

Statute of an Artist

.....
working material for general international debate

..... running summary
..... information and responses of 21 countries 4 continents
..... comments
..... suggestions
..... examples of legislative standards from several countries

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**I would like to thank everyone
who participated in the preparation of this working material,
because without their cooperation,
this summary would not come to existence:**

- representatives of international artists organizations, colleagues in Europe IAA, IAA / AIAP, IFCCD, ECCD and ECA, who supported the initiative and contributed to the spread among artists organizations
- artists from many countries, who responded to our proposal and sent us not only completed questionnaire, but often even wider comment
- colleagues of Board of Slovak Coalition for Cultural Diversity (SCCD): without their long-standing effort and real, open and constructive cooperation there would not be any chance to establish statute of an artist in real life of Slovakia
- a wider range of colleagues in the Coalition Council SCCD, in the Slovak Union of Visual Arts, our predecessors, who have raised this issue in Slovakia already in the 90s, or those who participated in translating of collected documents or supported our initiative in any other form
- Minister of Culture of the Slovak republic and his colleagues of the Ministry of Culture, who have a will to solve this problem and encouraged us to prepare the factual information and constructive suggestions and to start this whole international debate



Dear colleagues,

This is an example of effective international cooperation: the proposal of definition of Professional artist and questionnaire about statute of an artist was presented in 5 international art associations - IAA Europe, IAA/AIAP, ECCD, IFCCD, ECA - and I got some answers from all of them, for example:

- IFCCD: Australia (Ray Argall, Sarah Gardner), Morocco (El Hassane Neffali), Canada (great help especially from Charles Vallerand - lot of responds - not only positive but very complex)
- ECCD: Austria (Yvonne Gimpel), Germany (Prof. Wiesand)
- ECA: Malta (Narcy Kalemata), Denmark (Elisabeth Diedrichs), Finland (Ilkka Niemeläinen), Lithuania (Cornelius Platelis)
- IAA/AIAP: Chile, South Africa (Anton Loubser), Mexico (Rosa Maria)
- IAA Europe: France (Anne Pourny), Norway (Grete Marstein).

I have prepared and summarized the opinions, information and examples of related laws from 21 countries from 4 continents (with great help of my colleagues from Slovak Coalition and Slovak Union of Visual Art). Issues we are facing in the discussion often repeat, are very similar – now we can find answers from many countries and then it is easier to compare. I believe that it can be useful for artists.

10th General assembly of International Association of Art Europe 2013, October 5, Oslo, Norway:

1/ approved this recommendation: ***IAA Europe calls upon Member-State Governments to take into account the positive experiences with specific law like statute of an artist and implement the best idea in process of improvement social guarantees, creative working conditions, work and taxation conditions of Artists taking into consideration the Artist's creative contribution to each nation's cultural development.***

2/ approved to organize a conference on the statute of an artist probably in Jerusalem in the autumn of 2014 (we will discuss it with the organizer of GA IAA Europe 2014 – National Committee Israel).

We are very pleased with the positive feedback from countries where they deal with the status of artist, like in Morocco actually. We wish the best to our colleague Hassan El Neffali and all the others: it is very positive to know that they are actively working on a reform of the national law. We hope that this analysis will be at least somehow helpful in their efforts.

The process has not finished yet: we will be very happy to get reactions, comments and especially further information which are still missing in analysis. We are continuously working on the analysis, voluntarily and in our free time. And therefore be so kind and excuse our minor errors or inaccuracies that may have occurred in translation for example.

It is an open working material. We will appreciate if you point out the mistakes or raise any other kind of comments on the issues.

Thanks once again to all who took part - or are going to take part - in discussion.

The following summary/draft includes information provided by our partners in 21 countries worldwide.

Please, bear in mind that it is a work in process which concentrates - as a first step - mainly on the question „who should be included in the Statute of an Artist“.

The second step would be to analyze concrete measures to address the problems of artists in different countries. Our goal is to initiate an international discussion on this issue and come up with recommendation that would be acceptable for artists and governments.

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I/ Introduction

The effort to improve legal and social status of artists is one of the main goals of the Slovak Coalition for Cultural Diversity. It is also included in activities of many international artists' association that we cooperate which on a long term basis.

One of the ways of fulfilling this goal is new legislation – a law on the Statute of an Artist. Slovak artists have been discussing this issue for over two decades. Recently, we see a realistic chance to abandon mere discussions and enter the phase when things might actually be done: At the SCCD meeting with the Minister of Culture in May 2012 we reached an informal agreement that a task group would be established in order to analyze the current situation and prepare the draft proposal of the Statute of an Artist. This group, consisting of SCCD members and ministry representatives - had several meetings until, at the end of 2012 – an official working group has been officially appointed by the minister. The group is now a part of the Slovak Governmental Council for Culture (advisory body).

With the aim to facilitate a desired result:

a/ we continuously analyze artists' opinions and their situation in Slovakia and abroad: In Fall 2012, I worked out a basic analysis of the legislative framework of the statute (see appendix V/a) as well as the questionnaire (see appendix V/b). I presented these basic documents at meetings with 5 international associations and disseminated them to our partners IAA, IAA Europe, ECA, IFCCD, ECCD.

b/ Based on the gathered data we try to unite artists positions while searching for acceptable and feasible solutions for both the artists' community and the government: key role in this process at Slovakia has the SCCD and its Board; activities are also facilitated by the Slovak Union of Visual Arts and other associations. The information is placed on our website and discussed at meetings and debates.

c/ SCCD Board has prepared a draft version of The Statute of an Artist provision which is now used as the basic document for the discussion of the working group (see appendix V/c) .

Hereinafter, you can find preliminary summary of the information I have, to this day, received from several countries as well as the specific law or Statutes of an Artist from countries in which this concept has already been incorporated in social framework (Canada, Lithuania, Croatia, Morocco).

I have no doubts about the fact that international cooperation in this area can be beneficial for all parties involved. Despite differences in legal and social systems, the concept of The Statute of an Artist, basic definitions of terms and framework systems can save time and energy, but, most importantly, bring effective solutions – to the benefit of both artists and societies.

