

Final report of the discussion

Global Dialogue Forum on Employment Relationships in the Media and Culture Sector

(Geneva, 14–15 May 2014)



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INTERNATIONAL LABOUR ORGANIZATION

Sectoral Policies Department

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**Global Dialogue Forum on Employment Relationships
in the Media and Culture Sector**
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Geneva, 2014

INTERNATIONAL LABOUR OFFICE, GENEVA

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Introduction

1. The Global Dialogue Forum on Employment Relationships in the Media and Culture Sector was held at the International Labour Office in Geneva from 14 to 15 May 2014. The Forum's convening was proposed at the 317th Session (March 2013)¹ of the Governing Body of the ILO and its composition was approved at the 319th Session (October 2013);² its purpose was for tripartite participants to discuss employment relationships in the media and culture sector (excluding the graphical subsector), with a view to adopting points of consensus that would encourage future programme development and inform policy-making on the topic at the international, regional and national levels. The Office had prepared an Issues paper³ and Suggested points for discussion, which served as the basis for the Forum's deliberations.
2. The Chairperson of the Forum was Mr David Garner (Australia). The Government group coordinator was Ms Agnès Toullieux (France). The Employers' and Workers' group coordinators were, respectively, Ms Linda Facchin (Canadian Broadcasting Corporation, Canada) and Mr Chris Warren (Media, Entertainment and Arts Alliance, Australia). The Secretary-General of the Forum was Ms Alette van Leur (Director of the Sectoral Activities Department – SECTOR), the Deputy Secretary-General was Mr John Sendanyoye, the Executive Secretary was Mr John Myers, and the Coordinator of secretariat services was Ms May Mi Than Tun.
3. The Forum was attended by 93 participants, including 31 Government representatives and advisers from 21 member States, as well as 47 Worker and seven Employer participants, and eight observers from intergovernmental organizations (IGOs) and international non-governmental organizations (NGOs).
4. The Secretary-General of the Forum observed that the challenges governments and the social partners would discuss regarding employment relationships in the media and culture sector might be linked closely to the issues covered by the ILO's Employment Relationship Recommendation, 2006 (No. 198). The Forum would also discuss ways in which social dialogue and any other relevant approaches among stakeholders in this sector could contribute to addressing those challenges and to improving social protection coverage for media and culture workers; as well as measures that could help improve business and employment prospects in media and culture. She trusted that the participants' deliberations would result in focused, realistic and ascertainable recommendations for future action by the ILO and its Members in the media and culture sector as a follow-up to the Forum.
5. The Chairperson noted that the importance of the Media and Culture sector for many ILO member States and the global economy was often underestimated and misunderstood. The sector's contribution to employment was estimated to be around 1 to 2 per cent of the labour force. Media and culture work called for specific skills and high-level qualifications, but was often labour-intensive, for example in theatre or film production.

¹ GB.317/POL/5.

² GB.319/POL/4.

³ ILO: *Employment relationships in the media and culture industries*, Geneva, 2014. http://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---sector/documents/publication/wcms_240701.pdf.

For some occupational groups, particularly those providing creative content, there had been tremendous growth in opportunities for work. Employment in live entertainment, television and online and printed media was substantial in most countries, and was seen as an area with good potential for employment creation. However, the nature of work in the sector tended to involve more variations in the location, duration and type of work and of contract than in other sectors; hence, it was sometimes the subject of specific measures at the national level to ensure that issues related to social protection, taxation and other matters were treated appropriately.

6. The Executive Secretary introduced the Issues paper, which provided a background to recent developments in the media and culture sector in very general terms and highlighted some key issues relating to employment relationships and other contractual arrangements from various different viewpoints. He stressed that the graphical subsector would not be considered in the Forum. The paper's focus was on freelance and atypical work in the sector, rather than on standard employment relationships or agency work. Its first chapter aimed at setting the context for the Forum in relation to the 2004 Tripartite Meeting on the Media, Culture, Graphical Sector and discussions on employment relationship at the International Labour Conference in 2006 that had led to the adoption of Recommendation No. 198. Chapter 2 provided a brief overview of employment trends and general issues in the main four subsectors considered – newspapers and magazines; the film industry; television and radio broadcasting; and the performing arts. The first section of Chapter 3 differentiated between regular and non-regular employment and employment relationships, and commercial contractual arrangements for work in the media and culture sector. It also looked at “freelancers”⁴ or “self-employed people”, at “economically dependent workers”, at project-based work, at paid or unpaid internships or work experience schemes and at unclear, ambiguous or possibly disguised employment relationships. Chapters 3, 4 and 5 related to the first point for discussion, and those chapters covered respectively: Employment relationships in media and culture; Current trends in work, work organization, employment relationships and freelance work in the sector; and Issues relating to freelance status and intellectual property rights. Chapter 6, Social dialogue in media and culture, linked to the measures addressed in discussion points 2 and 3, and possibly to future action by the ILO and its Members under discussion point 4. He hoped that the discussions would lead to consensus points that could help promote opportunities for work and for creativity in the sector.
7. The Workers' group coordinator believed that the Forum was a great opportunity to discuss existing and growing challenges in the media and culture sector and how to resolve them. Ten years had passed since the last ILO tripartite meeting for the sector, which had experienced significant developments and enormous change. Many of the changes had been positive; they had opened opportunities to a variety of work, to do more things in different ways, and to communicate among workers through new technologies. At the same time, these developments had brought important challenges to traditional business models, which were evolving. For example, funding and support to media and culture – through advertisements, government support either through subsidies or by direct employment, and purchasing by consumers – were being compromised. Further, organizations that advertised products suffered declining revenues; there had been a profound loss of support from governments since the beginning of the crisis and the implementation of austerity measures; and finally, the direct purchase of media and cultural products was being undermined by copyright piracy, which had hit enterprises and workers alike.

⁴ Editor's note: the term “freelancer” has a wider meaning in English and in countries using common law than its French or Spanish equivalent translations.

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8. In his view, all of these factors had led to a shift in how workers were engaged and remunerated. Traditionally, wages and conditions were set by collective bargaining processes in large “creative factories”. However, recent developments had negatively affected workers’ conditions of employment, which meant that traditional employment relationships were no longer widespread. Further, the increasing variety of work, occupations and work organization had led to a lack of clarity of the types of working relationship. There were significant amounts of contingent work. A complication was whether contracts were remunerated on the basis of labour in terms of working time, or on the basis of intellectual property rights. The crisis was undermining the ability of workers to have a say in this matter.
 9. He believed that, from an ILO perspective, three aspects should be considered. First, it should be recognized that ILO Conventions applied to all workers, and were not restricted to permanent, full-time employees; consequently, all workers had the right to collective bargaining regardless of their form of work. Secondly, remuneration relating to creative products should be rewarded through royalties, residual payments and so on with regard to intellectual property. Thirdly, governments had greater responsibility towards the media and culture sector than other sectors, as governments had an obligation to promote culture and the media and to uphold cultural policies, and they also had responsibilities as employers. Government policy was creating confusion in ways of defining contracts by employing people directly or through cultural institutions. There were instances of public broadcasting entities driving policies that encouraged outsourcing. There was much confusion regarding competition laws that were negatively affecting the collective bargaining process for (freelance) performers and journalists in various countries. Another concern was the treatment of intellectual property income in relation to tax laws and social security. Governments needed to take a holistic approach to protecting the rights of workers and safeguarding their access to collective bargaining. A key point was the recognition that creative workers were at the centre of culture, information and debate; they enabled governments to sustain democracy and culture in their society. Governments should ensure that these workers could earn a decent living, and – despite their sometimes dependent relationship with governments – be able to collectively bargain for their pay.
 10. The Employers’ group coordinator highlighted the difficulties in characterizing employment relationships in the sector. By their nature, work in this sector had always been atypical; therefore, attempting to fit it into the traditional paradigms of standard employment relationships did not work. In the world of the media and culture sector, non-standard work was characterized by both creativity and entrepreneurship. One challenge was that stakeholders were not properly defined, including workers and contributors. She agreed with the Workers’ group coordinator that the development of new technologies had brought new ways of working and challenges had emerged from this. However, work in this sector had always been non-traditional. Hence, recent developments aggravated a problem that already existed. There were certain jurisdictions that had no legislation supporting freedom of expression as a fundamental right, while this critical aspect should be included in all jurisdictions. Further, there was a need to make a separation between the State and the funding of the broadcasting and media sector. She insisted that the media industry was different from others, in that workers had always wanted a different way of characterizing their working relationships and even more so today, when there was an increasing demand for flexibility and mobility.
 11. In the Employers’ view, a mix of traditional and other new types of employment relationships were necessary. She asserted that freelance work was not bad work in itself – it was in general decent work, and freelance was typical in this sector. Stakeholders should acknowledge this reality, as well as the fact that this sector could not adopt a traditional model of employment relationships. This did not mean that the Employers advocated for vulnerable and precarious work, but they were of the view that a flexible approach was needed. Employers and workers needed to be responsible and responsive to this new work

environment. Regarding the decrease in funding from public entities, she considered that it was necessary to maintain sufficient public funding to create jobs and sustain the industry.

