

Employment relationships in the media and culture industries



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Sectoral Activities Department

Employment relationships in the media and culture industries

**Issues paper for the Global Dialogue Forum
on employment relationships in the media
and culture sector**
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Geneva, 2014

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Preface

This paper is intended to serve as a basis for discussion at the Global Dialogue Forum on employment relationships in the media and culture sector. At its 319th Session (October 2013), the ILO's Governing Body decided that the forum would be held on 14 and 15 May 2014, would be composed of six Worker and six Employer participants, selected after consultations with the respective groups of the Governing Body, and would be open to all interested governments; and that representatives of certain intergovernmental and international non-governmental organizations would be invited to attend.¹ Its purpose is to discuss employment relationships in the media and culture sector (excluding the graphical subsector),² with a view to adopting points of consensus that would encourage future programme development and inform policy-making on the selected topic at the international, regional and national levels. Previous meetings relating to this sector were held in 2000 and 2004.³

This paper, published under the International Labour Office's authority, includes information from sources including ILO publications, academic studies and statistical databases. It was prepared by John Myers (Sectoral Activities Department (SECTOR)), with contributions by Gijsbert van Liemt, Andrew Bibby and Lucie Servoz, as well as several ILO departments, and was reviewed by Oliver Liang and John Sendanyoye.

¹ ILO: *Sectoral Activities Programme 2012–13 and 2014–15*, Governing Body, 319th Session, Geneva, Oct. 2013, GB.319/POL/4.

² This issues paper refers to the media and culture “industries”, as the term “sector” is used to refer to the broader media, culture, graphical sector.

³ Symposium on Information Technologies in the Media and Entertainment Industries: Their Impact on Employment, Working Conditions and Labour-Management Relations, Geneva, 28 February–3 March 2000; and Tripartite Meeting on the Future of Work and Quality in the Information Society: The Media, Culture, Graphical Sector, Geneva, 18–22 October 2004.

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1. Introduction

1. The media and culture industries have undergone significant change in the past two decades, marked by rapid growth in employment opportunities in the sector and dizzying shifts in the structure of the labour market and in work organization – both within employment relationships and through commercial contracts – and by the positive and negative consequences of information and communications technologies (ICTs) on employment relationships and on business and work. These industries play a crucial role in meeting society’s need for information, entertainment, communication and creativity, promoting the value of heritage, expression and diversity, and supporting democratic processes. Employment in these industries has grown, and draws on the creativity, skills, professionalism and dedication of businesses and workers; however, the sector has a long tradition of insecure work, characterized by unclear contractual arrangements and questions over the employment status of its workforce. The last ILO tripartite meeting for this sector concluded:

There is a trend towards freelance, self-employed or informal economy work. This can mean that such [media and culture] workers can no longer depend on legislative provisions on social security, even in countries where social security has good coverage. The impact of globalization, ICTs, multimedia convergence and increased international labour mobility should encourage greater efforts by the social partners to bring together workers and employers from a wider variety of countries and industries in social dialogue in various forms.¹

This paper will focus on freelance and atypical work in these industries, rather than on standard employment relationships or agency work.

2. In many countries, the gradual or rapid liberalization and restructuring of these industries has been accompanied by: the growth of a whole range of small and large enterprises (and the disappearance of many others); new employment opportunities and ways of working; technological changes that affect the sector’s composition and employment relationships; the mushrooming of start-ups in social and other new media; significant changes in audience tastes; job cuts in publicly funded media and entertainment companies; and a shift towards more temporary employment arrangements with weaker worker protection. There has been an increase in work where – to quote the Preamble of the Employment Relationship Recommendation, 2006 (No. 198) – there are “difficulties of establishing whether or not an employment relationship exists” (see Chapter 3).² Paragraph 4 of Recommendation No. 198 provides that national policy on the employment relationship should include measures to: provide guidance on effectively establishing the existence of an employment relationship and on the distinction between employed and self-employed workers; combat disguised employment relationships; and ensure the general application of protective standards that make clear which party is responsible for labour protection obligations.

¹ ILO: *Conclusions on the future of work and quality in the information society*, Tripartite Meeting on the Future of Work and Quality in the Information Society: The Media, Culture, Graphical Sector, Geneva, 18–22 October 2004, TMMCGS/2004/6, para. 24.

² The quotation continues “in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application”.

3. A report for the 95th Session (2006) of the International Labour Conference notes that, in many countries, legislation contains a substantive definition of the employment contract, worded in such a way as to establish what factors constitute such a contract and hence what distinguishes it from other similar contracts; in other countries, however, legislation is less detailed and the task of determining the existence of an employment relationship or contract is largely left to case law.³ Some legal systems describe certain potentially ambiguous or controversial situations as employment relationships, either in general or under certain conditions, or at least presume that they are employment relationships.⁴ For example, in France, performing artists, models and professional journalists who might otherwise be regarded as self-employed were presumed to have an employment relationship under certain conditions;⁵ in Spain, artists engaged in public performances who entered into a relationship with an organizer of public performances or a manager, on behalf of and under the organization and direction of the latter, were deemed to have a special employment relationship;⁶ and in Panama, performers and musicians were considered employees.⁷ Recent indications of a contrary trend include: an October 2010 amendment to the New Zealand Employment Relations Act 2000, to exclude from the statutory definition of “employee” all those engaged in film production work, thereby removing employment-based rights and protections;⁸ and France’s Act No. 2008-776 of 4 August 2008, which appears to limit presumption of employee status, inserting in the Labour Code an article establishing that a person is presumed to be self-employed if his or her working conditions are defined exclusively by him or herself or are defined by the contract with the client company.⁹

2. Employment trends in the media and culture industries

2.1. General issues

4. The media and culture industries cover many subsectors, including: mass media, such as the internet, television, newspapers, magazines, books, film and radio; publishing, producing and distributing audiovisual content; performing arts, such as theatre, dance, music concerts and music festivals, opera, comedy and circus; and music recording. The broader media, culture, graphical sector also includes video games, print and electronic publishing and the printing industries. The main occupations in the media and culture industries include: journalists, editors, writers, agents, designers and photographers; musicians, singers, actors and dancers; technicians, producers and directors of film,

³ ILO: *The employment relationship*, Report V(1), International Labour Conference, 95th Session, Geneva, 2006, para. 74.

⁴ *ibid.*, para. 103.

⁵ *ibid.*, para. 105.

⁶ *ibid.*, para. 104 – Spain, Workers’ Charter, s. 2(1)(e), and Royal Decree 1435/1985 of 2 August, regulating the special employment relationship of performing artists.

⁷ *ibid.*, footnote 45.

⁸ Employment Relations (Film Production Work) Amendment Act 2010.

⁹ Article L.8221-6-1 of the French Labour Code.

television and live performances; and costume, make-up, scenery, special effects and other staff.

5. In many countries, these subsectors employ more than 1 per cent of the workforce (see Chapter 4), providing entertainment and information services to the entire population. In the European Union (EU) alone, more than 2.3 million people are employed in publishing activities, video and television programme production activities and programming, broadcasting and information service activities, and approximately 1.2 million people work in printing and media reproduction. Although a majority of these are full-time employees, atypical forms of work continue to gain in importance.¹⁰ Furthermore, the EU live performance sector employs almost 1 million people, up to half of whom have self-employed status.¹¹ According to one observer, apart from in Japan and a few countries in Latin America, “the majority of musicians in Africa, Asia and Latin America live in very precarious conditions. Because the employment status of musicians is frequently insecure and ‘independent’, they are often not covered by social security schemes ... many musicians need to do other jobs in order to earn a living.”¹²
6. The structure of media and culture industries has changed, with less government funding, greater emphasis on enterprise development, more independent production and less emphasis on large studios. Over recent decades, technological developments have strongly affected work in this sector, with labour-intensive work using many employees often giving way to technologically advanced work with fewer employees, and more part-time work and teleworking. Competition between media and culture enterprises, styles and formats has influenced business prospects and has had an impact on the numbers of jobs created or cut. The pace of change should be just as rapid in the next few years, as further developments in digital technology are adopted. On-demand or downloaded films and music will increasingly replace scheduled transmissions, cinema and DVD releases and compact disc sales. News, books and other print media will increasingly be accessed electronically, the internet will become ever faster, and the boom in social media further promotes user-generated content competing with or complementing professionally produced material.