II/ Those who participated in the discussion

Our call to participate in the discussion and comment on our proposal (fill in the questionnaire) was heard by dozens of artists and organizations from

21 countries and 4 continents

– Europe, North, Central and South America, Africa and Australia:

- 1/ Australia
- 2/ Austria
- 3/ Canada
- 4/ Chile
- 5/ Croatia
- 6/ Denmark
- 7/ Finland
- 8/ France
- 9/ Germany
- 10/ Greece
- 11/ Island
- 12/ Lithuania
- 13/ Malta
- 14/ Mexico
- 15/ Morocco
- 16/ Netherland
- 17/ Norway
- 18/ Serbia
- 19/ Slovakia
- 20/ South Africa
- 21/ United Kingdom

There is an announced interest of some other countries to express the opinion, such as:

- Bolivia
- Nicaragua
- Puerto Rico
- Uruguay

III/ General mapping of the situation worldwide

- preliminary evaluation of findings

Generally, we can conclude that:

- governments worldwide have different types of approach towards artists and culture: some states have complex legal provisions (such as The Statue of an Artist); some states have specific parts/articles incorporated in other types of legislation; often, these articles are very interesting and efficient,

- despite the fact that culture is a complex and varying system which includes many types of art (visual arts, music, theater, film, literature, etc.) and despite the fact that artists themselves are, sometimes, very emotional, most reactions were highly positive. Prevailing number of respondents understood the concept, expressed their support and were genuinely interested in the results of our analysis. They also expressed their willingness to further cooperate in this effort.

The selection of relevant parts of the responses may be found in the next section. By the way of introduction I will try to respond especially on uncertainties and doubts, expressed which in the discussions or in the comments, and also to specify the purpose of this whole initiative is indeed - in order not to “get lost” in the problems that this proposal has no ambition to solve.

1 / objective is not to aggravate the situation or to discriminate "ARTISTS" (artists as defined by UNESCO, what we fully respect), our proposal will not solve their situation and does not attempt to deal with it as it is beyond the possibilities of this particular proposal; of course, that does not mean that the solutions do not exist: we in Slovakia, and I personally too, actively support the proposals that differently solve the situation of “artists” in the broadest sense – for example support for non-professional artistic activity (that implies artistic activity with no purpose of financial income), the grant system, state financing of cultural and artistic activities, aesthetic education support, etc.

Thus, the proposal to define a PROFESSIONAL ARTIST and solve the specific problems does not mean rejecting OTHER proposals that will have the ambition to solve OTHER specific problems of artists, who do not have an income from artistic activities: any initiative is welcome.

2 / In the same time we think that if we do not know how to solve ALL the problems of artists within one proposal, it is not a reason to give up and abandon the proposal, which could help to solve the problems of MAJOR PART OF ARTISTS: the aim is to find the way to solve the specific problems of that part of artists whose artistic activity involves their income and thus has an impact on their taxes and social security (hence to distinguish them from a wider group of “artists” we use the term “professional artist”).

At least one comment - DEFINING A PROFESSIONAL ARTIST, EXTRACTS FROM NEIL CRAIG ASSOCIATES REPORTS, Report for Province of Ontario – 2007: *“For a variety of reasons, including maintaining professional standards, eligibility for grants, prizes and access to support systems, both*

*artists' organizations and arts agencies also **need to distinguish between professional artists and others who might occasionally write an article, paint a picture, or perform in a play. All of the associations, unions and guilds that represent artists have objective membership criteria that distinguish between professionals and amateurs.***"

3 / The aim is not to invent something totally new, on the contrary:

- the aim is to start the international expert debate on WHAT REALLY EXISTS in several countries, either in the form of a specific law - Statute of artist (see Canada, Lithuania, Croatia, Morocco), or in the form of specific measures for artists as part of other laws

- the aim is - on the basis of the positive examples from practice - to try to come to the universal and viable FRAMEWORK model statute of professional artist, which could help to improve the situation in countries where such a legal framework is missing and other measures are not sufficient

4 / Even in the case that the consensus in the issue of the status of a professional artist we come – it is not and can not be the aim to FORCE it to the artists, associations, or even states (I respond to the concerns expressed by the colleague and friend from South Africa, Anton Loubser: *With regard to South Africa, probably in most African countries, traditional national values, crafts, etc continue to play an important role in considering who on the ground are regarded as 'professional artists'. We should take care not to encourage, inadvertently, criticism that is sometimes expressed in non-Europe circles that European countries (and the USA) tend to dictate to the rest of the world.*)

a / Is not and can not be the goal to dictate anything to any country, none of us has such a power. Any framework model can be only a recommendation, or INSPIRATION through specific examples for artists in search of concrete solutions in different countries, whether partial or more fundamental - and important inspiration may be the discussion; however, responsibility of decision ALWAYS has the country itself.

b / It is not important, WHO came up with a proposal, if it came from Europe or other parts of the world, important is if the proposal or THE WHOLE DISCUSSION CAN PROVIDE SOME HELP TO THE ARTISTS: in the case of the concerns expressed on behalf of Africa, the best answer is perhaps an interesting example right from Africa – for example, protection of artist defined in the laws of Morocco (eg. Chapter III / Article 9 - see page 28 and Appendix V/g, page 70) or example from other non-European countries - Mexico (interesting possibility for artists to pay taxes in kind, with their works of art – see page 27). Perhaps this may inspire some countries: why should we think that in the non-European country a good idea can not be born? I believe that there are good ideas and I sincerely wish there will be more and more of them.

c / One more note on baseless concerns expressed on behalf of Non European - countries: yes, a reality is that the legal and social status of artists is very different in various countries all over the world. There are differences also within Europe. It would be unreal to expect that the discussion or possible proposal will fundamentally change the situation in countries where the social and legal status is at a good or very good level: I believe it can be a positive stimulus also for these countries (always there is a room for improvement and it is important

to prevent deterioration, and you always can find some reason for that – eg. ongoing economic and financial crisis), but this discussion may be the most meaningful for countries where the legal and social status of artists IS NOT GOOD SATISFACTORY yet.

d / However, I agree with the opinion of Anton Loubser, quote : " As for South Africa, perhaps the as for the majority of African countries, the decision, who is a professional artist, is still majorly influenced by the traditional national values, crafts etc. " I agree, and that is why we, together with the team of colleagues, are trying to summarize all the specific examples, which - also thanks to you – can be reached and I attach particular Slovak model we are working on, but I repeat, that the aim of international consensus can currently be only agreement on framework model statute: namely, setting of strict criteria must remain – just because of substantial differences in traditions, real state of legal system, social security settings and current priorities – on the agreement between artists and representatives of a particular state.