- 12.** She noted that the Employment Relationship Recommendation, 2006 (No. 198), appeared to be the basis for some positions in the paper, but cautioned that the Recommendation should not be the only basis for the Forum’s work. She noted there were areas of consensus that could be achieved, and she sought better legal definitions of the different types of work. Referring to paragraph 32 of the Issues paper, she understood that permanent, full-time work had been considered “typical” and that a high share of media and culture sector employment was classified somewhat pejoratively as “atypical” and associated with precarious employment, with which she did not entirely agree, because many workers engaged in atypical working relationships did not consider themselves in precarious situations. Many freelancers or independent workers desired that type of work. Traditionally, work had been framed in a collective bargaining paradigm. However, in many countries, including Canada, unionized workers worked side by side with independent workers. She advocated a combination of working relationships, legal security, and forms of incentives for independent contracting. Finally, on decreased funding for arts and culture, she highlighted that sustainable public funding was a major issue and should be considered in the context of the current changing environment.
- 13.** The Government group coordinator explained that her group had discussed the scope of the sector, which jobs this field covered and whether statistics currently depicted them accurately. They had also considered different types of employment status, such as employee, freelance and self-employed, noting that these categories varied from one country to another. The Government group saw a problem with definitions, especially with regard to the scope of different jobs and realities in their respective countries. They had focused on economic issues, in particular the challenges of supply and demand. The media and culture sector had an impact on (and was in turn affected by) general economic performance; not only did this sector have some weight in the economy, but it had significant value to society. Training was a key aspect in terms of skills, developing professional competencies and using information and communication technologies.
- 14.** However, the Government group believed that there was a need to further elaborate how training could lead to jobs, what kinds of jobs would have to be created in future and disseminating information about training. Reskilling was also important, particularly for dancers and actors, where age and appearance were of key importance, as these workers needed particular support systems to develop their continuing employability. Social protection was also essential and coverage should be as broad as possible. There was a great need to progress with issues related to social security and training. There were also employment outcomes that varied between men and women, in particular concerning career length and maternity protection, while adequate remuneration was a crosscutting issue for all workers – performers, technicians and writers alike. Moreover, the status of artists and performers in society was problematic, and precarious work was a big issue. The Government group thought that addressing remuneration and precariousness were crucial in countering adverse perceptions of media and culture occupations and more employment stability was required in the sector.
- 15.** A representative of the World Intellectual Property Organization (WIPO) noted that the mission of her United Nations specialized agency was to lead the development of a balanced and effective international intellectual property (IP) system that enabled innovation and creativity for the benefit of all. WIPO welcomed the Issues paper and highlighted the importance of the aspects described in Chapter 5 on regulatory and intellectual property issues. She pointed to the relevance of protecting creativity, and yet in present times, creators were still denied rights and had little power to bargain in many countries around the world. As a result, in the context of globalization and media convergence, creative workers struggled to make a living. She urged Forum participants to

address this issue promptly and grant proper recognition and a better future for these workers. The international community had provided a legal framework for the development of the media and culture sector. After 12 years of negotiation, WIPO had adopted the Beijing Treaty on Audiovisual Performances in 2012. She acknowledged the collective efforts by stakeholders and many governments that were also participating in the Forum. The Beijing Treaty constituted a historic achievement, and a first step to allow performers to enjoy meaningful benefits from a combination of economic and moral rights. However, with 72 signatories, but only two ratifications, the Treaty was not yet in force. WIPO called for continuous cooperation and implementation of international law in national frameworks. She referred to the recognition of IP as a meaningful tool for improving working relationships in the media and culture sector. Finally, she noted that current standard-setting activities regarding rights of broadcasting organizations and the strengthening of collective management and its role in the marketplace were also relevant to the Forum's discussion.

16. A representative of the European Broadcasting Union (EBU) highlighted that the EBU was the world's foremost alliance of public service media (PSM), and its mission was to safeguard the role of the PSM and to promote its key contribution to society in Europe and beyond. The PSM served the public – not a particular government, political party, business or other interest group. The key values shared by all members were: universality, independence, excellence, diversity, accountability and innovation. To achieve excellence, EBU members acted with high standards of quality, integrity and professionalism, fostered talent and trained staff. They were committed to the safety of journalists and programme-makers, which was underpinned in all actions, and the digital future was open for all staff to embrace. But to fulfil their commitments, they were faced with ongoing challenges such as the need for robust and clear legislation, including labour legislation, and adequate and sustainable funding. They required professional governance to safeguard editorial independence and ensure that they could perform to the highest professional standards. EBU members needed to cater to a diverse range of audience interests. They also needed a workforce which was dedicated and committed to PSM values. To be credible employers, they had to be competitive and have terms and conditions of employment that enabled them to attract the best. For EBU members in the EU, the European Social Model effectively sets out best practice in the area of social dialogue and human resource (HR) management. The EBU did not negotiate terms and conditions of employment for members, but supported and fostered best practices, for example, through the European Audiovisual Social Dialogue Committee's outcomes. He recognized that EBU members had been working in a very difficult environment in recent years and as a consequence of the economic crisis, employment and social challenges had become more acute. To adapt to this context, public service broadcasters required fair, mobile, open and dynamic labour markets and a skilled workforce. Regarding the Issues paper, he did not accept that the downsizing of public service broadcasting was inevitable and a continuous trend, or that permanent jobs would automatically disappear in broadcasting, or that freelancing was the solution of the future. Members were adapting to a changing environment and the situation was diverse across countries; change was inevitable and the challenge was to manage how this took place – the EBU actively advised and supported members in this area of work. He believed that efforts to attract and support the best workers required having a diverse workforce, with a mix of employment relationships, supported by a range of best HR practices and initiatives.

Discussion point 1: Challenges faced by governments and social partners with respect to employment relationships in the media and culture sector

17. The Executive Secretary introduced discussion point 1, which focused on challenges facing governments and the social partners relating to employment relationships, in contrast to point 2, which looked at ways to address such challenges – through social dialogue for example – notably regarding ways to improve social protection for journalists and performers. Point 1 was closely linked to Chapters 3, 4 and 5, which covered Employment relationships in media and culture; Current trends in work, work organization, employment relationships and freelance work; and Issues relating to freelance status and intellectual property rights.
18. The Employers’ group coordinator highlighted the need for flexibility in working models in that work in this sector had historically required non-traditional forms of relationships, and legislation had to be adapted to respect the current and future environment. New media raised concerns over the lack of qualified workers and oversupply of other workers; this problem of inadequate supply to meet demand was affecting all stakeholders. Public broadcasting was embracing new media, yet training and employment relationships were not keeping pace with current and future sectoral trends. There was a need to create a legislative framework to deal with the realities of the new paradigm. Permanent work for all was not realistic, but a combination of relationships was required not only due to the nature of the work but because flexibility and mobility was desired by many workers in the sector. Atypical work was the reality of the sector and paragraph 32 of the issues paper emphasized the need to establish new definitions. In facing the realities of declining public funding, there was a need to examine other ways of promoting media and cultural activities. How could we create an environment that was conducive to attracting private investment? This would require non-traditional forms of work and a blend of relationships, but also different means of delivering social benefits. There was a greater financial burden on employers to contribute to social and economic benefits, which was dissuading investment in the sector. The example of Cirque du Soleil, which had started in Canada, was a highly mobile, global, creative, and lucrative business for all involved: a model of success where workers had a mix of relationships (employees, freelancers, temporary workers) that suited workers’ and employers’ needs. They performed high-quality work that was globally recognized.
19. A Worker participant from Ireland expressed concern over the interpretation and use of competition law by national governments and the European Community, which, in his opinion, used it to limit the right of economically dependent workers in a freelance or atypical freelance relationship to be collectively represented or to have unrestricted access to core labour rights. The ILO, and particularly its Declaration on Fundamental Principles and Rights at Work, made no distinction between any class of workers – traditional or non-traditional – and engagement in non-traditional forms of work did not mean the denial of labour and human rights for these workers. However, such rights were denied to many workers, staff and freelancers, in many parts of the globe. Freelance workers were the most flexible, the most adaptable, but also the most exploited. In referring to section 5.2 of the Issues paper dealing with competition law and noting that “anti-cartel law is designed to remove the risk of market distortion by dominant forces”, he observed that there was a growing tendency by regulatory bodies, such as the Competition Authority of Ireland, to view trade unions representing freelance workers as being engaged in anti-competitive practices. He asserted that competition law was often used to undermine the rights of workers. Freelance workers were being increasingly denied the right to trade union representation and collective bargaining. The publication of guidance notes on freelance pay, for example, had been deemed a criminal conspiracy. In Ireland, a trade union official

