

SECTORAL ACTIVITIES PROGRAMME

Working Paper

**The social situation of musical performers in Africa,
Asia and Latin America**

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

**International Labour Office
Geneva**

September 2001

Preface

The ILO's Sectoral Activities Department commissioned this study as part of the background work for a tripartite Symposium on Information Technologies in the Media and Entertainment Industries: Their impact on employment, working conditions and labour-management relations, held in Geneva in February-March 2000. The Symposium was part of the continuing work of the Department on 22 sectors of economic activity, of which the media, culture and graphical sector is one.

The study, prepared by Mr. Jean Vincent, General Secretary of the International Federation of Musicians (FIM), covers a wide range of issues affecting musicians. It reviews international legal standards concerning labour law and intellectual property law, and the general legal framework at the national level for workers in general and for performers in particular. It then looks at the place of musicians in society and at the realities of contractual status, pay, taxation, social protection and unemployment. It examines clandestine work, migration, trade union rights and collective agreements before concluding with some relevant provisions on the status of musicians and proposals for action.

This working paper underlines that, apart from Japan and a few countries in Latin America, the majority of musicians in Africa, Asia and Latin America live in very precarious conditions. Because the employment status of musicians is frequently insecure and "independent", they are often not covered by social security schemes. It notes the increase in unemployment of musicians, especially as a result of the use of recorded music and greater use of technologies and equipment that allow fewer musicians to be employed (synthesizers, etc.). In addition, many musicians need to do other jobs in order to earn a living. While commercial activity in musical recordings and distribution is increasing in these regions, collecting societies remain very underdeveloped. Owing to the precarious nature of musicians' contracts, trade union organizing has been limited, and the study identifies the need to provide assistance to improve the protection of musicians in developing countries. It also argues for, among others, encouraging the training of musical performers in the new digital technologies for recording, and the collection of statistics on musical performers.

In addition to the study, the ILO and FIM have collaborated on a number of projects in recent years.

- Training on trade union organizing and collective bargaining for musicians was carried out in Latin America and Africa in 1998-99. Similar training is planned for the Asia-Pacific region in 2001.
- The ILO attended the International Symposium on the Protection of Music Rights, 18-20 October 2000, Beijing, organized by the Chinese Musicians' Association, in cooperation with the International Federation of Musicians. It was attended by about 60 people, including representatives of the Chinese Government, music writers and performers, law professors, journalists, trade unionists and musicians from Japan, Finland, Germany, France and elsewhere, and representatives of United Nations specialized agencies. The meeting focused on intellectual property rights in China and on the economic and moral rights of performers, taking account of the major changes that have been brought about by information and communication technologies, globalization and China's forthcoming entry into the World Trade Organization. The debate covered legislative and contractual practices in the music industry, recognizing the need to reform the legislation on the protection of music rights, particularly those of music writers and performers, in the new international digital context. The

Symposium also discussed measures to encourage retraining for self-employment or new careers, given the shift in the Chinese music world away from state-funded orchestras and troupes and towards a more market-oriented music industry, which is having a strong impact on employment.

- The abovementioned ILO Symposium on Information Technologies in the Media and Entertainment Industries: Their impact on employment, working conditions and labour-management relations brought together representatives of governments, employers and workers to address topics concerning performers and others in the media and entertainment industry. The discussions, in which the International Federation of Musicians actively participated, centred on: new occupations, new forms of work organization and changing skills training needs; safety and health in relation to new technology; social dialogue; combatting piracy of media and entertainment products – effects on employment; and employment status, contractual arrangements and social protection.

As a basis for its discussions, the Symposium's Background document includes information and analysis on: global trends in information communication technologies (ICTs); impact of ICTs on processes, content and the role of government; ICTs and job creation in media and entertainment; Impact of ICTs on contractual arrangements, status and labour-management relations; ICTs and copyright piracy; International labour standards and international activities concerning media and entertainment; and Social dialogue in media and entertainment. The Final Report of the Meeting provides a record of the discussions, together with conclusions adopted by the Symposium to provide guidance for the ILO's future work in the media and entertainment industries, specifically including the following:

The ILO should:

- (a) undertake research on best practices and funding options for training in different regions and countries, and promote training and retraining in the use of information technologies by the social partners and learning institutions; ...
- (c) encourage and support employers and workers' representatives in this sector to: engage in social dialogue at the sectoral level, and when called for, use the ILO at the national, regional and international levels, especially with regard to the introduction of technological change; increase participation of workers' and employers' organizations in social dialogue; identify impediments to the development of workers' and employers' organizations and collective bargaining; and enhance cooperation with organizations in related media and entertainment industries; ...
- (e) *cooperate at the international level, within the scope of its mandate, in efforts to promote action to protect copyright and related rights;*
- (f) undertake research on: contractual arrangements and social security coverage for workers other than those in continuing employment; the employment of women in the media and entertainment industries; and child performers;
- (g) identify statistical sources and indicators of relevance to the sector, disaggregated by gender and age, including general patterns, impact, obstacles and work opportunities that the new technologies have demonstrated at the national level;

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- (h) facilitate the access of developing countries to the new information technology, particularly through the provision of technical assistance in training and advanced training.

The Office also supported and published another study that may be of interest to readers of this working paper, entitled *Actors and the international audiovisual production industries* by the International Federation of Actors (2000). This examined the internationalization and financing of audiovisual production, the organization of actors, contracting practices, collective bargaining and work permits and immigration processes in audiovisual production. The study noted that the increasing mobility of production and the funding for international productions were posing challenges for actors' unions in organizing and enforcing collective agreements. In order to benefit from the expansion of audiovisual production worldwide, performers' unions needed to develop individually and collectively. This could be achieved through technical assistance to support the development of union education; designing a series of internationally recognized model contracts for use on international productions; exploring internationally agreed minimum standards for the employment of performers; promoting adherence to collective agreements by producers; and implementing these provisions through international coproduction treaties and government subsidy schemes.

It is hoped that this study will lead to action to improve the situation of musical performers, develop union training, introduce internationally recognized standard contracts for musicians, agree on international minimum standards for performers' employment, and promote negotiation of equitable and enforceable contracts and collective agreements through social dialogue.

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1. Conclusions of the study

For pragmatic reasons, and for those who do not have the time to read this whole study, we set out here our conclusions, which highlight four priority areas:

(a) Precarious situation of employment and lack of social protection

With the exception of Japan and a few countries in Latin America (particularly Argentina), the frequent recourse of musical performers to the status of “freelance” worker means that there is practically no social protection for them. This is reinforced by the fact that employment itself is often not covered by any written contract, and this makes keeping such employment insecure and discretionary. In addition, “salaried” employment is rarely other than for a fixed duration. Since fixed-term contracts are the norm, even within permanent musical groups, the musician has little real stability of employment.

The precariousness of this situation makes it very difficult to set up musicians’ unions, and for unions to be effective. This explains why, for most countries covered by our study, musicians are represented collectively by associations rather than by unions. Thus the content of contracts, safety standards, working hours, professional training, holidays, inspection measures and clandestine work are generally neglected, since there is no collective and effective representation of musicians vis-à-vis public bodies or employers. The only exceptions to this alarming general situation are Japan and a few Latin American countries.

Finally, there is a huge discrepancy between the lack of status for folklore musicians (most of them receive no pay, or are paid directly by their audience) and the commercial development of their type of music, particularly under the “world music” category.

In the three regions under review, musicians often have to seek civil servant status within the police, the army and so on. This status, reserved for a minority, generally implies acceptance of restricted or non-existent trade union rights, and inevitable limits on artistic freedom, given the repertoires performed.

Systematic recourse to standard contracts drawn up in collaboration with unions, and legal norms clarifying the status of performers (requiring in some cases the status of employee), would play an important role in re-establishing musical performers’ social status.

(b) Increase in the level of unemployment, particularly as a result of use of recorded performances, wider use of new technologies for exploiting music, and frequent recourse to other activities in order to earn a living

Increasing unemployment can be observed in both industrialized and developing countries since the arrival of recorded music and new technologies, and their wide public use. This phenomenon has greater consequences in countries lacking a cultural policy, particularly with regard to the teaching of music. Musicians are often obliged to perform all kinds of trades and jobs to survive, and thus become “amateurs” in their art, except for the best known among them. Such an accumulation of jobs cannot, in our eyes, be considered as an expression of freedom, nor be overlooked by the State, especially as it tends to devalue the profession of musical performer in society.

In 1980, UNESCO wisely recommended that States should “*determine those remunerative jobs which might be confided to artists without restricting their creativity, their vocation and their freedom of expression and communication*”. Accumulating several jobs also makes it difficult to evaluate the real level of unemployment for musicians who

have the artistic or professional capacity to live from their activity, or to set up systems of unemployment insurance (always supposing that the economic context could allow it, which, for example, is very rarely the case in Africa today).

On the basis of these observations, and more generally in the light of the difficulties encountered in social protection for such precarious jobs, intellectual property rights could constitute a form of financial compensation and a source for financing social protection. It is surprising to see how ineffective the collective management of performers' rights is in Latin America, whereas the commercial markets for exploiting recorded music (radio, television, the record market etc.) are of prime importance.

A significant level of protection of performers' rights, on the basis of the WIPO Performances and Phonograms Treaty (1996) in particular, as well as the setting up of viable structures for collecting and managing such rights, would help social protection and could diminish the need to hold several jobs.

Real policies to promote or rehabilitate live music in public places also seem to be a necessity.

(c) The role of unions in designing and implementing appropriate solutions

On many occasions in this study, we have underlined or recalled the role that unions could play. It appears at the same time that, in most of the countries studied, union structures are weak, particularly as a result of musicians doing several jobs at once. Consequently, unions do not have the proper human and material means that would enable them to play a federating role or to act as a contact with public authorities or employers.

Proposals for reform, especially in the complex field of social protection, require that experts carry out fact-finding missions at the national level; such missions could be grouped with training seminars for union representation.

We therefore strongly recommend the setting up of an inventory and a union training programme, accompanied by financial support for unions who would apply the recommendations of this programme.

Financial support would solely be for developing the minimum material means necessary for union activity and for informing performers (bearing in mind that in some countries, there is still high illiteracy among musicians). Such a programme could take its inspiration from the PHARE and TACIS programmes created by the European Commission in the field of intellectual property and collective management. It could be set up with the help of intergovernmental organizations, groups of affiliated unions and collecting societies.

(d) Training in new digital communication technologies

Among the proposals that emerged from the ILO conference on multimedia convergence (January 1997) was one which draws attention to the gap which is being created between the information-rich and the information-poor, and supports national policies that might reduce disparities in resources between rich and poor countries in information and communications technologies and help developing countries to promote their human resources so as to meet modern media requirements. This position directly and practically concerns musical performers, whether in the field of recording and production, including multimedia, or that of distribution via Internet or other digital communication networks. The new "dematerialized" modes of music distribution may be controlled without substantial means for world commercialization, and could therefore give developing countries access to export potential over which they would keep control. We

therefore recommend the creation of a programme for training musical performers in new digital technologies of recording and communication.

2. Context and mission

2.1. The context

(a) At the end of the tripartite Meeting organized between 5 and 13 May 1992¹ by the International Labour Office on conditions of employment and work of performers, conclusions were adopted which contain a list of recommendations destined for the ILO and including the following:

- gathering further information, particularly at a statistical level;
- continuing to take an interest in performers' situations due to their status as workers, including participation within the inter-government Committee set up by the Rome Convention (1961);
- supporting the development of worker and employer organizations in this sector and promoting collective bargaining;
- incorporating health considerations of problems encountered by performers in its work relating to safety and, including any specific study if needs be;
- examining the situation of performers in developing countries and the possibility of organizing meetings in these regions to make people better aware of problems;
- envisaging regular meetings specifically on the situation of performers.

The discussions of the tripartite Meeting took place on the basis of a report (TMP/1992) drawn up mainly from information collected from governments, who themselves consulted employer and/or worker organizations.

(b) Between 27 and 29 January 1997, the International Labour Office organized a Symposium on multimedia convergence, during which international organizations representing performers' unions were able to comment on the numerous consequences of new digital technologies on employment, remuneration and working conditions for performers.²

The presentations made it possible to measure the extent to which musical practices had been upset by the use of new technologies, particularly in the field of multimedia, and consequently the importance of intellectual property rights that were recognized or would be so for performers. This could enable them, among other things, to control utilization of their performances in this new digital environment and to benefit from a fair share of the income generated by such use. Stress was also put on the need to preserve the development of local and national cultures. On this point, it was felt that technological progress should really contribute towards improving working conditions and not lead, as had been remarked here and there, to impairing live performance.

¹ See Appendix 2.

² The Symposium's conclusions are reproduced in Appendix 3.

It should be noted that in the musical field, a certain number of comments expressed during the course of this study tend to confirm the concerns expressed during the Symposium on multimedia convergence. FIM fully supports the remarks made in the previous paragraph and would like this study to be an extension of the work undertaken there.

- (c) From 30 June to 2 July 1997 and from 2 to 5 July 1999, meetings were held of the Intergovernmental Committee on the Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961),³ which WIPO, UNESCO and the ILO co-administer. Its mission is to examine questions relating to the application of this Convention and to examine proposals and prepare documentation about a possible revision. From these meetings a demand formulated by international organizations representing performers' unions emerged, for a revision of the Rome Convention. The next meeting of the Intergovernmental Committee will be held on June 2001.
- (d) In June 1997, the International Labour Conference adopted conclusions that prefigure the content of an International Convention relating to sub-contracted or outsourced work, including equality of treatment of workers employed on a sub-contract basis with salaried employees in comparable situations and minimum social rights. The notion of sub-contracting includes the direct relationship between the user enterprise and the worker if the latter does not have a status of employee.

Another session of the International Labour Conference in 2003 should be devoted to the negotiation and the adoption of an international labour Convention concerning the employment relationship. It should directly concern a significant proportion of performers covered by our study. As this study points out, most performers working in Africa, Latin America or Asia are not employed on the basis of a contract of employment, whereas in reality their work corresponds to that of a salaried employee.

2.2. The mission

In the wake of the tripartite Meeting of 1992 and the Symposium of 1997, the International Labour Office asked FIM to draw up report on the social situation of musical performers in Africa, Latin America and Asia, stipulating that this report should insist on the reality of situations (and not just the legal frameworks in force) and distinguish between categories of employment by type of music. The International Labour Office also wanted the social situation of performers to be compared with that of other professional categories. We shall see, however, that, with regard to this last point, the methodology chosen has not yielded sufficient information.

³ Reproduced in Appendix 4.

3. Methodology

- (a) An extensive questionnaire was sent by FIM to 54 union organizations or associations for the professional defence of musicians recognized by FIM in the regions under study. It should be pointed out that in Asia and English-speaking Africa, we identified very few organizations for the professional defence of musicians. At the end of this chapter we provide a rough terminological definition of the notion of “ musical performer “ and the classification of musical categories covered by the questionnaire. Despite the complexity of the questions asked, particularly with regard to contracts and social protection, and the considerable difficulties in communicating (sometimes the questionnaire took almost two months to reach its destination), FIM received replies from 33 countries, often in great detail, as listed in the table of contents.

Certain gaps are regrettable with respect to the countries covered by the report, in particular for English-speaking Africa, due to the impossibility of being able to obtain information from these regions in good time. It would therefore be necessary to go beyond this report by collecting this information using a different methodology.

- (b) The International Labour Office sent a simplified questionnaire to 54 member States in the regions covered. In particular we hoped that the replies from States would help us to complete the statistical data and information relating to professions comparable with musical performers. Unfortunately, there were few replies from States to this questionnaire, and they did not produce as much information as expected. This is partly explained by the great difficulty of developing inquiry tools and obtaining reliable statistics on such an unstable socio-professional category.

Musicians’ professional unions or associations are not well structured enough, nor do they have sufficient means in the developing countries (particularly in Africa and Asia) for it to be possible to expect real statistics from them. Therefore, it would be useful to supplement the report from the statistical point of view, even if the presentation of the social situation country by country (Appendix 1) provides a certain number of figures.

- (c) In the report, we present selected current international labour standards (Chapter 4.1), some of which are applicable in the States in question, if ratified.¹ With regard to the Conventions drawn up within the framework of the ILO, we considered it useful to make a presentation of them, which would enable their impact on performers’ situations to be measured.
- (d) In addition, FIM has collected general documentation on the political and social situation in these regions, as well as on the general legal framework of labour and social legislation, to assess how realistic proposals that might result from the study would be. It soon became very clear that, as we were dealing with proposals that aimed at creating or reforming the status of musical performers, or recommendations relating to union or professional practices, only a national approach could prove useful. Up to this point we have therefore limited ourselves to evoking general frameworks regarding labour and social legislation, without really developing this (Chapter 5).

Proposals aimed at creating or reforming the status of musical performers, or recommendations relating to union or professional practices should, in our eyes, be

¹ See appendices for information on these Conventions and their state of ratification.

preceded by on-site fact-finding missions, which in fact corresponds to one of the conclusions adopted at the end of the tripartite meeting of 1992.

- (e) The report then goes on to make an overall analysis of the information collected by FIM (Chapters 6-10). This overall analysis contains a description of the facts then a commentary including recommendations.
- (f) In the appendices, the report sets out, country by country, the detailed information regarding the present social situation of musical performers (Appendix 1).
- (g) This study has been prepared thanks to the collaboration of Mr. Thomas Dayan, DEA in social law (Paris X), who collected the general documentation, sorted through the replies in English or French and took part in the conception and the writing of the study; of Mrs. Corina Cadena, lawyer at the Bar of Mexico City; and Ms. Audrey Maîtrejean, personal assistant to the General Secretary of FIM, who went through and analysed the replies in Spanish.

We should like to extend our heartfelt thanks to these three people, as well as to all our colleagues in Africa, Latin America and Asia who, with great devotion and considerable work, sent us the information that constitutes the core of this study.

Note on the terminology used in this study

A. The term *musical performers* includes musicians, chorus-singers, singers and orchestra conductors. The questionnaire does not cover composers, songwriters, actors and dancers.

B. The replies to the questionnaire distinguish between the situations of performers in the following different musical categories:

“Classical orchestras” (or category “O”), for permanent ensembles of classical music (including chamber music).

“Other orchestras” (or category “A”), for permanent ensembles that mainly play types of music other than classical.

“Chamber music” (or category “C”), for small classical or contemporary music ensembles, except for permanent ensembles.

“Folk” (or category “F”), for traditional music, except for permanent ensembles.

“Jazz” (or category “J”), for jazz music, except for permanent ensembles.

“Variety” (or category “V”), for non-folk pop music, except for permanent ensembles.

4. International standards (ILO, UNESCO and WIPO)

4.1. ILO Conventions of relevance to performers

In this section we will follow the order of the questionnaire given to union organizations for musical performers and to States, noting the fields covered by ILO Conventions. The specificities of the profession make it difficult to apply them to performers' situations. These Conventions are listed in Appendix 8, and the texts and further information are available on the ILOLEX database that can be reached from the ILO Web site: <http://www.ilo.org>.

Duration of contracts

ILO Convention No. 158: Termination of Employment, 1982

This Convention, which ensures protection against unjustified redundancies, is applicable as such to the situation of musicians with a work contract that is of unfixed duration (such as musicians with a permanent orchestra). The question of application of this Convention is raised when it comes to breach of a fixed-term contract before the appointed time of expiry, or to non-renewal of a fixed-term contract after a long and continuous succession of fixed-term contracts comparable to contracts without limit of time.

Duration of work

ILO Convention No. 106: Weekly Rest (Commerce & Offices), 1957

ILO Convention No. 132: Holidays with Pay (Revised), 1970

These two Conventions provide respectively for a weekly period of rest of a minimum of twenty-four hours and paid annual holidays of three weeks (reduced pro rata if the period worked is less than one year). They are applicable to musicians with a work contract without limit of time or one of fixed duration of over six months. On the other hand, it is not as straightforward to apply such a Convention to those with intermittent jobs and who change employers, or to those who are self-employed. A favourable evolution might, however, be on the horizon for "freelance" performers who have a stable relationship with a "user" if a Convention on the employment relationship were adopted. The difficulties associated with intermittent work or situations where several employers are involved would not, however, disappear overnight.

ILO Convention No. 171: Night Work, 1970

This Convention imposes a requirement for specific measures on the health and safety of night workers by the particular nature of this work, and is of great importance since the majority of musical performances take place in the evening. Musicians are therefore widely affected by the problems of this rhythm of work (altered sleeping times, an upset social and family life, problems of night transport etc.). The question of appropriate compensation must, therefore, be taken into account when fixing pay and other benefits.

ILO Convention No. 175: Part-time Work, 1994

This Convention sets out to ensure that part-time workers benefit from working conditions comparable to those of full-time workers. For workers with a stable or regular job with the same employer, working time is calculated in a specific way; the notion of full-time working includes periods of rest or recovery, individual work at home, calculating services or working time using coefficients when a performance is subject to specific constraints (recordings, tours, etc.), and more generally by arrangements which result from customs of the profession. Applying this Convention to musical performers implies therefore that the notions of part-time and full-time be understood, and that the specificities associated with the profession be strictly respected, including for those who work intermittently.

Health protection

ILO Convention No. 155: Occupational Safety and Health, 1981

ILO Convention No. 161: Occupational Health Services, 1985

ILO Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977

ILO Convention No. 120: Hygiene (Commerce & Offices), 1964

These four Conventions, which overlap each other in certain aspects, respectively aim at preventing accidents and risks to health as a result of or during work, maintaining a safe and healthy working environment, eliminating risks due to pollution, noise and vibration, and respecting elementary measures of hygiene. They are applicable to musicians who might enter or work in commercial premises, but also cover specific pathologies that might affect them. Although it is difficult to fight against emotional pressure or stress inherent in the profession, it is nonetheless necessary to tackle risks linked with lighting, temperature, excessive sound levels, poor quality of air or poor ergonomic conditions. In this field, professional organizations that have good knowledge of the risks specific to the profession should be associated with any decision on standards.

ILO Convention No. 138: Minimum Age, 1973

ILO Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946

ILO Convention No. 182: Worst Forms of Child Labour, 1999

The first two Conventions – which prohibit the work of children and which restrict night working for teenagers – set principles that may expressly be waived for artistic performances. This does, however, imply that regulations that govern the working conditions of young musicians be strictly respected. The third Convention concerns both children and teenagers, by applying the term “child” to all persons under the age of 18 years. However, it proscribes, in particular, work which, by its nature and the conditions in which it is exercised, is likely to harm the health, safety or morals of children. Also, certain performances requiring the presence of young musicians are likely to be targeted by this Convention.

Inspection of working conditions

ILO Convention No. 81: Labour Inspection, 1947

This Convention, which aims at ensuring application of the legal provisions by regular inspection of the place of work, should be applied to musicians' jobs, since certain establishments where they perform present dangers to their safety and health. In addition, the proportion of undeclared work reaches significant levels in certain regions.

Unfortunately, this Convention is only mandatory for industrial establishments, but can be extended to commercial workplaces if ratifying States accept this. It would be desirable to extend its mandatory nature to all establishments where musicians perform.

Professional training

ILO Convention No. 140: Paid Educational Leave, 1974

This Convention, which promotes the adoption by States of systems of paid leave for education and training, is of great interest (particularly for developing countries). It does, however, require specific implementation for most musicians, who do not have a stable work contract – those who have contracts without limit of time have the possibility of such training being paid by their employer. In these numerous cases of musicians lacking a stable work contract, a fund should be established and managed by, for example, an organization with employer and employee representation, open to musicians who are able to justify a certain number of hours worked. It would then be desirable for the private sector (particularly broadcasters, music producers and so on) to contribute towards financing such a fund.

Social protection

ILO Convention No. 102: Social Security (Minimum Standards), 1952

This Convention aims at ensuring a minimum of social security (divided into nine branches: 1. medical care. 2. sickness benefit. 3. unemployment benefit. 4. old-age benefit. 5. employment injury benefit. 6. family benefit. 7. maternity benefit. 8. invalidity benefit. 9. survivors' benefit) and has a wide scope. It is intended to cover all categories of workers, therefore including musicians throughout the world. There are, however, difficulties that must first be overcome. Musicians experience variable situations: they often cannot benefit from social security in the same way as other workers because of their intermittent contractual status, which is frequently of short duration and for fluctuating pay. For this category of jobs, the social security systems must adapt specific schemes that assimilate musicians with employees. Unfortunately, the situation is even worse in many cases: in sub-Saharan Africa, except for rare exceptions, social security schemes (when they exist) only apply to salaried workers, and exclude certain types of seasonal or occasional employment (a phenomenon which is widespread in English-speaking countries). In 1989, from 0.7 to 24 per cent of the population was covered. In such a context, it is clear that any improvement in the situation of musicians depends on progress at a general level, but there are numerous obstacles on the way to such improvement. Beyond the shortcomings of administrative organization in these countries, the absence of any fiscal tradition enables many freelance workers completely without social security cover to avoid paying taxes. Any attempt to subject people to taxation would be difficult in regions where family ties (in the widest sense) mitigate the lack of State help as best they can.

ILO Convention No. 157: Maintenance of Social Security Rights, 1982

This Convention promotes the establishment of an international system for maintaining social security rights for people working or staying outside their own country. There is no reason why musicians should not benefit from such a system, where a general social security scheme, adapted to the specificities of their conditions of employment, can be set up.

