WIPO Performances and Phonograms Treaty | Implemented on 14 March 2010   |
| WIPO Audiovisual Performances Treaty    | Not yet in force but Treaty signed by UK on 11 June 2013   |

The treaty that is most relevant to visual artists, and therefore DACS members, is the WIPO Copyright Treaty. This Treaty is largely dealt with by the Copyright Directive 2001/29/EC, which is incorporated into UK national legislation.

Whilst the UK's national legislation is in line with the Directive, there is a notable lack of a levy system on blank recording media, widely adopted in Europe. This is because the UK Government has applied laws in a more limited scope, and has as a matter of fact recently introduced a private copying exception without providing for fair remuneration for rights holders. This has met with substantial resistance from the rights holder community.

### Transnational Mobility of Artists

The questions below pertain to the implementation of the following:

Section IV, paragraph 1 (j, k) of the 1980 Recommendation regarding the vocation and training of the artist calls upon Member States to:

“(j) recognize that artistic life and the practice of the arts have an international dimension and accordingly provide those engaged in artistic activities with all the means and, in particular, travel and study grants, likely to enable them to establish lively and far-reaching contacts with other cultures;... (k) take all appropriate steps to promote the free international movement of artists, and not to hinder the freedom of artists to practise their art in the country of their choice, while

ensuring that these do not prejudice the development of endogenous talents and the conditions of work and employment of national artists.”

Article 16, Operational Guidelines paragraphs 3.3.2 (iv) of the 2005 Convention respecting preferential treatment calls upon Parties to:

“(iv) take measures to facilitate the mobility of artists, other cultural professionals and practitioners, and, in particular, to favour those from developing countries who need to travel to developed countries for professional reasons. These measures should include, in conformity with the applicable provisions in this respect, for example: simplification of procedures for issue of visas regarding entry, stay and temporary travel; lower costs of visas etc.”

What are the major challenges faced by artists today in this field?

2.1 Has your government taken measures to promote the OUTWARD movement of your artists? Please describe.

2.1.1 Are public and/or private sector touring funds available for your artists who have been invited or wish to work abroad? Please describe.

2.1.2 Are there legal requirements which artists (and/or their agents or producers), who are intending to work abroad, must meet? Please describe.

2.1.3 Do your artists pay domestic tax on the income they receive when they are working abroad? If yes, do they receive credit for taxes which they may pay to foreign governments on the income they earn abroad?

2.1.4 Are your artists who work abroad disadvantaged with respect to coverage for social programs (e.g. health and retirement)? Please describe.

2.1.5 Does your government have concerns that the outward movement of your artists is having negative consequences for your arts and culture? Please describe.

2.2 Has your government taken measures to promote the INWARD movement of foreign artists?

2.2.1 Are foreign artists required to obtain a visa to work in your country? If so, are there special provisions for artists? Does each member of a troop or company require an individual visa or are group visas available?

2.2.2 Artists in some fields require technicians and other support personnel. Are these persons able to obtain a visa to work in your country? If so, are there special provisions for such technicians and support personnel?

2.2.3 Are foreign artists working in your country required to pay income or other taxes on the income they earn in your country? Please describe.

- 2.2.4 Are there tariffs or restrictions on the importation of equipment required by an artist (instrument, camera, etc.)? Please describe.
- 2.2.5 Does your government have concerns that foreign artists may be taking work opportunities from domestic artists?
- 2.3 If your government is Party to the UNESCO 2005 *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, have you entered into any agreements that invoke the provisions of Article 16 respecting the movement of artists and other cultural practitioners? Please describe.
- 2.3.1 Have you entered into any agreements that relate to preferential access for artistic works? Please describe.

### Social Protection of Artists

The questions below pertain to the implementation of Section V of the 1980 Recommendation on the social status of artists calling upon Member States to provide the economic safeguards to which artists are entitled as people actively engaged in cultural work and Section VI on means to improve the employment, working and living conditions of the artist.

3.1 Please specify whether **artists who are self-employed, freelance or independent contractors** (that is, not employed for purposes of their artistic work) are covered by the different social protection programs.

| Social Program   | Variables to Report  |
|--|--|
| Basic medical care   | <ul style="list-style-type: none"> <li>• Which categories of artists are covered by the programs?</li> <li>• What percentage of those artists is actually covered by the program?</li> <li>• What is the legal basis for the program?</li> <li>• How the program is funded (the artist, the person who contracts for their services and/or tax revenues).</li> </ul> |
| Health insurance (e.g. for non-covered medical services, medication, etc.) |  |

|   |  |
|---|--|
| Workers compensation (coverage for work place injuries)                       |  |
| Income protection during periods in which they are not working                |  |
| Insurance schemes for illness, parental leave or disability (please describe) |  |
| Retirement benefits   |  |
| Career transition   |  |

**Freedom of Artistic Expression**

The questions below pertain to the implementation of paragraphs 3, 6 and 8 of the Guiding Principles of the 1980 Recommendation that instill upon UNESCO Member States a “duty to protect, defend and assist artists and their freedom of creation. For this purpose, they should take all necessary steps to stimulate artistic creativity and the flowering of talents, in particular by adopting measures to secure greater freedom for artists without which they cannot fulfill their mission... Since freedom of expression and communication is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights”.

What are the major challenges faced by artists today in this field?

4.1 Do artists have statutory protection of freedom of artistic expression? Does your government have an official policy relating to artistic freedom? Please describe.

Artists in the UK generally benefit from the concept of freedom of artistic expression in respect of the work they create, however copyright protection is only afforded to works that fall within section 4 of the Copyright Designs and Patents Act 1988, which is restrictive. UK copyright law requires the determination of whether a work satisfies the criteria of section 4 CDPA 1988 to be formed on

a case by case basis, which has been refined through case law over the years. For example a case from 1976 *Henscher v Restawhile Upholstery* determined a basis on which to judge artistic craftsmanship and therefore copyright protection in furniture. In particular more modern forms of artistic expressions, like performance art, installation art and kinetic art will therefore fall foul of these older definitions and will not be awarded copyright protection. DACS believes that this application would no longer be compliant with EU law following recent legal developments, especially in the case *Infopaq*<sup>1</sup> that allowed open-ended subject matter categorisation. Further cases heard at the Court of Justice of the European Union (*BSA*<sup>2</sup>, *FAPL*<sup>3</sup> and *Painer*<sup>4</sup>) have also sought to confirm this approach of focusing on the intellectual creation of a work rather than the work falling within narrowly prescribed definitions of work categories. UK law has not yet fully adopted this analysis of which works are entitled to copyright protection which in our opinion is restrictive and has a limiting effect on the artistic freedom.

- 4.2 What challenges does your country face that may limit freedom of artistic/creative expression as prescribed by the guiding principles of the 1980 Recommendation?
- 4.3 With respect to public funding programs, whether those are administered by the state, an arts council, cultural agency or other public body, what are the rules and regulations relating to the nature or content of the artistic expression?
- 4.4 What mechanisms ensure that all artists can compete equally for support, regardless of race, gender, age, political or religious belief, etc.

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<sup>1</sup> Case C-5/08 of 16 July 2009: *Infopaq International A/S v Danske Dagblades Forening*

<sup>2</sup> Case C-393-09: of 22 December 2010: *Bezpečnostní softwarová asociace - Svaz softwarové ochrany v Ministerstvo kultury*

<sup>3</sup> Case C-403/08: 4 October 2011: *Football Association Premier League Ltd and Others v QC Leisure and Others*

<sup>4</sup> Case C-145/10 of 7 March 2013: *Eva-Maria Painer v Standard VerlagsGmbH and Others*