representing voice-over actors faced the threat of prison for negotiating an agreement which was not only good for workers but desired by the employer body which had freely entered into the agreement. Freelance workers were being denied equity and fairness because of their employment relationship. Freelancers or casual employees had precarious employment status and were denied the security of staff employment. This had implications for all freelance workers and particularly for women and vulnerable migrant workers, for whom flexibility often translated into exploitation. For women, the denial of permanent contracts had implications for maternity leave. A mixed workforce should refer to a mix in terms of employment relationships but not a mixed set of rights based on different employment relationships. Central to the achievement of the shared objectives of the ILO was recognition of the right of those who supplied their labour, which in this sector included intellectual property, to be treated as workers and granted the rights that flowed from such recognition.

- 20.** A Worker participant from the Netherlands noted that increasing numbers of people in this sector were self-contracted and needed to have proper representation by unions. In 2007, a collective agreement was reached between the FNV-KIEM and Ntb (Dutch musicians' unions) – and an employers' association, a key provision of which governed minimum tariffs for the engagement of self-employed musicians in orchestras. These tariffs were compatible with employees' wages, and enabled self-employed musicians to have medical insurance and to contribute to pensions. The agreement provided for equal pay regardless of employment status, and benefited not only self-employed people but also regular employees, because lower-cost, self-employed workers could have undermined employees and collective labour agreements. The agreement had to be terminated when the Dutch Competition Authority launched an investigation, imposing a fine on the parties to the agreement if it remained in force. The unions believed that the Authority should have understood that such collective agreements were an exception to the scope of cartel law, and would hamper trade unions' ability to engage in collective bargaining for self-employed workers.
- 21.** A Worker participant from Nigeria asserted that every employee should have the right to join a trade union – a right often denied by employers. Trade unions often found it very difficult to organize workers in the private sector. Collective bargaining did not exist in many media organizations in Africa, and was complicated by governments' role as employers in broadcasting. Highlighting the need to enforce freedom of association and collective bargaining structures, he noted that freelancers were often exploited in Nigeria. Government often found ways to outsource work to freelancers when regular employees demanded rights. Therefore, collective bargaining rights should be enforced regardless of whether it was in government-owned or private media and culture companies.
- 22.** A Worker participant from the United Kingdom highlighted that artists and performers were highly individual and unique, including in the way they approached their job. They were primarily chosen because of their performances, and there was no like-for-like competition among them. Therefore, they should be exempted from competition law. Trade unions should be able to collectively bargain on behalf of artists and performers.
- 23.** A Worker participant from Italy explained that many problems stemmed from the fact that the sector was characterized by a double labour market. There were permanent employees representing the traditional labour market, but also people engaged in atypical forms of work or freelancers, who were part of the “weaker” market. The traditional part of the labour market was shrinking, while the weaker, atypical work market was on the rise, for administrative staff and technicians too. It was of utmost importance that the flexible labour market met the needs and created the wealth necessary to ensure a decent life. Single collective bargaining agreements were not the solution; workers needed to have the right to collective bargaining to reach different agreements as appropriate. There should be an environment in which the two labour markets could avoid competition. Everyone

should recognize that fundamental rights were for all workers, and these included the right to representation, collective bargaining and social security, including pension, maternity leave and unemployment insurance. Flexibility should be negotiated, not forced. Access to relevant training was also critical.

- 24.** A Worker participant from France confirmed the opening EBU statement that European Social Dialogue was a good model, but it was not always practised. He noted with concern that the independence of public broadcasting had been under attack in recent years, including its economic independence. Sustainable public financing was necessary to ensure that public broadcasters could continue to meet the needs of all citizens through diversity. The Amsterdam Treaty confirmed the importance of public broadcasting services and their leading role in labour relations by having a direct impact on employment overall. The closures of public broadcasting in Greece and regional television stations in Spain were worrying, and a similar fate might soon face public broadcasting in Israel.
- 25.** A Worker participant from Kenya considered that the biggest challenge was for governments to understand the industry better and define the status of musicians. Musicians, at the start of their careers were often called workers, but once successful, were considered entrepreneurs. Regrettably, this perception had led to the exclusion of musicians from social dialogue and ultimately from social welfare and social protection systems, as indicated in paragraph 34 of the Issues paper. He called for social dialogue between musicians, employers, the Government and the Trade Union Registrar's Office.
- 26.** The Government group coordinator summarized her group's discussions by indicating that those countries had solid legal frameworks that varied by country – each featured certain basic standards supporting decent working conditions and social security. Social dialogue was possible in the sector without the imposition of new legal frameworks, and job security was important.
- 27.** The Government representative of France noted that the sector was dynamic and thriving, with a significant input to France's GDP that generated both direct and indirect employment. Unfortunately, the jobs created were often short-term, unstable employment opportunities. The proportion of permanent jobs continued to be very low in the arts and culture subsectors. Flexibility and job creation was important, but not to the detriment of protection and security. Through social dialogue, the Government was trying to help create more secure employment. But the challenge was how to achieve this, where appropriate, within the existing legal framework.
- 28.** The Government representative of Zimbabwe hoped that the Forum would be able to reach a consensus, despite the many divergent views. For her, it was important that a broader framework would be found that would work for all participants. In her country, actors and musicians were forming associations which were helping them to professionalize and provided training. Given that the sector was fast-moving, she deemed that any legal framework would have difficulties in keeping up with changing demands. Hollywood, Bollywood and Nollywood showed how artists could be brought together and organize. Such moves towards organizing should be promoted by governments, as this could help artists develop educational and training curricula, for example by including musical education in primary education to develop interest and skills at a young age. Governments could be conveners and coordinators to help musicians and artists tap into international markets.
- 29.** The Government representative of Tunisia expressed strong support for the sector and the importance it attached to safeguarding at least a minimum level of protection for its workers. Tunisia had experience with the Carthage International Festival, an event with a worldwide reputation, which had been instrumental in encouraging young people to become artists and promote innovation in arts. It was important that children and young

people were enrolled in artistic activities early on, so that they could choose this occupation, despite its perceived stigma. She agreed with the statement by Zimbabwe that it was crucial for art and culture to be included as subjects in primary education.

30. The Government representative of the Islamic Republic of Iran noted that his country had experienced rapid expansion in employment in the sector, similar to global trends. Labour issues should be investigated to understand the expanding labour market, including the challenges and impediments the industry was facing. Governments should support technical and vocational education and training, and employment status was an important indicator of the level of training. Ambiguities in the employment relationship needed to be addressed and Recommendation No. 198 should serve as a basis. Paragraph 29 of the Issues paper highlighted the need for better data and more research on this issue. Further labour market surveys should be carried out to identify relevant new occupations. Young people were more interested in media and culture training opportunities at universities and there needed to be a better link between training and employability.
31. The Employers' group coordinator believed that a key issue was the inconsistency in how governments interpreted ILO instruments and competition law. The Forum had discussed the lack of uniform definitions and interpretations, which contributed to a lack of clarity and led to inconsistencies. She agreed with the Worker participant for the United Kingdom that media and culture workers' contributions and talents were unique, but this called for flexibility in relationships, not standardization like workers on a production line. Governments should continue to provide financial support consistent with public demand, while commercial and employment relationships should adapt to the new paradigm. Employers needed to meet audience demand both in terms of content and flexibility. This additional public pressure for different types of programming would justify continued financial contributions from governments to the sector. Fostering entrepreneurship and creativity was essential.
32. The Workers' group coordinator stressed that the Forum should not focus on defining particular terms, which differed across countries – for example, “secure work”. Performers, musicians and journalists typically had regular work, but with various employers. “Secure work” should be conceptualized as security of continued access to opportunities for work in one's chosen craft. Governments should continue to invest in public broadcasting and broadband technology, as this enabled and expanded access to opportunities. He disagreed with the Employers' group coordinator that there was a reduction in demand, because he saw increasing and changing demand. People wanted to consume the product when and how they wanted to, which raised challenges for the industry but should not change the need for employment relationships and social dialogue. The Forum should encourage procedures for collective bargaining that permitted the best possible outcomes for local, national or sectoral needs. Identifying status was much less relevant.