ILO Convention No. 103: Maternity Protection, 1952 (revised)

ILO Convention No. 183: Maternity Protection, 2000 (revised)

Convention 103, which provides for a minimum of twelve weeks' maternity leave, seems to favour women who have a salaried status of unfixed duration, which is far from being the case for the majority of musicians. Like other conventions, it should be adapted and applied by social security organizations for women who can justify a certain number of hours of work, and who would consequently have contributed to such organizations. In order to be viable, such a system implies revising wherever possible the contractual relationship between musicians and their employers (or simply those who pay them) by setting up a general scheme of declaration. Convention 183, which revises the earlier one, applies to all employed women, including those within the framework of "atypical" employment, which can include musicians. This Convention creates an obligation for States to adopt appropriate measures to ensure that pregnant women are not obliged to perform work prejudicial to the health of the mother or the child. The minimum duration of the maternity leave is not less than fourteen weeks, including a compulsory period of six weeks after childbirth, and with a possibility of extending this on production of a medical certificate in the case of complications arising out of pregnancy. The Convention also imposes guarantees on the minimum level of the remuneration paid during the maternity leave and on the medical benefits. Lastly, the Convention strengthens the protection against discrimination in employment with regard to pregnant women or women who have just given birth. It institutes rather comprehensive protection of maternity, but the implementation of some of these provisions could prove to be difficult, both because of the possible exceptions that might reduce its scope (in particular for States whose economic and social development is the least advanced) and due to the forms of employment of musicians that limit de facto the range of certain provisions – limiting engagements of long duration, for example.

Unemployment/finding employment

ILO Convention No. 88: Employment Service, 1948

ILO Convention No. 96: Fee-Charging Employment
Agencies, 1949

ILO Convention No. 181: Private Employment Agencies, 1997

These three Conventions, which recognize the necessity for a free public employment service created and maintained by the State and the regulation of private employment agencies in all economic sectors and for all categories of workers, are applicable to musicians. In this respect, it is fortunate that the ILO took the initiative to complete Convention No. 96 by Convention No. 181 (dating from 1949, Convention No. 96 was no longer totally adapted to the contemporary context) since, in the absence of any public employment service in many countries, private employment agencies play an important role in show-business professions. Thus the rules for the protection of workers stipulated therein are very important, insofar as private employment agencies may in reality often give way to practices which go against the rules for employment legislation, particularly where especially low wages are concerned. It is therefore urgent, for those States that have not already done so, to ratify and transpose Convention No. 181 into their legislation.

Wages

ILO Convention No. 117: Social Policy (Basic Aims and Standards), 1962

ILO Convention No. 95: Protection of Wages, 1949

These two Conventions, which provide for salaries to be paid in legal tender, regularly and directly to the worker, are applicable to musicians as workers. In our eyes, these provisions do not prevent payment of a salary by a third party when it is directly in the musical performer's interest – for example, payment through a trade union that can organize social security contributions. On the other hand, these texts prohibit practices that consist of paying for a musician's performance in kind, through providing accommodation or meals.

Equal pay

ILO Convention No. 100: Equal Remuneration, 1951

This Convention, which affirms the principle of equal pay for men and women for work of equal value, should be directly applicable without restriction to musical performers' remuneration.

ILO Convention No. 117: Social Policy (Basic Aims and Standards), 1962

ILO Convention No. 131: Minimum Wage Fixing, 1970

These Conventions aim at encouraging the fixing of a minimum wage and protecting workers against excessively low wages, and emphasize the necessary involvement of workers' organizations. For musicians, union bodies must be associated with this on account, once again, of the specificity of the professions. The hourly rate provides a reference for pay. The performance, which is necessarily shorter than a working day, cannot simply be analysed by a small number of hours spent playing an instrument or singing for an employer. This would be tantamount to denying the "behind-stage work" of practising an instrument and rehearsing. Musicians' remuneration should not be calculated on the basis of an hourly rate comparable to that of any other worker, but should be calculated so as to ensure suitable living conditions on a par with the standards of living in the societies in which they work.

Migration

ILO Convention No. 118: Equality of Treatment (Social Security), 1962

ILO Convention No. 97: Migration for Employment, 1949

ILO Convention No. 143: Migrant Workers (Supplementary Provisions), 1975

These Conventions aim at ensuring and protecting equality of treatment between foreign and local workers with regard to social security, work legislation, fundamental human rights and so on. For musicians, the question of immigration is particularly complex since, in many countries, endogenous cultures and music are threatened with disappearance. Defending local musicians appears indispensable, while not unduly restricting the migration of musical performers. In these cases, maintaining – and above all developing – favourable conditions of employment that permit the most talented musicians to be trained and retained is considered a priority, with perhaps some affirmative action measures, particularly with regard to labour legislation.

Discrimination

ILO Convention No. 111: Discrimination (Employment and Occupation), 1958

This Convention of wide scope aims at promoting equality of opportunity and treatment in respect of employment and occupation. It therefore proposes action aimed at the elimination of all discrimination based on race, colour, sex, religion, political opinion, national extraction or social origin. It clearly must be applied in all fields covered by musical performers.

Union freedom

ILO Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

ILO Convention No. 98: Right to Organise and Collective Bargaining, 1949

These two Conventions are of crucial importance and are the foundations of the freedom for workers and employers to organize themselves with a view to promoting and defending their interests. They aim at ensuring the right to exercise this freedom, particularly through the promotion of voluntary collective bargaining to regulate the terms and conditions of employment. These Conventions are clearly applicable to all workers, including musical performers. These prerogatives are in theory protected almost everywhere in the world, but their implementation sometimes proves difficult, and not only for political reasons. Union legislation is applied unevenly in some States according to the socio-professional categories concerned, and musicians are rarely favoured in this field. The presence of union legislation in these professions is often fraught with difficulty, except for musicians with stable professional status, a single employer and regular working hours; they could demand application of these Conventions. When we consider the situation of many self-employed and/or intermittent musicians, alone or in groups, looking for a way to earn their living against a background of endemic “unemployment” which characterizes the profession, the very notion of union freedom loses all its meaning. This concept can only be viable when supported by all concerned. Insofar as taking steps towards forming unions and taking part in union activities implies a disposition and a will to do so, this can only be brought about freely within a balanced distribution of forces where individuals know that they are protected. Only the feeling of belonging to a community (of workers) “capable of resisting” the pressures of those who hold the reins of economic power can enable workers to offer themselves such a choice. In order to enable real application of these principles to musicians, States must have a voluntarist policy. Beyond guaranteeing respect for the provisions in the conventions, States should associate musicians’ representatives and employers in sectoral negotiations, through which union action is made legitimate. Care must also be taken that the disparity of employment situations should not serve as a pretext for refusing, for example, people with self-employed status or public employees their rights as workers protected by union legislation. In certain regions, musicians who have this status are consequently denied any union right. This situation appears absurd, insofar as they do not fulfil any public service mission, nor do they contribute to the administration of the State and even less to public power. It would seem important to create a “collective body” of musicians that could express itself with one voice through a musicians’ union. This implies drawing up a real census of musicians in each country, followed by a programme of information outlining why musicians need to be defended collectively and to present a unified front. On this basis, and when joint bodies are set up, it would perhaps be possible to negotiate union minimum standards. To sum up, we need to promote participative rather than electoral democracy. Such an evolution cannot happen without union involvement.

ILO Convention No. 135: Workers' Representatives, 1971

This Convention, which aims at ensuring protection of workers' representatives within an enterprise or undertaking, only concerns a minority of musicians; their careers do not usually develop within an enterprise or company, but within a stable structure such as an orchestra.

Union rights

ILO Convention No. 154: Collective Bargaining, 1981

This Convention, which promotes free and voluntary collective bargaining, supplements Convention No. 98. The remarks made above are also applicable. It is equally true that, for the exercise of union rights, many laws require a minimum number of employees in order to start collective bargaining. Such a requirement should not apply in this context, given the specific nature of the musician's profession. Finally, with regard to musicians having several employers, bargaining should be envisaged for establishing systems to be co-managed by unions to ensure a uniform status for musicians with several jobs. Measures should be adapted to national and also sectoral circumstances.

Statistics

ILO Convention No. 160: Labour Statistics, 1985

This Convention makes provision for the collection of regular series of statistics on work in various fields to be carried out by States, in close co-operation with the ILO and representative organizations of employers and workers. It could be extremely useful, since information about the musical performers' profession is often either insufficient or practically non-existent. Certain replies supplied by States and representative organizations of employers and workers reveal enormous gaps in this area. Implementing this Convention is an indispensable precondition, since only field studies and regularly updated and reliable statistics will enable local action to be evaluated as a priority. The poor quality of statistical data is an element that FIM was particularly concerned about, which led it to recommend the setting up of census missions.

4.2. The UNESCO Recommendation on the status of the artist (1980) and the Declaration concerning the implementation of this Recommendation (1997)

- (a) Adopted in Belgrade on the 27 October 1980, the UNESCO Recommendation includes a certain number of developments in the social field. It recalls that the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment, social security rights (right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood), the right to just and favourable remuneration to provide a standard of living adequate for one's health and well-being and that of the family, union freedom, right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay, and the right to social security in case of unemployment are contained in articles 22 to 25 of the Universal Declaration of Human Rights.

This Recommendation invites member States to:

ensure, through appropriate legislative means when necessary, that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations, if they so wish, and should make it possible for organizations representing artists to participate in the formulation of cultural policies and employment policies, including the professional training of artists, and in the determination of artists' conditions of work;

grant artists public recognition in the form best suited to their respective cultural environments and establish a system, where it does not already exist or is inadequately designed, to give artists the prestige to which they are entitled;

endeavour to take the necessary steps to see that artists enjoy the same rights as are conferred on a comparable group of the active population by national and international legislation in respect of employment and living and working conditions, and see that self-employed artists enjoy, within reasonable limits, protection as regards income and social security;

identify remunerative posts which could be given to artists without prejudice to their creativity, vocation and freedom of expression and communication;

seek means of extending to artists the legal protection concerning conditions of work and employment defined by the standards of the International Labour Organisation, in particular the standards relating to: (i) hours of work, weekly rest and paid leave in all fields of activities, more particularly, in the case of performers, taking into consideration the hours spent in travelling and rehearsal as well as those spent in public performance or appearances; (ii) protection of life, health and the working environment; the protection of life, health and the working environment;" and "make provision when necessary for appropriate forms of compensation for artists, preferably in consultation with organizations representing artists and their employers"...; and "recognize that profit-sharing systems, in the form of deferred salaries or shares in the profits of production, may prejudice artists' rights vis-à-vis their real incomes and social security entitlement and take appropriate measures in such cases to preserve these rights.

- (b) The Declaration adopted on the 20 June 1997 during the UNESCO World Congress on the implementation of the 1980 Recommendation, also includes developments in the social field and in particular the following:

States are invited to establish mechanisms for the entry of artists into working life and to create support funds to that end.

In view of the increasing tendency, in various artistic fields, towards precarious terms of employment and job insecurity for authors and performing artists, it should be reaffirmed that no artist should be discriminated against in respect of taxation, social security or freedom of association on the grounds of his or her employment status, and recognition should be given to the right of representative associations on behalf of all professional artists, and to be involved in the various decision-making processes affecting their interests.

4.3. The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961) and the WIPO Performances and Phonograms Treaty – WPPT (1996)

- (a) The Rome Convention came about as a result of the realization that it was essential to protect performers in the exercise of their profession against the implications of

technologies emerging in the 1950s and 1960s. Already at the beginning of the 20th Century, protection of performers through statutory rights had been recognized as being justified, given the creative nature of their performances but also since such protection could not be achieved through contractual means.

The Convention that was adopted was, however, the result of a compromise between competing economic and political forces, and it is far from having met performers' expectations. Since 1961, the gap has widened between the level of protection afforded by the Rome Convention and performers' real needs.

Since the 1960s, technical means of exploitation and consumption of performances have considerably increased, both in audio and audiovisual production, with many negative consequences for performers.

Whereas new markets for exploiting performances are emerging, and the content industry and the programme choice is expanding, performers are still not able to obtain part of the earnings or profits brought about by such changes, nor even to be protected from the numerous possibilities of digital manipulation and other abuses.

Technical means for fixation and reproduction of performances have become increasingly accessible, and more financially attractive. Private copying from CDs, radio and television, among other sources, has become widespread.

Private radios and television channels have multiplied, including those broadcast over several territories through direct satellite diffusion, or now over the Internet.

Performances are an increasingly central element of the content of programmes in this new environment, and intellectual property rights are thus becoming essential to enable performers to benefit from the results of this growth in the use of their performances. However, despite the profound changes that have occurred since its adoption in 1961, the Rome Convention has never been revised.

- (b) The WPPT Treaty adopted in December 1996 within the framework of WIPO certainly represents the most significant development in the field of performers' intellectual property rights since the Rome Convention of 1961.

The Treaty falls short, however, from several essential points of view, even if it embodies some elements that in principle represent progress, such as the recognition of exclusive rights and moral rights for performers. The Treaty's weakest point is that it only protects audio fixations, thereby excluding protection of fixed audiovisual performances.

In our opinion, this distinction between performances of audio and audiovisual fixations is unrealistic and a source of legal insecurity, seriously impairing the viability of the Treaty. The Committee of Experts set up by WIPO in 1992 underlined, before the Diplomatic Conference of December 1996, the necessity to protect performers in the audiovisual field.

Many experts considered that in the new digital context, both with regard to new forms of product and media, and new communication services, the distinction between protection of audio and audiovisual performances was unjustified.

Any progress resulting from the WPPT Treaty will only be effective if the field of protection is unified, that is to say if the now artificial distinction between protecting audio and audiovisual fixations is done away with.

The Diplomatic Conference that took place in 1996 adopted a resolution via which it requested that an additional protocol be adopted before the end of 1998 regarding the protection of audiovisual performances.

Several meetings were held since 1996, and WIPO convened a Diplomatic Conference in Geneva from 7 to 20 December 2000 on the protection of audiovisual performances. The negotiators did not manage to adopt an international instrument, although they provisionally adopted 19 articles, relating in particular to national treatment, moral rights, various economic rights such as the rights of reproduction, of distribution, of rental, and of broadcasting and communication to the public. On the other hand, the participants did not succeed in reaching an agreement on the question of transfer of rights or applicable law. Consequently, they recommended to the Assemblies of WIPO member States, which will meet in September 2001, the convening of a new diplomatic conference allowing the adoption of a final instrument.

- (c) The WPPT Treaty states (article 1): “*Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the (Rome Convention)*”. The WPPT Treaty refers in addition to articles 4, 5, 16, 17 and 18 of the Rome Convention. Thus the Rome Convention is destined to continue to be applied. In addition, the number of States adhering to the Rome Convention has significantly increased over the past few years.¹

The question today is to know whether the content of this Convention can remain the same as that agreed in 1961, or whether it is necessary to carry out a revision in the interests of the rightsholders it aims to protect. The UNESCO World Congress of June 1997 in its declaration adopted a provision inviting UNESCO, ILO and WIPO to propose such a revision of the Rome Convention.

During its seventeenth ordinary session, which was held in Geneva from the 5 to 7 July 1999, the Intergovernmental Committee of the Rome Convention drew up a report in which it estimated that it would be premature to consider a revision of the Rome Convention. Within the framework of this session, a report carried out by Professor Walter was presented. It is a comparative study on the relationship of, and comparison between, of the Rome Convention, the WPPT Treaty and the TRIPS Agreement and on the evolution and possible improvement of the protection of the neighbouring rights recognized by the Rome Convention.

The next session of the Intergovernmental Committee of the Rome Convention will meet in June 2001. On this occasion, the Intergovernmental Committee should come to a conclusion about the issues raised by Professor Walter’s study.

¹ Sixty-seven countries by March 2001.

5. General framework for labour legislation

The various countries covered by this study all have legal systems that could organize and regulate working relations. In all of these countries, workers are divided into one of the following three major categories: 1. Civil servants who, theoretically, have a safe job and are employed by the State, and are subject either to general provisions of the national Labour Code or to specific legislation. 2. Salaried employees with a work contract drawn up in conjunction with their employer (private or public) and are subject to the provisions of the national Labour Code. 3. Independent workers without a work contract but who carry out their activity on the basis of civil law contracts (corporate contracts, fees, remuneration for services). Insofar as certain texts expressly exclude any application to workers employed without a work contract, such workers are not therefore covered by national Labour Codes. In some countries, workers covered by Labour Codes are a small minority.

5.1. Africa

Colonial heritage plays a considerable role where labour standards in Africa are concerned. Thus the different Labour Codes of French-speaking African countries (south of the Sahara) all stem from the same text: the law of the 15 December 1952 regarding the Labour Code for Overseas Territories, which is largely inspired from French labour legislation. Thus it can be seen that, among the countries from which we obtained information, Benin, Cameroon, Guinea, Niger, Senegal and Togo have adopted the 1952 linear classification with more or less the following structure: 1. General provisions. 2. Professional unions. 3. Work contract and collective convention. 4. Wages. 5. Working conditions. 6. Health and safety. 7. Administrative bodies and methods of application. 8. Labour disputes. 9. Penalties. 10. Temporary provisions. (Chad and Mali have adopted a different order without significantly modifying the contents.) These countries have mostly ratified the ILO conventions relating to fundamental human rights (including everything on trade union rights), labour administration and working conditions. The French-speaking countries of North Africa have also adopted labour laws that are similar to French legislation. The other African countries have laws stemming from different origins (sometimes socialist), but which also guarantee a certain amount of protection for salaried employees, including countries like Zambia, that have a strong union tradition.

Thus there are legal systems in existence that can ensure viable protection for salaried employees. There are, however, three sets of factors that make this picture less positive.

1. Economic difficulties make some provisions inapplicable (for example health and safety, work inspection and social protection).
2. In some societies, rules and regulations do not always function properly, or are not understood (given the worrying rate of illiteracy in certain regions). Sometimes they are even ignored. The institutions of justice and government that should guarantee the respect of such rules do not always have the means or the will to ensure such respect. Finally, the ability of trade unions and others to counterbalance the employers' authority is sometimes absent, and unions are often unable to exercise any real pressure. The weakness of social dialogue and collective agreements illustrates this well.
3. The level of clandestine employment and the weakness of salaried employment (which is often unstable) act as efficient brakes on the application of labour legislation since, in such cases, there is little or no provision to protect workers.

5.2. Asia

Labour laws applicable in Asia have more varied origins, particularly as a result of the great diversity in economic and political circumstances, or because of certain strong traditions. All the countries from which we obtained information have broadly liberal economies, as their social legislation shows. In all these countries the Labour Code governs the status of salaried employees, with provisions on redundancy, working hours, holidays, wages, union rights, collective bargaining and social security, but the laws do not necessarily encourage the recruitment of salaried staff in stable employment (except in Japan, whose system of lifetime employment is now less widespread than in the past). It is often possible for an employer to hire an independent worker. Thus Philippine legislation defines the musician as “an independent contracting party,” while in Singapore (despite the existence of labour legislation) many workers are not salaried (which is the case for all musicians). Moreover, employers often enjoy considerable prerogatives. In the Republic of Korea, for example, the employer may object to an employee holding two permanent positions. In Japan, they may impose financial sanctions etc.

The texts are more or less well respected (health and safety measures may sometimes be resisted on financial grounds, and anti-union pressure is strong in some places – several Asian countries have not ratified Conventions 89 and 98 on freedom of association, the right to organize and collective bargaining). Recourse to justice on the other hand can bring excellent results. The Supreme Court of the Philippines has for example decided that employing an independent worker for a period of at least six months should be transformed into a work contract of unfixed duration.

Beyond the purely “labour-inspired” protection attached to the work contract, such a contract is of critical importance for workers, as it is more often than not the sine qua non for obtaining social protection (which is practically impossible without the support of employers’ contributions).

5.3. Latin America

Latin American countries have a strong tradition of social conflict, but also of protecting human rights, and consequently those of workers. Such rights are often stipulated in the Constitution. As for the State, it is often involved in the system of labour relations, even if its grip on social partners is tending to become weaker. All countries in this region have either major legislation on this topic (e.g. Argentina, Peru or Venezuela) or a Labour Code. These labour laws include detailed provisions on work contracts, wages, working hours, redundancy, unions, health and safety but also retirement pensions, social security, holidays and unemployment. Certain Labour Codes even devote a chapter to actors, musicians and others, as is the case with the Labour Code of Mexico or Panama. Colombia, Ecuador and Peru also have laws dedicated to artistic professions. During the 1980s, Latin American countries underwent a process of democratization, but also experienced economic difficulties, leading to structural adjustment imposed by the IMF. Economic development gradually re-emerged, but with consequences for social legislation. Today there is a quasi-paradoxical situation. On the one hand, legislation has been modified to create greater flexibility, facilitating in particular the use of temporary contracts. On the other hand, unemployment insurance schemes are rare and inadequate, while pension schemes (often private or semi-private) are increasingly based on individual contributions and protect no more than 31 per cent of previously economically active people over 60 years of age. The informal sector is also strongly on the increase. According to the ILO, it rose from 52 to 56 per cent between 1990 and 1994. In addition, the level of minimum wages has considerably diminished. On the other hand, union rights were strengthened during the 1990s by legislative reforms largely inspired by ILO principles, bringing significant progress everywhere, for workers and unions alike. It is for

this reason that, whereas disputes are tending to decline, collective bargaining (and social dialogue in general) is undergoing real growth.

6. Analysis of the legal situation of musical performers

This chapter provides a summary of the replies to the questionnaire reproduced in Appendices 6 and 7. Appendix 1, a richly detailed document transcribing the replies to the questionnaires is, unfortunately, only available in French.

6.1. Legal frameworks of employment for musicians and their implications

Among all the countries studied here, only a few Latin American countries have any national articles of association specific to musicians. Legal frameworks are generally varied and musicians can either be salaried employees in the public sector (for the most part civil servants), or in the private sector or self-employed.

Description

Asia

Public-sector salaried employees. Civil servants represent a small minority of musicians in most countries, except in China, where the situation is quite different – musicians are recruited by units organizing performances. They belong to units of the armed forces or the police, to national radio or major orchestras. They benefit from all the rights granted to civil servants, namely stability of employment, payment of a regular salary, social protection and a retirement pension. On the other hand, union rights are not always guaranteed and are sometimes prohibited, and the same often applies to holding more than one job, even if, in practice, some flexibility is possible so long as this does not affect the department from operating properly. The categories with the most public-sector salaried employees are “A” (other orchestras or permanent ensembles mainly playing music other than classical) and “O” (classical orchestras and permanent ensembles of classical music, including chamber music).

Private-sector salaried employees. In some countries, salaried musicians have work contracts and are consequently covered by national legislative provisions applicable to all salaried employees. In practice, however, such status is rare. It applies to members of a few orchestras, some employees of production companies, musicians employed in hotels and restaurants or by governmental broadcasting organizations, or musicians hired from time to time for a big-budget show. Usually, such contracts are drawn up for a fixed duration. Certain contractual practices do, however, appear strange, such as fixed-term contracts, which are rarely renewed despite the fact that the professional activities go beyond the term fixed by the contract. Sometimes, it is possible that musicians playing for long periods in a television programme may not have contracts, and famous musicians may have contracts in which it is stipulated that the employer declines responsibility (this clause has, however, been rendered null and void by the Supreme Court of the Philippines). Similarly, it is not rare for verbal agreements to be converted into written ones via a “letter of confirmation”, drawn up in the employer’s interest.

Self-employed. With the notable exception of China, this status is by far the most widespread in all Asian countries studied, some of which only have self-employed musicians. Such a status does not, however, imply the existence of a contract. Determining the worker’s status is not always mandatory with regard to general social protection schemes. Labour legislation rules do not apply to this type of contract since there is, in

theory, no employer. Contracts are governed by civil legislation and are entered into with show-business entrepreneurs, impresarios etc. Thus in addition to the total instability of their professional situation, these musicians are not covered by any social security scheme.

Africa

Public-sector salaried employees. Certain countries employ musicians with full civil servant status (without limit of time) and more rarely those with fixed-term public office status. Although this civil service status may ensure some stability, it is sometimes of an illusory nature since, when equipment or credits run out, “civil servants” are dismissed and then perhaps re-hired when times are better. Public sector salaried employees belong to permanent groups (institutional orchestras or state broadcasting organizations) or are employed by Ministries of Culture. In some countries, social protection exists for this category of workers, but holding several jobs and the right to form unions are often prohibited, at least in theory. Finally, positions held by civil service musicians may involve activities far removed from the musical field. Thus orchestral musicians may hold several jobs when their orchestra is not actually formed, and yet keep their job. This status applies mainly to musicians from category “A” permanent ensembles.

Private-sector salaried employees. Even if a salaried status exists in many countries, it is not very widespread and is on the decline in several countries because of the limited number of offers of employment and punitive taxation system. It mainly covers musicians working in private enterprises or establishments such as hotels, bars or restaurants. There are, however, some interesting initiatives. Thus in Mozambique, a few percussion ensembles have been formed that are linked to institutions such as arts’ centres, in order to combine their activity with dance and theatre. Work contracts are often for a fixed duration. Private-sector salaried employees are mostly in categories “A”, “V” (“variety” for non-folk pop music, except for permanent ensembles) and “J” (for Jazz music, except for permanent ensembles).

Self-employed. The vast majority of musicians do not have work contracts, and remain either self-employed or without any status at all. The hazy and tenuous character of the distinction between self-employed status and no status at all must be underlined. Although there is no problem where famous, well-known musicians are concerned, the distinction is much less clear for the majority of musicians in this category who are there simply because there is nothing better for them. This situation is particularly flagrant with category “F” (folklore) type musicians.