Since we were the initiators of this whole international debate on the definition of a professional artist and on the statute of the artist in connection with the current factual debate between artists and responsible representatives of the Ministry of Culture of the Slovak Republic (and we do as much as we can to reach a realistic outcome), I would like to illustrate an idea of the framework conditions on the basis of a compromise proposal, which we reached after long discussions of artists in Slovakia. The proposal arose independently from the legal provisions in other states, but additionally we are comparing them and despite the differences we find surprising - but logical - similarities that could be the basis of framework conditions of artist statute, usable in other countries.

Basic and general conditions of Slovak proposal of professional artist statute

1/ **voluntariness**: artist should be considered to be a professional artist, only if he himself is interested in it

2/ **artistic activities income**: although initially we tried to omit this condition, we concluded that it is necessary because it belongs to the important distinguishing features of this group of artists (since the objective is to find the way to solve the specific problems of those artists whose artistic activity is a part of their income and thus has an impact on their taxes or social security)

3/ **simplicity, openness and transparency of the system**: on the basis of clearly defined transparent criteria the system must allow the change the status of an individual artist from more broadly defined category of “artist” to more closely defined category of “professional artist”.

4/ **the chance to participate for those who are an active part of art and artistic creation**, by establishing three alternative conditions, allowing the acceptance after meeting one of them; **artist would be considered to be the professional artist status if:**

he/she received professional training

o r

he/she is a member of the generally recognized artists organization active in the artist's field

o r

he/she is recognized personality in artistic field according to the proven results.

5/ **the shift of responsibility to the artists:** according to the experience of several countries (see examples in paragraphs IV and V) the artists themselves, not the state, have to decide (by accepting in associations or assessing who is a personality)

6/ **protection against the consequences of subjective decision making:** no one should have a monopoly on decision-making, the artist should have an opportunity to choose the one of several alternatives that is most suitable for him

There are logical reasons why the proposed three criteria (education / association / personality) complement each other:

Ad professional education

Indeed we can agree with the objections, that sometimes occur - that school can not make somebody an artists, but on the other hand:

- Can it be argued that if someone has talent, completion of professional education will weaken his talent? Probably not.

- Is it not true that the quality professional art schools require talent test, that student has to complete additional amount of tests during the study, that graduating from the college or another art school is connected with the tests – so is it necessary to prove during of study over and over again that the person "has what it takes"? Undoubtedly yes.

- Education is the foundation of development in any field of human activity: is it not a sufficient reason to support the gaining, broadening, completing of education, lifelong educational process also in the field of arts? I am sure of it: gaining a professional, technical and technological experience and developing the skills, theoretical knowledge (aesthetics, art history, philosophy, etc.), even a period of several years spent in the artistic environment and during the intensive solutions in the field of artistic creation can (although it does not happen with every student) open new and unexpected horizons of arts.

- It is true, of course, that in the field of art there are and always will be exceptions – I mean individuals who are certainly successful in the art despite the lack of professional education, but the proposed system does not discriminate against them: two of the three options do not require professional education.

Therefore I believe that education in the art should be supported by all available means: in accordance with the practice in many countries (in some cases it is essential condition) - at least one of several criteria - as a compromise - should be included in the statute of professional artist.

Particular level of education needed could be defined by the county itself.

Ad **membership in the generally recognized artists organization** active in the artist's specific field.

The fact whether high-quality artwork will be created, does not depend on association of artists or cultural ministries: the work of art itself is determined primarily by the artist. But on the other hand the general conditions for artistic work, the laws, fact whether the artist's work can make his living also feed largely depends on the state, ministries of culture etc. Legal and social status of artists, cultural development strategy, public attitude to culture and the art is not once and away defined and changeless: it is a process that is continually evolving – sometimes turning for the better or even for the worse... And therefore, it is in the interest of the artists to have strong and actionable artists associations that are able to be reliable partner for the state in matters of social and legal status of artists and other key issues of culture and art, to be the partner able to represent and defend the interests of artists. Without the strong national associations there would not be (or would be greatly reduced) even the wider international cooperation (IAA Europe, IAA/AIAP, ECA, ECCD, IFCCD and other organizations), which have and should have the ambition to lobby in favor of promoting constructive solutions in the field of art during the wider international forum (EC, EU, UN, etc).

Therefore I believe that it is in the interests of artists to promote the membership in the associations in this way. Of course **not as an ultimatum but as a choice, as one of several options.**

Note: In your statements (see paragraphs IV and V) more of you supported such a possibility, and today it is also a part of real life in many countries. More precise definition of the conditions (which associations can be respectable for this purpose in specific countries) could be the subject of a individual decision in these countries: eg. required minimal number of association members will be different in large countries (eg. China or Germany) compared with small (Monaco or Liechtenstein).

Ad “personalities”

Last option - acceptance of indisputable personalities without examining whether and which education they have, and without forcing them to be members of an association, complements the other two options and gives enough space for substantive solutions in the spirit of fair play.

The decision who is a personality in the field of art would be left again to the decision of artists of the country itself regarding to the real situation.

Finally, I would like to repeat that negotiations with the state, aimed at the effort of gradual improvement of the legal and social status of artists, in accordance with the real possibilities of the country, is never easy, but with information, positive and constructive solutions and wider international support is at least a little easier.

THEREFORE I think that it is important to deal with this issue - the statute of a professional artist. Some criteria seem clear now. This analysis and open wider international debate should help to clarify them.

IV/ Summary of reactions

from individual countries, including the abridged versions
of the most interesting quotes (quotes are in *italics*):

1/ Australia: two detailed, separate reactions. We find both of them positive. Both of them contain interesting and useful bits of information, e.g. :

1/a **Ray Argall, President, Australian Directors Guild**, president@adg.org.au:

It's a bit like a can of worms trying to define Artist, and in Australia we are still waiting on our own National Cultural Policy to be processed through government.

As it stands now, as far as the tax office stands it's pretty straight forward to be considered an artist purely on the basis of ones economic activity (ie: proof of earning a living from creative work) however it's not so clear with social security which has a whole other range of considerations. We are hopeful the NCP will address this but from the POV of this question it's not the same answer for tax or social security.

However I can circulate this to our coalition to see if there are any more pointers that might help answer the questions?

Artists working in different creative industries often have different rules and definitions, and different mechanisms of govt support that carry their own definitions of eligibility.

The answer to the question(s) may differ for someone working in the screen arts as to musicians as to visual artists etc etc.

1/b **Sarah Gardner** S.Gardner@australiacouncil.gov.au:

This is an important question and one of the first things ever addressed by IFACCA in our D'art research questions (in response to a question to the Australian National Association for the Visual Arts (NAVA)).