Discussion point 2: The contribution of social dialogue to addressing challenges in respect to employment relationships and to improving social protection coverage in the media and culture sector

33. The Executive Secretary introduced the second discussion point, on addressing challenges that employment relationships might pose, notably ways identified through social dialogue and any other relevant approaches among stakeholders in this sector. This could include ways to extend social protection to those journalists, performers and other media and culture workers who had little or no coverage at present.

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- 34.** The Workers' group coordinator indicated that many of their issues had already been raised earlier. Social dialogue was a valuable tool when it was outcome-focused, meaningful and representative, taking into account the full spectrum of industries involved and recognizing that competition law was interfering with sectoral dialogue. That could occur at global level, but in many cases it was more appropriate at regional or national level. Practical concerns included that social dialogue should be ongoing and grounded in the social practices of the environment in which they were working.
- 35.** A Worker participant from France asked who should participate in social dialogue – in some cases workers wanted representation but could not without an association, and employers also had difficulty organizing themselves. It was important to involve public sector media employers, who might be easier to organize. There might be cases where social dialogue should be tripartite.
- 36.** A Worker participant from Argentina was concerned about some definitions concerning the status of workers used in the Issues paper that went beyond legislation in some countries regarding protections for self-employed workers. In Argentina, regulations defined all musicians as dependent workers, a definition defended many times in Argentine history. Including the notion of independent workers in a definition would constitute a step backwards compared to what had been achieved in his country, in Brazil and Mexico. Therefore, the ILO should not explicitly include definitions that would undermine these protections and represent a risk of placing these workers outside the system.
- 37.** A Worker participant from Germany explained that in his country, self-employed workers had major problems in the cases of illness and retirement. The federal Government established an artists' social fund, to which the employers and the representatives of the workers paid into. There was partial funding from the State as well. The fund had been a solution for the problem of the increasing number of self-employed. This could serve as an example of how to provide social protection and deal with the concerns involving the social partners.
- 38.** A Worker participant from France summarized the EU social dialogue process as was mentioned in the Issues paper in paragraph 75. In social dialogue, the employers and trade unions had a very important role to play at national and European level. The EU sectoral social dialogue committee had good representativeness for workers and employers across the entire range of the audiovisual sector. The agenda covered training needs, gender equality and piracy issues. The current agenda also discussed new forms of employment.
- 39.** The Employers' group coordinator noted that it was essential to engage in social dialogue, but that the form of dialogue should not be restricted to collective bargaining but be expanded to include other types of dialogue with other stakeholders. She did not believe that collective bargaining could be the form for all types of working arrangements. In the case of genuine independent contractors, or those who were self-employed, collective bargaining did not apply. Collective representation was needed to alleviate the power imbalance between employers and employees. The status of independent contractors retained its advantages and disadvantages, but did not provide an answer with regard to the needs of enterprises. Different countries had different jurisdictions and therefore varying notions of certain types of working relationships. Regarding self-employment, other ways of organizing dialogue existed. In her country, Canada, for example, there were associations of different types of creative workers which fell outside the paradigm of traditional social partners in collective bargaining.
- 40.** An Employer participant from El Salvador emphasized that consideration should be given to national legislation and regulation, as each country had particularities in the relationship between sectors, employers and workers. She believed that social dialogue was an important tool provided that the representativeness of all parties involved was respected. It

was imperative that dialogue functioned appropriately in order to be effective. Tripartite discussion was not always possible in each country, for political reasons.

41. The Government group coordinator stated that her group had already expressed its views on the first and second discussion items together, but would provide some details on social dialogue in the sector in two countries.
42. The Government representative of Tunisia emphasized that there seemed to be general agreement in considering collective bargaining and social dialogue as good tools for stable social and labour relations. In Tunisia, there existed branch conventions, for example for journalism and for the film industry. Following 2009, performers had encountered problems in joining trade unions, but negotiations with the Government had since progressed and recent negotiations had been proceeding smoothly. Tunisia's collective bargaining experience had proved to be positive. Regular negotiations helped to improve relations between employers, employees, performers and the Government.
43. The Government representative of Zimbabwe alerted the participants to the risk of misunderstanding among social partners. Zimbabwe was trying to build capacity on social dialogue, but employers and workers were interpreting the terms "social dialogue" versus "collective bargaining" in different ways. As the terms were recommended by the ILO, the Office should take the opportunity to establish a modus operandi on how social dialogue could be used effectively. This could avoid discussions that ultimately failed to agree on definitions and could not proceed to the issues. It was very important in the media and culture sector, where the challenge was the lack of labour frameworks that addressed effectively the sector's characteristics. The Forum's outcome should aim to enable an understanding that social dialogue, in line with ILO principles, should be tripartite.
44. The Workers' group coordinator responded to the points made by the employers, underlining that it was important not to get tied down by historical definitions. Social dialogue was a rather soft term with which one could feel comfortable, whereas collective bargaining was a harder label against which employers understandably wanted to push back. Bargaining between traditional employers and employees was not the only acceptable form of negotiation. In the New Zealand film industry, for example, amendments to the Employment Act defined anyone working in the sector as a contract worker, despite this contradicting the definitions of employer and employee as established under New Zealand's legislation. Nonetheless, workers and producers had engaged in negotiations and agreed on a set of minimum conditions for employees and contractors. The label attributed to these proceedings, be it social dialogue or collective bargaining, was not important. A key topic of social dialogue and/or collective bargaining in this sector concerned the sense of respect for the creative role that workers played in productions. The management of creative work was substantially different from other types of work; hence it could not be governed in the same way as a factory production line. Workers who brought their creative capacities to the production process – in film, theatre, websites, and others – were expected to negotiate with their employers on the content of work, yet they remained economically dependent on those who brought capital to the process. Therefore, it was crucial to enable them to negotiate the basis of their work, and that their skills and creativity be respected. The decent work gap between the workers in the media and culture sector and other workers could be exacerbated if traditional definitions continued to determine the form of negotiations. Social dialogue must be inclusive of all workers who were economically dependent on their employers, regardless of whether they were employees or contracted workers. Employers in the sector, who invested capital in the production, knew that it could not function any other way.
45. A Worker participant from Ireland reiterated that the absence of an appropriate term did not negate the existence of the issue itself. Flexibility was required where relationships changed and evolved. There was an inherent contradiction in implying that everything

changed except the attitude to employment statuses. Many employers were already engaging in social dialogue with many atypical workers. Collective bargaining often dealt primarily with money matters such as pay rates, but could also address issues concerning access to training, occupational safety and health, and dignity at work. The rights of workers should not be denied by virtue of their not being permanent employees. There was no future in abandoning ILO standards and principles. The ILO offered an opportunity to develop a more systematic approach to the challenges of the work environment.

46. The Employers' group coordinator responded that the Employers were in no way abandoning the ILO's principles and standards, particularly concerning the right to freedom of association and to collective bargaining, and they supported social dialogue. The Forum was intended to clarify the issues at hand, to define things rather than add to the ambiguity of what already existed. Many participants had echoed the need for clarity regarding the definition of an employee, but different thresholds for such terms existed in different countries. It was therefore difficult for an international organization to place a standard on it. Standards were also prone to being changed and adapted over time, and it was crucial for social dialogue to go beyond the collective bargaining paradigm. The solution might come from governments. It could involve legislation or other means of setting the threshold through which a dependent relationship between employer and employee could become a truly independent one. There were workers who did not want to be considered employees, who were contracted by governments or employers through their own companies. This type of relationship, which was beyond the traditional definition of an employee, should be acknowledged as well as other forms of work relations. The question whether collective or individual representation applied, and whether minimum standards needed to be set, should be considered in relation to the context. The Employers adhered to the ILO's fundamental principles and rights at work.