Latin America

In most of the region, the labour legislation is adequate and has sometimes been complemented by the adoption of rules specific to performers.

Public-sector salaried employees. National orchestras for classical music, national folk orchestras, municipal, police and fire brigade ensembles etc. employ musical performers who for the most part are considered to be holding public office. As such, they enjoy all the benefits and rights granted to civil servants; in particular, they have a sickness insurance scheme, and maternity, invalidity and death benefits, for themselves and their families. The contributions are paid jointly by employers and workers, and are deducted at source by the employer, who pays them directly to the social security department. Such employees also benefit from schemes covering retirement, paid holidays and wage bonuses. Their situation is very stable because of restrictive and costly redundancy procedures. People are mostly hired through competitions or by decree. In certain countries, public sector workers do not have the right to belong to a union.

Private sector salaried employees. Musical performers working with a contract have almost the same rights and obligations as those in the public sector. They benefit from legislative protection and decrees that are specific to their profession, but also from general provisions of labour legislation insofar as these are compatible with their profession. Work contracts may be drawn up without limit of time, or for a fixed duration, or for a particular event. In this respect, the Law covering Artists in Peru stipulates that “corporate bodies or natural persons, whether national or foreign, who hire, produce, organize, represent or administer artistic productions, are considered as having the capacity of employer and assume the responsibility for paying the artist corresponding rewards, remuneration and fees”. Argentina has a law relating to performers that implies the existence of a work contract in all situations where there is recourse to a performer’s services.

Self-employed. Most musical performers are self-employed, except in Cuba, where this category has no legal existence and where artists must sign a contract with an institution providing artistic services. Certain performers work on the basis of contracts for services rendered. The major problem with this type of contract is the traditionally verbal character of the commitments. The result is that most rights and obligations that fall on the employer are not respected, and social contributions are not paid, as is the case with paid holidays. Given the great musical traditions of certain countries, a significant proportion of self-employed musicians work regularly on the basis of contracts with individuals organizing private parties. The proportion of self-employed musical performers is estimated to vary between 60 and 90 per cent.

Comments

With the exception of Latin America, the absence of a specific status and the diversity of forms of contract represent the most marked characteristics of the legal frameworks in which musical performers operate. Except for famous musicians, a certain hierarchical structure of employment prevails. Recourse to certain types of contractual relationship is consequently less a question of individual choice than a sign of social recognition. From a practical point of view, such recognition results in more or less stability. It is better to be a civil servant or, if not, a salaried employee. As for other musicians, they are either self-employed or have no status at all. In any case, self-employed status and no status at all have the same common denominator – total precariousness, with no social protection, and pay as the only reward for work. Consequently, the distinction is more often than not a theoretical one. This situation affects folklore musicians in particular, though not exclusively, which is in itself a significant piece of information, revealing a lack of consideration on the part of economic and political decision-makers vis-à-vis folk music and, more generally, indigenous cultures. The most sought-after status on the other hand, that of civil servant, is reserved by the public authorities for musicians recruited by uniformed services (armed forces, police) or to prestige ensembles such as important national orchestras. The status of salaried employee is often precarious given the fixed duration of contracts, but with an economically fairly sound employer (production companies, hotels, restaurants, radio broadcasters, orchestras, major events), often in the tourist industry sector.

From this picture, a fundamental notion emerges – that of professional status or “professionalism”. It is perhaps on this basis that the hierarchy of contractual forms should be interpreted, even if, in our eyes, this is neither satisfactory in reality (some musicians with no real status are in fact able to live from their trade as musician), nor socially acceptable. Thus, when the State recruits a musician directly, it “confers” such a status on him or her. The employer who signs a work contract with the musician does so as well.

Rather than leaving such a “prerogative” at the discretion of the employer, we should question whether it is possible to develop provisions similar to those contained in Argentina’s abovementioned law, which implies the existence of a salaried status. The

possible adoption of an international convention on contract labour or the employment relationship would also be welcome, whilst nonetheless remaining vigilant on its final wording and the conditions of its implementation. On the other hand, such “professionalism” is seriously jeopardized for those musicians who, for want of anything better, are forced to be self-employed without being able to take advantage of the “benefits” which result from such “freedom”. Thus it is that market forces prevail in many countries and, since employment opportunities are rare, conditions for employment often suffer. We could also reflect on the cultural policy in countries in which musicians are all freelance. The notion of “professionalism” is all the harder to grasp given the widespread and often inevitable need of performers for several jobs, including salaried employees and civil servants alike. Finally, in certain countries, the status of civil servant may cover significantly different realities, including activities that go beyond musical ones. Criteria for “professionalism” are perhaps less a matter of artistic aptitude – which would ideally be the main criterion – than of economic and even political or personal factors.

6.2. Methods of recruitment

Description

Asia

Public employment agencies are practically nonexistent. While one country differs more or less from another, finding employment for musicians is possible either with or without an intermediary.

Without an intermediary. Musicians may be recruited on the basis of an audition organized by an orchestra or musical group.

With an intermediary. Musicians may be recruited by an impresario or by a private agency that will find work for them with a producer who is an agency customer. Such agencies or impresarios are not specialized in one type of music; they partly operate by work contract, supplying musicians for a fixed sum, paying them after deducting the agency’s fee. Sometimes musicians’ associations or unions can play a role in finding work. Thus, in Japan, in accordance with the law, the union supplies musicians for certain events. This situation is, however, not widespread, which is regrettable because this clearly constitutes a way to avoid possible exploitation of performers.

Africa

Generally bureaux or employment agencies do not exist, which means that recruitment is more often than not carried out by show-business entrepreneurs, or informally by occasional “agents” (sometimes friends or relations of the musician). In certain countries, musicians’ associations or unions play a role in finding jobs, or act as intermediaries when awkward problems have to be solved.

Latin America

In some countries, musical performers may be recruited by specialized private agencies, public agencies or via a union. In Mexico, certain agreements signed between the SUTM union and show-business establishments require that the latter recruit only unionised performers.

The percentage of musicians working thanks to the services of an intermediary may vary from 10 per cent in Colombia to 60 per cent in Peru. Certain texts regulate quite strictly such an activity. Thus, Ecuador’s legislation imposes joint responsibility on

employer and recruitment agency alike regarding remuneration and rights provided for by the law. The situation is not, however, the same everywhere. In some countries, payment is made in an informal manner, and social obligations are not respected.

Comments

The role of intermediaries is interpreted in various ways. Certain people in Africa think that neither the artist nor the employer values them much, whereas others feel that they are quite useful (to employers) since they enable the latter to avoid their responsibilities and so on. In reality, these appreciations depend on the context. But this approach could also be modified through following the example of Latin America, where regulations can provide additional “legal security” for performers recruited via agencies. Instead of having a situation where employers avoid all of their responsibilities, the law could impose joint responsibility between agency and employer. This would be in line with possible future international standards on contract labour. There may, however, be some cause for concern over certain practices prevalent in this type of recruitment, for example agents who, being subject to fierce competition, have no hesitation in seeking out the cheapest possible musicians so as to remain competitive, even if such musicians are “only amateurs incapable of reading a score...”. In addition, some intermediaries have a tendency to avoid recruiting musicians who insist on respect of social rights or those known for their union connections.

So as to preclude any discrimination or abuse, and also in order to ensure the quality of musicians recruited, it is clearly necessary to organize a process with union involvement, as well as a campaign by public authorities to make producers, show-business entrepreneurs and managers of establishments better aware of the situation, so as to produce a consensus on promoting higher quality recruitment, in short, to draw up a “professional charter” to moderate the “untamed” rules of the market.

6.3. Work permits and “professional” status

Description

Asia

In general, neither work permits (except for foreigners) nor any professional status exist. Consequently the distinction between amateur and professional musicians is determined by the employer and may appear tenuous. The level of reward may also be taken into account but, as we shall see later, exercising a second trade is extremely widespread where musicians are concerned.

Africa

The situation is a little more varied. Most countries deliver neither permits nor professional status, but there are exceptions such as Chad, Tunisia or Zambia, where the State grants professional status to certain musicians. Apart from this, (rare) work permits may exist but are reserved for foreigners.

Latin America

In certain countries, certificates or professional cards are issued, sometimes by a professional organization, as is the case in Brazil or by government ministries. This is an extremely important issue, reflected in the debates that sometimes happen in Argentina, where a joint committee has been set up for this purpose, or in Uruguay and elsewhere

regarding the level of competence required before a musician can be called a professional and is able to benefit from a true professional status.

Comments

None of the solutions described above appear satisfactory, all the more so since the notion of “professional status” is never clearly defined. The absence of professional status deprives musicians of a minimum recognition, including the social protection that could go with it. However, countries that require their “professional” musicians to have a work permit do so, with the exception of Brazil, by using administrative and discretionary means, which, given the absence of clear-cut criteria, could lead to corruption and selection based on personal contacts, thereby exposing musical performers to extra-professional pressures. If local circumstances so allowed, it would perhaps be interesting to encourage the creation of a professional status accessible as of right, based on the Argentinean model, according to criteria defined by a joint representation committee.

6.4. Form and contents of contracts

Description

Asia

The absence of contracts is a widespread phenomenon. When they exist, such contracts may be verbal or written. This is particularly true for contracts drawn up for the production of recordings. Without unions, there is no real possibility for negotiation between musicians and employers. In some countries, unions are very well organized and can draw up collective branch agreements that may be applied to all contracts in the sector of activity. Thus in India, the Association for Cinema Musicians and Singers, both affiliated to the Federation of Cinema Employees for Western India, were able to obtain a pay rise, negotiated by the Federation for the whole of the sector. When a work contract is signed, even if it has to comply with work legislation provisions, it is drawn up by the employer to his or her advantage, without negotiation of content.

Standard contracts are very rare but, within the framework of contracts drawn up for recording production, the clauses covering exclusive rights are ubiquitous, particularly with regard to reproduction and distribution rights. Many other types of clauses impose constraints on the musician.

Africa

Contracts are either written or verbal, but the distinction between absence of contract and verbal contract is far from clear. Verbal contracts mainly concern “F” category musicians, particularly given the widespread illiteracy in this group, but also because of lack of confidence in the written form. Many written contracts are drawn up for periods varying from one to five years and that relate to recordings. Generally, national laws impose specific headings such as pay and duration of contract. In certain countries, standard contracts exist, but this is not the case everywhere. These contracts may cover the production of records or stage performances. Some contracts impose exclusive rights, even for recording contracts. In Benin, contracts must contain mandatory clauses on royalties and the date by which they must be paid, but unfortunately there is little control over the production conditions and quantities offered for sale.

Latin America

Self-employed performers work for the most part on the basis of verbal contracts that rarely ensure that minimum standards are respected. With regard to written contracts – certain texts provide for all work contracts to be written – there are standard models drawn up by record producers, promotion agencies or alcohol-producing companies. Certain provisions protect the musical performer against clauses that are too unfavourable. Thus, in Colombia, any clause that would deprive the performer of the exclusivity of his or her rights to public performance is prohibited. In Ecuador, the law may require an entrepreneur who cancels a show without justification to compensate the performer with the remuneration that was contractually agreed upon. It can also prohibit the employer from imposing a sanction on the musical performer that was not stipulated in the contract. Finally, from a general point of view, the exclusivity of a contract must be expressly indicated.

Comments

It would seem that the form of contracts (verbal or written) depends on the importance accorded by the employer to the musician. A musician whose services are absolutely required and who has a certain reputation will always have a written contract, even if it is only to commit him or her to a certain date. This does not, however, mean that such a musician will have favourable conditions, since contracts are almost always negotiated by mutual agreement and drawn up by the employer to his advantage. Recourse to collective agreements, whose content must be imposed in the work contract, is exceptional. Consequently, apart from some rare exceptions for well-known musicians, this creates a strong contractual imbalance in favour of employers, who have economic dominance. Certain dispositions contained in Latin American legislation are thus very important insofar as they are designed to mitigate such imbalances.

Apart from setting legal standards that aim at promoting the form and content of contracts, by requiring mandatory headings and including substantial rules that provide minimum protection, it would be useful to produce standard contracts, such as those drawn up by the Mozambique government or by the Japanese musicians' union. Ideally collective bargaining should be encouraged, based on standard contracts with minimum guarantees (or if exceptions are to be allowed, they should be in favour of employees). This could take the form of a collective agreement.

This would enable excessive disparities to be reduced between the employment conditions of a few well-known musicians capable of defending themselves economically (negotiated by mutual agreement) and those of unknown musicians who have to accept any contractual provisions in order to work for very low pay.

6.5. Duration of contracts

Description

Asia

Most of the time, the contract's duration is agreed upon by the parties. With the notable exception of China, where life-long employment had for a long time been the norm (even if today it is disappearing) and with a few other exceptions, the contract's duration is quite short and often less than or equal to one year. In general, contracts may be broken before their term by one or the other party for a legitimate reason, and legal action for abusive termination is quite rare.

Africa

Contracts are generally entered into for a fixed term, but the situation does not always follow precise rules. Thus in hotels or restaurants, contracts which are entered into for a fixed duration may be broken before their term in order to replace musicians by a sound system. Many one-night contracts also exist, as do without-limit-of-time contracts that can be terminated without prior notice or compensation.

Latin America

Without-limit-of-time contracts exist, but the majority of contracts are drawn up for a fixed term. These are determined for variable duration depending on employers' needs. In this respect, protective provisions of the law may bring about perverse results. For example, since Argentinean law requires a minimum of three months work duration in order for a worker to benefit from redundancy payment, most performers' contracts are for shorter periods. In the case of exclusive contracts, the law sometimes provides for minimum periods of hire (two years in Colombia). Finally, contracts terminated before their term usually give rise to out-of-court settlements.

Comments

In Africa in particular, stricter attention should be paid to contract wording and respect of contract duration, but also to reasons and procedures in case of early dismissals. The legal system should play an important role in ensuring that these contractual provisions are respected, which implies that musicians should not be afraid to go to court after contractual relationships have finished. In all countries, including the most industrialized ones, this implies that, musicians should be able to benefit from legal advice from a union.

Generally, the short duration of contracts is an important factor in precarious employment, as it represents a serious obstacle to the work contract and is a factor excluding performers from a certain number of protections. As it seems practically impossible to influence the duration of contracts – except where short length of successive contracts masks a more stable working relationship – it is important to work towards better guarantees within such short-term contracts.

6.6. Hours of work

Description

Asia

Working hours are an essential element, often covered by collective agreements, particularly in orchestras or in sectors such as the record industry, given the specificity of this category of employment. In general, the duration of work is fixed per session, with several sessions being able to follow on successively. Even in the absence of collective agreements, daily sessions usually vary between three and four hours; any overrun of the scheduled time should give rise to overtime payment, increased for night work.

Africa

In the vast majority of cases, there is no regulation of hours worked, and these are fixed contractually by mutual agreement. The situation is far from ideal since working

times vary on average from four to eight hours per day, and sometimes ten hours, without overtime ever being paid to performers.

Latin America

Whereas some countries have made no provision with regard to working hours, others have adopted texts that limit working hours to around five hours per day, with possible extensions in exceptional circumstances. These are generally respected. Thus Peruvian legislation stipulates that daily working hours must not exceed of 4.5 hours, divided at least into two parts. In Brazil, except for exceptional circumstances, the working day must not exceed five hours. After six days of consecutive working, the artist has the right to paid rest of 24 hours. Collective agreements also play an important role in determining the number of hours in a working day.

Comments

Working hours are a perfect illustration of the risks musicians are exposed have to face on their own with an employer who does not recognize the specificity of the profession. To require a musician to play eight hours a day, sometimes even more, five days per week, which is equivalent to imposing a salaried employee's conventional working week, totally ignores what a musical performance entails (rehearsals, time for recuperation and so on). More than in any other area, specific regulations (determined by law or agreement) are absolutely essential; in this regard, the examples of Peru and Brazil are interesting. In addition, the extent of the problem is worsened by the *economic* necessity to hold a second job in order to make ends meet, given the low levels of pay. The situation is not perfect in Asia, but the contrast with Africa is striking and the need for awareness urgent.

6.7. Protection of health

Description

Asia

Nowhere is the situation satisfactory, since no country has any health legislation specific to performers, notably with regard to hearing problems to which performers are exposed, on account of amplified music in particular. There are, however, general rules on safety but, with a few exceptions, employers either are unaware of them, do not understand them or do not wish to apply them.

Africa

The situation is the same, or worse, than in Asia. Not only is there no provision to protect performers' health, but also minimum safety standards are not respected or don't exist. Greater awareness of the problems is, however, beginning to emerge. In Cameroon, some employers are trying to tackle health risks and accept responsibility for accidents at the workplace, particularly in hotels. In Mozambique, the union has alerted the government on this question, and a meeting has been held with the Minister for Social Coordination.

Latin America

Labour legislation provides for general measures to protect workers, including the Mexican law that makes the employer responsible for accidents at the workplace or occupational illnesses. On the other hand, there is no legislation ensuring specific

protection on health and safety, nor any statistics of accidents at work among musical performers. The Uruguayan union Audem has, however, set up a medical assistance service for its members.

Comments

The situation could be improved everywhere. Such changes can only come from greater awareness among employers and public authorities that are determined to have minimum safety standards respected, and from willingness to promote specific measures, especially against excessive noise. It is clear that existing but costly systems or suitable medical treatment cannot be introduced everywhere. However, it is possible to limit amplifier output, the length of time that musicians are exposed to loud noise, and so on. Labour inspectors and unions have critical roles to play in exposing such problems and educating all concerned.

6.8. Inspection of working conditions

Description

Asia

There are labour inspectors in most countries, but in the music business their action is extremely limited. They sometimes send a few requests to employers, as in the Republic of Korea, for example, where employers meet most requests formulated by the labour administration concerning musicians. Inspectors have powers of sanction that can go as far as imposing fines or closing down establishments but, in reality, in all these countries, the means for investigation are so weak as to make no inspection the general rule.

Africa

In general, inspections exist with powers of sanction, but they are hardly ever applied in the artistic field, with a few exceptions. In Mozambique, specific inspections are regularly carried out by the National Governing Body for Culture so as to check, among other things, whether contracts actually have been signed between musicians and show-business promoters.

Latin America

Unions, labour inspectorates or Employment Ministries are often called on to carry out inspections regarding conditions of work, particularly with regard to health and safety, or the application of work legislation. Unfortunately, inadequate staffing and lack of funds make such inspections exceptional. Current legislation is thus often violated. There are, however, certain union practices aimed at checking that certain contracts are properly applied. Thus in Brazil, work conditions are checked by the Inspectorate for Musicians' Work and, in Mexico, unions can request certain inspections to be carried out. In Peru, the organization that manages the social security service (IPSS) is setting up measures to inspect places where shows are being held, so as to encourage generalized drafting of work contracts.

Comments

Labour inspections would be useful in preventing and sanctioning the many problems found in the field of health and safety. This would, however, require serious effort to increase the inspectors' means of action and make such inspections viable. If they are to be

useful, investigations should normally be carried out in the evening or at night, therefore outside conventional working hours. This can only be a reasonable priority for countries with sufficient financial and legal means and adequate regulations. Elsewhere it would perhaps be better if unions carried out inspections if none were being done, and then try to improve the situation by negotiation or, should this fail to produce a result, through administrative or legal means.

6.9. Professional training

Description

Asia

There are few training opportunities, and those that do exist are unsatisfactory. There is also a worrying decline in the number of top-class music teachers in certain countries.

Africa

The rare occasions for professional training are made possible from time to time by government action or external assistance. In Niger, there is a centre for musical training and promotion that offers its training courses to musicians. In Zambia, experienced musicians are invited to run musical workshops for local performers. Finally, in Swaziland, the Musicians' Association organizes an annual workshop for musical performers, run by experts.

Latin America

In all countries where professional training for musical performers is possible, the musicians' union organizes and finances it almost entirely. The Uruguayan union has its own music conservatory, in addition to public and private ones. Brazilian and Mexican unions offer lessons to children within the framework of their music school. In Cuba, the system of artistic teaching guarantees professional training. In Panama, the union organizes training courses.

Comments

Except for Latin America, professional training is not very widespread, and a distinction should be made between initial training and on-the-job training for professionals. In the latter case, there are few possibilities and, given the overall situation, it is difficult to see how employers could finance this. However, a system of indirect taxation could be instigated for the record industry, broadcasters, users and producers, so as to collect funds for this. It would also be a good thing if administrations set up training centres of this type in the framework of a true cultural policy. The cost of such training need not be prohibitive, and cooperation agreements to establish schools could be developed. This could be a viable investment for the future, guaranteeing "national production" for industries in the musical sector.

6.10. Performers' employment: The reality

Description

Asia

The overall situation is not good. There are few salaried employees and, with the exception of Japan (10 per cent) needing a second trade concerns 70 to 90 per cent of musical performers. Most musicians are also teachers, employed in services or commerce, manual work or sometimes organizers of cultural events. China, however, has a totally different structure. Performers do not normally have to take up another activity and they often do not have the right to. When they are too old to continue in their activity, they may retrain, particularly through teaching.

Africa

With the exception of Guinea, where 40 to 60 per cent of musicians exercise a second profession, the proportion in all other countries is in excess of 80 per cent. Many musicians are teachers, but can also be journalists, policemen, soldiers, shopkeepers, farmers or other trades.

Latin America

In order to complement income, recourse to a second activity is very frequent and indispensable, particularly where self-employed workers are concerned. It can also qualify this latter category for social protection. The second profession, among others, may be that of teacher. It seems that from one country to another, the proportion varies considerably, from 20 to 80 per cent. There are often seasonal variations in second activities, especially in winter.

Comments

The figures alone indicate the difficulties that musicians may face in their profession, and the precarious nature of their social position. It is clearly impossible to eradicate the phenomenon of multi-activity, since this provides essential means of subsistence to unknown musicians, and earnings are sometimes greater than those derived from music. Insofar as this corresponds to the wishes of musicians themselves, it would, however, be desirable if complementary activities could form a "natural" extension of the musician's profession. Being a shopkeeper, an office worker or a farmer is rarely the result of a deliberate choice, but one dictated by the need for subsistence. Only overall improvement in employment and social status would enable this type of accumulation of jobs to be avoided.

7. The place of the musical performer in society

Description

Asia

The place occupied by music is difficult to gauge, being at one and the same time better and worse than in the past. From a positive point of view there is a strong development of the music industry, which generates considerable income. In addition, in some countries, public funds have been allocated to developing teaching and organizing more concerts, particularly in the field of traditional music. Unfortunately, competition is increasingly fierce as a result of the increase in the number of musicians and of the more widespread use of electronic equipment capable of replacing musicians. In Japan, technological development represents an important source of unemployment for musicians. In addition, intellectual property rights are not necessarily respected (when they exist) and trade unions are not always well organized. The result is that musicians benefit considerably less from the popular success of their musical performances than the music business does.

Africa

The situation is similar to the pattern in Asia. In general, States are not greatly interested in protecting intellectual property rights; in some cases they may actually violate them themselves. Despite the popularity of musicians in African societies, only the “stars” worshipped by the public can manage to protect their rights.

Today there are two significant phenomena. On the one hand, traditional music is experiencing a net increase in audiences while on the other, musicians are becoming more and more aware of the necessity of setting up viable collecting societies.

Latin America

Electronic equipment and recorded music are a source of unfair competition to musical performers called on to appear in live events. Nevertheless, such performers still have a significant role in many countries, where they are often in great demand. In general, possibilities for employment depend on how well known the performer is and, unfortunately, organizers of music festivals are too often satisfied with promoting already well-known artists, to the detriment of fresh talent.

Comments

In Asian and African societies where music plays a significant and traditional role, music is now undergoing unprecedented economic growth. There is an urgent need to ensure fair distribution of the income generated by music. It is essential to embody international standards that protect performers’ rights in national legislation and set up viable systems to collect and distribute the sums due. The amounts collected in this way should (at an individual as well as a collective level) bring about an improvement in their social situation, and in particular for musicians’ social security, given that for the majority, such protection is non-existent. Increased awareness of the risks surrounding live shows is important, as this affects the employment of many musical performers, but also has a

bearing on the cultural and social life of societies, in which musical traditions are strongly embedded in the social structure.

8. Social protection

8.1. Legal framework for the social protection of salaried employees

Description

Asia

In principle, public-sector employees are covered by an insurance scheme specific to civil servants and private-sector salaried employees coming under the general scheme of social protection. Sometimes complementary insurance may be taken out. Nevertheless, the absence of specific rules for this category of employees means that laws are sometimes poorly adapted. Rules governing social protection do not offer suitable coverage to musicians working for multiple employers and alternating between employment and unemployment.

Africa

In most countries, there is no system of social protection covering musical employees, except for some civil servants. In countries with such a system, musical employees benefit from the same scheme as others. There is no autonomous system, but there are schemes offering voluntary complementary cover.

Latin America

Social protection of public employees and salaried staff is guaranteed by different texts governing employment. There is no regulation specific to musical performers, who contribute like any other worker. In Peru, article 2 of the Law covering artists – which accords the capacity of employer to any natural person or corporate body that organizes, administers or represents artists – imposes the obligation on such person or body to pay the corresponding social contributions. Unfortunately, application of this text leaves much to be desired. Whether complementary or complete, private insurance also exists, but access is often determined by contributors' resources.