Information about our report published in 2002, "Defining artists for tax and benefit purposes" is available here <http://www.ifacca.org/topic/defining-artists-for-tax-and-benefit/>. I hope this helps contribute to your discussions – even though it is now ten years old and a small sample. Please let us know if it might be useful to work together on e.g. circulating information or updating this report.

It is also worth noting that the Compendium on Cultural Policies www.culturalpolicies.net (for Europe) and the international version we are developing, WorldCP www.worldcp.org (specifically see <http://www.worldcp.org/profiles-structure.php>) has a whole Section 5 on "Legal provisions in the cultural field" - so you can check on that for nearly 50 countries now. You may

already be aware of this useful resource too <http://www.culturalpolicies.net/web/status-of-artists.php>

2/ Austria: Austria as our neighboring country is very interesting and important to us due to our geographic and historic closedness. **The reaction is positive, interesting and useful .**

2/a Yvonne Gimpel:

*Dear Pavol! Thanks a lot for the initiative. However, it should be noted, that this reply **only illustrated the situation in legal and practical terms, but does not represent the political position or current state of discussions of the relevant artist associations/ interest groups!***

Just to give you one example: the Austrian Association of visual artists as well as the Austrian Council of Culture are discussing for some time now the very narrow and restrictive practice of defining artists as precondition for access to the Austrian "artist social insurance fund" which does not (anymore) reflect the developments and every-day life reality of professional artists and artistic activities (you'll find a rough translation of the latest political statement on this matter in our previous correspondence with Mirka).

We are very interested to learn more about the results and your intended follow-up! Please let me reiterate once again our openness and willingness to meet on this matter in person.

Kind regards from the big Bratislava Suburb called Vienna

(Thank you Yvonne ☺. Pavol Kral)

Questionnaire of IAA Europe to the definition of „Professional Artist“

1) Do you have currently in your country any valid system, allowing – as simply as possible but definitely – recognize from point of view or tax or social insurance office worker who is a professional artist?

YES: *“Law of Social Security Insurance Funds for Artists” (Künstler-Sozialversicherungsfondsgesetz, KSVF-Gesetz)¹*

The KSVF-Gesetz specifies a “Professional Artist” (KünstlerIn)

(BGBl. I Nr.131/2000, last changes through BGBl. I Nr. 55/2008)

- a) arts, music, literature, cinematics or in one of the contemporary implementations of art due to his/her artistic capability in line with artistic activities*
- b) A person who successfully completed an artistic higher education is artistically capable to exercise those artistic activities that are covered by the higher education.*

In order to determine if a particular activity falls within the definition of artistic, the KSVF requests an expert opinion from the so-called Künstlerkommission (art

¹ <http://www.bmukk.gv.at/kunst/recht/ksvfg.xml>

commission). The sub-commissions (Kurien) provide expert opinions as to the existence of so-called “Künstlereigenschaften” (art qualities) and the artistic activity.²

If the report is negative, the applicant may appeal for a new assessment from the appeals commission. The sub-commissions are primarily composed of representatives of special interest groups, artist unions and collecting societies.³

- 2a) Is your system completely different to the attached proposal? **NO**
- 2b) Is your system similar to the proposal? **YES**
- 2c) Are there any benefits from being recognized as a professional artist? **YES** (full answer at question 6)
- 5) If your system is similar to the attached proposal please briefly describe just differences:

Austria not only follows the “alternative 5” of the attached proposal, recognizing a professional artist based on the combination of the two criteria “specific art education” and “verifiable results of their art activities”, but combines it with the evaluations of the artists’ work by sub-commissions specialized in the area of arts (= evaluation by colleagues).⁴

- 6) If there are any benefits from being recognized as a professional artist in your country please add examples (rules or specific law is welcome):

Artists registered for compulsory insurance and who fulfil all other requirements will receive a subsidy towards their pension contributions from the KSVF (and since 2008 also for their health and, where applicable, accident insurance contributions where the maximum subsidy for pension insurance contribution has not been fully exhausted). (Social Security Insurance for Artists – Basic Guide 2011)⁵

Since January 1st, 2011 there is the possibility to temporarily step back from the self-employed artistic activity and therefore form the compulsory insurance. [...] This is the right and necessary option for the goal of claiming an existing right on unemployment benefits.⁶

² http://www.bmukk.gv.at/medienpool/17177/bgbl_ii_309_2008.pdf

³ http://www.igbildendekunst.at/fileadmin/user_upload/IGBK_Dateien/igbk_online/service/sozialversicherung/2011_SocialSecurityInsuranceArtists_BASICGUIDE.pdf [Basic English Guide 2011]

⁴ <http://www.igbildendekunst.at/service/sozialversicherung/ksvf.htm>

⁵ http://www.igbildendekunst.at/fileadmin/user_upload/IGBK_Dateien/igbk_online/service/sozialversicherung/2011_SocialSecurityInsuranceArtists_BASICGUIDE.pdf [Basic English Guide 2011]

⁶ http://www.igbildendekunst.at/fileadmin/user_upload/IGBK_Dateien/igbk_online/service/sozialversicherung/2012_SozialversicherungKuenstlerInnen_KURZINFO.pdf

Furthermore has the KSVF the right to approve of delays of payment and payments by instalment or to renounce back-payments partially or totally, if this is unreasonable for the artist because of the economic situation.⁷

¹http://www.igbildendekunst.at/fileadmin/user_upload/IGBK_Dateien/igbk_online/service/sozialversicherung/2012_SozialversicherungKuenstlerInnen_KURZINFO.pdf [Basic German Guide 2012]

2/b Austria - additional information from the web site (IFACCA and National Association for Visual Arts - NAVA, Australia):

2001 the Law on Social Security for Artists (Künstler-Sozialversicherungsfondsgesetz) came into force (since 2011 it has been called the Artist's Social-Security Insurance Structure Act) and freelance artists are treated the same as other self-employed professionals, which means they must pay their statutory social security insurance if they earn more than 6 453 EUR per annum. In many cases, the new Law created a situation whereby artists end up making two different types of social insurance payments: statutory insurance for freelance work and any other social security insurance payments which result from other part-time employment contracts they may have. As many freelance artists are employed both part-time and do freelance work, the contribution to the social security system is relatively high compared to total income. There was a change here in 2009, and indeed one that applies for those cases in which additional to self-employment there is a further income: if this income exceeds the threshold of EUR 4 515 (2012) it will also be subject to the obligatory social insurance payments.