(a) Training

7. Given the changes that technology is bringing to the media and culture industries, lifelong training approaches are increasingly important, thus employers and workers have a direct interest in ensuring that adequate training is available. The success of an enterprise depends on the skills and knowledge of its workers. While freelance media and culture workers are largely responsible for ensuring that they have the training and skills they need, some examples exist of unions helping freelance members obtain professional training.
8. An Organisation for Economic Co-operation and Development (OECD) report noted that: “Fostering the skills of journalists who increasingly have to be multimedia journalists is central to maintaining a high-quality news environment News organisations have to invest heavily in the creation of a versatile workforce. The role of the universities (and the

¹⁰ European Commission: *European Sectoral Social Dialogue: Recent developments* (Luxembourg, 2010), p. 19.

¹¹ *ibid.*, p. 53.

¹² J. Vincent: *The social situation of musical performers in Africa, Asia and Latin America* (Geneva, ILO, Sectoral Activities Programme, Working Paper No. 172, 2001), p. iii.

teaching of journalism, namely entrepreneurial journalism) in the new media ecosystem is also large and growing.”¹³ The National Union of Journalists (NUJ) of the United Kingdom (UK) and Ireland has claimed that “there is a real gap between what journalists are expected to do and the training they are receiving for carrying it out”.¹⁴ The European Commission’s sectoral social dialogue committees for the live performance and audiovisual sectors (see Chapter 6) are currently undertaking a feasibility study to develop a sectoral skills council.

(b) Children and young people

9. A unique aspect of this sector is the issues that it raises relating to the employment relationships and conditions of child performers, when employed for short or long periods to work in television series, films and entertainment.¹⁵ In accordance with Article 8 of the Minimum Age Convention, 1973 (No. 138), children may, after consultation with the organizations of employers and workers concerned, be employed for purposes of “participation in artistic performances”, subject to minimum levels of protection regarding the working conditions and hours of work and the safety, health and morals of the young persons concerned. Article 3 of the Worst Forms of Child Labour Convention, 1999 (No. 182), cautions against child labour in “the production of pornography” and in “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.”
10. Young people have been particularly affected by the weak and uneven recovery from the global financial and economic crisis. It is estimated that some 74.5 million young people – aged 15–24 – were unemployed in 2013; this was almost 1 million more than the figure for 2012.¹⁶ Young people and graduates trying to obtain media and culture jobs often struggle to find a toe-hold, and may enrol in an unpaid work experience or internship scheme, which may involve months of work and might not lead to paid employment (especially given the project-based nature of these industries). There is an apparent imbalance between the large numbers of students undertaking courses related to media and culture and the ability of the industries to take on new workers.
11. In 2010, young people aged 15–24 represented 11.4 per cent of the workforce of the 27 Member States of the European Union (EU27) in motion picture, video and television programme production, sound recording and music publishing activities and 8.6 per cent of the EU27 workforce in programming and broadcasting activities.¹⁷

¹³ OECD: *The Evolution of news and the Internet* (Paris, 2010), p. 72.

¹⁴ NUJ (UK and Ireland): *Shaping the Future: Commission on Multi-Media Working* (London, 2007), p. 18.

¹⁵ See K. Sand: *Child performers working in the entertainment industry around the world: An analysis of the problems faced* (Geneva, ILO, Sectoral Activities Programme, Working Paper No. 186, 2003).

¹⁶ ILO: *Global employment trends 2014: Risk of a jobless recovery?* Executive summary (Geneva, 2014), p. 3.

¹⁷ Eurofound (European Foundation for the Improvement of Living and Working Conditions): *Representativeness of the European social partner organisations: Audiovisual sector* (Dublin, 2013a), p. 4.

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12. A report by the International Federation of Journalists (IFJ) and the European Federation of Journalists (EFJ) suggests that young people in France are accepting unpaid hours or unpaid internships as a way to enter journalism.¹⁸ This problem exists in other subsectors and countries. For example, the NUJ (UK and Ireland) states: “The abuse of ‘work experience’ trainees is becoming a scandal, with large numbers of new jobless graduates offering themselves for free to publishers in the distant hope of getting, if not a job, then at least a line for the CV.”¹⁹ However, internships can be mutually beneficial and lead to jobs.

(c) Gender aspects

13. 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.
14. In 2010, less than 40 per cent of audiovisual sector employees were women, a share that was lower than the average share of female employment in the whole EU27 (45.5 per cent). Women accounted for 39.9 per cent of the workforce in programming and broadcasting activities and 34.6 per cent in motion picture, video and television programme production, sound recording and music publishing activities.²⁰
15. The increase in the freelance membership of the NUJ (UK and Ireland) between 2005 and 2012 was primarily attributable to an increase in the number of women members. This could be an indication that more women than men are studying journalism, that more graduates are entering the profession as freelancers, or that women who lose their staff posts are more likely to go freelance while men would consider leaving the industry; or it could be due to other reasons.
16. The Framework of Actions on Gender Equality agreed on by the EU Audiovisual Sectoral Social Dialogue Committee in 2011 (and which also addresses issues such as gender portrayal in the media, gender roles at work, equal pay and equality in decision-making) states:

It is critical when considering working arrangements which support the reconciliation of work and family life that these can be taken up on a voluntary basis by both women and men, and are designed in a way that does not undermine their long-term participation and position on the labour market. Some of the practices aiming at creating a better work–life balance may have adverse effects on the careers of women in particular. Indeed, surveys show that flexible working practices are more used by women than men. In many cases, this has resulted in, inter alia, career stagnation, a pay-gap and lower pensions.²¹

¹⁸ IFJ–EFJ: *Survey report on women in journalists’ unions in Europe* (Brussels, 2012), p. 20.

¹⁹ NUJ (UK and Ireland): *op. cit.*, p. 17.

²⁰ Eurofound, 2013a: *op. cit.*, p. 4.

²¹ European Union: *Framework of Actions on Gender Equality*, EU Audiovisual Sectoral Social Dialogue Committee, 2011, p. 20.

2.2. Newspapers and magazines

17. In most developed economies, sales of newspapers and magazines in paper format are falling, while the number of online readers has grown. Some publishers have responded to the decline in sales and subscriptions by raising prices (in the United States, for example, this has broadly led to revenue remaining stable, despite declining sales).²² Traditionally, newspapers and magazines have depended on revenues from sales and advertising, which were estimated at US\$164 billion globally in 2012, down from \$187 billion in 2008.²³ In recent years, new sources of revenue have been sought by placing editorial content on the internet behind paywalls. In the early years of the internet, most publishers in developed economies made editorial material available to online users free of charge, which some major media groups still do. It remains unclear what the business models will be for free online publishing (including the role of advertising revenue based on the “pay-per-click” model), or how successful general interest publications will be in charging for content, although there are obvious opportunities for specialized publications.
18. In developed economies, the advertising revenue earned by media enterprises from their printed publications – which used to come from recruitment, property, car sales and small (classified) advertisements – is declining, and advertisers are increasingly using online media instead. However, as the World Association of Newspapers and News Publishers has pointed out, digital advertising revenues cannot compensate for the advertising revenues lost to print.²⁴ Online in-text display advertising has proved to be of limited value; advertising targeted to meet the interests of individual internet users (through the algorithmic analysis of internet usage) is seen as being more promising.
19. The traditional role of professional journalists has changed in recent decades as a result of the rapid diffusion of ICTs, especially smartphones and social networking services such as Twitter, which enable the public to contribute editorial material and photographs.²⁵ The importance of user-generated content has grown rapidly in recent years. According to the NUJ (UK and Ireland), professional photographers are particularly at risk because, using digital technology, everyone has the possibility to distribute their images.²⁶

²² See Pew Research Center: *The State of the News Media 2013*, Key Findings, at <http://stateofthemediamedia.org/2013/overview-5/key-findings/> [accessed 10 Feb. 2014].

²³ See PwC: *Global entertainment and media outlook 2013–17*, at <http://www.pwc.com/gx/en/global-entertainment-media-outlook/segment-insights/newspaper-publishing.jhtml> [accessed 10 Feb. 2014].