Comments

It is clear that social protection is costly and above all, in our opinion, must be based on principles of solidarity. Apart from Latin America, which has well-developed laws and resources that other regions do not have, it is a luxury for many countries. Setting up such a system goes well beyond the mere protection of musicians and, a priori, requires an overall approach and the implementation of national structures. This also implies that public authorities accept making employers pay. Two suggestions might, however, be put forward. First, once a system for collecting intellectual property revenues has been set up, a proportion of these revenues, particularly those that cannot be distributed, could be allocated to a fund to help musicians, to complement or substitute for a general scheme. Second, wherever there is a general scheme, it should be possible to adapt it to the specific employment conditions of musical employees, with regard to short duration of contracts, intermittent work and consequently the existence of successive employers.

8.2. Financial aspects of the social protection of salaried employees

Description

Asia

Generally representing less than 10 per cent of gross salary, rates of contribution are divided between employees and employers. Employers on average pay one-and-a-half times more than the employee. Health and retirement insurance are normally the most important items.

Africa

Where schemes exist, the contribution rates are higher than in Asia, and employers pay twice the amount of employees.

Latin America

Employees' contribution rates vary from less than 10 per cent to 20 per cent of the salary. In some cases, the employee contribution may be half that of the employer, but in others it is the same.

8.3. Administrative aspects of the social protection of salaried employees

Description

Asia

There are either government-supported private companies or social security bodies whose role is to collect funds. Services are on the basis of contributions, and artists who have never contributed are not entitled to anything.

Africa

Where social security exists, organizations under government control are responsible for collecting contributions and paying them out to those employees who are covered. As for the others, the State has no obligation. Sometimes, as in Senegal, the Ministry for Culture sets up an assistance fund that covers certain medical costs.

Latin America

The employer and the employee jointly pay social contributions. Generally it is the employer who deducts the amount of contributions from the employee's pay slip and then pays the organization responsible for collecting it. In certain places, associations have set up a system of services. In Uruguay, the union even has a private clinic for its members.

Comments

The administrative schemes are very classical, but emphasize forced saving rather than solidarity.

8.4. Legal framework of the social protection of non-salaried workers

Description

Asia

Those who use the services of performers, often “disguised employers”, are never called upon to finance social protection of “freelance” musicians under contract, especially if such a contract is a one-off. Consequently, if they want to be covered, it is up to the musicians to pay the larger share of contributions, including the employer’s share and, in compensation, receive small benefits. In certain countries, Indonesia for example, traditions of mutual aid help certain performers to subsist, but generally social insurance schemes are poorly adapted. In Japan, however, there is a campaign to make people more generally aware and improve social protection for freelance workers. Its aim is to promote the model of social insurance for artists based on German legislation.

Africa

There is no recognition of social status for performers, thus those who use the services of performers (disguised employers) have no obligation. Sometimes, if they wish, artists may “pay for” an insurance scheme, but such an enterprise is of doubtful viability.

Latin America

In order to benefit, freelance musicians must be individually affiliated to the social security scheme. Even if a contract for services exists, social obligations are not respected. Certain laws therefore provide the possibility for musical performers to be individually affiliated to social protection schemes. Sometimes the law makes membership of an artists’ association a condition of such affiliation. In some countries, a scheme for admission to hospital has been set up to enable all those who are not affiliated to receive minimum care. Colombia has developed a project aimed at improving the situation for those who are unemployed and without social cover, ensuring them a right to social security from 2003 through a solidarity scheme.

Comments

The weaknesses of the social security scheme for self-employed musicians illustrates perfectly the consequences of a generalized *laissez-faire* policy which leaves most musicians at the wayside, in the company of other socio-professional categories in Africa and Asia. In Latin America the overall situation is better and perhaps improving, here and there. Nonetheless, even in this region, freelance musicians are often poorly covered. The question of salaried status is central in this debate. It is not normal that short-term workers placed in a situation of legal subordination (assessed by criteria such as the place where the performance is carried out, working hours imposed, directives with which the performer must comply etc.) be excluded from the community of workers to whom protective rules apply and which are contained within the different labour codes. Neither is it normal that, placed in a situation of economic dependence, such self-employed musicians receive the same legal treatment as the entrepreneurs who employ them and then lose all interest in them afterwards. To say the least, it is disappointing that, in failing to make provisions, legislators in these countries have offered a strong incentive to promote this “sub-salaried” status. This enables “actual employers” to avoid their responsibilities as employers, particularly for social protection, while obliging these musicians to become affiliated as if they were employers themselves, which they are unable to do except in rare cases. *It is therefore urgent to actively support the establishment of systems of presumption of*

salaried status, omitting only those musicians who wish to remain outside contractual pressure and those in whose interest it is to remain self-employed.

8.5. Financial aspects of the social protection of non-salaried workers

Description

Asia

Very few details are available, other than the fact that the weight of social protection is proportional to the worker's income.

Africa

Practically no information exists on this point.

Latin America

When schemes provide for self-employed musicians to benefit from affiliation to social security, provided they are union members, the union may pay contributions on their behalf. Otherwise, when legislation provides for the possibility of a musical performer being individually affiliated, it is the performer who pays all the contributions.

8.6. Administrative aspects of the social protection of non-salaried workers

Description

Asia

Contributions may be collected by local authorities, state-controlled organizations, unions or performers' organizations. Where they exist (Japan), collecting societies contribute towards social protection by paying pensions.

Africa

When a social security body exists, it is supposed to receive contributions directly, but there is no mention of a collecting society for performers.

Latin America

In certain countries, self-employed musical performers are supported by a professional association, possibly a union, which covers its members' affiliation to social security. In Ecuador, the union sometimes organizes charity galas to help performers in greatest need.

Comments

In the absence of any viable form of state-administered social protection for self-employed workers, the actions of professional associations, as in a few Latin American countries, are very significant. Developing such systems can only be viable where there is active government support and appropriate legal frameworks. In addition, such a solution –

which may appear to be the only one possible in certain regions – implies economic and human resources which many unions lack.

9. Unemployment, pay and taxation

9.1. Unemployment statistics by musical category

Description

Asia

It is difficult to give precise indications on unemployment. In India, it is estimated to average between ten and fifteen days per month. Other opinions maintain that this is a personal matter, which depends on the capacities of each individual. In China, unemployment is practically non-existent. In Singapore, the rate has fallen below 2 per cent, with the result that musicians no longer require governmental help.

Africa

There are very few and sometimes no statistics concerning unemployment, but periods of inactivity vary between four and six months per year, sometimes even as much as nine months, with some months of more or less full employment, particularly for intermittent musicians. Unemployment also depends on the musical category, and is more present in category “F” than categories “A”, “V” and “J”.

Latin America

With the exception of Mexico, where it reaches on average 30 per cent, no reliable statistics are available concerning the rate and length of unemployment for musical performers. Nevertheless, it is clear that the rate is high.

Comments

It is practically impossible to obtain reliable information regarding unemployment rates, because the profession is poorly structured and musicians are generally isolated. Unemployment insurance schemes are thin on the ground, since public authorities often consider that the activity of musicians does not represent a real profession (musicians who do not perform are obliged to find work elsewhere in order to earn their living, and then no-one considers them as unemployed). Any serious enquiry would require substantial means and a considerable work of classification and investigation. The only estimations available underline the random character of periods of work, which explains the frequency of contractual situations unfavourable to performers.

9.2. Legal framework for unemployment – financial and administrative aspects

Description

Asia

With the exception of Japan, where unemployment insurance covers all employees with contracts of fixed duration in excess of six months or without-limit-of-time contracts, very little information was supplied. In most cases, this was due to an absence of legal framework or to the idea in certain countries that musicians are private entrepreneurs who should receive no help. Japan has unemployment insurance schemes for employees under

contracts of more than six months but, on the other hand, makes no provisions for self-employed performers or employees with self-employed status. In the eventuality of unemployment, the insured parties receive benefits pro rata to their monthly earnings.

Africa

There are practically no provisions for coping with situations of unemployment, except in Chad, where unemployment insurance may be taken out.

Latin America

Most countries do not distribute unemployment benefits. Where they do, benefits are paid to employees and the amounts are limited, as is the duration, which rarely goes beyond six months. They do not cover all unemployed people. Sometimes the amount of unemployment benefit is determined by the individual's family situation. In Panama, there is an unemployment fund constituted from the employees' contributions when they were working.

Comments

The situation is dramatically simple, because almost everything remains to be done in Africa and to a lesser extent in Asia. Serious shortcomings also exist in Latin America. This overall situation perhaps illustrates that developing an unemployment insurance system which might provide an income substitute is one of the most delicate "social enterprises" that a State can undertake. It is thus difficult to recommend setting up such a system for musicians in those countries where a system does not exist for all categories of workers. On the other hand, a system of unemployment insurance that excludes non-salaried musicians is purely and simply iniquitous. Where unemployment exists, "actual employers" must be forced to contribute for the workers they employ. Here again, the question of salaried status is at the heart of the debate.

9.3. Payment of remuneration

Description

Asia

As a general rule, payments are in cash, made either directly by the employer or the user, or by the agency/agent who recruited the musician. Sometimes musicians are paid in kind (for example in the Philippines in the form of a journey for a performer who has played for a tour operator).

Africa

If there is no intermediary, the musician is paid wages directly, more often than not in cash, by the employer. Otherwise reward goes through an intermediary who may be an agent but can also be a union, a cultural association or a copyright bureau.

Latin America

As a general rule, the worker receives his or her pay directly. In certain countries, payment is mostly in cash (for example in Brazil or Colombia), but in others this custom is not widespread (as in Argentina or Peru). Sometimes the union collects fees for its members, after acting as intermediary in the negotiation of the agreement. After deduction

of a percentage calculated in accordance with minimum union fees (around 5 per cent), the remuneration is then paid to the performer.

Comments

Cash rewards suit both parties, as this generally means that they do not have to fulfil formalities and meet social and tax payments. It is for this reason that certain elements of musicians' remuneration are entered into employers' accounts under the heading "overheads". Such a practice is extremely prejudicial to the musician who, in any case, remains out on a limb without any hope of sufficient social protection. If a salaried status is to emerge, it must necessarily do so via a system of remuneration that is clear-cut and above board. There is no objection to remuneration going via intermediaries if this permits effective and fair payment for musicians.

It should be pointed out that in Africa, associations and trade unions act as private agents. Such a role must necessarily be considered as going hand-in-hand with that of finding employment for musicians. The fact that intermediaries find work for musicians is not in itself a problem but, with the exception of Latin America, there is no public, cost-free service specializing in show-business, with the result that artists' interests and quality often go by the board. It can only be a good thing if associations or unions whose aim is to improve performers' situations work towards this end. This role is entirely justified, as are any fees deducted from wages, if, as is the case in certain Latin American countries, the union plays a role in managing a system of social protection and unemployment insurance created in order to compensate for shortcomings in any general system.

9.4. Level of remuneration

Description

Asia

Despite not being widespread, minimum wages exist in certain branches, for example in the Japanese or Indian record industry. Remuneration varies of course according to numerous criteria, especially the standard of living in the country, but also depends on norms for specific categories of musician according to how well known the performer is. Sometimes reward depends directly on the process of negotiation, and the strong climate of competition that can exist between musicians is often useful to employers. Free performances are not common and are often fiercely opposed by certain unions.

Africa

The same is true for Africa, except that the level of unpaid performance is higher. Musicians in a situation of economic dependence can be called upon to play occasionally without remuneration. In some countries, the State sets a bad example by organizing events for which musicians are not paid. Customs are, however, evolving and unpaid performance, often assimilated with begging (musicians have to appeal to the audience's generosity) is gradually being fought against. Finally it should not be forgotten that unrewarded overtime constitutes a considerable lack in earnings.

Latin America

Sometimes minimum salaries are fixed by law. Elsewhere, unions often fix the scale of wages. Unpaid performance is sometimes prohibited as in Argentina but is often difficult to check. Certain musicians do accept to play for free within the framework of

television promotions or minor events. In Colombia a minimum wage has been set up, whereas in Brazil, unions have drawn up an indicative scale of salaries.

Comments

The fixing of pay levels is often dictated by market forces that (with a few exceptions) rarely favour musicians, despite increasing public following for music. Unpaid performances and derisory wages represent a sort of “social dumping” made possible by the absence of any social framework. Any remuneration is accepted in order not to be eliminated from the labour market. If this circle, to which employment agencies willingly lend themselves, is to be broken, the public authorities in these regions must mobilise themselves, in particular to allow unions to intervene and offer them real collective bargaining. In such a context, the fact that contracts – and payments – pass through trade unions could be a positive thing.

9.5. Importance of income from intellectual property rights

Description

Asia

The situation is very varied, going from one extreme to the other from country to country. In some, intellectual property rights are not recognized and international treaties not signed. In others, recognition is recent and the system in the process of being set up, for example the Philippine law on intellectual property came into force in January 1998. Finally there are countries (Japan) where the system has been in operation for a long while and generates considerable sums, which are very important to the profession, notably for social protection. A noteworthy singularity in the Korean system is that this country only recognizes intellectual property rights for groups and not for individuals.

Africa

Intellectual property rights at present are insufficient and, more often than not, are not collected given the lack of any adequate structure. If an organization tries to collect such rights, it will experience substantial difficulties, as users are not able to accept such an intervention. In addition, the consequences of rampant piracy on such rights are incalculable. There is, however, a real willingness to set up an effective system. In Cameroon, 5 million French francs were collected and 420 members out of 819 registered received copyright fees. In Togo, even if the operation of the collecting society sometimes leaves room for improvement, recording rights and rights from live shows are regularly collected. In Mozambique, the Ministry for Culture was preparing a text on intellectual property rights and a collecting society, SOMA, was being set up in the late 1990s.

Latin America

A distinction should be made between those countries that have legally recognized intellectual property rights and those that have not (or not yet). The first category is more numerous than the second. Implementation of such legislation is not always satisfactory, however, particularly due to poor administration of funds collected. In Argentina, a joint body of representatives of record producers and performers carries out rights management. The poor organization of this structure means, however, that the average amount of fees paid is less than the minimum wage. Elsewhere provisions are being negotiated but the systems are not always easy to set up. In Panama, the law governing intellectual property is

very recent and the implementation of the collective management system was being regulated in the late 1990s. Sometimes, as in Peru, disagreements between unions and record producers regarding issues of collective management are sometimes a brake on any improvement.

Comments

The situation is improving in Asia and Latin America, even if some major countries do not concern themselves with the problem. In Africa, the situation is simply catastrophic. In addition to the fact that payment of copyright and performers' fees has to be legitimized by educating "consumers" and users about the notion of copyright compensation, implementing such a system may be justified by an economic and social logic that could be set out as follows:

1. Access to such rights would give minimum earnings to performers who would benefit individually (for those musicians whose performance is sold or broadcast), and also collectively by constituting funds that might partially offer social protection.
2. By substantially improving musicians' living conditions, it could be hoped that the starting point for negotiation would be raised to a higher level, so young musicians would benefit from improved working conditions.
3. By setting up a mandatory fee for disseminating recorded material, legislators could attenuate the competition to which live performers are exposed. Managers of establishments clearly make savings by replacing musicians with recordings, but if communicating such recordings to their public meant that they have to pay a fee might make them think twice before doing so.

Implementing collective management, particularly in Africa, is an urgent priority, but it would be a major project, which would require the following measures in particular:

- Setting up an administration with material means such as offices, computers, vehicles, basic documentation and above all human resources including legal knowledge, data processing skills and field training.
- Identification of users.
- Identification of rights-holders and affiliation of national residents with participation in a General Meeting.
- Reciprocity agreements with equivalent foreign organizations depending on obligations of national treatment.
- Fostering awareness with and educating the public at large, including schoolchildren, and users.
- Fiscal measures to encourage the respect of intellectual property rights.
- Cooperation with police and legal departments in combating piracy.
- Transparent measures for financial control of collecting and distributing the proceeds of copyright payments.

9.6. Fiscal status

Description

Asia

The profession of musician does not benefit from any preferential scheme. Musicians are taxed just like other professions. In certain countries, there are, however, some advantages, such as a reduction in taxation for performances of traditional music in Indonesia, or tax exemption for the purchase of instruments in the Philippines.

Africa

Generally, legislation makes no provision for any fiscal advantage, with the notable exception of Tunisia, which grants a reduction of 22 per cent on income tax, and Swaziland (where national musicians do not pay any tax). Musicians are taxed like any other worker. The tax authorities are not always very efficient and, in many cases, musicians are in effect exempted. In Chad, musical performers grouped together as an association do not pay income tax for natural persons to which all performers are liable provided that production remains small scale.

Latin America

Generally musical performers do not have any fiscal advantage, whereas writers in Argentina do. In Mexico, on the other hand, artists with a professional contract are exempt from tax. In Brazil, a cultural promotion programme (PRONAC) has been set up which allows natural persons and corporate bodies that make donations in the cultural field to obtain significant tax deductions. In the musical field, deductions can reach 100 per cent.

Comments

Even if it is sometimes difficult to talk of a fiscal policy, it can be noted that, with a few rare exceptions, the tax system that governs musicians is the same as for the majority of people, which means that there is no policy in favour of artists and generally in favour of culture, at least with regard to music. In Zambia, there are no fiscal advantages for musicians but there are for sportsmen. This situation is regrettable, for two reasons at least. First, being a musician involves financial investments that can be considerable, since equipment and certain instruments are very expensive, as well as investment in unpaid working time to practice and improve one's performance on such an instrument. Secondly, fiscal policy can provide a stimulus by inciting people using musicians for events, for example, who are employers in reality, to become recognized as such.

10. Professional context

10.1. Clandestine employment

Description

Asia

It is practically impossible by its nature to estimate the extent of clandestine work, and as this varies from country to country. There are sanctions everywhere in the form of fines for nationals, and fines and expulsion for foreigners, but there is generally insufficient control. The larger the structure (record industry, broadcasting, major hotels) of the workplace, the less widespread the phenomenon is likely to be. Many musicians tend to declare as little as possible, insofar as they cannot hope to benefit from a satisfactory level of social protection.

Africa

Clandestine work is all the more widespread because of the lack of any control where music is concerned and the fact that, in certain countries, musicians are not recognized as professionals. Although it is true that certain countries repress the practice vigorously, there are others where there is no obligation to declare workers.

Latin America

Few statistics are available. The Brazilian union claims that clandestine work affects 70 per cent of the country's musical performers, while in Peru the figure is around 30 per cent. In Argentina, available statistics vary according to the musical category in question, from 0 per cent for orchestral musicians to 70 per cent for folk and variety musicians. Generally speaking, the phenomenon is widespread, except for Uruguay, both in the musical field and other sectors. Although there is legislation combating such practice, control and sanctions are practically non-existent.

Comments

Despite numerous legal systems to tackle clandestine work, it is very difficult to quantify the phenomenon, and this is particularly true for a category of workers as poorly structured as musicians. Consequently it is hard to combat it.

The situation is serious, harms the social fabric and leads to an absence of public-spiritedness. The reason is perhaps that in many countries, it is objectively in the musician's interest to work clandestinely, as the social protection systems are insufficient to compensate for reduced earnings as a result of taxation and social contributions. It is because States tax them without giving anything in return that many musicians, already placed in difficult financial situations, opt to take the risk of clandestine work. The consequent fiscal deficit for the State is certainly high.

Generally, however, it is the employer who is responsible for clandestine work, who decides whether or not to declare the work being offered and therefore whether or not to expose the worker to this. It is quite common for balance sheets to cover up hidden remuneration under items such as "overheads" or "miscellaneous". Against a difficult economic background, workers rarely have the possibility to oppose their employer's choice.

It could be argued that reducing clandestine work indicates a State's capacity to offer social protection for its population and, from a wider point of view, to re-establish public-spiritedness. It is no coincidence that the country with the strongest social protection, Japan, is where clandestine work for musicians is the lowest.

10.2. Migration

Description

Asia

The proportion of foreign musicians working in Asian countries is negligible (less than 1 per cent in India to 10 per cent in the Republic of Korea), apart from Japan where it is relatively high. Such a situation is less due to formalities for obtaining a work permit or to taxes on work than on the lack of attraction for those thinking about immigrating to countries where the level of wages is still low.

Africa

The situation is one of extreme contrasts. Despite a generally difficult situation, certain countries have a high proportion of immigrant musicians (60 per cent in Zambia, 40 per cent in Niger) whereas in others the numbers are negligible. Nowhere are there any traces of cultural protectionism even if, in the past, countries like Chad introduced such measures. There are practically no administrative formalities for working. In Mozambique, however, foreign musicians must obtain a contract signed by a national promoter, and authorization from the national culture organization.

Latin America

As a general rule, unions are very vigilant when it comes to musicians of a foreign nationality. Even if the proportion never exceeds 20 per cent of the population of musical performers, the stakes are important. Certain countries have implemented a work permit for foreigners, measures of cultural protectionism or specific measures aimed at giving priorities for hiring or compensation measures in favour of nationals (see Appendix 1). In Mexico, there is a law that limits the threshold of foreign musicians to 25 per cent. In Peru, foreign performers who decide to work must, in addition to their work contract and visa, obtain a "pass" issued by the union, a provision that is regularly sidestepped. Any show on Peruvian territory must have at least 80 per cent of performers being Peruvian residents. Television and radio programmes must respect a quota of 5 per cent of national productions, and in cinemas showing new films, the law imposes a projection or a presentation of a Peruvian artist, at least five minutes of film or ten minutes live. More often than not, however, laws are neither respected nor applied, despite the risk for employing local performers and the regular protests from unions. For example, a Colombian legal ruling refused compensatory measures.

Comments

Immigration does not pose a real problem either in Asia or Africa, even if, generally speaking, legislation in Asian countries is fussier, so long as it concerns a small minority of people (in Asia, except for Japan, and a few countries in Africa). In Latin America on the other hand, the situation is different. Here trade unions demand, sometimes in vain, that protective and compensatory measures be taken, often planned in advance and extremely detailed.

Some African countries have a considerable proportion of foreigners, but have not introduced protective and restrictive measures, perhaps because many States were founded in the recent past, their frontiers being defined either in a totally arbitrary way or determined by geographical features (rivers, mountain ranges, etc.) rather than whether people belonged to a specific ethnic group. In the socio-political reality, of which culture is one of the important elements, it would appear that belonging to an ethnic group or clan is more important than belonging to a country. Nationality as a concept does not always suit the African context, and sometimes does not even mean much at all for those Africans concerned. Thus a national of a neighbouring country may be more integrated when of the same ethnic group as the locals, rather than a fellow-countryman belonging to a different ethnic group. Such a situation could also explain why cultural protectionism measures at the national level might not be meaningful or are sometimes difficult to understand. Unlike a nation, an ethnic group has no legal entity, thus no protectionist measures are likely to be envisaged, except at a regional level encompassing several countries. Such a situation affects the employment of musicians. A reflection along different lines in Asia and Latin America could be developed with regard to broadcasting or the recorded music market.

10.3. Freedom of association

Description

Asia

As a general rule, freedom of association is recognized in legislation, with the exception of civil servants in certain countries. Such formal recognition is, however, weakened by a conjunction of phenomena making it uncertain or even theoretical. Thus certain texts provide for intermittent and self-employed performers, among other categories of workers, to have the right to organize themselves but not the possibility of bargaining collectively. In practice, there are often risks of anti-union discrimination, sometimes even more so for union officials than ordinary members, but performers are concerned over the risks to employment that might result from belonging to a union. Engagements can rapidly dry up and, given the difficulty in proving anti-union discrimination and the weakness of recourse to justice, musicians often prefer not to have anything to do with unions. In India, structures have been set up to protect the interests of workers, but unions do not often use them, preferring direct negotiation.

Africa

Union freedom is widely recognized, except for civil servants; but here as well, the reality is often disappointing, owing to the relatively small number of union structures set up, and sometimes also because of too great a dependency on governments. There are often performers' associations that are not yet unions; transforming them is not always an easy task, especially since having a second trade (wrongly) harms the legitimacy of professional unions. Thus, in Zambia, the professionalism of musical performers is not recognized, and some musicians are, in accordance with their second trade, members of the union for agency employees or teachers. On the other hand there does not seem to be any systematic practice of blackmail against those wishing to join a union.

Latin America

Union freedom is guaranteed by law, sometimes at the constitutional level. Certain laws exclude public sector musicians from benefiting from such freedom, whereas other recognize it even to the point of providing for collective bargaining. Although it is true that some countries have a strong union tradition with well-structured organizations, many unions complain that they are not sufficiently heeded by public bodies.

Comments

Freedom of association is one of the major principles common to all labour laws. The specificity of performers' professions for those not belonging to a permanent orchestra means that application of this principle is a particularly thorny issue. Two series of explanations might be useful for understanding the present situation:

1. In most cases, musicians are recruited for a fixed, often very short period. They find themselves in an extremely precarious and vulnerable situation in relation to their potential employers, who do not have to explain why they chose to engage one artist in preference to another. Given this context, it would be pointless to try to explain that the reason for non-recruitment, and even, to a lesser extent, for dismissal, was the fact that the musician belonged to a union, except in cases where the employer made an incredible blunder. In addition, how many musicians would not fear permanently damaging their reputation with other potential employers by having recourse to union action or justice?
2. It is clear that unionism is stronger if all workers are clearly defined. There can be no real change without voluntary action on the part of governments to improve the status or the social condition of musical performers, who will then have a real choice between joining or not joining a union without any external pressures. Without excluding recourse to law when freedom of association has been restricted, the only chance of government action being successful is for it to take place within the framework of sustained cooperation between employee and employer unions.