The Law set up a Social Security Insurance Fund for Artists (Künstlersozialversicherungsfonds) which grants artists a pension supplement of up to EUR 130 per month, if their annual income from artistic activity is at least EUR 4 515 (2012) and the sum of all their income does not exceed EUR 22 575 (2012) annually. This amount increases by EUR 2 257 for each child for which Child Benefit is drawn. The pension supplement is based on self-evaluation of future income. If either of the above limits is not achieved, or is exceeded, the supplement has to be paid back. Those artists entitled to receive a grant must meet certain requirements such as being specifically trained (art-university graduates, for example).

Others are selected by a specific board (commission). Each year about 4 500 to 5 000 artists receive this pension supplement; about 20% do not reach the minimum level.

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http://www.igbildendekunst.at/fileadmin/user_upload/IGBK_Dateien/igbk_online/service/sozialversicherung/2012_SozialversicherungKuenstlerInnen_KURZINFO.pdf

Since January 2008, however, freier Dienstnehmer have had unemployment insurance. In the field of the performing arts, there is a specific labour law, the Actors' Law (Schauspielergesetz, 1922, amended 2011) regulating the working hours, holiday rights and bonuses for actors, which are different from the employee regulations. Formerly, actors were assumed to be employees but full employment with all the costs and obligations for employers (e.g. festival-organisers) is now often circumvented.

3/ Canada: In Canada, the Statute of an Artist has been applied for years. The reaction is positive and very complex. Provides us with a lot of interesting and incentive information. IFCCD Secretary General, Charles Vallerand, whom I approached, contacted the Secretariat for socio-economic relationship of artists, Directory for political and inter-sectoral relationships and the Ministry of Culture and Communication of Québec.

3/a Here are several quotes related to the definition of a Professional artist. (The full version – see appendix page 46).

For the purpose of granting scholarships Art and literary Council of Quebec (Conseil des arts et des lettres au Quebec) defines professional artists as follows:

- *they declare themselves to be professional artists;*
- *they practise an art or art activities on their own account or offer their services for remuneration, as creators or performers, especially in the fields under the responsibility of the Conseil des arts et des lettres du Québec (CALQ);*
- *they have gained the recognition of their peers;*
- *they disseminate or publicly interpret their works in places and/or contexts recognized by their peers.*

Source : [http://www.calq.gouv.qc.ca/faq/artistes.htm # 1](http://www.calq.gouv.qc.ca/faq/artistes.htm#1)

We note that this definition of a professional artist is similar to the definition, which is stated in the Act respecting the professional status of artists of visual arts, arts and crafts and literature, and their contracts with promoters (users) (LRQ, c. S-32.01) (see Appendix).

An Act respecting the professional status and conditions of engagement of performing, recording and film artists (LRQ, c . S - 32.1)

This Act applies to artists and to producers who retain their professional services in the following fields of artistic endeavour: the stage, including the theatre, the opera, music, dance and variety entertainment, multimedia, the making of films, the recording of discs and other modes of sound recording, dubbing, and the recording of commercial advertisements. Adopted in December 1987.

For the purposes of this Act, an artist is a natural person who practices an art on his own account and offers his services, for remuneration, as a creator/performer in a field of artistic endeavour referred to in this act.

This Act grants professional status of artists. Among other things, it also supports the establishment of minimal labor standards by introducing the system of collective bargaining between

the recognized artistic organization and producer or association of producers or recognized producer organization.

An Act respecting the professional status of artists of visual arts, arts and crafts and literature, and their contracts with promoters (users) (LRQ, c. S-32.01)

This Act applies to artists who practice their art their own account in these three artistic activities: visual arts, arts and crafts, literature. It also relates to disseminators of such works.

The second Act, relating to the status of the artist was adopted in 1988 and confirms professional status of artists working in three major artistic activities.

♠ *The definition of a professional artist*

*According to this Act, a professional artist is a person who meets **each** of the following four conditions:*

- *he declares himself to be a professional artist;*
- *he produces works on his own behalf;*
- *his works are exhibited, produced, published, presented in public or marketed by a promoter in any way possible;*
- *he has been recognized by his peers as a professional artist by way of an honourable mention, an award, a prize, a scholarship, an appointment to an adjudication committee or an invitation to participate in a salon/exhibition or by any other similar means;*
or
- *is a member of a recognized association of professional artists.*

3/b Canada - additional information from the web site (IFACCA and National Association for Visual Arts - NAVA, Australia):

Enacted in 1993 and brought into force in 1995, the Status of the Artist Act (1995) officially recognises the contributions artists make to Canadian cultural, social, economic and political life and establishes a policy on the professional status of the artist. It also recognises rights of freedom of association and expression of artists and producers, as well as the right of artists' associations to be recognised in law and to promote the socio-economic well being of those whom they represent. Although Part I of the Act (1995) established the Canadian Council on the Status of the Artist, which was intended to provide advice to the Minister of Canadian Heritage, to date, this part of the Act has not been implemented. Part II of the Act (1995) established the Canadian Artists and Producers Professional Relations Tribunal, and put into place a framework for the conduct of professional relations between artists and producers within federal jurisdiction (government institutions and broadcasting undertakings under the jurisdiction of the Canadian Radio-television and Telecommunications Commission). The Tribunal reports to Parliament through the Minister of Labour.

The Status of the Artist Act was reviewed in 2002-2003 as stipulated in section 66. (Prairie Research Associates 2002) Although the Act (1995) was endorsed by those consulted, there was also a consensus that the legislation, by itself, is insufficient to bring about significant change in artists' socio-economic circumstances. The Act's restriction to federal producers, the fact that it addresses only labour relations, and the fact that it does not apply to producers sub-contracted by producers within federal jurisdiction are seen by artists' organisations in particular as its main shortcomings.

There was general agreement that other kinds of measures are necessary if the socio-economic circumstances of self-employed artists are to improve.