²⁴ World Association of Newspapers and News Publishers: *World Press Trends: Newspapers Still Reach More than Internet*, 12 Oct. 2011, <http://www.wan-iffra.org/press-releases/2011/10/12/world-press-trends-newspapers-still-reach-more-than-internet> [accessed 10 Feb. 2014].

²⁵ See A. White: *The Digital Labour Challenge: Work in the Age of New Media* (Geneva, ILO, Sectoral Activities Programme, Working Paper No. 287, 2012).

²⁶ NUJ (UK and Ireland): op. cit., p. 23.

2.3. The film industry

20. In 2005–09, the top five countries for major film production were India, Nigeria, United States, Japan and China.²⁷ There are also important film industries in other countries, including Argentina, Brazil, Chile, Egypt and Republic of Korea. The Indian film industry is highly developed and successful, with films often produced on multi-million dollar budgets. Major Californian studios such as Warner Bros, Sony Pictures and 20th Century Fox are among international investors in the industry.²⁸ China’s box office revenue has seen very rapid growth in recent years and its film industry is expected to double in size in the next four years.
21. The United States continues to be the heartland of the global film industry, with American funded and produced films enjoying worldwide distribution. The industry is significant for the country’s economy and is responsible, according to the Motion Picture Association of America, for providing 284,000 jobs in the core business of producing, marketing, manufacturing and distributing motion pictures and television shows.²⁹ There has been a small decline in the number of full-length feature films made in recent years by six major studios.³⁰ The fall in film production has been roughly matched by a rise in production for television, so the amount of work available is little changed.³¹
22. In Europe, film financing has become more difficult, partly due to the austerity policies of many countries. There is a requirement under European Union rules to ensure that the amount of state support for film production does not exceed state aid limits.
23. The film industry’s standard business model saw films being released first in cinemas, and then subsequently being sold on video or DVD, and finally being shown on television. The secondary revenue streams have typically played a determining role in whether a film makes a profit or loss. Payments from these uses, known as “residuals”, are important sources of income for some workers in the industry. Indirectly, they also help fund collective pension and health-care schemes (overseen jointly by employer and union representatives). However, recent developments, such as online video on demand, are leading to a reduction in the number of video or DVD sales and potentially could reduce secondary income and residuals; other films are released directly on video or DVD without cinema release. Copyright piracy is also seen as a major problem and film production companies are working closely with trade unions to combat this risk to revenue. Nevertheless, the film industry is perhaps less affected than other parts of the media by challenges from new media. However, employment relationships in the film industry tend to be based on short-term contracts to “work for hire” on individual films on an “as needed” basis, and not on an ongoing relationship with one film studio or another.

²⁷ United Nations Educational, Scientific and Cultural Organization: *From international blockbusters to national hits: Analysis of the 2010 UIS survey on feature film statistics*, UIS Information Bulletin No. 8, Feb. 2012, p. 8, <http://www.uis.unesco.org/culture/Documents/ib8-analysis-cinema-production-2012-en2.pdf> [accessed 10 Feb. 2014].

²⁸ See: <http://newsonair.nic.in/100-YEARS-OF-INDIAN-CINEMA.asp> [accessed 10 Feb. 2014].

²⁹ Motion Picture Association of America: *The Economic Contribution of the Motion Picture & Television Industry to the United States*, Washington, DC, 2012, <http://www.mpa.org/Resources/92be6469-1d3c-4955-b572-1d3f40f80787.pdf> [accessed 10 Feb. 2014].

³⁰ The Walt Disney Studios, Paramount Pictures Corporation, Sony Pictures Entertainment, 20th Century Fox, Universal Studios and Warner Bros Entertainment.

³¹ A. Bibby: *Employment relationships in the media industry* (Geneva, ILO, 2014).

2.4. Broadcasting

24. There has been a trend away from in-house programme development towards the use of independent production houses. Programmes are increasingly being commissioned externally, with budget and staffing risks being transferred to the independent producer. This has a direct effect on staff working in television. Media unions have reported that many former employees of broadcasters are now working as freelancers or for independent producers.
25. Public sector broadcasting faces the threat of cuts to licence fees and public funding, and television advertising revenue has decreased, leading to financial instability, and all this is having a direct effect on employment and employment relationships in radio and television. Furthermore, the operating methods of traditional television and radio broadcasting (whether public or private sector) are being transformed by the internet. There is a significant shift from watching scheduled television programmes at set times towards on-demand accessing of programming, both through conventional television sets and via internet and mobile devices. Radio has been affected in different ways, with podcasting, internet radio and other developments. Employment and employment relationships in radio and television have also been touched by these trends, but to a lesser extent than by the changes relating to funding and advertising.
26. Technological developments such as these present a challenge in particular to pay television operators, which typically fund their business model through monthly viewer subscriptions. More generally, however, as viewers can now select what they watch and when, rather than watching scheduled programmes, television advertisements no longer have such a “captive” market or audience. Global revenues from the television advertising business were estimated at around \$170 billion in 2013³² and are crucial to the industry.

2.5. Performing arts

27. As regards live performance, the effects of the financial and economic crisis and ensuing austerity in many parts of the world – with differences by country and type of performance – could be characterized by a generalized tightening of government funding and private sponsorship on the one hand, and reduced spending by audiences on the other. State-subsidized entertainment has been hit harder than those more dependent on private funding. Reduced funding can have an almost direct impact on employment and working conditions – for example, orchestras and cultural institutions have been disbanded or forced to merge; repertoires have been changed; jobs have been cut; and aspirations of finding a steady job have sometimes given way to hopes of being rehired as a freelancer. Although this pattern started well before 2008, the crisis reinforced the trend towards more freelance activities and self-employment.³³ In the EU, short-term contracts have become the norm and contract duration for occasional workers in the entertainment industry has declined steadily since the 1980s.³⁴

³² See PwC: op. cit.

³³ See Eurofound: *Representativeness of the European social partner organisations: Live performance industry* (Dublin, 2013b), pp. 6 and 7.

³⁴ See European Institute for Comparative Cultural Research: *The status of artists in Europe* (Brussels, European Parliament, 2006).

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28. A 2011 survey by the International Federation of Actors (FIA) found that self-employment among dancers had increased steadily over the past 20 years, and that employers were encouraging dancers to become self-employed. It also found that the employment status of many dancers was determined by the available budget of the employer; the fact that funding and grants were increasingly limited or project-based had led to dancers being employed on short-term contracts. Permanent and long-term contracts were increasingly rare, mainly concerning dancers in national companies or public theatres. But even in national ballets, operas or companies, where long-term contracts, with pensions, used to be the norm, dancers generally did not have such security. They increasingly worked freelance. In countries where there was still a pension scheme, new dancers were often excluded by being employed on short-term contracts.³⁵
29. Labour market data are unreliable for counting the number of performing artists, and little employment research has been done into labour processes in the entertainment industry or, more broadly, “cultural occupations”. Labour market surveys typically ask about the job being performed the previous week, but exclude secondary jobs. New occupations such as motion capture artists, digital special effects specialists, website designers and multimedia producers are not reflected in the statistics.
30. Performers largely fall into the “freelance” or “self-employed” categories of professional contingent workers, or have other forms of employment relationships than salaried workers. They often have low and variable earnings; a high risk of unemployment; temporary job tenure; long working hours; and infrequent, unpredictable, short-term work. They work fewer hours than they would like to, typically earning modest incomes compared to people in other occupations with the same level of education, often have a secondary job related to their primary artistic activity – for example, in teaching or an administrative job in a cultural enterprise – and often are financially supported by their families or a partner with a regular income. Awards and private and public sponsorship are other sources of income. The vocational motivation to perform, be competitive and maintain a good reputation affects the pay, working conditions and unionization of actors. Performers often continue to work beyond normal retirement age (or may have no retirement age at all) for reasons including interesting roles, professional fulfilment, inadequate social protection and economic necessity. Many performers sometimes work without pay, as they consider their work to be a passion, and are willing to accept modest lifestyles. Some are paid a share of the receipts for a performance, or royalties on a recording, or on a casual basis; others are considered to be “service providers”.
31. A 2013 survey by Equity, the UK trade union for professional performers and creative practitioners, reported that – each year – 11.2 per cent of entertainment industry members of the union earned nothing from their work in the industry (although around half of this group were paid some expenses), 37.7 per cent earned less than £5,000, 18.3 per cent earned between £5,000 and £10,000, 19.1 per cent earned between £10,000 and £20,000, 11.4 per cent earned between £20,000 and £50,000, 1.5 per cent earned between £50,000 and £100,000, and only 0.7 per cent earned over £100,000.³⁶

³⁵ FIA: *Dancers’ Career Transition: A EuroFIA handbook* (Brussels, 2011), p. 5.