The question of union freedom for public sector workers arises in many countries. In the preparatory work for the ILO's Convention No. 87, it was emphasized that freedom of association should be guaranteed just as much for public sector workers as for private sector employees. The question might be posed about freedom of association for civil servants belonging to musical groups in the armed forces or the police, since Convention No. 87 authorizes exceptions to freedom of association for these categories of public sector workers. Such an exception is, however, only justified by the responsibility of personnel maintaining order and the internal and external security of the country. In reality, although musicians belong to the armed forces or the police, they do not exercise functions of maintaining order and security and, ipso facto, need not be placed under the exceptions that exclude union freedom, especially because States should set an example for private sector employees.

10.4. Trade union rights

Description

Asia

On union action, the situation varies widely from country to country. Some countries do not have any real unions and hence no union rights. In others, such as India or Japan, unions are widespread. In Japan, unions are considered to be the legitimate representatives of musical performers and are authorized to negotiate and sign agreements on wage rises, working hours and more generally on the improvement of working conditions. The State informs them regularly about reforms that might affect the workers they represent. Over the past five years, they have mainly been concerned with improving salaries and conditions of work, protecting performers' fees and improving union structures. Union demands tend to prioritise the recognition of intellectual property, implementing a system of medical insurance and increasing budgets in favour of cultural policies.

Africa

With the exception of a few countries whose laws remain silent on the matter, or where unions have been requested to “be on standby” (notably in Tunisia), union activity is defined by legislation. Although union activity is still very limited in many areas, there are signs of increasing presence almost everywhere, which makes this study of particular interest and should foster a more general awareness. Some associations are presently restructuring themselves to become unions. When these are set up, they are sometimes asked to give their opinion on governmental reforms affecting musicians, but this is far from being systematic. It is difficult to really talk of collective bargaining. Up to now, union action has essentially been concerned with demands for the State to become more involved in culture, management of intellectual property rights, the implementation of a system of social protection or demands for more specific targets such as reducing customs duties on imported musical equipment. Finally, concerts, seminars or actions in cooperation with schools are organized on a regular basis, particularly in Mozambique.

Latin America

Generally, Latin American unions have a strong field base but encounter some difficulties in exercising their rights. Certain are also experiencing financial problems and problems of representativity. Unions are rarely or even never consulted by governments before taking measures regarding musical performers, and receive little support from governments during collective bargaining, if and when this exists.

Unions are presently undertaking various activities, such as contributing to the debate about implementing insurance systems, modifying and improving laws which have a bearing on the situation of musical performers. The Ecuadorian and Panamanian unions have, for example, put forward proposals for improving the status of performers, both via the law and by specific actions. Unions also contribute legal and personal assistance in the form of administrative training and implementation of cultural projects by the Brazilian union and lessons in musical training, particularly by the Argentinean, Peruvian and Uruguayan unions.

Comments

Union freedom only has any meaning if its action is effective. At several points in this study, suggestions have been put forward which often involve union actions. It is not an exaggeration to say that intelligent and acceptable union action is the cornerstone of the whole project through which the profession of musical performer can obtain true recognition. At a general level, unionism is only meaningful if it is intended as a structure for professionals, thus necessitating the existence of a professional status, even if this is included in an overall definition applicable to other categories of workers. Then there is the exercise of trade unionism, without which principles are meaningless. Unionism should be a good tool to advance the demands of a professional group vis-à-vis the state, but in order to be effective it must necessarily evolve towards a modern form of action, namely collective bargaining. Thus African unions that until now only dealt with the State must also deal with employers or users. Collective bargaining could be institutionalized with the support of the government, a necessary step given the fact that it is far from being widespread. The State could also give impetus to the dynamism of collective bargaining. Finally, in accordance with what was mentioned previously, unions have a major role to play in implementing systems of collective management of intellectual property rights and social protection.

10.5. Level of union membership

Description

Asia

Membership level varies by country and according to the musicians' speciality. It can be between 5 and 90 per cent (level of union membership for musical performers working in hotels and restaurants in the Philippines). All musicians who belong to a union must pay a membership fee, either a lump sum or a sum based on monthly earnings. This fee enables the organization to pay its administrative expenses, given that union leaders often work for the union on a voluntary basis. The Indian union has set up a "lifelong" membership system and, in addition, organizes auditions to test its new members.

Africa

Although it is difficult to have an exact idea of the proportion of unionized musicians, and despite the lack of information, it would seem that in those countries where a union is active, the level of union membership is high, at least in sub-Saharan countries. Such is the case in the Cameroon, where membership fees are calculated per category on a lump sum basis. In Niger, there is considerable solidarity around the National Association for Composers and Performers of Modern Music (ANACIMM) so as to try and approve their rights.

Latin America

Figures are insufficient here to be able to properly measure the influence of union organizations. It would seem, however, that membership levels are highest among ensembles rather than musicians playing on their own. In certain countries, the rate is very high, a reflection of the deep-rooted dynamism of certain union organizations.

Comments

Membership level is a fundamental item determining the capacity for a union to act efficiently on behalf of musicians. A union that registers a membership rate over 50 per cent for example has substantial resources, giving it some independence. But it also has more "political" legitimacy to express its opinion, both on behalf of its members and for the profession as a whole. It objectively becomes a force to be reckoned with. It can also have the power to call a strike. At the present it certainly represents the only means to redress the balance, which is much too favourable to employers. It is logical that membership level is higher with ensemble musicians, particularly in Latin America – they benefit from generally more stable situations and they already form part of a "collective" body which certainly favours union membership.

10.6. Collective agreements

Description

Asia

In those countries that respect union rights, collective agreements have an important bearing and represent the most efficient way of guaranteeing performers' rights. In India, collective bargaining enables wage rises and compensations to be obtained. This is all the more important since many laws can be applied and rigorous sanctions issued if this is not

the case. Thus collective bargaining helps to raise rewards, to fix working conditions either generally or in part, but also to exercise intellectual property rights. On the other hand, in countries that do not respect union rights, collective bargaining is not recognized or ensured.

Africa

There is little real collective bargaining and practically no collective agreements, particularly due to the failure of organizations representing employers to do anything about this. It is a matter of urgency to get the process started.

Latin America

Collective bargaining exists only in a few countries and, with some exceptions, the situation is generally unsatisfactory. In Argentina on the other hand, the practice is quite widespread and has led to the setting-up of minimum wage thresholds by activity – the amount received for a first use, additional contributions for musicians' health schemes, reuse and/or rebroadcasting fees. Lack of efficient controls have, however, contributed to such collective agreements not always being scrupulously respected. In Mexico, the law requires that, within the framework of collective agreements, working conditions be freely negotiated between parties. Such agreements should not be less favourable for workers than current provisions.

Comments

Collective agreements are in many ways the result of union action, a positive outcome to the process made possible by the combination of freedom of association and collective bargaining. It is clear that in a context where employers are in a position of force, they will only accept granting social advantages when convinced that they will lose out by not negotiating. Strength is therefore necessary in order to compensate the economic imbalance in the contractual relationship. Given the specificity of the profession, the exercise is particularly perilous and requires united, numerous and determined musicians fully aware of their rights and legitimate aspirations and helped by governments conscious of the importance of the social and cultural stakes. Governments should be ready and willing to support collective bargaining. This is how a generalization of procedures for extending collective bargaining – transforming collective agreements into “laws” so that the provisions of such agreements may be applicable to all, including those who have not signed them – would give collective bargaining a completely different dimension than in the present context.

11. Need to organize a general census

It is likely that the great difficulty in carrying out a census of musical performers stems from the extreme volatility of employment of a certain number of musicians, who are obliged for economic reasons to cease their musical activity in order perhaps to resume it later on. Adopting a professional status for musical performers in all these countries would make it much easier to establish statistics. The unreliability of statistical information received makes it impossible for us to propose any meaningful analysis, hence the necessity to carry out a census in Africa, Latin America and Asia, which, in our opinion, should be the fruit of a common methodology common to all States and which could be proposed by the ILO.

Detailed information on figures for each country is given in Appendix 1.

12. Some relevant provisions for defining the status of a musical performer

The information collected during this study is both rich and contrasting. We feel that certain aspects are encouraging and would make it worthwhile trying to outline a definition of the status of musical performer. The interest in such an exercise lies in the fact that we would only take into account experiences, provisions and various measures that are not theoretical.

The legal framework

The situation of performers is often rendered more delicate by the fact that differing legal frameworks often provide insufficient legal and material security. Paradoxically, there are labour laws everywhere. Given that performers are workers in all senses of the term, it would be logical to guarantee them a work contract when a relationship of subordination exists, notwithstanding the nature of the contract. The law should guarantee this principle by setting up, as in Argentina, a presumption scheme – a working contract is presumed to exist from the moment when there is a contractual relationship – or a compulsory rule as in Peru: the Law of the Artist and the Regulations of Social Funds provide that “corporate bodies or natural persons, regardless of nationality, who engage, produce, organize, represent or administer artistic productions, have the capacity of employer and assume the responsibility of paying corresponding reward, remuneration and fees”. Given the specificity of the profession of performer, specific texts need to be implemented in order to complement texts of a general nature with suitable provisions. It is possible to achieve this objective either through legislation concerning the performer as in Argentina, Ecuador or Peru, or by adding a specific chapter to the Labour Code. Thus, in Mexico, in section 6 of the Labour Law devoted to “special” work, chapter 11 deals with regulations concerning musicians and actors. We should not neglect the influence that justice can have in determining the status of employee. In the “Torillo” case, the Supreme Court of the Philippines decided that a performer who had been engaged without written documents beyond a period of six months became a permanent employee, and that all the provisions of the Labour Code were applicable to him.

Finding employment for people

When recruiting, having recourse to an intermediary can be useful in itself so long as such a practice does not lead to misunderstanding the rights to which performers may legitimately aspire. From this point of view, the union intermediary, as in Mozambique or Uruguay, constitutes a definite guarantee, in particular enabling union control to be exerted where artists’ contracts are concerned. Ecuador’s law offers a minimum guarantee to the performer recruited via an agency by setting up joint and several responsibility between the agency and the employer, whether this be from the point of view of remuneration or any other obligation written into the law.

Professional status

The creation of a professional status could help to identify a solution to the delicate debate over criteria for professionalism. In order to ensure that all musicians benefit from good working conditions and fair competition, the Argentinean law on the “musical performer” provides for the setting up of a joint committee, made up of State representatives and unions in order for competency tests to take place. This measure is in the process of being implemented and it is consequently too early to say whether its effects will be positive or negative.

Form, content and duration of contracts

Unions are in the best position to negotiate provisions that are favourable to performers and from which they can benefit. Certain negotiations in India are extremely positive and have helped to draw up collective agreements by branch, applicable to all contracts entered into in the sector of activity. The possibilities for collective bargaining are not, however, so well developed elsewhere. For this reason, the law must establish rules that protect performers against clauses that are too unfavourable, but also provide sanctions against those who do not respect their obligations. In Mozambique, for example, the government has firmly drawn up a standard and mandatory contract providing respect for minimum rules regarding remuneration, due dates for payment or the respect of moral rights, and failure to meet such rules entails application of a fine. The existence of such a contract does not however limit the subjects open to negotiation. In several Latin American countries, precise rules and minimum requirements are fixed by law, like Brazil, Ecuador, Mexico, Panama or Peru where the contract must necessarily be written, and in the absence of such written contract, employers may not invoke the artist's obligations whereas artists may insist that their rights be respected. The validity of the contract is not affected but its demurrability (openness to objection) with regard to the performer is. Apart from details such as the name, address, nature of the activity, place, duration of work, remuneration etc. certain laws include interesting stipulations. Colombian law, for example, provides that exclusive rights contracts must be entered into for a minimum length of two years and that these should not affect public performance rights. Ecuadorian law provides for the payment of compensation if the performer has to travel. Similarly, the entrepreneur who cancels a show without good reason has to pay a remuneration to the artist – the same provision exists in Panama or Uruguay for contracts of fixed duration which are broken before the due date – and infringements or sanctions applied to the artist for breach of contractual obligations must be stipulated in the contract.

Duration of work

The law must also contain stipulations regarding duration of work which, given the specific aspect of the activity, cannot be comparable to the general norm. In Indonesia, the average working day is made up of three sessions of one hour, with twenty-minute breaks. In India, periods of work in a recording studio are fixed by the union, and exceeding the time limit means that overtime has to be paid. So as to balance the different services, no musician who takes part in recording for a film may record more than one song per period of work. In Peru and Brazil, the length of daily work is respectively limited to four-and-a-half and five hours, and periods of paid weekly rest of twenty-four hours.

Health protection

Even if there is no specific legislation guaranteeing performers' social security, numerous texts do exist covering workers' social security in general. In this area, the provisions of Mexican law are of great interest insofar as, on the one hand, they require enterprises to comply with legislation regarding health and safety and, on the other, hold the employer responsible for any accident occurring during working hours or any occupational illness.

Professional training

In order to guarantee the continued development of music, a system of professional training is essential, both at the outset but also on an ongoing basis. In those countries where it has been set up, such training depends on the State or international cooperation (in Africa and Latin America). In Benin, an inter-ministerial body uniting the ministries of

culture, labour and health and international cooperation jointly finance such training. In Niger, musical performers benefit from training and further training courses in a specialized centre. In Cuba, Mexico and Nicaragua, state institutions organize training, courses or lessons. In Argentina, Panama or Uruguay, training is directly provided by unions who have set up music schools or conservatories. These twin systems of training need not be mutually opposed. They can be complementary and improved by employers' contributions. Thus, in Mexico, in addition to the action carried out by the abovementioned state institutions, agreements have been drawn up between the SUTM union and the employers, so that employers pay a fee to the union's music school.

13. Proposals

In conclusion, four specific proposals for action may be envisaged:

1. Promoting systematic recourse to standard contracts drawn up with the help of unions, as well as legal norms that clarify performers' status.
2. Promoting a high level of protection for performers' rights, particularly on the basis of the 1996 WIPO Performers and Phonograms Treaty, as well as the implementation of viable structures for collecting and sharing such rights.
3. Creating an inventory and a programme of union training, together with a mechanism for financial support, which will benefit union structures and apply the recommendations resulting from such a programme.
4. Creating a programme for training musical performers in new digital recording and communications technologies.

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Appendix 1

Detailed presentation of the situation of musical performers

This appendix, a richly-detailed document transcribing the replies to the questionnaires summary of which is provided in Chapter 6, is unfortunately only available in French.¹ That text covers the following countries:

Asia: China, India, Indonesia, Japan, Republic of Korea, Philippines, Singapore and Thailand.

Africa: Algeria, Benin, Cameroon, Chad, Guinea, Mali, Morocco, Mozambique, Niger, Senegal, Swaziland, Togo, Tunisia and Zambia.

Latin America: Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Nicaragua, Panama, Peru and Uruguay.

¹ See J. Vincent, *La situation sociale des artistes-interprètes de la musique en Asie, en Afrique et en Amérique latine*, Document de travail SECTOR WP.171, Geneva, ILO, 2001, pp. 59-197.

Appendix 2

Conclusions of the ILO Tripartite Meeting on Conditions of Employment and Work of Performers (Geneva, 5-13 May 1992)

Conclusions concerning the conditions of employment and work of performers¹

The Tripartite Meeting on Conditions of Employment and Work of Performers,
Having been convened by the Governing Body of the International Labour Office,
Having met in Geneva from 5 to 13 May 1992;
Adopts this thirteenth day of May 1992 the following conclusions:

Employment and unemployment

1. Governments have an important role to play in creating a climate in which the performing arts can flourish. This is vital not only from the point of view of economic development, but also from that of social development, of which the national culture is a prime component. Only by maintaining employment opportunities for performers can the quality of the performing arts in a country be preserved at a high level. Attention should also be drawn to the effects of technological change on restructuring employment patterns of performers. The absence of employment opportunities in the developing countries in particular can lead to the emigration of talent which may in turn lead to an impoverishment of their national cultural heritage. National and international action is necessary to ensure a more balanced geographic distribution of the performing arts.
2. Within the performing arts, private institutions, profit making and non profit making, and public bodies, all have a valuable role to play in satisfying public demand and in providing employment for performers. The market is the natural focus for profit making institutions, whereas the more specialised areas in the performing arts require financial support in order to be viable. Experience shows that a pure market approach may restrict the choice available to the public, for example of some large scale musical and theatrical works and minority art forms which are costly to produce in relation to possible market response. On the other hand, market forces have opened up many lands to other cultures and entertainment opportunities. Public authorities at all levels therefore have a role to play in providing financial and other support to ensure continued public access to a broad range of cultural experience. Private sponsorship can provide valuable additional resources, but it is unrealistic to expect that it can replace government support. It is necessary that care should be taken to ensure that publicly funded activities do not enter into unfair competition with private initiatives.
3. Underemployment of women and ethnic minorities in the performing arts has been observed to be a problem by the organizations representing performers. Collective bargaining is one mechanism whereby remedial action may be taken to deal with the problem of discrimination, e.g. the establishment of monitoring arrangements for the employment of women and ethnic and other minorities. The public authorities have the fundamental task of adopting and enforcing general legislation to outlaw discrimination, but they may also help achieve improvements in practice through their guidance to arts institutions including those receiving public subsidies.
4. A wide pool of talent is essential for the success of the performing arts. Public educational institutions have the main responsibility for developing young talent, while many employers also have an interest in developing training opportunities, within the scope of the enterprise, for the

¹ Adopted by consensus except for paragraphs 17, 18 and 30, on which a majority of the Employer members expressed reservations.

skilled labour on which their activities depend. Since no single organization can be expected to provide training to performers employed on an occasional basis by many other institutions, industry wide training schemes have a vital role to play. Where these do not come into being otherwise, the public authorities should take the necessary measures to establish them. Special attention should be paid to the need to ensure equitable training opportunities for women and ethnic minorities. Initial training of performers should be sufficiently broad to permit flexibility and facilitate movement within the profession. Retraining should be available to assist performers in making career transitions, particularly those affected by technological developments or exercising professions in which the active working life is short.

5. The placement of performers in employment is a specialised activity and in most countries there is consequently a need for private agencies in this particular field. However, it is important that the public employment agencies should also develop services as not all performers are adequately catered for by private agents. Governments should adopt legislation to regulate private fee charging agencies and ensure that it is enforced in practice. The legislation should include the provisions contained in the Fee Charging Employment Agencies (Revised) Convention, 1949 (No. 96). Agents should not normally act as employers. If national law provides that this may happen, care should be taken to ensure that performers are properly protected.

Labour relations and determination of conditions of employment

6. Performers should enjoy the same rights, in terms of freedom of association and collective bargaining, as other workers, in line with ILO principles as contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and in the related jurisprudence of the ILO supervisory bodies. Designation of performers either as self employed persons or as public servants should not be invoked as a reason to deny them these basic human rights. It is clear that performers, even if they are employed in the public sector, cannot be said to be involved in the administration of the State; they should therefore enjoy full trade union rights.
7. Given the nature of the profession, special care should be taken that any regulations concerning the minimum size or operation of workers' organizations of performers conform to ILO principles and do not deny the rights of performers to voluntary collective bargaining.
8. The role of governments extends beyond simply recognising the rights of performers and their employers to organise and to bargain collectively. In view of the special circumstances of the performer's work, governments should make a special effort to encourage the development of independent employers' and workers' organizations and of voluntary collective bargaining in this field, especially in countries undergoing transition to a market economy, in which these are still rudimentary. Governments should recognise the role of performers and the arts in establishing and maintaining the cultural fabric and heritage of their nations.

Working time and earnings

9. From the point of view both of performers and of their employers, the primary considerations in determining the duration and organization of working time are the well being of performers and the need to preserve the quality of performance. In general the best results in questions relating to working time and earnings will be achieved through voluntary collective bargaining, since only the parties directly involved are fully aware of the needs of the profession. However, in the absence of effective collective bargaining and to deal with those cases where statutory protection is also required, legal norms should be established to ensure that performers, like other workers, have reasonable minimum rest periods.
10. Performers are in general motivated by non financial considerations, in their dedication to their art, often undertaking long periods of professional training, and they should be able to achieve an adequate standard of living, in line with the norms of the societies in which they live and work.
11. Juvenile performers make a unique and indispensable contribution to the arts. Governments, employers' and workers' organizations all have a role to play in providing them with the necessary special protection in all aspects of employment and earnings. The performing arts should not be

exempted from protective legislation, though special provisions may often be necessary and appropriate. Collective bargaining also has an important role to play in ensuring fair treatment and good working conditions for juvenile performers.

Social security and problems associated with fluctuating earnings

12. Performers should enjoy social security protection equivalent to that of other workers. The implementation of this general principle demands that special consideration be given to distinctive characteristics of their profession, relating to their contractual status, their intermittent and frequently short term professional activity and their fluctuating earnings. Social security systems should examine how their provisions may unintentionally penalise performers and adapt these provisions accordingly. Problems of contractual status should not be an impediment to performers having an appropriate level of social protection. Governments should consider the possibility of assimilating performers to employees for this purpose.
13. While basic social protection should be provided for performers, as for other workers, through statutory social security systems, collective bargaining has a valuable role to play in supplementing and providing for any gaps in such protection. For performers who have many different employers, schemes may be set up under multi employer collective agreements providing mobility, retirement and other occupational benefits covering the sector as a whole, administered either by the employers or jointly or solely by the workers, organizations; In this way, freelance performers may be accorded occupational benefits equivalent to those enjoyed by permanent employees. In designing benefit provisions, account should be taken of the unusually short working lives of certain categories of performers, such as dancers, with emphasis on training and assistance in taking up a second career.
14. Just as performers may be at a disadvantage under social security legislation, so too they may be unintentionally penalised by income tax systems. Their fluctuating earnings and their exceptionally high work related expenses are major factors to be taken into consideration. Such expenses include the purchase of musical instruments and other professional equipment, special clothing, the services of photographers, travel, child care, etc. Appropriate provisions should be available to performers, allowing them to average their earnings over time for tax purposes and to allow tax deductions for expenses. Governments should review taxes and duties on musical instruments and other professional equipment in cases where these are wrongly classified as luxury items.

Performers' rights as regards the uses of their performances

15. In recent decades, technological developments have resulted in an enormous growth in the uses that are made of recorded productions, but in many countries the right of performers to share in the benefits derived from these uses have not kept pace with the developments in question.
16. Performers and their employers have a common interest in securing adequate protection against piracy and similar unauthorised uses of both audiovisual material and phonograms/sound recordings, since at the present time these activities are resulting in enormous economic losses to performers and their employers, which in turn is reducing the funds potentially available for future productions.
17. National legislation should provide all performers with the right to authorise or prevent the broadcasting or recording of their live performances and to prevent copies being made for uses other than those which they originally authorised. They should also have the right to equitable remuneration from those who use their commercial recordings for broadcasting or other communication to the public, in accordance with the Rome Convention. It is important that rights to equitable remuneration be accorded both to performers and to producers of phonograms/sound recordings. Recognising the rights of producers of phonograms/sound recordings alone is unsatisfactory, since performers may not be sufficiently well organised to negotiate a fair share of the proceeds and the collective agreements they conclude may be subject to interference on the part of the public authorities.

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18. Under national legislation to establish a framework of rights for audiovisual works and phonograms/sound recordings, performers and their employers may work out detailed collective agreements and schemes for the administration of rights. These rights should ensure that performers are compensated for the increased use of their performances, and employers should have the full economic value of their investments. Collective bargaining alone does not provide an adequate basis for protection, since, in the absence of appropriate legislation, there are no sanctions that signatories to collective agreements can bring to bear on third parties making unauthorised use of their products.
 19. Legislation on performers' rights should apply not only to performers of literary or artistic works but to all categories of performers whose work may be recorded and used by others, but such rights should be without prejudice to other rights holders.

Health, safety and the working environment

20. The emotional pressure and stress to which performers are exposed are to a large extent an inherent part of their profession, but their human and social costs are very real and need to be recognised. Other factors may put the health of performers at risk including inappropriate lighting and temperature, excessive noise, poor air quality, physical strain and ergonomic problems.
21. Worker safety representatives, which include trade union safety representatives, with direct and detailed understanding of the problems facing performers have an important role to play in the prevention of accidents and occupational diseases. Legislation should ensure that workers are not compelled to work on productions that are unsafe. Cooperation between workers' organizations and employers in the planning of productions, for example, should be considered in order to help avoid risks related to unrealistically tight production schedules. Effective prevention also requires that labour inspectorates have adequate resources and specially trained personnel with a knowledge and understanding of the special risks facing performers.
22. Over and above any existing statutory obligations, workers' and employers' organizations should include safety matters in the scope of collective bargaining, should collaborate in the development of safety codes and should consider other joint action to help in the prevention or cure of health problems affecting performers. The activities of specialised occupational health centres are especially valuable in this respect and the results of their scientific research should be used in the training of performers to avoid future health problems for them. Initial, on the-job and all other training should lay much greater emphasis on how performers may exercise their professions in a safe and healthy manner.
23. Particular attention should be paid to the safety of performers and other personnel during "action sequences", or stunts, in film, television, theatre productions, etc. Experience in one of the world's major film industries shows that collective agreements and joint safety committees have a particularly valuable role to play in this connection and ways should be found to enable performers and employers elsewhere to benefit from this experience.
24. Appropriate compensation should be provided through social security systems or insurance schemes to performers injured at work or suffering from work related diseases. Lists of occupational diseases should be revised to include conditions peculiar to the performing professions, since otherwise a heavy and unfair burden of proof may fall on the disabled performer. The demands of the particular profession should be taken into account in evaluating the gravity of impairments suffered by performers.