Certain deductions to the Income Tax Act (1985) are in effect for visual artists and writers, and performing artists. Visual Artists and Writers: visual artists and writers who are self-employed are entitled to deduct reasonable expenses incurred in connection with earning income from their business, including work

space in home expenses and professional membership dues. Visual artists and writers who are employees can deduct, within certain limitations, their expenses paid (e.g. advertising and promotion, travel expenses) to earn employment income from "qualifying artistic activity" which includes:

- *creating (but not reproducing) paintings, prints, etchings, drawings, sculptures or similar works of art;*
- *composing a dramatic, musical or literary work;*
- *performing a dramatic or musical work as an actor, dancer, singer or musician; or*
- *an artistic activity in respect of which the taxpayer is a member of a professional artists' association that is certified by the Minister of Communications, now the Minister of Canadian Heritage.*

Performing artists who are self-employed can deduct reasonable business expenses, including the following: insurance premiums on musical instruments and equipment, the cost of repairs to instruments and equipment, legal and accounting fees, union dues and professional membership dues, an agent's commission, publicity expenses, transportation expenses related to an engagement, cost of music, acting or other lessons incurred for a particular role or part or for the purpose of general self-improvement in the individual's artistic field.

4/ Chile

We appreciate that our analysis may include also the view of Latin America: **There is no** valid system of clear distinction of professional artist in Chile and they **agree** with our proposal, although they have some objections (the answer on the question "Do you think that some part of the proposal should or could be defined better?" was yes).

They added a detailed information:

*In my country (Chile), **the artist is defined as a "professional artist" if he gained college/university education** (gained degree in the field of art and so on). Those without the art college/university education are considered to be amateurs who practice their art only as a hobby.*

It is difficult to unify ideas and change in reality the orientation in this area, where there are various criteria. Even different geographical conditions are revealed in the territorial differences between areas that influence assessment or criteria.

Moreover, if the artists are recognized as "professional artists", who have achieved in their profession a degree of recognition in other countries, the state also provides a means for local artists through competitive projects mediated by the Ministry.

5/ Croatia

Alen Ačkar, Croatian freelance artists association:

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist?

YES

2a/ Is your system completely different to the attached proposal?

NO

2b/ Is your system similar to proposal?

YES

2c/ Are there any benefits from being recognized as a professional artist?

YES

3a/ Do you agree with attached proposal?

YES

3b/ Do you think that something in proposal should or could be defined better?

NO

6/ If there are any benefits from being recognized as a professional artist in your country, please add examples (rules or specific law is welcome):

LAW ON THE RIGHTS OF INDEPENDENT ARTISTS AND PROMOTION OF CULTURAL AND ARTISTIC CREATIVITY- see attachment V/e – page 55

6/ Denmark

Elisabet Diedrichs, Council of Danish Artists dkr@danskkunstneraad.dk,
www.kunstner.org

Dear colleagues at IAA

Here is a very short answer to the questionnaire on the definition of professional artist. Please note that the Council of Danish Artists gathers authors and performers of all artistic disciplines. Our perspective is not only that of the visual artists.

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist?

NO

3a/ Do you agree with attached proposal?

YES

We think that the proposal is OK. We understand it as "a specific art education and/or verifiable results of their activities".

It is then a matter of definition to find out of which schools that can be classified as "a Specific art education".

It is also necessary to find out what we mean by "verifiable results". There is of course the criteria of artistic quality, but there might also be a financial criteria and a criteria of activity. There are different opinions on to what extent the last 2 should be considered.

Finally I would like to add that the only definition of an artist that we are aware of in Danish legislation is written in a law on taxation. Artists are defined as people who receive income from the arts, and under certain conditions they may spread their taxable income over more than one year (a

form of income averaging). But the policy of the Council of Danish Artists is not to ask for special schemes and rules for the artists within labour, social and tax legislation. We rather try to advocate for a treatment of artists that is equal to other groups in the society, and when it is possible we prefer to collaborate with other sectors. **But in order to achieve equal conditions, the specific working conditions of artists must of course be considered.**

7/ Finland

7/a Ilkka Niemeläinen, composer, president FORUM ARTIS ry The Joint Organization for Associations of Finnish Artists:

Hello Pavol, thank you for your level of activity. Here are my answers to the questionnaire.

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist?

NO

3a/ Do you agree with attached proposal?

YES

3b/ Do you think that something in proposal should or could be defined better?

NO

7/b Finland - additional information from the web site IFACCA and National Association for Visual Arts - NAVA, Australia:

Mitchell a Karttunen, 1991 and Heikkinen a Karttunen, 1995

Practical definitions for tax and benefit systems

All tax and benefit systems impact on working artists. Some countries have specific schemes that attempt to account for the particular working patterns of artists, or that target specific arts policy outcomes. All tax and benefit systems therefore require some formalisation of what it means to be an artist or a 'working' or 'professional' artist. Examples where such determinations need to be made are:

- to allow the tax deduction of arts work expenses.
- to allow income averaging for artists.
- in deciding the tax treatment of trans-national/cross-border artists.
- for specific instruments such as Ireland's special income tax exemption for artists

(Revenue Ireland, 2001) and Croatia's Freelance [Independent] Artists and Encouragement of Cultural and Artistic Creativity Law (Institute of Public Finance, 2001).

8/ France

8/a Anne Pourny and the CNFAP board's ideas:

1/ Do you have currently at your country any valid system, allowing - as simply as possible but definitely - recognize from point of view of tax or social insurance office worker who is an professional artist?

NO (having paid the membership to the Maison des Artistes cannot be considered as necessary and sufficient to be a professional artist)

3a/ Do you agree with attached proposal?

NO (because a criteria based on diploma is unfair and contrary to reality)

3b/ Do you think that something in proposal should or could be defined better?

YES (by following the UNESCO definition of Professional Artist and adding a recognition of artistic activity)

6/ If there are any benefits from being recognized as a professional artist in your country please add some examples (rules or specific law is welcome):

In France the Maison des Artistes requests to be a “professional artist” to benefit from the governmental health coverage. But it doesn’t insure any artistic quality nor professionalism. Moreover it is in opposition with the UNESCO definition and therefore cannot be considered as a good approach.

7/ If you think that something in the attached proposal should or could be defined better please briefly describe your opinion:

Why concluding that “specific art education” is one of the two final criteria when it is recognized as an “unfair” criteria in the earlier discussion of article 3?

Everyone knows that what is important in any artist’s life is not the diploma but the everyday training, meaning a continuous effort through trials and errors, successes and failures.

We know that what is important in any artist’s life is not the diploma but the everyday training, meaning a continuous effort, lifelong, through trials and errors, successes and failures.

Stating that “verifiable results of art activity” is the second criteria, we agree with it.

We are pleased to see the large number of disadvantages listed by Pavol concerning the “income from artistic activities”: it excludes the possibility of using this criteria.