Discussion point 3: Measures to help improve business and employment prospects in the media and culture sector

47. The Executive Secretary introduced point 3, which was oriented towards measures that could improve business prospects and employment opportunities in the sector, such as cooperation on more sustainable cultural and media businesses and employment opportunities, and emphasizing the potential role of culture, communication and information in development. For example, efforts could focus on policy-making and cooperation on developing structures, incentives and tools to encourage more sustainable enterprises and business models, specifically for small and micro-enterprises. In other cases, using formal instruments or frameworks, such as the United Nations Millennium Development Goals, policy development and cooperation could emphasize the role of the media and culture sector in the economy and society and the importance of adequately protecting intellectual property and copyright.
48. The Employers' group coordinator proposed a collaborative tripartite forum on aligning training to address current and future enterprise skills needs in a timely manner. She advocated the promotion of public funding in the form of direct contributions, subsidies, tax relief and support to small and medium enterprises. It was critical to have a legal framework that provided an environment conducive to facilitating business. These measures would help ensure the security of the industry. The Forum should re-evaluate the current situation of the sector, as in her view, it had not adapted to new needs and dynamics, in particular regarding working arrangements. She voiced concern that the existing occupational classification and collective agreements were based on the realities of the sector 50 years ago, and perpetuated occupational "silos". Her personal experience with the Canadian Broadcasting Corporation, which experienced a technological

revolution over the past 15 years, was operating without the right skills, tools or flexibility of workers to permit them to learn and apply different skills within the company. Younger workers did not want to limit their sphere of activities based on the current sectoral structures and should be encouraged to be trained and work in other parts of the production process. Her recommendation did not suggest less unionization, it was geared towards creating a more flexible and polyvalent workforce, without infringing on trade union activities.

49. An Employer participant from Mexico noted that his country was currently in the process of drafting a new telecommunications law that included other types of technology. The Government was trying to stimulate independent production and was offering incentives for enterprises to procure this content. Business sought a level playing field and not a destruction of the market, as he observed had happened in the United States. Radio and television concessions were expensive; however, community media could obtain airwave licences for free, and then use the concession for commercial purposes – resulting in unfair competition. Legal regulation and compliance was of utmost importance and governments needed to create a level playing field for all participants in the sector to prosper.
50. An Employer participant from Germany, recalling the intervention from the Government representative of Zimbabwe, stated that government should also be training the public at a young age to be aware of and value cultural activities in order to support the sector.
51. The Workers' group coordinator welcomed the demand for legal certainty and a level playing field. In his view, secure employment meant ensuring quality and sustainable opportunities for employment that enable people to develop their career as creative workers. Government should ensure adequate funding through public broadcasting or subsidies. These measures would protect quality employment and support for emerging artistic platforms. He agreed with his Employer counterpart that training people for the future was required, but identifying future needs was difficult. Training was typically provided for people wanting to enter the sector, but was severely lacking for those already engaged. Greater emphasis on this was needed and social dialogue at national level could play a role in resolving it. The greatest single investment in training was made by creative workers themselves, in cost and time, and hence tax policy should reflect this for them to be job ready and marketable in the future. Investment in broadband technologies was required for innovation in order to meet and create demand. In response to Employer comments about multiskilling, he stated that creative workers were very open to multiskilling but stressed that people cannot do every job; it must not result in overwork or work intensification. Divisions between jobs were important for structure in some cases. He stressed that greater clarity and recognition of intellectual property rights and collective rights was necessary.
52. A Worker participant from Germany stated that our rapidly changing world required finding the best way to respond by working together through social dialogue. Good and quality work products and services were needed, as the culture and media field was important for value creation and employment. Employment growth in media and culture over the past decade in Germany, for example, was greater than that of the chemical industry. This evidence indicated that government promotion of the industry was very worthwhile. Copyright law was sound in Germany thanks to WIPO, but was undermined by bad contract practice. As a result of the German Copyright Contract Law (*Urhebervertragsrecht*) of 2002, recent social dialogue practices where trade unions negotiated on behalf of independent creative workers had resulted in positive outcomes for the social partners as the law created clarity for all. There was a collective agreement for media and culture that would be monitored (although uncertainty regarding the e-books segment persisted), and the partners also collaborated on piracy.

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- 53.** A Worker participant from Nigeria agreed that appropriate and adequately funded training was important for workers and employers. Without training, creativity would be diminished. In Africa, the governments were funding TV and radio stations, but there was an increase in the use of freelancers, forcing regular employment to be marginalized. Governments needed to promote social dialogue and enhance respect for the sector to help change negative public perceptions.
- 54.** A Worker participant from Japan stated that in the relevant collective agreement in his country, workers' lives had been improved and the role of public service broadcasting in society had been strengthened, but this achievement had taken 30 years. In terms of training, precarious workers could be included in the negotiation even though they were not union members. Currently, public broadcasting was facing a crisis and he sought open, transparent dialogue with the Government to address the issues.
- 55.** A Worker participant from Ireland highlighted the pervasive abuse of internships, attracting candidates with the prospect of a successful career in the sector, yet often subjecting them to long working periods with no remuneration. He requested an international standard of best practice for the oversight of interns.
- 56.** A Government representative of Cameroon highlighted the need to improve measures for media and culture businesses in order to increase employment prospects, as they were operating at a loss, making it difficult for them to comply with decent work standards and collective agreements. This required a transparent regulatory framework, which was critical for both employers and workers. Cameroon promoted social dialogue and was developing a sector-specific policy that included flexibility in taxes and was considering ratification of relevant ILO Conventions, the Florence Agreement and the Nairobi Protocol on the Importation of Educational, Scientific and Cultural Materials, and encouraged other constituents to do so. Companies in the media sector should be allowed to pay less duty on importing the tools and equipment needed to carry out their work in order to be competitive. He underscored the importance of the quality of training to fit industry needs. The establishment of new institutes and regional cultural centres were aimed at encouraging the development of arts and culture.
- 57.** Another Government representative of Cameroon reiterated the importance of legal and institutional frameworks that were conducive to attracting investment and supporting decent work. Another proposal was to provide direct financial aid to artists to launch new projects or sustain current ones – representing one third of the ministry's budget. The aim of these measures was to help the sector grow. They had no clear understanding of the informal economy in the sector, but as informality was quite substantial, and the Government had instituted a policy that permitted workers to declare themselves for social security purposes, since employers were not registering workers. A partnership to promote festivals also existed, which entailed skills training to help artists to compete better at the international level.
- 58.** The Employers' group coordinator highlighted that consensus existed on several themes, notably on enhancing government efforts on the legal framework, but sought the Office's support to draft specific measures to address them.
- 59.** The Workers' group coordinator added that governments had a critical role to play in combating copyright piracy, as this had a direct negative impact on the social partners.

Discussion point 4: Recommendations for future action by the ILO and its members regarding employment relationships in media and culture

60. The Executive Secretary introduced the fourth point, which provided an opportunity to identify specific suggestions that helped orient the work of tripartite constituents and the ILO on this topic in the coming years. As mentioned by the Secretary-General, these recommendations for future action should be focused, realistic and verifiable.
61. The Workers' group coordinator noted that several proposals had been discussed during the meeting, particularly under point 3. Employers and workers had suggested practical interventions that member States could implement to help ensure "security of access" to ongoing work. It was important for the ILO to continue promoting social dialogue at global and regional level. Fundamental rights and principles – such as freedom of association, the right to organize and collective bargaining – applied to all workers and should not be automatically denied due to the workers' tax status or their employment status or relationship. Competition law and anti-cartel law should not be used to undermine fundamental human rights, as media and culture workers were not interfering with competition in the market. Further, competition laws should not be used to prevent unions from representing those workers who were not in traditional employment relationships. Member States should give special attention to trade unions representing these workers. These measures could be the basis for ILO and member States' work to promote an enabling legal environment to support the media and culture sector.
62. A Worker participant from Argentina noted that media and culture workers in Latin America were facing common issues in relation to the four discussion points of the Forum. The particularity and atypical nature of their work was based mainly on the heterogeneous nature of artistic work and in the nature of the service, which he noted was not regular to the same employers. This he said, made work discontinuous, and the income of workers random. Yet, there were elements that revealed the existence of a dependent relationship in the case of the actors' activity. The actors were subordinated to the orders and instructions of a company, normally a production company, which established the working hours, forms of recruitment, duration of contract, workplace, costumes, script, among other charges that were specific of the needs of the business. He added that while actors had more freedom to develop their role as they desired, they were technically subordinate to the directions of the director. From the employment perspective, actors in the region had inadequate social protection. The experience in recent years of actors/performers underscored the need for legislation that specifically regulated social security rights considering the particular characteristics of artistic work. A legal framework tailored to the sector was required, establishing necessary standards which guaranteed that workers benefit from their social security rights. Further progress was required in relation to the UNESCO Recommendation concerning the Status of the Artist, 1980, which highlighted "recognition of the liberties and rights, including moral, economic and social rights, with particular reference to income and social security, which artists should enjoy"⁵ and the "need to improve the social security, labour and tax conditions of the artist, whether employed or self-employed, taking into account the contribution to cultural development which the artist makes".⁶ This Recommendation was adopted by the Argentinian Republic in 1993 by Law No. 24.269. The issue was again addressed in 2004, yet no progress had

⁵ Article I.2, last sentence.