Future ILO activities

25. The ILO should collaborate with government and other international organizations in efforts to produce standards for better statistics on the employment, underemployment and unemployment, earnings and occupational safety and health of performers. Moreover, studies should be undertaken on the economic impact of cultural activities and on the effect of technological change on performers' employment.
26. The ILO should continue to concern itself with the interests of performers as workers, both within the context of its own activities and in other fora, such as the Intergovernmental Committee

established under the Rome Convention. It should assist in the development of workers' organizations and of employers' organizations and in the promotion of collective bargaining in the performing arts.

27. The ILO should call upon governments to adopt legislation in conformity with Convention No. 96, to regulate private placement agencies in order to prevent abuse of performers and of their employers.
28. The ILO should include the problems of performers within the scope of its research on occupational safety and health and should examine ways to promote the adoption of joint safety codes or model agreements developed by employers' and workers' organizations. It should carry out an in depth study concerning safety and health in the performing arts in order to examine the requirements in that field.
29. The ILO should consider the special problems facing performers in developing countries, particularly in the countries of Africa, and examine the possibilities of organising a meeting and other activities in this area.
30. The ILO should point out to member States that one of the best ways of enhancing the conditions of performers whose performances are recorded is to introduce legislation, granting rights consistent with these conclusions.
31. The ILO should envisage convening regular meetings specifically for the performing arts.
32. The ILO should call on governments to respect artistic freedom and to refrain from exerting political pressure on performers and art institutions.

Appendix 3

Statements concerning performers made during the ILO Symposium on multimedia convergence

(Geneva, 27-29 January, 1997)

The impact of convergence on the conditions of work of performers

Changes in the production system and in the working conditions
of musicians: The influence of technology on the human mind
and human activities
(Shinji Matsumoto)

It is often said that multimedia will stimulate people's artistic and cultural sensibilities and open up a new world of communication. Multimedia is seen as a key industry of the twenty-first century in Japan. It is often described in positive tones. But today I would like to talk about another aspect of recent developments, that is, the impact of digital technology on musical performers.

Until the 1960s, if you went to a recording studio, you would find 50 performers, including soloists, playing together under the direction of a conductor. The conductor and the musicians worked together to complete the musical piece. Composers, singers and performers shared time and space and, by communicating closely with each other, they completed the recording together. There was a sense of solidarity among them as they created music together.

Many of the studio musicians were employed by the recording companies. Yesterday an employer member mentioned that many workers, including musicians, preferred self-employment; however, as far as musicians are concerned, we preferred being employed by the recording company. Nowadays, the labour relationship has been converted from one of contractual employment to one of non-employment. The relations between musicians and employers have become very weak, and this is a source of deep concern.

With the development of technology, simultaneous recording has gradually disappeared. Different groups of instruments, such as rhythm, string, woodwind and brass instruments, are recorded separately and sound engineers combine them later onto one track. Afterwards, the vocal element is added to complete the piece. As a result, performers simply play their parts according to the musical score without ever hearing the whole piece.

In the mid-1960s the synthesizer emerged and enabled the use of digital sound sources. This changed the recording studio tremendously. Where there had been human performers, now there was the synthesizer. Human performers disappeared from the recording scene and synthesizers took the place of musicians. The new skills of the synthesizer programmer were used to bring the sound as close as possible to that desired by the composers. At first, instruments which produced simple sound waves, and then almost all instruments, were replaced by synthesizers, as sampling technology made it possible to create a tremendous variety of sounds with synthesizers. The synthesizer came to dominate the musical world, as it replaced almost all musical instruments. Currently, the only acoustic instruments remaining are highly specialized ones. Otherwise, musical instruments are simply used to add depth and flavour to synthesized sound.

Then came the MIDI standard. The computer became the controller of the synthesizer and performers were placed under even greater threat. Through years of hard training, they had learned to express their musical talent and had finally established themselves as musicians. Now, however, with the introduction of computer-controlled synthesizers, even people without professional musical skill could enter data into the computer and take part in musical production. As a result, the professional status of musicians has been threatened. The tendency for acoustic instruments to be replaced by synthesizers or computers is rarely used for the best-selling musical pieces. However, as far as film soundtracks, commercial music, the music used for computer games or the sound sources for karaoke are concerned, these are mostly mechanical sounds produced by synthesizers. Under

these circumstances, many studio musicians are struggling to survive in a storm of technological unemployment.

Synthesizer programmers, who replaced the human musicians, enjoyed initial popularity. However, with technological innovation, synthesizers became available at very low prices, they became easy to operate, and the programmer's function was also deskilled.

Altogether these changes have had a major impact on the working conditions of studio musicians and have raised three major problems. First, because musicians are under the constant threat of losing their jobs, they are not powerful enough, either individually or collectively, to conduct effective bargaining to improve their working conditions. This has resulted in the relative decline in the recording fee. Over the last ten years the minimum performance fee of studio musicians for broadcast productions has increased on average by 35 per cent, but that for record production has risen by only 20 per cent. Second, since studio musicians are freelancers, they are not entitled to the same social benefits as employed people. If they lose their jobs, they receive no unemployment benefits. The third issue relates to copyright and neighbouring rights. A major question that we have to address is whether synthesizer programmers or sound producers using the computer fall into the category of performers under copyright law and whether they may claim remuneration on the basis of neighbouring rights.

How have the life and work of performers changed with increasing multimedia production? A very large number of CD-ROMs under production are to be used for multimedia computers. However, as far as performers are concerned, this situation has not led to improved employment opportunities. Musical pieces are mostly downloaded from existing CDs. Even when a decision is made to create new sounds, the sound is produced by an extremely small number of people. Multi-channel digital TV broadcasting has started using communication satellites. However, the majority of broadcasts simply reuse existing programmes or foreign programmes imported into Japan. While there has been a slight increase in the coverage of live concerts, that has not resulted in more work for musicians.

The multimedia content providers or broadcast operators say that content is important, but in reality rather than making new products, they often simply import the products from overseas or reuse existing ones. As a consequence, in many cases the neighbouring rights granted to performers have come under attack. In exchange for appearing in a programme, in many cases performers are obliged to sign over their neighbouring rights on the programme to the producers.

Beginning in 1993, a new treaty for the protection of performers and producers of phonograms was discussed at the World Intellectual Property Organization (WIPO) and the treaty was adopted at the end of last year. Many performers had expected a greater protection of their rights corresponding to the needs of the multimedia era, but the Convention actually adopted was anachronistic and a great disappointment. It failed to recognize the right of performers in audiovisual works.

Social communication has changed in its nature. Economic rationale has been the overwhelming concern and people have stopped thinking deeply and spending time on art and culture. People are content passively to receive fixed patterns of culture, and they live life rather superficially. Recent technological innovation has not necessarily always contributed to the development of new human abilities. To take my experience as an example, I always use a word processor to create a text and, of course, this speech is no exception. Word processors are very convenient for revising and improving my text, but the price I pay for this convenience is that I have forgotten many of the Chinese characters I used to remember. In the past, when I wrote a paper, I used to look over a lot of books, journals and newspapers, but now I simply search the database on a CD-ROM or use the Internet and just combine the data I choose to complete the paragraph.

With the penetration of computers into our lives, human wisdom is not used for thinking deeply. Instead, our intelligence is used for operating computer software and mastering operational skills. If we look at children absorbed in computer games, we worry that this might impede the sound development of their individuality or sensitivity. Of course I am not negative about the social progress that science and technology have brought. However, I am concerned that in the future, people will forget how to talk to each other face to face and will simply stare at a computer screen the whole day.

Of course with the development of computer information networks, anybody can communicate freely with people living on the opposite side of the globe, or even in virtual reality. But should human relations and the expression of our individuality be limited to such virtual exchanges? Seemingly, multimedia broadens our world, but I wonder whether this is not an illusion. Perhaps human beings are confined by computers and our artistic and cultural sensitivity is restricted by the capacity of computer software. I am afraid that human sensitivity may decline, that creativity may diminish and that we will end up living in a superficial society.

Now let me focus on the effects of multimedia on the development of our culture. It is not only in developing countries, but in advanced countries as well that we need to maintain our traditions. Japan is quite receptive to foreign culture and foreign technology. We introduced foreign technology and science very actively, succeeded in commercializing them and began to export such products. This led to the very rapid recovery of economic prosperity after the war. The same holds true in the area of culture. We have always respected foreign products. For instance, half of the CDs released in Japan are foreign products. In terms of classical music, one fourth of the concerts given each year are by foreign performers. Half of all concert revenues go overseas. Given this wide acceptance, foreign culture is pouring into Japan and, in fact, the domestic market is being dominated by foreign products. Despite this, when it comes to preserving and further developing Japanese culture, there has been insufficient support from the Government. Opportunities to perform have gradually decreased due to lack of support for cultural activities. I think this issue is even more serious than that of technical unemployment.

With the development of information networks, the earth is getting smaller and it is wonderful to be able to make cultural exchanges across vast distances and to deepen mutual understanding among people. We have to remember to respect national cultures and social systems. We also need to formulate the conventions, systems and rules which are appropriate to advanced information societies in the multimedia era. Performers are engaged in a profession which appeals directly to people's artistic and cultural sensitivity. Our activities motivate people to live better and they in turn motivate us to develop new creative approaches. Years of effort have led to rich artistic creation and social progress. The faster the pace of technology, the more important artistic activities should become. Artistic activity is one of the main distinguishing features of mankind. Unless we value human feeling and artistic expression, the multimedia society cannot mature. This is my strong belief.

General discussion on the implications of convergence on the condition of performers

John Morton of the International Federation of Musicians (FIM) recalled that the phenomenon of technical convergence was not new to performers. In fact, performers were among the first affected by technology, such as the development of sound and film recording, as well as by the convergence of technologies, the dissemination of these recordings through radio and television broadcasting. These developments had radically separated the performer from the performance in time and place and had had an enormous impact on musical and theatrical activities. Musicians had turned to the ILO some 70 years ago in order to address the labour and economic issues caused by the convergence between recording and radio. The ILO had made an important contribution to the Rome Convention in 1961, which covered not only performers' rights but also those of record producers and broadcasters, since those groups had recognized the need for intervention as well. Performers greatly valued the ILO's essential, practical input into the current discussions on the rights of performers, authors and producers. ILO history showed that tripartite deliberations could produce balanced proposals and measures. Current concerns of performers regarding convergence went beyond the matters of recording and broadcasting, that is, fixation and dissemination, tackled in the Rome Convention. These new concerns included issues such as the reuse and modification of fractions of their performances, the ease of unauthorized and unpaid access to and use of their work, as well as the difficulties in establishing collective relations within the fragmented production and user industries. Performers were well aware that ongoing technological development entailed not only dangers, but also enormous advantages in terms of the distribution and use of their work. The way in which technological progress would occur was certainly not inevitable or predetermined. Man could control technology and decide on the structures and uses of it. It was none the less necessary to see how these developments could be fitted into well-established frameworks. Furthermore, performers put much emphasis on the need to preserve a diversity of cultural resources. While exceptions might exist, the bulk of performers wanted collective representation.

Even very prominent performers who could quite easily negotiate their remuneration individually still worked under collective agreements. Strengthening social dialogue, improving economic and legal structures and studying the applicability of standards might not appeal to the ideologues of unfettered market forces or to “techno-anarchists” who believed that all technical change was inevitably beneficial, yet this challenge would appeal to concerned participants in the present debate.

Katherine Sand of the Workers’ group regarded the question of performers’ intellectual property as a central issue in the context of the multimedia revolution, since an erosion of performers’ rights could be observed worldwide. The pressure imposed on performers, through contracts which forced them to give up their rights, had increased. Performers should have an ongoing relationship to their work and a continued financial interest in the use, reuse and modification of their performances, which had become extensive. In the new multimedia production, there was an increasing use of performers’ voice work in computer games, for example, and audiovisual material on the Internet. All these subjects ought to be discussed with the employers. While performers were, by and large, quite optimistic about the expansion of work possibilities provided by new technologies, it was misleading to talk about a global information society. Actors in many parts of the world were completely untouched by the new phenomena. This had serious implications for national production and the preservation of national cultures. Finally, digitally created virtual performers were unlikely to make actors redundant. To create digital actors one needed live performers to start with. In any case, even in the multimedia future, the general public would still wish to see real live actors.

José Luis Erosa Vera of the Employers’ group stated that discussion of the labour aspects of broadcasting should be limited to the first transmission of a performance. Problems concerning the secondary or subsidiary uses of a performers’ work were copyright issues and, thus, had to be dealt with at the WIPO, not the ILO. The current labour issues for musicians, performers or actors were certainly linked to the new technological developments. Technology very often entailed displacement. However, this was not the fault of employers, as had been implied by referring to the lack of contracts, but was due to performers who had failed to keep pace with technological developments. Technical people without musical knowledge had consequently been able to displace musicians in compositions or musical performances.

Pier Verderio of the Workers’ group foresaw that the information society could transform certain unprofitable entertainment sectors into lucrative businesses. Operas or theatre plays, for example, which had never been financially successful due to their small market size, could soon be connected to one big market. In other words, events which had traditionally been limited to the place of performance could “travel through space” and, thus, become profitable. The information society as a virtually globalized entity would entail a crisis in the field of taxation due to the impossibility of detecting exactly where production and sale took place and, hence, where to tax the added value. Since social protection was often based on a general taxation system, the effects of these problems were far-reaching. It was necessary to contemplate alternative contribution systems. Companies and other legal entities could pay taxes in a way different from the actual contributors. A society built upon immaterial production required a new way of envisaging taxation.

Marc Blondel, the Chairman of the Symposium, referred to current problems in France with the existing inter-occupational unemployment system in special relation to performers. The employment situation of performers working on a part-time basis had become more and more unstable, their contracts were often short-term and there was considerable rotation within these jobs. Therefore, there was a very extensive use of the unemployment insurance system by people from this sector. As a consequence, employees from other professions whose contributions had been increasingly used for this sectoral labour issue had started to challenge the whole inter-occupational system. The argument that their contribution had to be regarded as an indirect subsidy for culture and creativity was rejected as not being the task of an unemployment insurance system. The whole issue raised a number of questions about social solidarity and its limits, state intervention and the way governments should shoulder their responsibilities in preserving culture and creativity.

Nagwa Abdalla Abd-El Hafez, representative of the Government of Egypt, referred to her experience in the field of broadcasting and stated that, while a sound studio could be replaced by a computer and software, a computer could nevertheless not replace the talent of human beings. In the music industry, very talented musicians were still needed to edit the separate recordings of several

instruments. In cartoon production, talented artists could still not be replaced by computers, despite the use of the latest software. In short, the computer helped human talent to express itself, but could not replace the talented person.

Response of the speaker

Shinji Matsumoto agreed with the view that human talent could not be replaced by computers, but stressed the importance to performers of gaining wider social recognition. Too often the role of computers was emphasized while the importance of the human contribution was diminished.

Current labour issues of performers were certainly related to technology, but the plans of production and, hence, the decisions as to how to apply new technologies, were made by employers. Consequently, it was not simply technology, but also employers and companies that were responsible for the labour issues that confronted performers.

Finally, it was no longer possible to confine the problems of intellectual property rights to just a single organization, whether WIPO or UNESCO. The demarcation line between international organizations had become blurred. ILO involvement in intellectual property was appropriate, as many performers had been forced to give up their rights in order to appear in a programme or performance. This was not a copyright, but a labour issue.

Appendix 4

The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations (1961)

International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations

Done at Rome on 26 October 1961

The Contracting States, moved by the desire to protect the rights of performers, producers of phonograms, and broadcasting organizations,

Have agreed as follows:

Article 1

[Safeguard of Copyright Proper¹]

Protection granted under this Convention shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this

Convention may be interpreted as prejudicing such protection.

Article 2

[Protection given by the Convention. Definition of National Treatment]

1. For the purposes of this Convention, national treatment shall mean the treatment accorded by the domestic law of the Contracting State in which protection is claimed:
 - (a) to performers who are its nationals, as regards performances taking place, broadcast, or first fixed, on its territory;
 - (b) to producers of phonograms who are its nationals, as regards phonograms first fixed or first published on its territory;
 - (c) to broadcasting organizations which have their headquarters on its territory, as regards broadcasts transmitted from transmitters situated on its territory.
2. National treatment shall be subject to the protection specifically guaranteed, and the limitations specifically provided for, in this Convention.

Article 3

[Definitions: (a) Performers; (b) Phonogram; (c) Producers of Phonograms; (d) Publication; (e) Reproduction; (f) Broadcasting; (g) Rebroadcasting]

For the purposes of this Convention:

¹ Articles have been given titles to facilitate their identification. There are no titles in the signed text.

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- (a) “performers” means actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, or otherwise perform literary or artistic works;
 - (b) “phonogram” means any exclusively aural fixation of sounds of a performance or of other sounds;
 - (c) “producer of phonograms” means the person who, or the legal entity which, first fixes the sounds of a performance or other sounds;
 - (d) “publication” means the offering of copies of a phonogram to the public in reasonable quantity;
 - (e) “reproduction” means the making of a copy or copies of a fixation;
 - (f) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds;
 - (g) “rebroadcasting” means the simultaneous broadcasting by one broadcasting organization of the broadcast of another broadcasting organization.

Article 4

[Performances Protected. Points of Attachment for Performers]

Each Contracting State shall grant national treatment to performers if any of the following conditions is met:

- (a) the performance takes place in another Contracting State;
- (b) the performance is incorporated in a phonogram which is protected under Article 5 of this Convention;
- (c) the performance, not being fixed on a phonogram, is carried by a broadcast which is protected by Article 6 of this Convention.

Article 5

[Protected Phonograms: 1. Points of Attachment for Producers of Phonograms; 2. Simultaneous Publication; 3. Power to exclude certain Criteria]

1. Each Contracting State shall grant national treatment to producers of phonograms if any of the following conditions is met:
 - (a) the producer of the phonogram is a national of another Contracting State (criterion of nationality);
 - (b) the first fixation of the sound was made in another Contracting State (criterion of fixation);
 - (c) the phonogram was first published in another Contracting State (criterion of publication).
2. If a phonogram was first published in a non-contracting State but if it was also published, within thirty days of its first publication, in a Contracting State (simultaneous publication), it shall be considered as first published in the Contracting State.
3. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will not apply the criterion of publication or, alternatively, the criterion of fixation. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 6

[Protected Broadcasts: 1. Points of Attachment for Broadcasting Organizations;
2. Power to Reserve]

1. Each Contracting State shall grant national treatment to broadcasting organizations if either of the following conditions is met:
 - (a) the headquarters of the broadcasting organization is situated in another Contracting State;
 - (b) the broadcast was transmitted from a transmitter situated in another Contracting State.
2. By means of a notification deposited with the Secretary-General of the United Nations, any Contracting State may declare that it will protect broadcasts only if the headquarters of the broadcasting organization is situated in another Contracting State and the broadcast was transmitted from a transmitter situated in the same Contracting State. Such notification may be deposited at the time of ratification, acceptance or accession, or at any time thereafter; in the last case, it shall become effective six months after it has been deposited.

Article 7

[Minimum Protection for Performers: 1. Particular Rights;
2. Relations between Performers and Broadcasting Organizations]

1. The protection provided for performers by this Convention shall include the possibility of preventing:
 - (a) the broadcasting and the communication to the public, without their consent, of their performance, except where the performance used in the broadcasting or the public communication is itself already a broadcast performance or is made from a fixation;
 - (b) the fixation, without their consent, of their unfixed performance;
 - (c) the reproduction, without their consent, of a fixation of their performance:
 - (i) if the original fixation itself was made without their consent;
 - (ii) if the reproduction is made for purposes different from those for which the performers gave their consent;
 - (iii) if the original fixation was made in accordance with the provisions of Article 15, and the reproduction is made for purposes different from those referred to in those provisions.
2. (1) If broadcasting was consented to by the performers, it shall be a matter for the domestic law of the Contracting State where protection is claimed to regulate the protection against rebroadcasting, fixation for broadcasting purposes and the reproduction of such fixation for broadcasting purposes.
 - (2) The terms and conditions governing the use by broadcasting organizations of fixations made for broadcasting purposes shall be determined in accordance with the domestic law of the Contracting State where protection is claimed.
 - (3) However, the domestic law referred to in sub-paragraphs (1) and (2) of this paragraph shall not operate to deprive performers of the ability to control, by contract, their relations with broadcasting organizations.

Article 8

[Performers acting jointly]

Any Contracting State may, by its domestic laws and regulations, specify the manner in which performers will be represented in connection with the exercise of their rights if several of them participate in the same performance.

Article 9

[Variety and Circus Artists]

Any Contracting State may, by its domestic laws and regulations, extend the protection provided for in this Convention to artists who do not perform literary or artistic works.

Article 10

[Right of Reproduction for Phonogram Producers]

Producers of phonograms shall enjoy the right to authorize or prohibit the direct or indirect reproduction of their phonograms.

Article 11

[Formalities for Phonograms]

If, as a condition of protecting the rights of producers of phonograms, or of performers, or both, in relation to phonograms, a Contracting State, under its domestic law, requires compliance with formalities, these shall be considered as fulfilled if all the copies in commerce of the published phonogram or their containers bear a notice consisting of the symbol (P), accompanied by the year date of the first publication, placed in such a manner as to give reasonable notice of claim of protection; and if the copies or their containers do not identify the producer or the licensee of the producer (by carrying his name, trade mark or other appropriate designation), the notice shall also include the name of the owner of the rights of the producer; and, furthermore, if the copies or their containers do not identify the principal performers, the notice shall also include the name of the person who, in the country in which the fixation was effected, owns the rights of such performers.

Article 12

[Secondary Uses of Phonograms]

If a phonogram published for commercial purposes, or a reproduction of such phonogram, is used directly for broadcasting or for any communication to the public, a single equitable remuneration shall be paid by the user to the performers, or to the producers of the phonograms, or to both. Domestic law may, in the absence of agreement between these parties, lay down the conditions as to the sharing of this remuneration.

Article 13

[Minimum Rights for Broadcasting Organizations]

Broadcasting organizations shall enjoy the right to authorize or prohibit:

- (a) the rebroadcasting of their broadcasts;
- (b) the fixation of their broadcasts;
- (c) the reproduction:
 - (i) of fixations, made without their consent, of their broadcasts;

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- (ii) of fixations, made in accordance with the provisions of Article 15, of their broadcasts, if the reproduction is made for purposes different from those referred to in those provisions;
 - (d) the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee; it shall be a matter for the domestic law of the State where protection of this right is claimed to determine the conditions under which it may be exercised.

Article 14

[Minimum Duration of Protection]

The term of protection to be granted under this Convention shall last at least until the end of a period of twenty years computed from the end of the year in which:

- (a) the fixation was made-for phonograms and for performances incorporated therein;
- (b) the performance took place-for performances not incorporated in phonograms;
- (c) the broadcast took place-for broadcasts.

Article 15

[Permitted Exceptions: 1. Specific Limitations; 2. Equivalents with copyright]

1. Any Contracting State may, in its domestic laws and regulations, provide for exceptions to the protection guaranteed by this Convention as regards:
 - (a) private use;
 - (b) use of short excerpts in connection with the reporting of current events;
 - (c) ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts;
 - (d) use solely for the purposes of teaching or scientific research.
2. Irrespective of paragraph 1 of this Article, any Contracting State may, in its domestic laws and regulations, provide for the same kinds of limitations with regard to the protection of performers, producers of phonograms and broadcasting organizations, as it provides for, in its domestic laws and regulations, in connection with the protection of copyright in literary and artistic works. However, compulsory licences may be provided for only to the extent to which they are compatible with this Convention.

Article 16

[Reservations]

1. Any State, upon becoming party to this Convention, shall be bound by all the obligations and shall enjoy all the benefits thereof. However, a State may at any time, in a notification deposited with the Secretary-General of the United Nations, declare that:
 - (a) as regards Article 12:
 - (i) it will not apply the provisions of that Article;
 - (ii) it will not apply the provisions of that Article in respect of certain uses;
 - (iii) as regards phonograms the producer of which is not a national of another Contracting State, it will not apply that Article;

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- (iv) as regards phonograms the producer of which is a national of another Contracting State, it will limit the protection provided for by that Article to the extent to which, and to the term for which, the latter State grants protection to phonograms first fixed by a national of the State making the declaration; however, the fact that the Contracting State of which the producer is a national does not grant the protection to the same beneficiary or beneficiaries as the State making the declaration shall not be considered as a difference in the extent of the protection;
- (b) as regards Article 13, it will not apply item 13(d); if a Contracting State makes such a declaration, the other Contracting States shall not be obliged to grant the right referred to in Article 13(d), to broadcasting organizations whose headquarters are in that State.
2. If the notification referred to in paragraph 1 of this Article is made after the date of the deposit of the instrument of ratification, acceptance or accession, the declaration will become effective six months after it has been deposited.

Article 17

[Certain countries applying only the “fixation” criterion]

Any State which, on October 26, 1961, grants protection to producers of phonograms solely on the basis of the criterion of fixation may, by a notification deposited with the Secretary-General of the United Nations at the time of ratification, acceptance or accession, declare that it will apply, for the purposes of Article 5, the criterion of fixation alone and, for the purposes of paragraph 16.1(a)(iii) and 16.1(a)(iv), the criterion of fixation instead of the criterion of nationality.