We don’t have the tools to evaluate the references given by the White Paper of the Maison des Artistes about the various European countries. But we can say that contrary to this White Paper, in France it is not an “administrative declaration” which allows the “artistic quality”...

The latest definition recorded by UNESCO was elaborated back in 1980, during the 21st session, in Belgrade, and published under the title “ Recommendation concerning the Status of the Artist”. In article 1.1

“Artist is taken to mean any person who creates or give creative expression to, or recreates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who asks to be recognized as an artist whether or not he is bound by any relations of employment or association”.

As a conclusion:

We consider that the combination of the criteria included in the UNESCO definition together with an evaluation of the "artistic activity" must be presented as the universal solution and let each NC free to adapt its own criteria according to their needs (for instance : representativeness vis- à-vis local authorities), culture (for instance: importance of tradition and handicrafts), habits of assistantship (this is the case of France and some European countries), urgency of other issues (such as freedom of expression in Turkey and Tunisia).

b/ France - additional information from the web site (IFACCA and National Association for Visual Arts - NAVA, Australia):

There is no general tax legislation for culture, but many special measures operate in the different domains.

Tax laws for culture pertain to five major sectors:

- artistic and literary creation;
- preservation of cultural heritage;
- promotion of culture;
- cinema, broadcasting and the music industry;
and press and publishing.

A specific social insurance regime applies to authors and to "artists-authors" (writers, music composers, film and television authors, software authors, choreographers, photographers, visual artists, graphic artists, etc.), by which they can benefit from social coverage under the same conditions as salaried workers.

Artists and technicians working in the performing arts or audiovisual and entertainment industries (film, television, etc.) can have specific social security coverage designed for people without regular activity or steady employment, a regime commonly called the intermittence du spectacle.

9/ Germany:

9/a Prof. Dr. Andreas Joh. WIESAND, Executive Director, European Institute for Comparative, Cultural Research gGmbH (ERICarts), Editor, Compendium of Cultural Policies & Trends in Europe

The statement is very factual and knowledgeable, I give it in full:

*Hello, I have not much to add to what Sarah proposes (to explain - P.Kral: Prof. Wiesand responds to the statement of Sarah Gardner from Australia - see above). **In principle, I sympathize with the solution proposed by the Slovak Coalition, as long as the focus remains on artists' activities and membership in any organisation is not made compulsory in order to get recognition (since this would exclude a great number of people).** Of course, answers to the question of a "legal definition" of artists will depend, in most countries, on what particular field or problem is to be addressed, e.g. taxation, health and pension benefits or eligibility to receive public funding. **Reviewing the results of comparisons made in the context of the Council of Europe/ERICarts "Compendium of Cultural Policies and Trends in Europe", we came to this conclusion:***

"In addition to the systems of direct public support for the arts and artists, there are pieces of legislation in many European countries which take into account some of the social and /or economic needs of creative workers resulting from their often precarious working status. However, "integrated models" which facilitate cooperation between cultural policies (including direct and indirect measures) and other areas of policy making (e.g. economics, social affairs, health or employment) are few. A re-orientation or re-focussing of existing public policies for artists and their working environment in a more integrated manner remains a challenging task - artists and their associations or unions could try to contribute to solutions for this problem."

Possibly, the Compendium Experts Group on Legal Affairs and Cultural/Human Rights may find it challenging to participate in the search for appropriate solutions, which is why I will address them separately.

9/b Germany - additional information from the web site IFACCA and National Association for Visual Arts - NAVA, Australia

Artists and journalists / authors in the Federal Republic of Germany enjoy comprehensive social security coverage. When employed, they are covered under the general social security regimes. Self-employed artists and journalists / authors are obliged to join the Artists' Social Insurance Fund (KSK). The special protection for self-employed artists and journalists / authors provided for under the Artists' Social Insurance Act (KSVG) which came into force on August 2nd, 1981 encompasses statutory health,

long-term or old age care and pension insurance. Like employees, the artists and journalists / authors must only pay half of the social insurance contribution. Sixty percent of what could be labelled an "employers share" is paid by the companies that regularly exploit and market the work of artists and journalists / authors. To that effect, the enterprises are charged with an artists' social insurance levy (Künstlersozialabgabe) on all fees and royalties paid, whose level is subject to annual adjustments. For example, the levy reached 5.8% in 2005 and then decreased in the following years to 4.1% in 2013.

In addition, the Federal Government provides a subsidy to help fund the supposed "employee's share" with 40% of the expenditures of the Artists' Social Insurance Fund. Through another amendment of the Artists' Social Security Law that came into effect in June 2007, the financial basis of the Fund was improved by broader coverage and a stricter examination of all contributors, including the artists as beneficiaries. In September 2008, the attempt of some Länder in the Bundesrat to abolish the Social Security Act for Artists failed, due to a broadly supported protest against such plans both from cultural policy makers of all parties and from culture and artists' associations.

With the exception of the Artists' Social Insurance Act there are no special laws regarding the terms of employment for artists and other cultural workers. The general labour legislation is applied. If artists or cultural workers are employed in municipal, Länder or federal facilities, then the public service regulations are applied. On the basis of the general Wage Agreement Law (TVG), special contracts and wage agreements for the cultural sector, including non-artistic staff, were concluded by unions and employers organisations for single artistic sectors and cultural facilities such as theatres, orchestras and music schools. The conditions of work for main occupational groups such as singers, actors, orchestra musicians etc., are laid down in these agreements. In addition, special

courts of arbitration have been set up to settle employment disputes in theatres (Bühnenschiedsgericht).

10/ Greece

The response to the questionnaire is similar to the view that we have received from Chile. There is **no valid system of** clear distinction of professional artist **in Greece** and they agree with our proposal, although they have certain unspecified objections: the answer to the question “Do you think that something in proposal should or could be defined better?” - was **yes**.

11/ Island

The response to the questionnaire is similar to the view that we have received from Chile and Greece. There is **no valid system of** clear distinction of professional artist **in Greece** and they agree with our proposal, although they have certain unspecified objections: the answer to the question “Do you think that something in proposal should or could be defined better?” - was **yes**.

Comment on the explanation of proposal (not to the actual proposal):

COMMENT relating to the last chapter: In conclusion of this proposal”Defining professional artist is rather a protection against poor quality performances like reality shows” - My comment: referring to a specific kind “reality shows” should be avoided in the argument it ‘points a finger’ and limits the scope of the subject.