⁶ Tenth item of the preamble: "Affirming further ...".

been made; waiting more years to reach an agreement would increase the risk of going without protection. He sought points of consensus to help end discrimination against workers in the sector, to combat precarious work and poor pay, and to promote capacity-building and greater recognition of the social status of artists.

- 63.** The Government group coordinator indicated that they had several proposals and requests. Accurate, reliable and timely statistics were essential in order to have evidence and stocktaking on the labour market for policy-making. The ILO Department of Statistics should consider these issues and include them on the agenda of the next International Conference of Labour Statisticians. Such employment statistics should include more specific and up-to-date data on occupations, enterprises and types of contract in the sector, and not just general statistics. It would be helpful to clarify the links between ILO and European Union efforts regarding job creation and dissemination of opportunities in the field of culture. Many countries had very low unionization in the media and culture sector; the ILO and governments should strengthen trade unions' ability to help organize these workers. There was limited information regarding labour market opportunities in the media and culture sector for young people to explore, thus career guidance materials and job counselling from employment services would be helpful for employability in the sector. International codes of good practice would help countries to open up the market for cultural goods and services and improve the quality of the products created, establishing synergies between countries. Workers should enjoy appropriate remuneration, decent working conditions, fundamental rights, social security and other protections. A publication dealing with issues of child workers in the sector should also be considered in order to provide guidance on issues pertaining to working hours, pay and health and safety. An ILO document on child performers in the entertainment industry existed, but was a decade old and only published in English. It should be updated and translated so it could be widely accessible.
- 64.** The Government representative of Poland stressed the need for coordination between the EU and the ILO, to increase awareness of job opportunities across Europe and platforms for exchanging information to promote mobility and employment. It would be good to know what was going on in the media and culture sector since there were many interesting EU programmes that extended beyond its borders. In addition, the EU annually designates a European Capital of Culture which created opportunities for many to participate in special cultural events. The Forum should encourage member States to cooperate and exchange information regarding such potential work opportunities.
- 65.** The Employers' group coordinator introduced a note of caution about international standards and noted that national legislation provided clarity on what an employee was; but there was good reason for lack of clarity on who was not an employee, reiterating that laws could not govern all types of working relationships. The definition was vague in national legislation because, over time, situations and working relationships were fluid. She emphasized that devising an international "definition" or standard could be a problem and might contradict domestic legislation.
- 66.** A Worker participant from Ireland noted that there was a need for an agreement on the characteristics that defined what was and what was not an employee, which in Ireland for example, they had defined through social dialogue. They determined that individual workers could be declared as self-employed for tax purposes, but were still considered employees under labour laws and maintained their rights. While national laws required certain definitions, these would not change the principles enshrined in ILO Conventions, which extended to all workers. There was no difficulty in identifying the characteristics of what defines a worker, but tax status should not be a determinant of international human rights.

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67. The Workers' group coordinator observed that child performers were given special exemption from the ILO Conventions regarding child labour. However, this was the only sector in which children were represented by trade unions. There was an increasing need to have an international code of practice on child performers in the entertainment sector, which had been proposed in the 2004 Meeting's conclusions.

Discussion of the draft points of consensus

68. At the closing plenary session, the Forum examined document GDFMCS/2014/6, which contained the suggested points of consensus drafted by the Office on the basis of the plenary discussions, and discussed amendments point by point.

Point 1

69. The Employers' group coordinator requested to replace the word "industries" with "sectors" in the opening sentence and proposed this change for the entire text of the consensus points, emphasizing that her group felt uncomfortable with the term "industry".
70. The Workers' group coordinator accepted this change, and suggested adding the words "civic participation, cultural diversity" before "innovation and creativity".
71. The Executive Secretary clarified the specific use of the word "sector" in the ILO. The Sectoral Activities Department covered 22 sectors, one of them being the media and culture sector. Any division within one of those sectors was referred to as a subsector or industry. He suggested revising the overall wording from "The media and culture industries are a growth sector" to "Media and culture is a growth sector".

Point 1 was adopted as amended.

Point 2

72. The Workers' group coordinator proposed a change in wording to the first sentence similar to that put forward by the Employers' group for the previous point, which would flow through the entire document – to replace "employment relationships" by "work relationships" – to avoid confusion. He also suggested that the second sentence should end: "self-employment, and other forms of freelancing" instead of "self-employment and freelancing", since many of the terms were in fact forms of freelancing.
73. The Employers' group coordinator disagreed with the proposed changes, suggesting that the purpose of differentiating between employment relationships and contracts was intended; and without that differentiation, the Employers would find issue with the entire point. She proposed keeping the term "employment relationship" so as to avoid confusing the intent of the sentence. Regarding "other forms", the "spectrum" already included different types of arrangements, not all of which were necessarily forms of freelancing. Her group further proposed that the words "and atypical" be removed from the first sentence, so as to avoid questions on the definition of "atypical", which could lead to unnecessary complications. They proposed adding the words "civil and" before "commercial contracts", as these were the words used to describe these relations.
74. The Workers' group coordinator agreed with the proposed deletion of "and atypical" and insertion of the words "civil and". His group was prepared to withdraw its amendments, although employment relationships within that context did not necessarily imply

employees, and could connote work relationships in general; not that all forms of work mentioned in the second sentence were freelancing, but some were.

- 75.** A Worker participant from Ireland stated that it was possible to work on a short-term contract on a specific project for a newspaper in Ireland, while simultaneously being a freelancer and doing work for other people. People did a wide range of freelance work for organizations. The word “freelancers” was characteristic of the sector, covering only some people for some of the time engaged in some of the work, but there were various forms of freelancing. The main concern lay with the current formulation of the sentence which implied that these were stand-alone structures, when in fact they were overlapping at the edges.
- 76.** The Employers’ group coordinator agreed that “project work” could be “contract work”; all of these terms had subtleties. Her group was happy with “freelancing” as it stood in this enumeration of what could be found in the spectrum, but took issue with “forms of freelancing” as this could entail many things, including traditional open-ended contracts. It was not useful to overemphasize the varieties of freelancing.
- 77.** The Government representative of Zimbabwe noted that it had been agreed earlier in the proceedings to reserve the right to define terminology in areas already covered in national legislation. She did not see the need for adding “other forms of” as this caused ambiguity.
- 78.** The Workers’ group coordinator suggested – with regard to the third sentence – that the word “work” before “relationship” be deleted, as well as the word “clearly”. The sentence would then read: “Some relationships in this sector are commercial and fall outside the scope of the employment relationship and its concomitant rights and responsibilities. Further, the word “can” should be deleted from the fourth sentence and the words “or residual” added, so that it would read: “Intellectual property rights of performers, writers, directors, and others include economic and moral rights, which may involve prompt remuneration for the work and/or subsequent royalty or residual payments.” Royalties were payments based on a percentage of earnings; residuals were a subsequent payment based on the total payment.
- 79.** The Employers’ group coordinator suggested adding “intellectual property rights for certain performers ...” to the sentence, because not all would have such rights.
- 80.** A Worker participant from Ireland stated that the Employers’ amendment on intellectual property rights was not needed, as those that did not enjoy these rights were not relevant to this paragraph.
- 81.** The Secretary-General therefore suggested including the notion of “where they exist”, to read “Where intellectual property rights of performers ... and others exist”.