³⁶ Equity Report, No. 16, 3 Dec. 2013, p. 1, available at <http://www.equity.org.uk/documents/equity-report-3-december-2013/> [accessed 10 Feb. 2014]. The findings are in line with studies on American and European performers’ remuneration.

3. Employment relationships in the media and culture industries

3.1. General aspects

32. The media and culture industries have long had a high share of atypical workers, and success and commercial rewards in these industries often depend on talent, human creativity and specialized, highly skilled work. It is thus unsurprising that employment relationships have developed somewhat differently from those in manufacturing sectors or finance, for example. Worldwide, these industries are characterized by atypical work – employment relationships that do not conform to the standard model of full-time, regular, open-ended employment with a single employer, with fixed hours, a regular income, pension entitlements and protection against ill-health and unemployment.³⁷ As the ILO’s Director-General remarked, “The supposedly ‘atypical’ has become typical; the ‘standard’ has become the exception. Views are strongly divided about whether and how this matters for the attainment of decent work for all and, if so, what if anything should be done about it.”³⁸ In the media and culture industries, many different forms of non-standard employment relationships have expanded during the past decades, notably: part-time, casual and fixed-term contracts; temporary agency work (often linked to festivals and other large events); self-employment (including through “umbrella companies” that deal with invoicing, taxes, social protection and so on, for freelancers); homework; and telework. The term “employment relationship” refers to (a) “regular employment”, which has three main characteristics: it is full-time, indefinite and part of a dependent, subordinate employment relationship; and (b) “non-regular employment”, which lacks one or more of the characteristics of regular employment, and can be classified into three main (sometimes overlapping) categories: non-standard working-time arrangements (part-time, on-call, zero-hours, and so on); non-permanent contracts (fixed-term, project or task-based work, or casual or seasonal work); and non-dependent employment relationships (contracted or subcontracted work, economically dependent self-employment or agency work). There is also a grey area between the “non-regular” category and independent, freelance or home working.
33. Atypical workers in the media and culture industries often do not benefit from the same protection as employees, such as unemployment benefit, pensions, maternity leave and sick pay; they may be excluded because of their independent or self-employed status. In some cases, taking on self-employed status may be a positive choice for media and culture workers wishing to develop their own enterprise, while in others it could be a negative necessity to avoid unemployment. Self-employed journalists and performing arts workers have a long tradition of unionization in many countries, but they often lack coverage by collective agreements and are usually not considered to be employees.
34. A “freelancer” or “self-employed person” can be defined as someone “pursuing a gainful activity for their own account, under the conditions laid down by national law”,³⁹

³⁷ <http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/atypicalwork.htm>.

³⁸ ILO: *Towards the ILO centenary: Realities, renewal and tripartite commitment*, Report of the Director-General, Report 1(A), International Labour Conference, 102nd Session, Geneva, 2013, para. 71.

³⁹ 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).

in contrast to an employee, who is subordinate to and dependent on an employer. However, there may be blurred borders⁴⁰ between self-employment and employment: some self-employed media and culture workers may be in a dependent or subordinate position (as entrepreneurs working for a single client or customer rather than an employer): others may have somewhat more autonomy: whereas others may draw benefit from their independence, and have no desire to be considered as being similar to employees. Self-employed and independent workers usually have commercial contractual arrangements rather than employment relationships.

- 35.** The term “**economically dependent workers**” – a concept falling between employment and self-employment – refers to workers who do not fall under the traditional definition of employee because they have no employment contract. Although such workers are formally self-employed, economically dependent media and culture workers depend on one employer for all or most of their income and may work on the employer’s premises, use the employer’s equipment and perform similar tasks to employees, but do not generally benefit from the protections provided to employees, including social protection and working-time provisions.⁴¹ The lower cost of both employer and employee social contributions enables companies to pay a higher net wage directly to freelancers, but it is doubtful that people switching to freelance employment sufficiently improve their income over time and save enough to compensate for insufficient public pension entitlements.⁴² A comparative study by the European Industrial Relations Observatory (EIRO) found that economically dependent workers were formally self-employed, usually held a service contract and depended on a single employer for their income (or a large part of it). However, economically dependent workers were similar to employees in other ways, for example in cases where there was a lack of clear organizational separation or of a clear distinction of tasks between them and existing employees. Freelancers are not a homogeneous group: rather, they occupy the blurred boundary between dependent employees and self-employed workers, and may be found close to either end of this continuum.⁴³
- 36. Project-based work** (very common in the media, film and television industries) with a specific employer for well-defined tasks with predetermined objectives and outputs may be performed by freelance or economically dependent workers, often with fixed-term contracts and low or no social security contributions, at fixed or various locations, and without sick or maternity leave compensation or unemployment benefit.
- 37. Unclear, ambiguous or disguised employment relationships** can arise in these industries. In many cases, work is performed under conditions giving rise to genuine doubts about the existence of an employment relationship (such as casual or seasonal work in the media and culture industries) while in others workers are not treated as employees, so as to disguise their legal status (for example, through false sub-contracting, the

⁴⁰ See G. Davidov: “Freelancers: An Intermediate Group in Labour Law?”, in J. Fudge et al: *Challenging the Legal Boundaries of Work Regulation* (Hart Publishing, 2012), pp. 171–185.

⁴¹ http://www.eurofound.europa.eu/areas/industrialrelations/dictionary/definitions/ECONOMICALLY_DEPENDENT_WORKER.htm [accessed 10 Feb. 2014].

⁴² European Parliament: *Social protection rights of economically dependent self-employed workers*, IZA Research Report No. 54, Aug. 2013, p. 9, http://www.iza.org/en/webcontent/publications/reports/report_pdfs/iza_report_54.pdf [accessed 10 Feb. 2014].

⁴³ *ibid.*, p. 30.

establishment of pseudo-cooperatives,⁴⁴ the false provision of services and false enterprise restructuring). Judges and labour inspectors could play a role in assessing whether or not an employment relationship exists, based on relevant evidence.

38. There is a growing use of paid or unpaid **internship or work experience schemes** for young people trying to enter the media and culture industries, which may involve months (or even years) of work and offer only distant hopes of eventual regular employment. Recent cases in the United States film and magazine industries have raised the issue of whether certain unpaid interns were really employees.
39. In the current context of greater labour flexibility and mobility, combined with a fall in public funding, many media and culture workers face irregular and unpredictable employment opportunities and may thus be more likely to sign non-standard contracts and to have little control over their working conditions.⁴⁵

3.2. New technologies and new forms of work organization

40. In the media and culture industries, ICTs have had a significant influence on the sector's occupations and work organization, by facilitating teleworking and freelance contracts. ICTs have decreased the importance of some occupations, while creating new ones. In Spain, for example, even though freelance work has long been a familiar feature in these industries, the number of self-employed or freelance online journalists has increased rapidly as a result of new technologies. UNI-MEI – UNI Global Union's media, entertainment and arts division – has estimated that broadly half of its affiliates' members are freelance or self-employed, and that a clear majority are atypical in some way,⁴⁶ reflecting a shift away from traditional employer–employee relationships and towards other ways of working, in both developed and developing economies.
41. The 2013–14 work programme of the EU Audiovisual Sectoral Social Dialogue Committee focuses on new forms of employment. A 2010 European Commission Working Document noted:

Many workers in the audiovisual sector face irregular and unpredictable employment opportunities, atypical contractual relationships and lack of control over their working conditions. This means that safeguarding and enhancing a genuine professional status for cultural and media workers is vital to making a career viable. However, audiovisual sector workers have a recognized standard of competence which allows them to be mobile within the industry across the EU and beyond. They tend also to be highly skilled and are trained for the future requirements of the sector.⁴⁷

⁴⁴ The Promotion of Cooperatives Recommendation, 2002 (No. 193), states that national policies should “ensure that cooperatives are not set up for, or used for, non-compliance with labour law or used to establish disguised employment relationships.”