Article 18

[Withdrawal of reservations]

Any State which has deposited a notification under Article 5.3, Article 6.2, Article 16.1 or Article 17, may, by a further notification deposited with the Secretary-General of the United Nations, reduce its scope or withdraw it.

Article 19

[Performers’ Rights in Films]

Notwithstanding anything in this Convention, once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, Article 7 shall have no further application.

Article 20

[Non-retroactivity]

1. This Convention shall not prejudice rights acquired in any Contracting State before the date of coming into force of this Convention for that State.
2. No Contracting State shall be bound to apply the provisions of this Convention to performances or broadcasts which took place, or to phonograms which were fixed, before the date of coming into force of this Convention for that State.

Article 21

[Protection by other means]

The protection provided for in this Convention shall not prejudice any protection otherwise secured to performers, producers of phonograms and broadcasting organizations.

Article 22

[Special agreements]

Contracting States reserve the right to enter into special agreements among themselves in so far as such agreements grant to performers, producers of phonograms or broadcasting organizations more extensive rights than those granted by this Convention or contain other provisions not contrary to this Convention.

Article 23

[Signature and deposit]

This Convention shall be deposited with the Secretary-General of the United Nations. It shall be open until June 30, 1962, for signature by any State invited to the Diplomatic Conference on the International Protection of Performers, Producers of Phonograms and Broadcasting Organisations which is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.

Article 24

[Becoming Party to the Convention]

1. This Convention shall be subject to ratification or acceptance by the signatory States.
2. This Convention shall be open for accession by any State invited to the Conference referred to in Article 23, and by any State Member of the United Nations, provided that in either case such State is a party to the Universal Copyright Convention or a member of the International Union for the Protection of Literary and Artistic Works.
3. Ratification, acceptance or accession shall be effected by the deposit of an instrument to that effect with the Secretary-General of the United Nations.

Article 25

[Entry into force]

1. This Convention shall come into force three months after the date of deposit of the sixth instrument of ratification, acceptance or accession.
2. Subsequently, this Convention shall come into force in respect of each State three months after the date of deposit of its instrument of ratification, acceptance or accession.

Article 26

[Implementation of the Convention by the Provision of Domestic Law]

1. Each Contracting State undertakes to adopt, in accordance with its Constitution, the measures necessary to ensure the application of this Convention.
2. At the time of deposit of its instrument of ratification, acceptance or accession, each State must be in a position under its domestic law to give effect to the terms of this Convention.

Article 27

[Applicability of the Convention to Certain Territories]

1. Any State may, at the time of ratification, acceptance or accession, or at any time thereafter, declare by notification addressed to the Secretary-General of the United Nations that this Convention shall extend to all or any of the territories for whose international relations it is responsible, provided that the Universal Copyright Convention or the International Convention for the Protection of Literary

and Artistic Works applies to the territory or territories concerned. This notification shall take effect three months after the date of its receipt.

2. The notifications referred to in Article 5.3, Article 6.2, Article 16.1 and Articles 17 and 18, may be extended to cover all or any of the territories referred to in paragraph 1 of this Article.

Article 28

[Denunciation of the Convention]

1. Any Contracting State may denounce this Convention, on its own behalf or on behalf of all or any of the territories referred to in Article 27.
2. The denunciation shall be effected by a notification addressed to the Secretary-General of the United Nations and shall take effect twelve months after the date of receipt of the notification.
3. The right of denunciation shall not be exercised by a Contracting State before the expiry of a period of five years from the date on which the Convention came into force with respect to that State.
4. A Contracting State shall cease to be a party to this Convention from that time when it is neither a party to the Universal Copyright Convention nor a member of the International Union for the Protection of Literary and Artistic Works.
5. This Convention shall cease to apply to any territory referred to in Article 27 from that time when neither the Universal Copyright Convention nor the International Convention for the Protection of Literary and Artistic Works applies to that territory.

Article 29

[Revision of the Convention]

1. After this Convention has been in force for five years, any Contracting State may, by notification addressed to the Secretary-General of the United Nations, request that a conference be convened for the purpose of revising the Convention. The Secretary-General shall notify all Contracting States of this request. If, within a period of six months following the date of notification by the Secretary-General of the United Nations, not less than one half of the Contracting States notify him of their concurrence with the request, the Secretary-General shall inform the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, who shall convene a revision conference in co-operation with the Intergovernmental Committee provided for in Article 32.
2. The adoption of any revision of this Convention shall require an affirmative vote by two-thirds of the States attending the revision conference, provided that this majority includes two-thirds of the States which, at the time of the revision conference, are parties to the Convention.
3. In the event of adoption of a Convention revising this Convention in whole or in part, and unless the revising Convention provides otherwise:
 - (a) this Convention shall cease to be open to ratification, acceptance or accession as from the date of entry into force of the revising Convention;
 - (b) this Convention shall remain in force as regards relations between or with Contracting States which have not become parties to the revising Convention.

Article 30

[Settlement of disputes]

Any dispute which may arise between two or more Contracting States concerning the interpretation or application of this Convention and which is not settled by negotiation shall, at the

request of any one of the parties to the dispute, be referred to the International Court of Justice for decision, unless they agree to another mode of settlement.

Article 31

[Limits on Reservations]

Without prejudice to the provisions of Article 5.3, Article 6.2, Article 16.1 and Article 17, no reservation may be made to this Convention.

Article 32

[Intergovernmental Committee]

1. An Intergovernmental Committee is hereby established with the following duties:
 - (a) to study questions concerning the application and operation of this Convention; and
 - (b) to collect proposals and to prepare documentation for possible revision of this Convention.
2. The Committee shall consist of representatives of the Contracting States, chosen with due regard to equitable geographical distribution. The number of members shall be six if there are twelve Contracting States or less, nine if there are thirteen to eighteen Contracting States and twelve if there are more than eighteen Contracting States.
3. The Committee shall be constituted twelve months after the Convention comes into force by an election organized among the Contracting States, each of which shall have one vote, by the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works, in accordance with rules previously approved by a majority of all Contracting States.
4. The Committee shall elect its Chairman and officers. It shall establish its own rules of procedure. These rules shall in particular provide for the future operation of the Committee and for a method of selecting its members for the future in such a way as to ensure rotation among the various Contracting States.
5. Officials of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works, designated by the Directors-General and the Director thereof, shall constitute the Secretariat of the Committee.
6. Meetings of the Committee, which shall be convened whenever a majority of its members deems it necessary, shall be held successively at the headquarters of the International Labour Office, the United Nations Educational, Scientific and Cultural Organization and the Bureau of the International Union for the Protection of Literary and Artistic Works.
7. Expenses of members of the Committee shall be borne by their respective Governments.

Article 33

[Languages]

1. The present Convention is drawn up in English, French and Spanish, the three texts being equally authentic.
2. In addition, official texts of the present Convention shall be drawn up in German, Italian and Portuguese.

Article 34

[Notifications]

1. The Secretary-General of the United Nations shall notify the States invited to the Conference referred to in Article 23 and every State Member of the United Nations, as well as the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works:
 - (a) of the deposit of each instrument of ratification, acceptance or accession;
 - (b) of the date of entry into force of the Convention;
 - (c) of all notifications, declarations or communications provided for in this Convention;
 - (d) if any of the situations referred to in paragraphs 28.4 and 28.5 arise.
2. The Secretary-General of the United Nations shall also notify the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works of the requests communicated to him in accordance with Article 29, as well as of any communication received from the Contracting States concerning the revision of the Convention.

IN FAITH WHEREOF, the undersigned, being duly authorized thereto, have signed this Convention.

DONE at Rome, this twenty-sixth day of October 1961, in a single copy in the English, French and Spanish languages. Certified true copies shall be delivered by the Secretary-General of the United Nations to all the States invited to the Conference referred to in Article 23 and to every State Member of the United Nations, as well as to the Director-General of the International Labour Office, the Director-General of the United Nations Educational, Scientific and Cultural Organization and the Director of the Bureau of the International Union for the Protection of Literary and Artistic Works.

Appendix 5

The WIPO Performances and Phonograms Treaty (WPPT) of 20 December 1996

Preamble

The Contracting Parties,

Desiring to develop and maintain the protection of the rights of performers and producers of phonograms in a manner as effective and uniform as possible,

Recognizing the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments,

Recognizing the profound impact of the development and convergence of information and communication technologies on the production and use of performances and phonograms,

Recognizing the need to maintain a balance between the rights of performers and producers of phonograms and the larger public interest, particularly education, research and access to information,

Have agreed as follows:

Chapter I General Provisions

Article 1

Relation to Other Conventions

- (1) Nothing in this Treaty shall derogate from existing obligations that Contracting Parties have to each other under the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations done in Rome, October 26, 1961 (hereinafter the “Rome Convention”).
- (2) Protection granted under this Treaty shall leave intact and shall in no way affect the protection of copyright in literary and artistic works. Consequently, no provision of this Treaty may be interpreted as prejudicing such protection.¹
- (3) This Treaty shall not have any connection with, nor shall it prejudice any rights and obligations under, any other treaties.

¹ **Agreed statement concerning Article 1(2):** It is understood that Article 1(2) clarifies the relationship between rights in phonograms under this Treaty and copyright in works embodied in the phonograms. In cases where authorization is needed from both the author of a work embodied in the phonogram and a performer or producer owning rights in the phonogram, the need for the authorization of the author does not cease to exist because the authorization of the performer or producer is also required, and vice versa. It is further understood that nothing in Article 1(2) precludes a Contracting Party from providing exclusive rights to a performer or producer of phonograms beyond those required to be provided under this Treaty.

Article 2 Definitions

For the purposes of this Treaty:

- (a) “performers” are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;
- (b) “phonogram” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;²
- (c) “fixation” means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
- (d) “producer of a phonogram” means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;
- (e) “publication” of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the rightholder, and provided that copies are offered to the public in reasonable quantity;³
- (f) “broadcasting” means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also “broadcasting”; transmission of encrypted signals is “broadcasting” where the means for decrypting are provided to the public by the broadcasting organization or with its consent;
- (g) “communication to the public” of a performance or a phonogram means the transmission to the public by any medium, otherwise than by broadcasting, of sounds of a performance or the sounds or the representations of sounds fixed in a phonogram. For the purposes of Article 15, “communication to the public” includes making the sounds or representations of sounds fixed in a phonogram audible to the public.

Article 3 Beneficiaries of Protection under this Treaty

- (1) Contracting Parties shall accord the protection provided under this Treaty to the performers and producers of phonograms who are nationals of other Contracting Parties.
- (2) The nationals of other Contracting Parties shall be understood to be those performers or producers of phonograms who would meet the criteria for eligibility for protection provided under the Rome Convention, were all the Contracting Parties to this Treaty Contracting States of that Convention. In

² **Agreed statement concerning Article 2(b):** It is understood that the definition of phonogram provided in Article 2(b) does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

³ **Agreed statement concerning Articles 2(e), 8, 9, 12, and 13:** As used in these Articles, the expressions “copies” and “original and copies”, being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

respect of these criteria of eligibility, Contracting Parties shall apply the relevant definitions in Article 2 of this Treaty.⁴

- (3) Any Contracting Party availing itself of the possibilities provided in Article 5(3) of the Rome Convention or, for the purposes of Article 5 of the same Convention, Article 17 thereof shall make a notification as foreseen in those provisions to the Director General of the World Intellectual Property Organization (WIPO).⁵

Article 4 National Treatment

- (1) Each Contracting Party shall accord to nationals of other Contracting Parties, as defined in Article 3(2), the treatment it accords to its own nationals with regard to the exclusive rights specifically granted in this Treaty, and to the right to equitable remuneration provided for in Article 15 of this Treaty.
- (2) The obligation provided for in paragraph (1) does not apply to the extent that another Contracting Party makes use of the reservations permitted by Article 15(3) of this Treaty.

Chapter II **Rights Of Performers**

Article 5 Moral Rights of Performers

- (1) Independently of a performer's economic rights, and even after the transfer of those rights, the performer shall, as regards his live aural performances or performances fixed in phonograms, have the right to claim to be identified as the performer of his performances, except where omission is dictated by the manner of the use of the performance, and to object to any distortion, mutilation or other modification of his performances that would be prejudicial to his reputation.
- (2) The rights granted to a performer in accordance with paragraph (1) shall, after his death, be maintained, at least until the expiry of the economic rights, and shall be exercisable by the persons or institutions authorized by the legislation of the Contracting Party where protection is claimed. However, those Contracting Parties whose legislation, at the moment of their ratification of or accession to this Treaty, does not provide for protection after the death of the performer of all rights set out in the preceding paragraph may provide that some of these rights will, after his death, cease to be maintained.
- (3) The means of redress for safeguarding the rights granted under this Article shall be governed by the legislation of the Contracting Party where protection is claimed.

Article 6 Economic Rights of Performers in their Unfixed Performances

Performers shall enjoy the exclusive right of authorizing, as regards their performances:

⁴ **Agreed statement concerning Article 3(2):** For the application of Article 3(2), it is understood that fixation means the finalization of the master tape "bande-mère").

⁵ **Agreed statement concerning Article 3:** It is understood that the reference in Articles 5(a) and 16(a)(iv) of the Rome Convention to "national of another Contracting State" will, when applied to this Treaty, mean, in regard to an intergovernmental organization that is a Contracting Party to this Treaty, a national of one of the countries that is a member of that organization.

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- (i) the broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance; and
 - (ii) the fixation of their unfixed performances.

Article 7 Right of Reproduction

Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in phonograms, in any manner or form.⁶

Article 8 Right of Distribution

- (1) Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in phonograms through sale or other transfer of ownership.
- (2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.⁷

Article 9 Right of Rental

- (1) Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances fixed in phonograms as determined in the national law of Contracting Parties, even after distribution of them by, or pursuant to, authorization by the performer.
- (2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of performers for the rental of copies of their performances fixed in phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive right of reproduction of performers.

Article 10 Right of Making Available of Fixed Performances

Performers shall enjoy the exclusive right of authorizing the making available to the public of their performances fixed in phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

⁶ **Agreed statement concerning Articles 7, 11 and 16:** The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

⁷ **Agreed statement concerning Articles 2(e), 8, 9, 12, and 13:** As used in these Articles, the expressions “copies” and “original and copies”, being subject to the right of distribution and the right of rental under the said Articles, refer exclusively to fixed copies that can be put into circulation as tangible objects.

Chapter III

Rights of Producers of Phonograms

Article 11 Right of Reproduction

Producers of phonograms shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their phonograms, in any manner or form.⁸

Article 12 Right of Distribution

- (1) Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their phonograms through sale or other transfer of ownership.
- (2) Nothing in this Treaty shall affect the freedom of Contracting Parties to determine the conditions, if any, under which the exhaustion of the right in paragraph (1) applies after the first sale or other transfer of ownership of the original or a copy of the phonogram with the authorization of the producer of the phonogram.

Article 13 Right of Rental

- (1) Producers of phonograms shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their phonograms, even after distribution of them by or pursuant to authorization by the producer.
- (2) Notwithstanding the provisions of paragraph (1), a Contracting Party that, on April 15, 1994, had and continues to have in force a system of equitable remuneration of producers of phonograms for the rental of copies of their phonograms, may maintain that system provided that the commercial rental of phonograms is not giving rise to the material impairment of the exclusive rights of reproduction of producers of phonograms.

Article 14 Right of Making Available of Phonograms

Producers of phonograms shall enjoy the exclusive right of authorizing the making available to the public of their phonograms, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

Chapter IV

Common Provisions

Article 15 Right to Remuneration for Broadcasting and Communication to the Public

- (1) Performers and producers of phonograms shall enjoy the right to a single equitable remuneration for the direct or indirect use of phonograms published for commercial purposes for broadcasting or for any communication to the public.

⁸ **Agreed statement concerning Articles 7, 11 and 16:** The reproduction right, as set out in Articles 7 and 11, and the exceptions permitted thereunder through Article 16, fully apply in the digital environment, in particular to the use of performances and phonograms in digital form. It is understood that the storage of a protected performance or phonogram in digital form in an electronic medium constitutes a reproduction within the meaning of these Articles.

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- (2) Contracting Parties may establish in their national legislation that the single equitable remuneration shall be claimed from the user by the performer or by the producer of a phonogram or by both. Contracting Parties may enact national legislation that, in the absence of an agreement between the performer and the producer of a phonogram, sets the terms according to which performers and producers of phonograms shall share the single equitable remuneration.
 - (3) Any Contracting Party may in a notification deposited with the Director General of WIPO, declare that it will apply the provisions of paragraph (1) only in respect of certain uses, or that it will limit their application in some other way, or that it will not apply these provisions at all.
 - (4) For the purposes of this Article, phonograms made available to the public by wire or wireless means in such a way that members of the public may access them from a place and at a time individually chosen by them shall be considered as if they had been published for commercial purposes.^{9 10}

Article 16 Limitations and Exceptions

- (1) Contracting Parties may, in their national legislation, provide for the same kinds of limitations or exceptions with regard to the protection of performers and producers of phonograms as they provide for, in their national legislation, in connection with the protection of copyright in literary and artistic works.
- (2) Contracting Parties shall confine any limitations of or exceptions to rights provided for in this Treaty to certain special cases which do not conflict with a normal exploitation of the performance or phonogram and do not unreasonably prejudice the legitimate interests of the performer or of the producer of the phonogram.¹¹

Article 17 Term of Protection

- (1) The term of protection to be granted to performers under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the performance was fixed in a phonogram.

⁹ **Agreed statement concerning Article 15:** It is understood that Article 15 does not represent a complete resolution of the level of rights of broadcasting and communication to the public that should be enjoyed by performers and phonogram producers in the digital age. Delegations were unable to achieve consensus on differing proposals for aspects of exclusivity to be provided in certain circumstances or for rights to be provided without the possibility of reservations, and have therefore left the issue to future resolution.

¹⁰ **Agreed statement concerning Article 15:** It is understood that Article 15 does not prevent the granting of the right conferred by this Article to performers of folklore and producers of phonograms recording folklore where such phonograms have not been published for commercial gain.

¹¹ **Agreed statement concerning Article 16:** The agreed statement concerning Article 10 (on Limitations and Exceptions) of the WIPO Copyright Treaty is applicable *mutatis mutandis* also to Article 16 (on Limitations and Exceptions) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 10 of the WCT reads as follows: "It is understood that the provisions of Article 10 permit Contracting Parties to carry forward and appropriately extend into the digital environment limitations and exceptions in their national laws which have been considered acceptable under the Berne Convention. Similarly, these provisions should be understood to permit Contracting Parties to devise new exceptions and limitations that are appropriate in the digital network environment. It is also understood that Article 10(2) neither reduces nor extends the scope of applicability of the limitations and exceptions permitted by the Berne Convention".]

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- (2) The term of protection to be granted to producers of phonograms under this Treaty shall last, at least, until the end of a period of 50 years computed from the end of the year in which the phonogram was published, or failing such publication within 50 years from fixation of the phonogram, 50 years from the end of the year in which the fixation was made.

Article 18 Obligations concerning Technological Measures

Contracting Parties shall provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by performers or producers of phonograms in connection with the exercise of their rights under this Treaty and that restrict acts, in respect of their performances or phonograms, which are not authorized by the performers or the producers of phonograms concerned or permitted by law.

Article 19 Obligations concerning Rights Management Information

- (1) Contracting Parties shall provide adequate and effective legal remedies against any person knowingly performing any of the following acts knowing, or with respect to civil remedies having reasonable grounds to know, that it will induce, enable, facilitate or conceal an infringement of any right covered by this Treaty:
- (i) to remove or alter any electronic rights management information without authority;
 - (ii) to distribute, import for distribution, broadcast, communicate or make available to the public, without authority, performances, copies of fixed performances or phonograms knowing that electronic rights management information has been removed or altered without authority.
- (2) As used in this Article, “rights management information” means information which identifies the performer, the performance of the performer, the producer of the phonogram, the phonogram, the owner of any right in the performance or phonogram, or information about the terms and conditions of use of the performance or phonogram, and any numbers or codes that represent such information, when any of these items of information is attached to a copy of a fixed performance or a phonogram or appears in connection with the communication or making available of a fixed performance or a phonogram to the public.¹²

Article 20 Formalities

The enjoyment and exercise of the rights provided for in this Treaty shall not be subject to any formality.

Article 21 Reservations

Subject to the provisions of Article 15(3), no reservations to this Treaty shall be permitted.

¹² **Agreed statement concerning Article 19:** The agreed statement concerning Article 12 (on Obligations concerning Rights Management Information) of the WIPO Copyright Treaty is applicable mutatis mutandis also to Article 19 (on Obligations concerning Rights Management Information) of the WIPO Performances and Phonograms Treaty. [The text of the agreed statement concerning Article 12 of the WCT reads as follows: “It is understood that the reference to ‘infringement of any right covered by this Treaty or the Berne Convention’ includes both exclusive rights and rights of remuneration. “It is further understood that Contracting Parties will not rely on this Article to devise or implement rights management systems that would have the effect of imposing formalities which are not permitted under the Berne Convention or this Treaty, prohibiting the free movement of goods or impeding the enjoyment of rights under this Treaty.”]

Article 22

Application in Time

- (1) Contracting Parties shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the rights of performers and producers of phonograms provided for in this Treaty.
- (2) Notwithstanding paragraph (1), a Contracting Party may limit the application of Article 5 of this Treaty to performances which occurred after the entry into force of this Treaty for that Party.

Article 23

Provisions on Enforcement of Rights

- (1) Contracting Parties undertake to adopt, in accordance with their legal systems, the measures necessary to ensure the application of this Treaty.
- (2) Contracting Parties shall ensure that enforcement procedures are available under their law so as to permit effective action against any act of infringement of rights covered by this Treaty, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements.

Chapter V

Administrative and Final Clauses

Article 24

Assembly

- (1)
 - (a) The Contracting Parties shall have an Assembly.
 - (b) Each Contracting Party shall be represented by one delegate who may be assisted by alternate delegates, advisors and experts.
 - (c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation. The Assembly may ask WIPO to grant financial assistance to facilitate the participation of delegations of Contracting Parties that are regarded as developing countries in conformity with the established practice of the General Assembly of the United Nations or that are countries in transition to a market economy.
- (2)
 - (a) The Assembly shall deal with matters concerning the maintenance and development of this Treaty and the application and operation of this Treaty.
 - (b) The Assembly shall perform the function allocated to it under Article 26(2) in respect of the admission of certain intergovernmental organizations to become party to this Treaty.
 - (c) The Assembly shall decide the convocation of any diplomatic conference for the revision of this Treaty and give the necessary instructions to the Director General of WIPO for the preparation of such diplomatic conference.
- (3)
 - (a) Each Contracting Party that is a State shall have one vote and shall vote only in its own name.
 - (b) Any Contracting Party that is an intergovernmental organization may participate in the vote, in place of its Member States, with a number of votes equal to the number of its Member States which are party to this Treaty. No such intergovernmental organization shall participate in the vote if any one of its Member States exercises its right to vote and vice versa.

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- (4) The Assembly shall meet in ordinary session once every two years upon convocation by the Director General of WIPO.
 - (5) The Assembly shall establish its own rules of procedure, including the convocation of extraordinary sessions, the requirements of a quorum and, subject to the provisions of this Treaty, the required majority for various kinds of decisions.

Article 25 International Bureau

The International Bureau of WIPO shall perform the administrative tasks concerning the Treaty.

Article 26 Eligibility for Becoming Party to the Treaty

- (1) Any Member State of WIPO may become party to this Treaty.
- (2) The Assembly may decide to admit any intergovernmental organization to become party to this Treaty which declares that it is competent in respect of, and has its own legislation binding on all its Member States on, matters covered by this Treaty and that it has been duly authorized, in accordance with its internal procedures, to become party to this Treaty.
- (3) The European Community, having made the declaration referred to in the preceding paragraph in the Diplomatic Conference that has adopted this Treaty, may become party to this Treaty.

Article 27 Rights and Obligations under the Treaty

Subject to any specific provisions to the contrary in this Treaty, each Contracting Party shall enjoy all of the rights and assume all of the obligations under this Treaty.

Article 28 Signature of the Treaty

This Treaty shall be open for signature until December 31, 1997, by any Member State of WIPO and by the European Community.

Article 29 Entry into Force of the Treaty

This Treaty shall enter into force three months after 30 instruments of ratification or accession by States have been deposited with the Director General of WIPO.

Article 30 Effective Date of Becoming Party to the Treaty

This Treaty shall bind:

- (i) the 30 States referred to in Article 29, from the date on which this Treaty has entered into force;
- (ii) each other State from the expiration of three months from the date on which the State has deposited its instrument with the Director General of WIPO;
- (iii) the European Community, from the expiration of three months after the deposit of its instrument of ratification or accession if such instrument has been deposited after the entry into force of this Treaty according to Article 29, or, three months after the entry into force of this Treaty if such instrument has been deposited before the entry into force of this Treaty;

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- (iv) any other intergovernmental organization that is admitted to become party to this Treaty, from the expiration of three months after the deposit of its instrument of accession.

Article 31
Denunciation of the Treaty

This Treaty may be denounced by any Contracting Party by notification addressed to the Director General of WIPO. Any denunciation shall take effect one year from the date on which the Director General of WIPO received the notification.

Article 32
Languages of the Treaty

- (1) This Treaty is signed in a single original in English, Arabic, Chinese, French, Russian and Spanish languages, the versions in all these languages being equally authentic.
- (2) An official text in any language other than those referred to in paragraph (1) shall be established by the Director General of WIPO on the request of an interested party, after consultation with all the interested parties. For the purposes of this paragraph, “interested party” means any Member State of WIPO whose official language, or one of whose official languages, is involved and the European Community, and any other intergovernmental organization that may become party to this Treaty, if one of its official languages is involved.