Point 2 was adopted as amended.

Point 3

- 82.** The Employers’ group coordinator stated that the word “fragility” and many other aspects of the paragraph could not be accepted by her group since there was no evidence or data to support the statements. She considered that much of its wording was negative and unacceptable.
- 83.** The Workers’ group coordinator agreed with some of the text, but wanted to delete the last sentence.

84. The Government group coordinator supported the last sentence.

85. After further deliberations, no consensus was found.

Point 3 was deleted.

Point 4

Point 4 was adopted without amendment (to become new point 3, and all subsequent points were renumbered).

Point 5

86. The Workers' group coordinator agreed with the first two sentences of the paragraph but proposed to amend the text of the third and fourth sentences as follows: "Gender disparities, including access to work pay, inequalities and barriers to promotion, need to be addressed. Freedom of expression must underpin the sector."

87. The Government group coordinator suggested amending the text to delete the word "skills" in the first sentence, and just leave "training".

88. The Employers' group coordinator agreed in general with the proposed amendments, but stated she would prefer the third sentence to start with "Gender equality" instead of "Gender disparities". She also stated her group wished to propose to add the word "Global" before "Labour statistics", in the second sentence, as discussions during the meeting evidenced that adequate statistics were available at the national or local level in some countries, but not globally. Further suggestions by the Employers were made for the third sentence to reflect a positive tone. She also suggested to include the words "and independence" after "Freedom of expression" in the fourth sentence.

Point 5 was adopted as amended (as new point 4).

Point 6

89. The Employers' group coordinator agreed with the first sentence but requested to remove the second sentence of this paragraph. She suggested adding the words "and working arrangements" after "employment relationships" in the third sentence.

90. The Workers' group coordinator stated that there were many forms of dialogue but that social dialogue could not be substituted. Thus, he suggested deleting in the first sentence the text "takes many forms". In the second sentence, he proposed to replace "Dialogue" with "Cooperation", and requested to delete the third sentence.

91. The Government group coordinator suggested deleting the second and third sentences, which was accepted by the other groups.

Point 6 was adopted as amended (and subsequently became part of new point 5).

Point 7

92. The Workers' group coordinator suggested amending the paragraph as follows: "Social dialogue is shaped in this sector by the variety of relationships and changes in traditional

occupational categories. Workers are now versatile and multiskilled to meet the opportunities of the future.” Multiskilling had been the result of technology and its consequences on production, and workers had embraced these new skills and did several jobs simultaneously.

93. The Employers’ group coordinator supported the original proposed draft text, because the proposed amendment generalized that all workers in the sector were versatile and multiskilled, and this was not the case in all countries. She also requested clarification on the phrase “variety of relationships”.
94. The Workers’ group coordinator stressed that the proposed draft paragraph portrayed an unfair characterization of the workforce as the second sentence implied that the workforce was expected to be versatile but was not.
95. After further discussions on the proposed and amended text, the Executive Secretary proposed deleting the words “changes in traditional” and replacing “now” by “increasingly”, and then merging the new text with the previous point.

Point 7 as amended was adopted (and was merged with original point 6 to become new point 5).

Point 8

96. The Government group coordinator noted that clarification was needed on what constituted “traditional” in the sentence “Associations of industry professionals may provide new avenues of dialogue where traditional trade unions do not exist.”, and perhaps “unions” could be replaced by “unionism”.
97. The Workers’ group coordinator proposed that the entire paragraph be deleted, as its meaning was unclear. Regarding this sector, there was no meaningful distinction between trade unions and professional associations, while the ambiguity of the latter term could refer to employers or workers, so might not relate to social dialogue.
98. The Employers’ group coordinator believed that lengthy previous discussions had centred on what could be regarded as falling outside the traditional paradigm and which needed to be reflected in the consensus document. She suggested keeping the paragraph with the change suggested by governments.
99. The Secretary of the Employers’ group referred to the Workers’ Representatives Convention, 1971 (No. 135), which recognized that priority should be given to trade unions where they existed, but opened doors for representation of workers where there were no trade unions. He believed that workers needed to be protected even if trade unions were not established.
100. According to the Workers’ group coordinator, the paragraph seemed to refer to the need to meet the challenges of the new environment, but there seemed to be no link between the two sentences.

As no consensus emerged from the discussion, point 8 was deleted.

Point 9

101. The Employers’ group coordinator proposed to add “and other working arrangements” after “A better understanding of the different types of employment relationships” in the

first sentence. Further, they proposed for more clarity – and despite the Employers being not in full agreement with the Employment Relationship Recommendation, 2006 (No. 198) – to replace “along the lines set out in relevant ILO standards, such as those in paragraph 8 of the Employment Relationship Recommendation, 2006 (No. 198).” by “bearing in mind that this assessment exercise” followed by a direct quote from its paragraph 8, “should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due”.

- 102.** The Workers’ group coordinator was prepared to accept the proposal, but requested to delete the word “independent” from the phrase “which ones constitute an independent civil or commercial relationship”.

Point 9 was adopted with the proposed amendments, and became new point 6 [and in view of translation problems was split into two sentences for editorial reasons].

Point 10

- 103.** The Government representative of France expressed concern with the third sentence stating that “Governments can set out a clear legal framework”, because it was the State as a whole (not government alone) that set out legal frameworks.
- 104.** The Employers’ group coordinator proposed to amend the first sentence to replace the words “and employment stability in” by the word “for”; to rephrase the third sentence as: “States can set out a clear, legal and sustainable framework regarding the public broadcasting, especially with regard to subsidies ...” and to remove the word “independent” from the phrase “right of independent media and culture workers to freedom of association ...” in the final sentence.
- 105.** The Government representative of Portugal said the paragraph needed to be simplified and shortened in order to make it more understandable. He was not comfortable with the language of the second or third sentences, which could be described as protectionist and convoluted.
- 106.** After further discussions – noting various Governments’ views that they should have flexibility in view of budget constraints linked to the global financial crisis – the paragraph was amended to refer to a “sustainable” legal framework, to “unfair competition and legal certainty”, and to delete the second sentence.

Point 10 was adopted as amended, and became the revised point 7.

Point 11

- 107.** The Workers’ group coordinator proposed deleting “establish dialogue mechanism to” in the first line, adding “current and” in the second line after “in a timely manner to”, adding “help address gender equality and other disparities” in the third line, and changing “current” in the fourth line to “existing”.
- 108.** The Employers’ group coordinator considered the term “other disparities” too broad and ambiguous, thus should be deleted.
- 109.** The Workers’ group coordinator, stressing the need for training to include and address this issue, proposed changing term to “diversity”, which was agreed by the Employers.

Point 11 was adopted as amended and became final point 8.

Point 12

110. The Workers' group coordinator proposed replacing "informed consumer of" in the second line with "educating people about", which was agreed upon.
111. A Government representative of Indonesia proposed adding "where applicable" in the first line, after "in education curricula", as including media and culture aspects might not be relevant for all schools.
112. On this proposal, the Workers' group coordinator proposed changing "where applicable" to "wherever possible", which was agreed by the Governments and the Employers.

Point 12 was adopted as amended and became new point 9.

Point 13

113. The Employers' group coordinator stated that point 13 needed more clarity and that it was rather broad and not applicable to every jurisdiction. She needed background information on this; otherwise, it should be deleted.
114. The Workers' group coordinator proposed to merge the two sentences into one, deleting the reference to "self-registration of workers in such schemes", to read: "Social security schemes should take into account particular needs of the media and culture workers".

Point 13 was adopted as amended and became new point 10.

Point 14

Employers, Workers and Governments endorsed point 14(a).

115. The Employers' group secretary disagreed with point 14(b), which proposed an activity to "assist efforts to strengthen the organization of workers in the media and culture sector, and to promote the extension of social dialogue" that corresponded to the Workers' Activities Department of the ILO, which was in fact already carrying it out, and not to the Sectoral Activities Department, which should not use its budget to support this.
116. The Workers' group secretary noted that the recommendations were directed at the ILO as a whole, as had been done in the 2013 Global Dialogue Forum for the Promotion of the Work in Fishing Convention, 2007 (No.188), in which a proposal on addressing forced labour had been agreed although it would be carried out by another Department.
117. The Employers' group secretary remembered other cases in which this had been done, specifying the roles of ACTRAV and ACT/EMP, and it should be in this case too.
118. The Workers' group coordinator suggested inserting a footnote that would read "Through ACTRAV".
119. The Employers' group coordinator stated that the Employers thought that the points required consensus to remain in the text, and restated their objection. Her group would not endorse a document with text that requested the Office to carry out these activities.
120. The Executive Secretary indicated that the "efforts to strengthen the organization of workers" were clearly for ACTRAV to carry out.