⁴⁵ See Bibby: op. cit.

⁴⁶ J. Wilson, quoted in Bibby: op. cit.

⁴⁷ European Commission: *The European Agenda for Culture – Progress towards shared goals*, Working Document SEC(2010) 904, Brussels, 19 July 2010, section 2.12.2.

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42. Membership data from the NUJ (UK and Ireland) and the UK's Broadcasting, Entertainment, Cinematograph and Theatre Union (BECTU) confirm the freelance trend: overall membership fell in recent years, although freelance membership increased.
 43. The introduction of computer technology into the media industry in the late twentieth century gave rise to concerns over musculo-skeletal disorders such as repetitive strain injury linked to keyboard usage. The focus then shifted somewhat, as increased work pressure both on employees and on freelancers led to stress⁴⁸ and mental health issues. Responsibility for occupational safety and health now lies less frequently with employers because many salaried jobs have been converted into freelance positions.
 44. The fact that the number of freelancers reporting from conflict zones has increased poses particular safety risks. For many younger journalists, war reporting is seen as a high-profile way to develop a professional reputation. However, freelancers often travel to areas of considerable danger without the training or back-up resources that employed journalists rely on, and without specialist equipment (such as flak jackets and helmets) or adequate personal insurance.⁴⁹

3.3. The motivation behind freelancing

45. Freelancers can be categorized in different ways, and some observers distinguish between genuine freelancers and economically dependent workers who have been declared to be freelance. Unions demand that workers in the latter group be reclassified as employees. This approach is in line with that adopted by governmental tax and social security authorities keen to avoid evasion and loss of state revenue. However, there can be grey areas, and it is not necessarily straightforward to determine for individual freelancers whether an employment relationship really exists. Sometimes it is the worker, rather than the client or employer, who actively chooses the status of freelancer. These workers may positively welcome this status, and may resist any attempt to reclassify them as employees. Some freelancers are less content with their situation, having had their freelancer status imposed upon them by external factors, such as the need to find work of any kind.
46. In the case of genuine freelancers, where there is no suggestion that an employer–employee relationship exists in practice, further distinction is possible between those who are broadly content with their employment status and those who are not. Many freelancers in the media industry operate successfully in terms of pay and working conditions, and enjoy the independence of their position. Undoubtedly some consider themselves as entrepreneurs engaged in the challenge of developing their client base and building their own business to the point where, sometimes, they may be able themselves to take on employees. Some freelancers in this position may still be active trade union members, for the benefits of belonging to what can be seen in many respects as a professional association, but also sometimes for reasons of solidarity and commitment to trade union principles. It is possible for individual freelancers to consider themselves as both businesspeople running their own creative micro-enterprise and as workers; thus any attempt to squeeze freelancers into traditional categories recognized by labour law can be problematic.

⁴⁸ See S. Giga et al.: *Violence and stress at work in the performing arts and in journalism* (Geneva, ILO, Sectoral Activities Programme, Working Paper No. 201, 2003).

⁴⁹ These issues are included in the UN Plan of Action on the Safety of Journalists and the Issue of Impunity (2012) and in the work of the International News Safety Institute, a coalition of news organizations and journalists' unions.

4. Trends in work, work organization and employment relationships in the media and culture industries

47. In media and culture enterprises, restructuring, the reorganization of production processes, the need to ensure economic viability and the use of increasingly advanced technologies can lead to changes in employment relationships. The increasing numbers of freelance workers and job losses in recent years have made union organization a challenge, although such insecurity might encourage workers to seek protection through collective efforts. The majority of media and culture workers have long and irregular hours, low and variable earnings, temporary job tenure, regular unemployment and low protection. Many performers are freelance professionals for whom work tends to be infrequent, unpredictable and short-term. In the current era of non-standard work arrangements, workers in the media and culture industries may be required to be increasingly flexible about tasks, work schedules and the duration and nature of the employment relationship.
48. Across the whole media industry, there do not appear to have been major aggregate job losses. Within the EU27 region, for example, total employment in the audiovisual sector (including film, video and television production, sound recording and music publishing activities, and programming and broadcasting activities) increased over the period 2008–13 (see table 1), although employment in publishing activities fell by around 200,000 jobs.

Table 1. Employment in selected media and culture subsectors, EU27, 2008–13 (in thousands of jobs)

	2008	2009	2010	2011	2012	2013
NACE J58						
Publishing activities	1 240.8	1 180.9	1 189.6	1 149.1	1 144.6	1 044.5
NACE J59						
Motion picture, video and television programme production, sound recording and music publishing activities	428.0	398.9	433.0	452.7	448.1	460.7
NACE J60						
Programming and broadcasting activities	307.4	348.8	347.5	317.1	338.9	346.8

Note: Occupational groupings based on the Statistical Classification of Economic Activities in the European Community (NACE Rev. 2).
Source: Eurostat, 2013 (lfsq_egan22d).

49. Detailed data from Eurostat for France, Germany, Poland and the United Kingdom for the occupational groupings in table 2 show wide annual variations, with German publishing, UK and French film and television and French programming and broadcasting activities seeing employment growth.⁵⁰

⁵⁰ Eurostat warns that, at these detailed occupational levels, data may not be reliable.

Table 2. Employment in selected media and culture subsectors, selected EU countries, 2009–13 (in thousands of jobs)

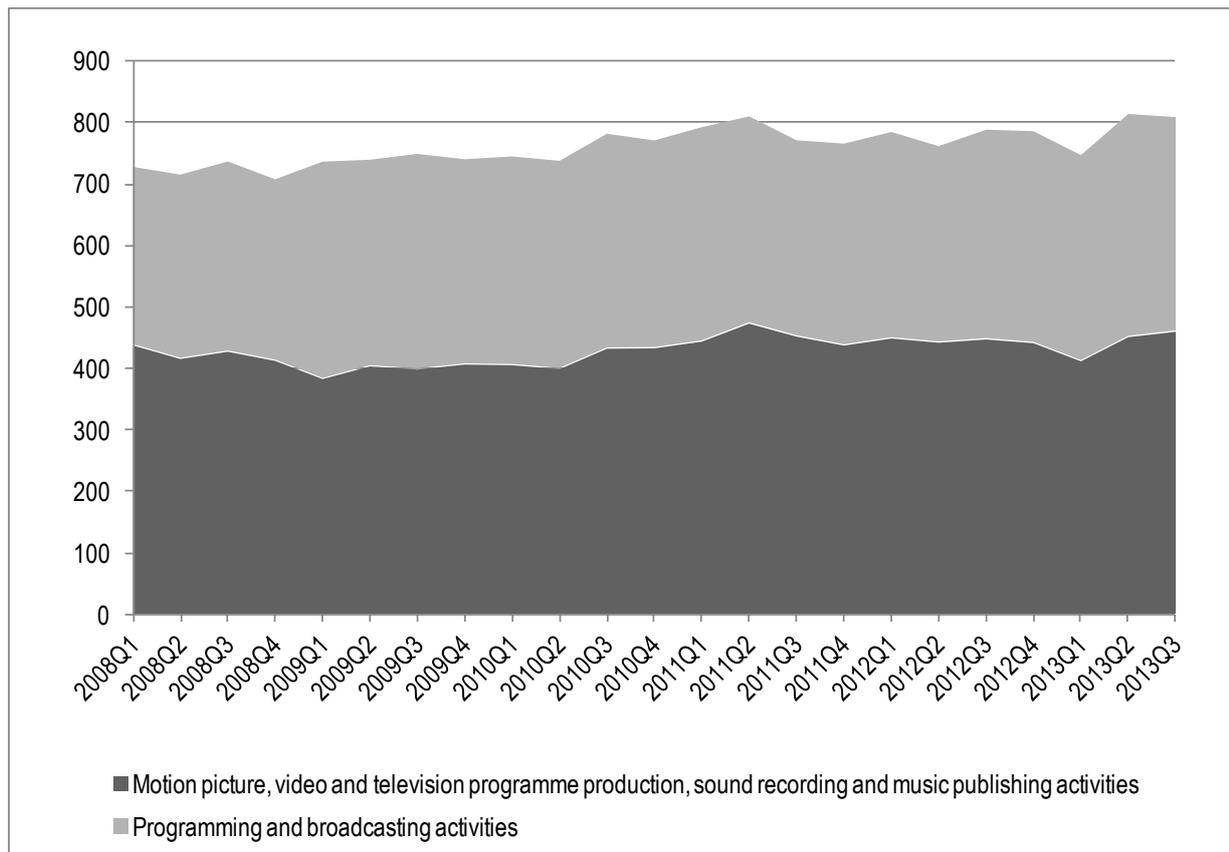
	2009	2010	2011	2012	2013
NACE J58					
Publishing activities					
France	146.1	135.9	123.7	119.7	112.6
Germany	369.8	368.3	402.4	392.7	387.7
Poland	50.4	45.7	39.4	26.2	32.0
United Kingdom	173.1	200.5	184.0	203.5	156.4
NACE J59					
Motion picture, video and television programme production, sound recording and music publishing activities					
France	53.9	63.3	62.0	69.7	58.3
Germany	82.1	85.4	75.3	76.3	80.4
Poland	15.6	14.4	14.8	15.6	13.8
United Kingdom	78.2	92.4	91.7	88.5	114.3
NACE J60					
Programming and broadcasting activities					
France	31.0	37.9	29.0	27.8	39.2
Germany	61.1	54.4	51.0	64.0	41.0
Poland	25.3	26.6	19.4	21.7	19.6
United Kingdom	61.7	50.8	55.4	64.7	77.8