Article 33
Depositary

The Director General of WIPO is the depositary of this Treaty.

Appendix 6

Questionnaire sent by FIM to organizations for the professional defence of musicians

<p>Survey On the social situation of music performers in Latin America, Africa and Asia Questionnaire dated 16 July 1997</p>
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Aims

The purpose of this survey is to make an analytical report on the social situation of music performers. This survey includes the following elements:

- Specificity of music performers' employment for each musical category
- Practical difficulties encountered in relation to legal frameworks
- Comparison with other categories of workers.

This survey could be used for preparing future recommendations on how to improve this situation.

Questionnaire

The questionnaire contains "open" questions, which require you to answer in detail and to comment on the practical difficulties encountered on the issue. In some questions you will also be asked to make a commentary on the future perspectives. Statistics are required in some cases.

Deadline

Answers have to be received by **15 October 1997**.

A first draft report will be established by 30 October 1997.

<p>Questionnaire on the social situation of music performers</p>
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Preliminary observations

A. Music performers include musicians, choristers, singers and conductors

Composers, authors of lyrics, actors and dancers are therefore not considered in our questionnaire.

B. You should systematically describe the performers' situation for each musical category, which has been classified in the following manner:

"Classical orchestras" (type "O") for permanent classical music orchestra (including chamber music).

"Other orchestras" (type "A") for permanent orchestras of all musical categories other than classical music.

"Chamber music" (type "C") for small classical music orchestras or contemporary music, except permanent orchestras (see type A).

“Folklore” (type “F”) for traditional music, except permanent orchestras (see type A).

“Jazz” for all type of jazz music, except permanent orchestras (see type A).

“Pop music” (type “V”) for popular music which is not folklore music, except permanent orchestras (see type A).

For convenience you may also want to use the letter (given to each musical category) when answering the questions. If some of the above mentioned musical categories seem to you inadequate or if you think there are other possible categories, you can use your own classification.

C. Each question has been given a number that you should use when answering on a separate handout.

1. The legal framework

1.1. What are the legal frameworks that can be used for the employment of music performers?

civil servant?

“employee” with a work contract?

“self-employed” with a contract for provision of service?

specific status?

without status?

Mention if the use of a particular status is compulsory (For instance: In some countries, for a better social protection in the private sector, the “employee” status has been made compulsory), and which is, in practice, the usual status used for each musical category.

If available, you may give *statistics* for each musical category.

What are the future perspectives on this issue (for example can you notice a decreasing number of employees and an increasing number of self-employed)?

1.2. What are the consequences of such legal framework(s)?

in case of termination of contract or dismissal?

on the right to have two permanent positions (one of them being teaching for instance ...)?

on the social protection?

on the intellectual property rights?

on the right to become a member union?

As it is one of the most important aspects of the survey, you should explain these consequences in detail. You are also required to make the distinction between both the theoretical and the practical consequences.

It would be useful to know if legal cases have changed the nature of the legal framework of performers’ employment, which provides them with a social protection.

If a court case seems relevant in this field, you may enclose a summary of it in your handout.

1.3. What ways of recruiting are used?

Do employment agencies exist for music performers?

If so, describe the status of these agencies and their ways of remuneration

Do unions play a role in recruiting performers?

Give statistics (even if approximates) on the different ways of employing music performers for each musical category.

Explain, in general, both negative and positive aspects of such ways of recruiting performers and the future perspectives on this issue.

1.4. Do work permits and a “professional” status for musicians exist?

Does a system of work permits exist, and if so on what legal ground is it based?

Does a “professional” status exist and what are the consequences in comparison with the “non-professional” or amateur status?

Explain why does such system or such status exist and what are the negative and positive consequences.

If available you may give statistics on the weight of both “professionals” and “amateurs” for each musical category.

1.5. What are the form and contents of contracts?

Written or unwritten contracts?

Mention what is compulsory in such contracts, and also what type of contract is used in practice for each musical category.

In case of exclusive rights (particularly for contracts between singers or soloists and records producers), what is the purpose of this exclusivity and what is its duration?

Are there standard contracts and, if so, who drafts them?

What are the binding clauses?

What are the prohibited clauses?

You should stress, the contractual practices, and particularly on whether or not performers have the opportunity to get a contract and if they can negotiate its contents.

What are the differences between each musical category?

1.6. What is the duration of contracts?

Is the duration of contract regulated (for instance some countries lay down that contracts have to be for an unlimited period when the employment is on a permanent basis)?

Do permanent orchestras use contracts for a limited period (precarious contracts)?

Can such contracts be terminated before the expiration date, and what are the consequences of such termination?

Explain what are the future perspectives, in particular concerning the increasing tendency to have precarious position for performers.

1.7. What regulations (if any) apply to working time?

Is working time (which applies to music performers) regulated?

You should answer to this question for each musical category, in stressing whether such legislation has benefited from collective agreements. Describe the content of this legislation (duration of sessions, maximum hours which is authorised per day or per week, legislation on night shift, remuneration of extra hours, system of breakdown of services in permanent orchestras, taking into account transport duration, etc.).

Do you think that the legislation is respected and if so in what proportion?

The purpose of the question is to lay down a set of recommendations, per regional area and per category of music

1.8. Is health protected?

Does general legislation on health and safety that applies to performers exist? If so, what is its content?

Does legislation on health that applies specifically to performers exist? If so, what is its content?

Are there increasing risks particularly in relation to hearing problems, and if so, why?

Do you notice a change in the attitude of employers on this issue, particularly in relation to health prevention?

Summarize the content of the legislation, and explain if it applies to all musical places or performers (notably for those who have no work contract).

Furthermore, it would be useful to know what are the main safety measures adopted by the employers and if these measures have benefited from both public funding and collective bargaining.

1.9. Are safety inspections carried out at workplaces?

If so, explain what do they bear (safety, employment right, social tax declaration, payment of wages, etc.)

Who is in charge of such inspections?

What are the eventual consequences that carry such inspections when breaches or irregularity are noticed?

1.10. Can music performers benefit from professional training?

If so, explain what is the contents of such training and how is it financed (If available, you should give statistics).

2. *The employment current situation and the place of performers in the society*

2.1. What is the current situation of employment for music performers?

Do they need to have another position?

What is the proportion of performers who have two positions?

What are their other occupations (teaching ...)?

For each musical category, you should give figures or statistics.

2.2. What is the place of music performers in the society?

This is, of course, a subjective question, but answers should describe the evolution felt over the last decade and the future perspectives. The answer can take into account different aspects: Development of public funding for music teaching and concert halls, promotion of local music, developments in employers' attitudes, deterioration or improvement of the musicians' situation in relation to the growth in radio and television audiences or recorded music market, etc.

3. Social protection (outside unemployment).

3.1. Employees who work under contract

3.1.1 Legal framework

List the insurance schemes available (for sickness, maternity leave, disability, retirement pension, etc.)

What are the criteria necessary for performers to benefit from social protection as regards notably the amount of their contributions, whether or not they are unemployed, whether or not they are periodic workers (that is to say who are not employed in a permanent orchestra), their marital status etc.?

What are the employer's legal obligations (employment declaration, payslips, etc.)?

Do employees who have a contract for a limited period benefit from the same protection as employees who have a contract for an unlimited period?

What is the situation for employees who live abroad and for employers who have established their headquarters abroad, notably in case of touring or occasional performances (few concerts for instance)?

Is there unlawful competition from foreign producers working on the national territory?

What are the complementary and voluntary schemes available (in relation to pension for example)?

Generally speaking, is the compulsory social security scheme sufficient enough? Or do they need to contract complementary insurance schemes to be sufficiently protected?

This question is, together with point 1.2, the most important aspect of this survey.

You should compare this legal framework with the one used by other categories of workers.

In conclusion, explain the general situation and the future perspectives by distinguishing, when necessary, the different musical categories

3.1.2. Financial aspects

What is the total amount of social contributions that the employers have to pay (in proportion to the wages or in flat rate)?

What is the total amount of social contributions that the employees have to pay (in proportion to the wages or in flat rate)?

What is the weight of such social contributions: you should give figures (when available).

Statistics are important, including at a national level, to establish what are the financial situation at the management level of such systems.

3.1.3. Administrative aspects

Who is in charge of collecting the contributions? (State, institution controlled by State, performers' union, private company, etc.).

Who is in charge of distributing music performers' allowances?

Does a collecting society working for performers (that is to say claiming "neighbouring rights") contribute to the financing and the managing of social security?

Does the State have to pay for medical care or other social allowances when a performer is without work, or more generally when this person has no social protection?

This question is, together with point 1.2, the most important aspect of this survey.

In conclusion, explain the general situation and the future perspectives for performers by using comparison with other categories of workers.

3.2. Legal framework for employees *without work contract*

3.2.1. Legal framework

In the case of performers without work contract: do performers' employers (show producers, entertainment companies, records producers, or film producers, radio or television producers, etc.) have social duties, particularly in paying contributions?

What are the performers' duties?

Do they have to pay for their social protection (sickness, maternity leave, disability, pension scheme, etc.)?

Can they subscribe to a complementary social security scheme, particularly in relation to pensions?

What is the situation for employees (without work contract) who live abroad and for employers who have established their headquarters abroad in case of touring or occasional performances (few concerts for instance)?

Is there unlawful competition from foreign productions working in the national territory?

You should compare the legal framework with the one that applies to other categories of self-employed.

In conclusion, explain the general situation and the future perspectives, by distinguishing, when necessary, the different musical categories.

3.2.2. Financial aspects

What is the total amount of social contributions that the employers have to pay (in proportion to the wages or in flat rate)?

What is the total amount of social contributions that performers without work contract have to pay (in proportion to the wages or in flat rate)?

What is the weight of social protection attributed to employee without contract? You should give statistics (when available).

Statistics are important, including at a national level. Indeed they can be used to *compare the different status given to performers* and to lay down recommendations.

3.2.3. Administrative aspects

Who is in charge of collecting the contributions? (State, institution controlled by State, performers' union, private company, etc.).

Who is in charge of distributing music performers' allowances?

Does a collecting society working for performers (that is to say claiming "neighbouring rights") contribute to the financing and the managing of social security?

Does the State have to pay for medical care or other social allowance when a performer without work contract has no social protection?

In conclusion explain the general situation and future perspectives for performers by using comparison with other categories of employees without work contract.

4. Unemployment

4.1. Statistics for *each musical category*

On the average of the total unemployment's duration

On the average of the monthly work's duration for periodic workers, that is to say for performers who do not work in a permanent orchestra

You should make the distinction between the different musical categories, as it is on this issue that differences are the greatest.

4.2. Legal framework

Describe the unemployment scheme system which apply to performers, distinguishing between:

- employees under a work contract for an unlimited time
- employees under a work contract for a limited time
- employees as "freelancers", that is to say those who work on an irregular basis for different employers
- self-employed, you should stress particular cases if they exist (e.g. those who work in the public sector or for the army).

Make a comparison with other categories of workers and underline if this legal framework is applied in a satisfactory manner.

4.3. Financial aspects

What is the total amount of social contributions that the employers have to pay (in proportion to the wages or in flat rate)?

What is the total amount of social contributions that the performers have to pay (in proportion to the wages or in flat rate)?

What is both the weight and the duration of distributed unemployment allowance?

Statistics are important, including at a national level, in order to make a *comparison with the performers' different status* and to lay down recommendations.

4.4. Administrative aspect

Who is in charge of collecting the contributions? (The State, institutions controlled by State, performers' union, private company, etc.).

Who is in charge of distributing music performers' allowances?

Does a collecting society working for performers (that is to say claiming "neighbouring rights") contribute to the financing and the managing of social security system?

Does the State have to pay for medical care or other social allowance when a performer has no social protection?

In conclusion, explain the general situation and the future perspectives for performers in comparison with other categories of workers.

5. Remuneration

5.1. Who gets paid?

Do performers receive directly their income or is there a system of payment through a professional organization, which is in charge of collecting social contributions (unions, association controlled by the State ...)?

What is the weight of remuneration paid in cash in comparison with other ways of payment?

5.2. What is the amount of remuneration?

Is there a minimum wages (per session, weekly, monthly)?

Is free performance common practice and if so, in which proportion?

Establish a scale from 1 to 3 (or 4) representing the annual average wages and give for each scale the number of performers (approximately) receiving such remuneration.

You should make a distinction for each musical category and explain whether there is an increase or decrease in the music performers' wages.

5.3. What is the weight of income coming from intellectual property rights?

Do performers (really) benefit from collecting societies' income?

If not, explain why is it not the case.

What is the total amount of performers rights that collecting societies collect annually?

Make a distinction for each musical category

Do you think that this source of income could become a substantial part of income for music performers, and could this source contribute to the financing of social security protection?

6. Fiscal situation

6.1. What are the taxes advantages given to this profession?

6.2. Compare with other professions.

7. Illegal work

7.1. What is the proportion of illegal work, that is to say work which is not taxed?

You should (when available) give statistics or figures

Describe the consequences of such work

7.2. What are the measures taken against illegal work

What are the legal sanctions?

Is this issue administratively controlled?

Does the law punish with efficiency illegal work?

More generally speaking, describe what has been the tendency over the last decade, for each musical category, and the future perspectives.

8. Immigration

8.1. What is the proportion of foreign performers who work in the national territory?

- For those who work on a regular basis
- For those who work on an irregular basis

8.2. Legal framework

What are the necessary formalities that foreigners have to fill in to work in the national territory?

Do you think that this legal framework is respected?

Did the union obtain compensation, in particular by imposing their nationals for any work offered?

Are there measures of cultural protection, notably on the contents of radio or broadcasting programmes (quota) and on the tax system, which apply to record and film producers?

Describe more generally the situation and the future perspectives.

9. Collective representation

9.1. Freedom of association

What are the main legal provisions existing to protect freedom of association?

What is the factual situation?

What is the situation for those who work in the public sector?

Does “blackmail” at work exist for those who want to become union members?

9.2. Prerogatives given to union

What are the main statutory prerogatives given to union?

Does the State inform unions before making reforms that may have consequences on performers’ occupations?

Describe the main union actions over the last 5 years and their main current claims

Describe the other activities that have been carried by unions (music school, entertainment venue, recording production, other ...).

9.3. Level of membership (with statistics)

What is the level of union membership for each musical category?

How is (in practice) the amount of membership fees calculated?

Compare the performers' situation with other professions.

9.4. Collective agreements

Give significant examples of social rights that have been attributed to music performers thanks to collective agreement

Do you think that collective agreements are respected?

Explain both the weight and the role played by collective bargaining concerning music performers and the future perspectives on this issue.

10. *Registration of musical performers*

Give statistics for each musical category

Appendix 7

Questionnaire sent by the ILO to governments

<p>Survey on the social situation of music performers in Latin America, Africa and Asia Questionnaire dated 23 July 1997</p>
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Aims

This survey, commissioned by the ILO, will be carried out by the International Federation of Musicians. Its purpose is to make an analytical report on the social situation of music performers. This survey includes the following elements:

- Specificity of music performers' employment for each musical category
- Practical difficulties encountered in relation to legal frameworks
- Comparison with other categories of workers.

This survey could be used for preparing future recommendations on how to improve this situation.

Questionnaire

The questionnaire contains "open" questions, which require you to answer in detail and to comment on the practical difficulties encountered on the issue. In some questions you will also be asked to make a commentary on the future perspectives. Statistics are required in some cases.

Deadline

Answers have to be received by **15 October 1997**.

<p>Questionnaire on the social situation of music performers</p>
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Preliminary observations

- A. **Music performers** include musicians, choristers, singers and conductors

Composers, authors of lyrics, actors and dancers are therefore not considered in our questionnaire.

- B. You should systematically describe the performers' situation for *each musical category* (permanent orchestras, folklore, etc.)
- C. Each question has been given a number that you should use when answering on a separate handout.

1. The legal framework

- 1.1. What are the legal frameworks that can be used for the employment of music performers?**

Mention if the use of a particular status is compulsory, and, if available, you may give statistics for each status that is used.

What are the future perspectives on this issue (for example can you notice a decreasing number of employees and an increasing number of self-employed?)

1.2. What are the consequences of such legal frameworks, particularly in relation to social protection?

As it is one of the most important aspects of the survey, you should explain these consequences in detail. You are also required to make the distinction between both the theoretical and the practical consequences.

1.3. What are the ways of recruiting?

Private employment agencies, public services, and unions of musicians: which organization is intervening in the recruiting process and according to what financial conditions?

1.4. Do a work permit and a “professional” status exist?

Explain the reasons for such system, and give if possible statistics on the number of “professionals” and “amateurs”.

1.5. What are the form and duration of contracts?

Describe in detail the contractual practices and particularly on whether or not performers have the opportunity to get a written contract and if they can negotiate its contents.

1.6. What is the fixed working time?

Is working time (maximum hours, night work, extra hours) regulated for music performers?

1.7. Is health protected?

Describe the content of health regulation, and stress if it applies to all musical places or music performers.

1.8. Are safety inspections carry at workplace?

If so, explain what do they bear who are in charge of such inspections and what are the sanctions resulting from breaches (fines, closing down the place, etc.)

1.9. Can music performers benefit from professional training?

If so, explain what is the contents of such training and how is it financed (If available, you should give statistics).

2. *The employment current situation and the place of performers in the society*

Do performers usually need to have another job?

What is the proportion of performers who have several jobs?

What are their other occupations (teaching)?

3 Social protection (outside unemployment)

3.1 Employees, that is to say who work under labour contract

3.1.1. Legal framework

List the insurance schemes available (for sickness, maternity leave, disability, retirement pension, etc.) and generally speaking, is the compulsory social security scheme sufficient enough?

Do performers need to contract complementary insurance schemes to be sufficiently protected?

You should compare this legal framework with the one used by other categories of workers.

3.1.2. Financial aspects

What is the total amount of social contributions and the weight of social security?

You should give, when available, figures.

3.1.3 Administrative aspects

Who is in charge of collecting the contributions? (State, institution controlled by State, performers' union, private company, etc.).

Who is in charge of distributing music performers' allowances?

In conclusion, explain the general situation and the future perspectives for performers by using comparison with other categories of workers.

3.2. For self-employed, that this to say who have no work contract

3.2.1. Legal framework

What are both the employers and performers duties?

You should compare the legal framework with the one that applies to other categories of self-employed.

3.2.2. Financial aspects

What is the total amount of social contributions and the weight of social security?

You may give, when available, statistics

3.2.3. Administrative aspects

Who is in charge of collecting the contributions? (State, institution controlled by State, performers' union, private company, etc.).

Who is in charge of distributing music performers' allowances?

In conclusion explain the general situation and future perspectives for performers by using comparison with other categories of performers without work contract.

4. Unemployment

4.1. Statistics for each musical category

Average duration of unemployment.

Average of work duration (per month or per year) for performers who do not work in permanent orchestras.

4.2. Legal framework

Describe the unemployment scheme that applies to performers.

Make a comparison with other categories of workers and underline if this legal framework is applied in a satisfactory manner.

4.3. Financial aspects

What is the total amount of social contributions?

What is the weight and the duration of distributed unemployment allowances?

Statistics are important, including at a national level, in order to make a *comparison with the performers' different status* and to lay down recommendations.

4.4. Administrative aspect

Who is in charge of the unemployment scheme for music performers?

In conclusion, explain the general situation and the future perspectives for performers in comparison with other categories of workers.

5. Remuneration

5.1. Who gets paid?

Do performers receive directly their income or is there a system of payment through a professional organization?

5.2. What is the amount of remuneration?

Is there a minimum wages (per session, weekly, monthly)?

Is free performance common practice and if so, in which proportion?

6. Fiscal situation

What are the taxes advantages given to this profession?

Compare with other professions.

7. Illegal work

What is the proportion of illegal work, that is to say work that is not taxed.

What are the legal sanctions?

More generally speaking, describe what has been the tendency over the last decade, for each musical category, and the future perspectives.

8. Immigration

What is the proportion of foreign performers who work in the national territory?

What protectionism measures are used to limit work for foreign performers?

9. *Collective representation*

9.1. Freedom of association

What are the main legal provisions existing to protect freedom of association?

What are the main statutory prerogatives given to union?

Give significant examples of social rights that have been attributed to music performers thanks to collective agreement

Do you think that collective agreements are respected?

Explain both the weight and the role played by collective bargaining concerning music performers and the future perspectives on this issue.

10. *Registration of musical performers*

Give statistics for each musical category.

Appendix 8

ILO Conventions applicable to musical performers

Chronological order

- ILO Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946
- ILO Convention No. 81: Labour Inspection, 1947
- ILO Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948
- ILO Convention No. 88: Employment Service, 1948
- ILO Convention No. 95: Protection of Wages, 1949
- ILO Convention No. 96: Fee-Charging Employment Agencies, 1949
- ILO Convention No. 97: Migration for Employment, 1949
- ILO Convention No. 98: Right to Organise and Collective Bargaining, 1949
- ILO Convention No. 100: Equal Remuneration, 1951
- ILO Convention No. 102: Social Security (Minimum Standards), 1952
- ILO Convention No. 103: Maternity Protection, 1952 (revised)
- ILO Convention No. 106: Weekly Rest (Commerce & Offices), 1957
- ILO Convention No. 111: Discrimination (Employment and Occupation), 1958
- ILO Convention No. 117: Social Policy (Basic Aims and Standards), 1962
- ILO Convention No. 118: Equality of Treatment (Social Security), 1962
- ILO Convention No. 120: Hygiene (Commerce & Offices), 1964
- ILO Convention No. 131: Minimum Wage Fixing, 1970
- ILO Convention No. 132: Holidays with Pay (Revised), 1970
- ILO Convention No. 135: Workers' Representatives, 1971
- ILO Convention No. 138: Minimum Age, 1973
- ILO Convention No. 140: Paid Educational Leave, 1974
- ILO Convention No. 143: Migrant Workers (Supplementary Provisions), 1975
- ILO Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977
- ILO Convention No. 154: Collective Bargaining, 1981
- ILO Convention No. 155: Occupational Safety and Health, 1981
- ILO Convention No. 157: Maintenance of Social Security Rights, 1982

ILO Convention No. 158: Termination of Employment, 1982
ILO Convention No. 160: Labour Statistics, 1985
ILO Convention No. 161: Occupational Health Services, 1985
ILO Convention No. 171: Night Work, 1970
ILO Convention No. 175: Part-time Work, 1994
ILO Convention No. 181: Private Employment Agencies, 1997
ILO Convention No. 182: Worst Forms of Child Labour, 1999
ILO Convention No. 183: Maternity Protection, 2000 (revised)

Thematic order

Duration of contracts

ILO Convention No. 158: Termination of Employment, 1982

Duration of work

ILO Convention No. 106: Weekly Rest (Commerce & Offices), 1957
ILO Convention No. 132: Holidays with Pay (Revised), 1970
ILO Convention No. 171: Night Work, 1970
ILO Convention No. 175: Part-time Work, 1994

Health protection

ILO Convention No. 155: Occupational Safety and Health, 1981
ILO Convention No. 161: Occupational Health Services, 1985
ILO Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977
ILO Convention No. 120: Hygiene (Commerce & Offices), 1964
ILO Convention No. 138: Minimum Age, 1973
ILO Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946
ILO Convention No. 182: Worst Forms of Child Labour, 1999

Inspection of working conditions

ILO Convention No. 81: Labour Inspection, 1947

Professional training

ILO Convention No. 140: Paid Educational Leave, 1974

Social protection

ILO Convention No. 102: Social Security (Minimum Standards), 1952

ILO Convention No. 157: Maintenance of Social Security Rights, 1982

ILO Convention No. 103: Maternity Protection, 1952 (revised)

ILO Convention No. 183: Maternity Protection, 2000 (revised)

Unemployment/finding employment

ILO Convention No. 88: Employment Service, 1948

ILO Convention No. 96: Fee-Charging Employment Agencies, 1949

ILO Convention No. 181: Private Employment Agencies, 1997

Wages

ILO Convention No. 117: Social Policy (Basic Aims and Standards), 1962

ILO Convention No. 95: Protection of Wages, 1949

Equal pay

ILO Convention No. 100: Equal Remuneration, 1951

ILO Convention No. 117: Social Policy (Basic Aims and Standards), 1962

ILO Convention No. 131: Minimum Wage Fixing, 1970

Migration

ILO Convention No. 118: Equality of Treatment (Social Security), 1962

ILO Convention No. 97: Migration for Employment, 1949

ILO Convention No. 143: Migrant Workers (Supplementary Provisions), 1975

Discrimination

ILO Convention No. 111: Discrimination (Employment and Occupation), 1958

Union freedom

ILO Convention No. 87: Freedom of Association and Protection of the Right to Organise, 1948

ILO Convention No. 98: Right to Organise and Collective Bargaining, 1949

ILO Convention No. 135: Workers' Representatives, 1971

Union rights

ILO Convention No. 154: Collective Bargaining, 1981

Statistics

ILO Convention No. 160: Labour Statistics, 1985

Please consult the ILO's website on international labour standards, at <http://ilolex.ilo.ch:1567/public/english/50normes/infleg/iloeng/index.htm>

Appendix 9

Ratifications of the ILO Conventions applicable to musical performers

For up-to-date information, please consult the ILO's website on international labour standards, at <http://ilolex.ilo.ch:1567/public/english/50normes/infleng/iloeng/index.htm>