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- 121.** The Employers' group secretary restated that the group could not be seen as promoting an activity that focused on strengthening the organization of workers, "especially those without open-ended employment relationships"; this would be for ACTRAV to do, but clearly not for the Employers to endorse.
- 122.** The Secretary-General explained that the future action of the Office could include work by other Departments; the paragraphs would be referred to the advisory bodies and the Governing Body for approval, and, if approved, it would be for ACTRAV to envisage implementing.
- 123.** The Employers' group coordinator restated her group's disagreement and indicated that if the group would have known that such proposals could be made, it would have made a similar proposal to assist employers.
- 124.** The Executive Secretary proposed changing the phrase "strengthen the organization of workers" to "strengthen the social partners", and deleting the phrase "especially those without open-ended employment relationships".
- 125.** The Employers' group coordinator indicated that the text existed in previous documents and was unnecessary, but agreed with the proposed amendment.

Employers, Workers and Governments endorsed point 14(b) as amended.

- 126.** The Employers' group coordinator objected to the text proposed in point 14(c) "in particular in relation to initiatives such as the European Union's Creative Europe programme", because it excluded other programmes. She proposed to delete that text.
- 127.** The Workers' and Government group coordinators agreed.

Point 14(c) was adopted as amended.

- 128.** Following brief discussion on point 14(d) it became clear that there was no consensus on the text.

Point 14(d) was therefore deleted.

- 129.** The Employers' group coordinator wished to amend proposed point 14(e), noting the lack of definition of the categories referred therein; they had already been defined by international statistical standards, but stated that her group had no objection to working with the International Conference of Labour Statisticians through a text replacing "refining categories of media and cultural workers to provide for better disaggregated data" by "attaining better disaggregated data".

- 130.** The Workers' group coordinator felt that the text was too broad, so he suggested adding the word "employment" before "data".

Point 14(e) was adopted as amended.

Point 14(f) was adopted without amendment.

- 131.** A Worker participant from Germany proposed a new point 14(g) that would instruct the Office to "consider publishing best practice guidelines covering interns, work experience programmes, volunteers, apprenticeships and other forms of unpaid labour".

- 132.** The Employers' group coordinator pointed out that this proposal corresponded to the text that was deleted in the proposed point 3, and therefore had no justification.

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- 133.** The Workers' group coordinator responded that there was broad agreement in the sector that interns and work experience programmes were needed; if participants were committed to diversity, they should ensure that internships did not benefit only people with wealthy parents who could support them; and asked the employers not to block a concept that was widely accepted. Best practice guidelines in particular should not be opposed.
- 134.** The Government representative of France expressed strong support for the proposal made by the Workers' group, in this sector and in others, stating that this topic was highly sensitive and important. The sector would benefit from reflecting on it.
- 135.** The Employers' group coordinator proposed replacing "best practice" by "good practice", and the Employers' group secretary proposed replacing "Consider publishing" by "Consider elaborating" at the beginning of the paragraph.

Point 14(g) was adopted as amended.

Point 14 was thus adopted as amended and became new point 11.

- 136.** The points of consensus as a whole were adopted as amended, and were subsequently published as GDFMCS/2014/7.⁷
- 137.** The Employers', Workers' and Government group coordinators, the Secretary-General and the Chairperson of the Forum all welcomed the adoption of the points of consensus and commended the cooperative, stimulating and useful nature of the debate, recognizing the Forum's ability to reach consensus on sometimes controversial issues.

⁷ Some minor editorial and linguistic changes were subsequently made to the points of consensus, in order to resolve problems and enhance consistency between the English, French and Spanish texts. In accordance with established procedures, these points of consensus were to be submitted to the Governing Body of the ILO at its 322nd Session in November 2014 for its consideration.

Points of consensus

Challenges faced by governments and social partners with respect to employment relationships in the media and culture sector

1. Media and culture is a growth sector and has the potential to provide significant business and employment opportunities, especially for skilled workers. It is also important for fostering communication, civic participation, cultural diversity, innovation and creativity in societies, and has a positive effect on other sectors such as tourism and commerce.
2. The media and culture sector has always been unique in that it depends on the individual talent and creativity of workers and, due to the nature of the work, it has been characterized by a wide spectrum of employment relationships and of civil and commercial contracts relating to work. This spectrum includes: traditional open-ended employment contracts, fixed-term contracts, project and contract work, self-employment and freelancing. Some relationships in this sector are commercial and fall outside the scope of the employment relationship and its concomitant rights and responsibilities. Where intellectual property rights of performers, writers, directors and others exist, these include economic and moral rights, which should involve prompt remuneration for the work and/or subsequent royalty or residual payments.
3. Fundamental principles and rights at work apply to all workers in the media and culture sector, regardless of the nature of their employment relationship.
4. Addressing challenges regarding the sector's employment relationships requires a holistic approach that takes into account other aspects of the sector, such as better coordination between supply and demand in its labour market, and a focus on training that is better adapted to industry needs and to the rapidly evolving technological environment. Global labour statistics on the media and culture sector are inadequate, and better labour market information using more up-to-date definitions and occupational categories is required. Gender equality should be promoted, including through addressing issues related to access to work, pay inequalities and barriers to promotion. Freedom of expression and independence must underpin the sector.

The contribution of social dialogue to addressing challenges in respect to employment relationships and to improving social protection coverage in the media and culture sector

5. Social dialogue includes sharing of information, consultation and collective bargaining. Social dialogue is shaped in this sector by the variety of relationships and occupational categories in media and culture. Workers are increasingly versatile and multiskilled to meet the opportunities of the future.
6. A better understanding of the different types of employment relationships and other working arrangements in the media and culture sector is needed to assess which types constitute an employment relationship, and which ones constitute a civil or commercial relationship. It should be borne in mind that such an exercise should not interfere with true civil and commercial relationships, while at the same time ensuring that individuals in an employment relationship have the protection they are due.

Measures to help improve business and employment prospects in the media and culture sector

7. Governments have an important role in promoting a sound and enabling business environment for the media and culture sector. States can set out a clear and sustainable legal framework regarding public broadcasting. In addition, they will need to address issues with regard to subsidies to independent producers, and to the granting of airwave licences that imply unfair competition and legal uncertainty. Governments need to apply intellectual property protection laws and to ensure that competition legislation does not obstruct the right of media and culture workers to freedom of association or to engaging in social dialogue with their social partners.
8. Government and social partners need to develop strategies on training which will respond in a timely manner to current and future skills needs in the sector. Training should help address diversity in the sector and focus not only on people who want to find work in the sector, but also on existing media and culture workers.
9. Another key strategy is fostering media and culture in education curricula, wherever possible, with the aim of developing future media and culture workers, as well as educating people about media and cultural goods and services.
10. Social security schemes should take into account the particular needs of media and culture workers.

Recommendations for future action by the International Labour Organization and its Members

11. In view of the discussion at the Global Dialogue Forum on Employment Relationships in the Media and Culture Sector, and subject to the availability of resources, the following future action is recommended.

The Office could:

- (a) strengthen efforts to promote fundamental principles and rights at work (FPRW) in the media and culture sector and build capacity of constituents to do likewise;
- (b) assist efforts to strengthen the social partners in the media and culture sector, and to promote the extension of social dialogue;
- (c) carry out research on the employment-creation potential of the media and culture sector and related good practices;
- (d) together with the International Conference of Labour Statisticians and UNESCO, examine the possibility of attaining better disaggregated employment data on the sector;
- (e) consider publishing a new (revised, updated) edition of the Sectoral Working Paper *Child performers working in the entertainment industry around the world* (2003) in English, French and Spanish and consider drafting a code of practice on the protection of children working in audio-visual and live performance;
- (f) consider elaborating good practice guidelines covering internships, apprenticeships, volunteering, work experience programmes and other forms of unpaid labour in the media and culture sector.

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