Note: Occupational groupings based on the Statistical Classification of Economic Activities in the European Community (NACE Rev. 2).

Source: Eurostat, 2013 (lfsq_egan22d).

- 50.** Eurostat’s Labour Force Survey for 2013 indicated that, in the third quarter of 2013, employment in the audiovisual subsector in the EU27 stood at more than 800,000 jobs and was relatively little affected by the economic crisis across the EU27, employment growth being relatively stable overall (see figure 1). Employment oscillated between 700,000 and 750,000 jobs until mid-2010, and then ranged from 745,000 to 810,000 thereafter, with job cuts in several European countries in early 2013, particularly in public broadcasting services, and a recovery since then.

Figure 1. Employment in the audiovisual subsector, EU27, by quarter, 2008–13
(in thousands of jobs)



Source: Eurostat, 2013 (lfsq_egan22d).

51. The OECD has noted a clear trend of declining employment in newspaper publishing in many OECD economies over recent years.⁵¹ The Pew Research Center’s 2013 *The State of the News Media* reported that American newsroom staffing levels fell by 30 per cent between 2000 and 2013, while jobs in magazines fell by 4 per cent in 2011–12, following a 1.7 per cent fall the previous year.⁵²

52. An IFJ report states:

The media industry has undergone dramatic growth and change over the last two decades due in part to globalization, democratization and technical and creative innovation. The rapid growth has meant significant changes in the structure of the labour market and in the organization of work both within and outside the framework of the employment relationship. Journalists and media workers are increasingly being employed in atypical and contingent employment relationships – casual employment, use of contract work and the rise of the use of triangular, ambiguous and disguised employment. ... In Asia and Latin America, journalists are being employed on individual contracts in increasing numbers. Around the world, the trend is toward the privatization of state media, and experienced senior journalists are being replaced by younger graduates who more often work in a non-permanent – or ‘atypical’ – employment relationship. ... Atypical workers are primarily paid on rates set by employers, usually by the story or item, and generally without the same working conditions of

⁵¹ OECD: op. cit., p. 7.

⁵² Pew Research Center: op. cit., Overview and Key Findings.

permanent employees. Freelance journalists are most commonly engaged by a verbal agreement, without a contract, and contribute material to between one and four employers.⁵³

Freelancers operate as a convenient safety valve for the labour market, able to absorb more work when times are busy, but equally having no effective redress if work dries up. Several media unions have reported that it has been harder for their freelance members to find work, and that freelance incomes fell as a consequence.⁵⁴

- 53.** In 2010, self-employment and non-employee relationships accounted for 21.4 per cent of total employment in the audiovisual subsector, compared with 16.1 per cent of total employment in the EU27.⁵⁵ Unions responding to changes in employment relationships have adapted their work to more effectively represent freelance and other atypical workers, for whom union organizing is more difficult than it is for employees in traditional workplaces, because they require more individual attention and union resources than employees. Unpaid invoices are often the most common issue for freelance media workers, along with tax problems, legal problems, occupational health and safety concerns, and enquiries about employment rights.
- 54.** In 2010, 21.4 per cent of audiovisual subsector employees in the EU27 were working on a temporary basis, compared to 11.7 per cent of employees in all economic sectors, and 26.1 per cent were working irregular hours.⁵⁶ Moreover, it was reported that 6.2 per cent of workers in the audiovisual subsector had more than one job in 2010.
- 55.** Workers in the audiovisual subsector were generally more highly educated than the average employee in the EU27 in 2010, with 52.1 per cent having a high level of educational attainment, 40 per cent having a medium level and 7.9 per cent having a low level, with the average rates being 29 per cent, 49.2 per cent and 21.5 per cent, respectively.⁵⁷

5. Regulatory and intellectual property issues in the media and culture industries

5.1. Freelancers' legal status

- 56.** The exact legal status of freelancers is a complex issue, and varies from country to country. The term “freelancer” should not be considered synonymous with “self-employed”, although many freelancers in the media industry do indeed have self-employed status (and thus effectively can be considered to be running their own micro-enterprise). In many States, there is no legal middle ground between employed and self-employed status, although there can be considerable areas of overlap in practice. Some States (such as

⁵³ IFJ–ILO: *The changing nature of work, A global survey and case study of atypical work in the media industry*, 2006, pp. v–vi. See: <http://www.ifj.org/assets/docs/068/112/3fbf944-95ebe70.pdf> [accessed 10 Feb. 2014].

⁵⁴ Media Alliance, quoted in Bibby: op. cit.

⁵⁵ Eurofound, 2013a: op. cit., p. 4.

⁵⁶ *ibid.*, p. 4.

⁵⁷ *ibid.*, p. 5.

Germany and Italy) have one or more additional legal forms of employment status defining workers in a position of economic dependency towards a particular company or employer (even if they are technically not employees). Similarly, Spain's 2007 Self-Employed Workers Act includes the concept of "economically dependent self-employed worker". A 2001 study of the legal, taxation and social protection frameworks for media, arts and entertainment workers in the European Union by the European Arts and Entertainment Alliance (EAEA) and the European Trade Union Confederation (ETUC) highlighted the complexity of freelance employment. For example, it noted that workers who were not considered as employees could, in some situations, be totally or partially covered by social protection measures for employees:

The notion of employer is not always easy to define in the entertainment and audiovisual fields. In France, a performing artist may be an employee and himself employ musicians, choir members or dancers who accompany him. These two capacities are not incompatible. Moreover, the apparent employer may not be the actual employer, and courts are able in certain countries to designate the real employer ... without taking account of the content of agreements.⁵⁸

5.2. Competition law versus freelance remuneration rates

57. Anti-cartel law is designed to remove the risk of market distortion by dominant forces – in other words, groups of enterprises banding together to fix the prices they charge their customers. National competition authorities have a vital role to play in preventing this abuse of power. Based on the theory of efficiency of free competition and open markets, the objective of competition law is to protect competition in free-market economies. As most national legislation does not exclude collective bargaining from the scope of competition laws, and given the particularities of work arrangements of media and culture workers (freelance, temporary contracts, outsourcing, and so on), competition authorities in some countries sometimes use their powers to target certain categories of workers who have concluded collective bargaining agreements on pay rates, because such standardized rates could restrict competition from other providers. Freelance media and culture workers have been particularly affected. Anti-cartel initiatives by competition regulators have posed problems for freelance media and culture workers in countries including Australia, Denmark, France, Ireland, Netherlands and Spain. When trade unions representing media and culture workers are exposed to antitrust law, it weakens their collective bargaining power and they cannot negotiate with those who have commissioned the work and performances of their members.⁵⁹

58. Where collective agreements are not in place, in some countries media unions offer advisory recommended minimum rates of freelance remuneration, for example, in Belgium, Germany, Finland, France, Norway, Sweden and United Kingdom.⁶⁰

⁵⁸ EAEA–ETUC: *Study relating to the various regimes of employment and social protection of cultural workers in the European Union* (Brussels, 2001).

⁵⁹ See C. Rubiano: *Collective bargaining and competition law: A comparative study on the media, arts and entertainment sectors* (ILO Bureau for Workers' Activities and International Federation of Musicians, 2013).

⁶⁰ See EFJ: *Freelances' Fees Recommendations of EFJ Unions*, Brussels, 2009.

5.3. Authors' rights and intellectual property rights

59. As the last meeting for the media, culture, graphical sector concluded, “Employers and creative workers share a strong interest in the role of copyright and neighbouring rights in innovation and creation. Such rights should be strongly protected in the context of new technologies on the basis of international instruments in this field”⁶¹ Digital piracy poses a serious risk to the media and culture industries and has become a major focus of lobbying and enforcement work. At the same time, for media and culture workers, intellectual property rights are important in negotiations over how their labour is remunerated. The quality of content is a result of intellectual and artistic achievement, and changes in employment or contractual relationships affect the balance between individual content providers and enterprises that commercialize their work. This is of particular concern to freelance workers, who need to strive to ensure that they receive a fair share of the rights payments for work they have created. Different jurisdictions treat rights on created material differently, and there is a broad division internationally between countries where copyright principles apply and those that apply the principle of authors' rights. Authors' rights comprise both moral rights (important for establishing and defending professional reputation and for attracting further work) and economic rights (the financial value of the created product) and are therefore fundamental to employment relationships in the media industries. The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, 1961 (for which the ILO, UNESCO and the World Intellectual Property Organization (WIPO) share responsibility), covering copyright in music, acting and other related areas, has over 90 States parties and was an important early standard in intellectual property. WIPO's Beijing Treaty on Audiovisual Performances, 2012, also covers, and updates, these rights.
60. In some countries, employees are legally deemed to have relinquished their economic rights under their employment contract, with these intellectual property rights passing to the employer. Sometimes this extends also to moral rights. However, even in countries where this is not the case (such as France, Germany and Sweden), copyright issues can be fundamental to collective bargaining and social dialogue. In the United States film industry, rights are covered in collective agreements negotiated between production companies and unions (including freelance performers, writers and directors). Elsewhere, the issue can be more problematic. Media unions have been particularly concerned about the situation facing freelancers negotiating individually with businesses for which they are working.⁶²
61. In many countries, collecting societies established and run collectively by their members receive royalty payments from the exploitation of rights on behalf of groups such as writers, photographers, actors and musicians; payments to creative workers by collecting societies can form a very significant part of the total income of such workers.

⁶¹ ILO: *Conclusions on the future of work and quality in the information society*, op. cit., para. 13.

⁶² The United Kingdom has seen several high-profile disputes between freelancers and publishers over alleged “rights grabs”. One publisher demanded full rights “throughout the universe”, including in “media yet to be invented”. In Germany, the United Services Union – ver.di – and nine major publishers successfully negotiated an agreement covering authors' rights, including self-employed workers (Eurofound: *Self-employed workers: Industrial relations and working conditions*, Dublin, 2010, p. 41).

6. Social dialogue and employment relationships in the media and culture industries

62. In many countries, social dialogue is highly fragmented because subsectors of the media and culture industries are often considered as being separate, involving both public and private employers, and a wide range of activities and professions. In the context of changing employment arrangements in the media and culture industries, in its 2013 conclusions concerning the recurrent discussion on social dialogue, the International Labour Conference recalled that social dialogue is based on respect for freedom of association and the effective recognition of the right to collective bargaining. These founding principles of the ILO – stated in its Constitution and reaffirmed in the ILO Declaration on Fundamental Principles and Rights at Work – are applicable to all ILO Members. These rights cover “all workers in all sectors, with all types of employment relationships, including in the public sector, the informal economy ..., micro, small and medium-sized enterprises (MSMEs), and ... migrant workers”.⁶³ ILO Members should renew their commitment to social dialogue and tripartism, respect the independence and autonomy of workers’ and employers’ organizations and refrain from interfering in their establishment, functioning and administration, ensure that collective bargaining is carried out in observance of the autonomy of the parties and ensure respect for the rule of law.⁶⁴

6.1. Collective bargaining in the media and culture industries

63. Collective bargaining can take place at the sectoral, workplace, national and regional levels. Many of the issues raised in the collective bargaining process relate to wages, working hours, social security and pension systems, increasing flexibility of working conditions, training provision and protection of intellectual property rights.

64. As well as fixing terms and conditions of employment, collective bargaining can also foster peaceful, cooperative and efficient labour markets.⁶⁵ Promoting collective bargaining for non-standard workers is a challenge because – unlike standard employees – they have limited attachment to single workplaces and employers. Non-standard workers may be employed directly by employers in casual and temporary jobs so that their association with the employer is limited; be indirectly employed – for example through an employment agency; or be dependent freelance or self-employed workers. This growth in non-standard employment relationships has resulted in a decline in trade union membership and the fragmentation of collective bargaining. Some workers are not covered by labour law or collective bargaining, while others face difficulties or can be reluctant to exercise their rights, as they fear losing their jobs.⁶⁶ Some trade unions also exclude non-standard workers. Some media and culture trade unions have faced problems gaining

⁶³ ILO: Conclusions concerning the recurrent discussion on social dialogue, para. 2, in *Provisional Record* No. 11, International Labour Conference, 102nd Session, Geneva, 2013.

⁶⁴ *ibid.*, para. 9.

⁶⁵ Rubiano: *op. cit.*, p. 6.

⁶⁶ M. Ebisui: *Non-standard workers: Good practices of social dialogue and collective bargaining* (Geneva, ILO, Industrial and Employment Relations Department, Working Paper No. 36, 2012), pp. 5–6.

recognition from the authorities in recent years (for example, musicians' unions in Kenya and Malawi). In other countries, collective bargaining is long established in these industries, and its value is recognized by employers' organizations and trade unions. However, willingness to take industrial action is constrained by several factors, including the combination of an oversupplied labour market and intense motivation to work – industrial action would require members to refuse to work when there is no guarantee of future work.⁶⁷

65. Generally, collective bargaining coverage in the audiovisual sector is low in newer EU Member States, such as Hungary (38 per cent), Lithuania (27 per cent) and Latvia (17 per cent), and higher in older Member States, with the exception of Spain (24 per cent) and the United Kingdom (30 per cent). However, coverage is very high in Slovenia (100 per cent), where public broadcasting companies have a major role, and thanks to a multi-employer agreement that ended in 2013, Romania had 100 per cent coverage in 2011. Several factors contribute to higher levels of collective bargaining coverage, such as: the predominance of multi-employer bargaining; relatively higher density rates of employee and employer organizations (Belgium, Denmark, Finland, Sweden); and the predominant role of public service broadcasting with single-employer agreements (Austria, Slovenia).⁶⁸
66. Technological convergence has brought operators from other industries, including the telecoms sector, into broadcasting. The IFJ has highlighted issues arising in Latin America where telecoms operators running cable television services were not initially prepared to negotiate with local media unions.⁶⁹
67. Traditional social dialogue and collective bargaining have been under pressure in some countries, particularly in relation to print media, where most major industrial disputes were related to restructuring and the development of ICTs, driven by changes in ownership, falling sales and the increasing importance of the internet and free newspapers.
68. A trend away from collective bargaining towards deregulated individual negotiations is visible. For example, in Germany, Italy and Switzerland, collective agreements have proved difficult to renegotiate.⁷⁰
69. Given the number of freelancers in the sector, one issue to consider is the extent to which collective agreements also cover freelancers. The picture is mixed. On the one hand, in the film industry in the United States, there is a long and highly successful record of agreements between employers' organizations and unions such as the Writers Guild of America and the Directors Guild of America, whose members are generally almost exclusively freelancers. In the United Kingdom, the collective agreement of BECTU and the Producers Alliance for Cinema and Television covers freelancers; and BECTU and the Directors' Guild of Great Britain have multi-employer bargaining for freelance directors.⁷¹

⁶⁷ D. Dean: "The relevance of ideas in a union's organization of contingent workers: 'Here come the fairy people!'" in *Work, employment and society* (2012, Vol. 26, No. 6), pp. 918–934.

⁶⁸ Eurofound, 2013a: op. cit., p. 24.

⁶⁹ B. Costa, quoted in Bibby: op. cit.

⁷⁰ Bibby: op. cit., p. 3.

⁷¹ Heery et al.: "Beyond the enterprise: Trade union representation of freelances in the UK", in *Human Resource Management Journal* (London, 2004, Vol. 14, No. 2), p. 29.

Freelancers are also covered in various collective agreements with the BBC and with some commercial television operators.⁷² The NUJ (UK and Ireland) has some collective agreements covering the use of freelancers' work as casuals in employers' premises, as well as one agreement (with The Guardian Media Group) covering minimum rates for editorial supplied by freelance contributors.⁷³ In Germany and Austria, collective agreements cover certain categories of freelancers.⁷⁴

70. However, the majority of freelancers in print media are not included in collective agreements.⁷⁵ In Greece, although the statutes of the journalists' unions restrict membership to journalists working as employees, and therefore freelancers cannot join, in practice, some flexibility is being shown. The Journalists' Union of the Athens Daily Newspapers (ESIEA) reports that more and more freelance journalists are now among its members.⁷⁶
71. In the United Kingdom, in 2013, freelance hair and make-up workers (primarily women) on contract for the film *Les Misérables* threatened collective action to ensure that they were paid for the overtime that they were required to work⁷⁷ and, in 2010, 200 freelance journalists agreed jointly to stop contributing to a major magazine publisher as part of a dispute over authors' rights ownership.⁷⁸
72. In several countries, efforts by freelancers to organize and bargain collectively have been judged illegal under competition law (see Chapter 5). As a result, unions are careful about how they support their freelance members. Media and culture unions have called for the conflict between labour rights and competition law to be resolved to enable freelance workers to enjoy the right to association and representation. In some countries, unions are legally unable to recruit and organize freelance workers and unions of freelance workers are not recognized. In addition, the concerns of freelance union members often differ from those faced by their employee colleagues.

6.2. Social dialogue

73. Social dialogue varies significantly between countries, subsectors and the public and private sectors. It may be hampered by the growth of atypical employment, as casual or freelance workers do not have stable workplaces and may replace or be replaced by other workers, potentially raising tensions between unionized and non-unionized workers. In appropriate circumstances, constructive social dialogue between stakeholders in the labour

⁷² T. Lennon, quoted in Bibby: op. cit.

⁷³ J. Toner, quoted in Bibby: op. cit.

⁷⁴ See, for example, Eurofound: *New collective agreement for journalists*, 8 July 2013, <http://www.eurofound.europa.eu/eiro/2013/05/articles/at1305011i.htm> [accessed 10 Feb. 2014].

⁷⁵ A. Bittner/EFJ: *Managing Change: Innovation and Trade Unionism in the News Industry* (Brussels, 2011), p. 17.

⁷⁶ IFJ, quoted in Bibby: op. cit.

⁷⁷ N. Clark, "Revolt Les Misérables hair and makeup staff close to victory over conditions and pay", in *The Independent* (London), 28 Feb. 2013.

⁷⁸ Bibby: op. cit.

market can contribute to combining flexibility with security in regulation and to influencing national policies.⁷⁹

74. However, increasing competition, employers' greater demand for flexibility, growing job insecurity, and changing working conditions and industrial relations have been observed in the media and culture industries in countries including Germany, Greece and the Netherlands. The increased number of self-employed workers gives greater weight to calls for flexibility and to trends towards the individualization of wages and working conditions.
75. At the European level, two sectoral social dialogue committees are relevant: the one for the audiovisual sector (established in 2004) and the one for the live performance sector (established in 1999).⁸⁰ In both committees, the EAEA⁸¹ is the recognized social partner for the workers, while the employers' social partner organizations are the European Broadcasting Union; the Association of Commercial Television in Europe; the European Coordination of Independent Producers; the Performing Arts Employers' Associations League Europe (PEARLE*); the Association of European Radios; and the International Federation of Film Producers Associations.⁸² These committees discuss European social and labour issues related to the sector and are consulted on the drafting of EU legislation, in accordance with the provisions of the Treaty on the Functioning of the European Union.
76. Training and skills development for all media and culture workers is of crucial importance, especially given the changes taking place in the industry, when technology and a fundamentally changed media landscape are requiring new skills. In some cases, social dialogue addresses training needs, but there are concerns that fewer training opportunities are offered to workers than before,⁸³ despite the rapid technological and market changes that generate a need for more rather than less training.
77. In social dialogue in the live performance sector, career transition for performers is of relevance to the wider debate on pension age, health and safety, lifelong learning and early retirement schemes. Although the main focus has been on dancers (who usually have to leave that occupation when still young), career development and career transition are also of importance to other professions in the performing arts.⁸⁴
78. The promotion of the media and culture industries can sometimes also be an important topic for social dialogue, to address ways to increase audiences and employment, examine good practices in promoting the sector, and agree on a common lobbying strategy. Areas of

⁷⁹ See ILO: *Combining flexibility and security for decent work* and *Report of the Committee on Employment and Social Policy*, Governing Body, 306th Session, Geneva, Nov. 2009, GB.306/ESP/3/1 and GB.306/12(Rev.).

⁸⁰ Another committee – for the graphical sector – began work in May 2013.

⁸¹ This organization represents the European members of the International Arts and Entertainment Alliance, which is a global union representing cultural and media workers at the international and regional levels, made up of three global federations: UNI Global Union's media, entertainment and arts division (Euro-MEI); the International Federation of Musicians; and the International Federation of Actors.

⁸² Eurofound, 2013a: op. cit., p. 28.

⁸³ Bibby: op. cit.

⁸⁴ PEARLE*: *On the European Stage*, Brussels, Nov.–Dec. 2013.

common interest could include freedom of expression and of information, cultural diversity and quality, and social inclusion.

79. A variety of joint approaches have been used to address issues related to extending social protection to media and culture workers, mostly as an outcome of social dialogue. Some trade unions offer access to social protection for freelance members. In the United States, the Directors Guild of America and the Writers Guild of America actively participate in health care and pension schemes for their members, negotiated through collective agreements in the sector. In some countries, specific schemes have been developed to provide coverage to media and culture workers – for example, the social security insurance fund for artists and writers in Germany, which covers self-employed and freelance artists and writers,⁸⁵ and the unemployment benefit for intermittent entertainment workers in France.⁸⁶ There may be potential for bipartite or tripartite social dialogue at the national, sectoral or enterprise levels on social protection for media and culture workers who currently lack coverage, in a context of constant change and adaptation in these industries.

7. Concluding remarks

80. The media and culture industries have experienced rapid growth and enjoyed ever-greater public attention in recent years, but have also had a long tradition of insecure work, characterized by unclear contractual arrangements and questions over employment status within their workforce. This paper has suggested that, in line with Recommendation No. 198, guidance should be provided on how to distinguish between employed and self-employed workers in the media and culture industries, how to establish whether an employment relationship exists or not, and how to clarify which party is responsible for ensuring effective protection for workers.
81. The purpose of the Global Dialogue Forum on 14 and 15 May 2014 is for Government, Worker and Employer participants to discuss employment relationships in the media and culture industries on the basis of suggested points for discussion,⁸⁷ and to adopt points of consensus on future action by the ILO and its Members. These consensus points could be aimed at addressing challenges that governments and the social partners face in employment relationships in the media and culture industries, and at helping improve business and employment prospects in the media and culture industries.

⁸⁵ http://www.kuenstlersozialkasse.de/wDeutsch/download/daten/Versicherte/Aufsatz_zur_KSVG-VP_-_englische_Version.pdf [accessed 10 Feb. 2014].

⁸⁶ *Intermittents du spectacle: Montant et conditions de l'allocation chômage*, at <http://vosdroits.service-public.fr/professionnels-entreprises/F14098.xhtml> [accessed 10 Feb. 2014].

⁸⁷ To be published in April 2014, after this issues paper has gone to press.