12/ Lithuania - Kornelijus Platelis, president of LKMA - Lietuvos meno kūrėjų asociacija (Lithuanian Association of Artists)

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist? **YES**

2a/ Is your system completely different to the attached proposal? **NO**

2b/ Is your system similar to proposal? **YES**

2c/ Are there any benefits from being recognized as a professional artist? **YES**

5/ If your system is similar to the attached proposal please briefly describe the differences:

An artist is recognized to be professional in Lithuania considering his education and artistic achievement. The decision is taken by an association which is registered as an “association of art creators” or by the special public board by the Ministry of Culture. The Minister of Culture has to approve the decision.

6/ If there are any benefits from being recognized as a professional artist in your country, please add examples (rules or specific law is welcome):

Artists pay the social tax from the half of their income from their artistic fees. If the paid taxes are too small in order to get artist insured as a receiver of minimum monthly allowance (1000 Lt) the State pays the rest.

I attach the Law on Artistic Creators and Their Organizations. (see Appendices - V/f page 61)

13/ Malta

Narcy Kalemata, ECA:

Dear Pavol, congratulations on the useful outcome of the ECA conference at Vilnius. Unfortunately Malta could not afford to be present. Thank you for questionnaire on status of the artist.

1. In Malta we do not have any recognition of the artist.

2. Any creator of commerciable work whether artitic or not is given a VAT (value added tax number) and like all SME's or self employed has to give a numbered VAT receipt to his clients. Those who do not earn more than Euro 6,000 a year are tax exempt but cannot claim tax refunds on materials and work related costs.

3. I agree with the college 5 year graduation criterium although it is problematic as such courses only started in Malta in the last 20 years therefore many professional artists have no qualification.

4. Most of our artists have alternative jobs or teach their art for their regular income. Employment in the arts are mostly with government. With media industries based on IT (tv, PR, printing etc) the image is distorted as all of them could be deamed to be artists. For example a handful of architects who work on government financed projects in millions distort the average earnings of artists. For every highly paid architect there are 100 artists who do not earn enough from their art to live decently.

I like your report.

If I may suggest one consideration I would like you to consider the establishment of criteria of the selction body who deals out recognition of a professional artist. Probably this will be a government entity like a medical board that accepts doctors and gives them an operating licence. So are we demanding that the selction board must be manned by persons who are really qualified to do the job.

I wish you good success in your quest fond regards from sunny Malta. Impression is this.

Cheers Narcy.

14/ Mexico

Rosa María Burillo Velasco, President IAA /AIAP . The statement is reproduced in full. An interesting solution is the possibility to pay taxes with artwork.

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist?

YES, from the point of view of tax.

NO, in social insurance

2a/ Is your system completely different to the attached proposal? **NO**

2b/ Is your system similar to proposal? **YES**

2c/ Are there any benefits from being recognized as a professional artist? **YES**

3a/ Do you agree with attached proposal? **YES**

3b/ Do you think taht something in proposal should or could be defined better? **NO**

From the point of view of tax visual artists can pay with their works or in cash.

TAXES AND SOCIAL SECURITY IN MEXIC: *In Mexico artists have 2 ways of paying their taxes:*

Pay with art work

Once a year artists can pay with their work in the following way:

If they sell 1 to 5 works they would pay with a work similar in size and value.

From 5 to 10 they would pay with 2

From 10 to 15 they would pay with 3

From 15 to 20 they would pay with 6

The work is judge by a jury, if the jury determines the work is not good the artist is asked to change it. If acceptace is denied for a second time the artist should pay taxes according to the sales he made.

The Works collected by the Treasury Department are send to be exhibited in different museums of the country, embassies or in offices of the federal government. The Works becomes part of the National Patrimony.

Other way is the normal pay.

The artists have to declare every month to the Treasury Department and have to give a receipt or invoice for each sold work and has to pay taxes according to the income they made. If no sales were made the artists have to declare 0.

SOCIAL SECURITY

In Mexico there is no social security for artists yet. A initiative was presented to the Senate and Congress. It was approved by the Senate and it is waiting for the approval of Congress.

15/ Morocco

El Hassane NEFFALI, the Moroccan Coalition for Cultural Diversity.

Here are some interesting information from Law No. 99.71 concerning the Status of Artists, 19 June 2003. **Complete law is presented in Appendix V/g page 70.**

Chapter I Preliminary Measures Article 1 Definitions

1. "Artist" means any natural person who practices artistic activity, either continually or intermittently, in return for remuneration and in the context of a contract of work or employment, or who performs an artistic work to sell or rent it to others, or produces it for the public administration, local authorities or public institutions.

2. "Artistic activity" is any activity involving artistic creation or artistic performance, where:

(a) "Artistic creativity" is any artistic work by a natural person, particularly in the field of audio visual art, photography, fine arts, music, theatre, literature (either written or spoken) or choreography.

(b) "Artistic performance" is any activity involving the artistic presentation or execution of all or part of an artistic work by a natural person, in any way, especially in the fields of music, theatre, variety shows, circus or puppetry.

Chapter II Relationship between Impresarios and Artists / Article 6

The artist working under contract, whatever name is given to that contract, is an employee to whom the provisions of employment law apply, unless covered by a special text in that or other laws, and taking account of the provisions issued for protecting literary and artistic works or artistic activities carried out by artists who belong to public professional organisations.

Chapter III Remuneration Article 9

If the presentation or execution of the artistic activity requires more than fifteen (15) days, the artist and the impresario may establish payment dates by mutual agreement, on condition that the artist receives advance instalments every fifteen (15) days, in such a way that he or she has been fully remunerated at the termination of the contract or at the conclusion of the artistic activity.

Section Two Art Services Agencies' Fees Article 21

Staff of art services agencies, when undertaking their function of seeking employment for artists, may not receive or accept deposits or collateral of any kind.

The impresario alone bears responsibility for the fees requested by the art services agency, while the artists employed pay nothing.

16/ Netherland

Information from the web site IFACCA and National Association for Visual Arts - NAVA, Australia:

Specific regulations are indicated in the Work and Income Provisions for Artists Act [WWIK, Wet Werk en inkomen kunstenaars, 2005]. This Act provides artists temporarily - for a maximum of 48 months, spread over a maximum period of 10 years - with a basic income (70% of the guaranteed minimum income). However, artists may earn up to 125% of the guaranteed minimum income by doing extra work, have no job seeking obligations and have free access to the training and individual counselling services of Artists&Cultural Entrepreneurship [Kunstenaars&CO, see also chapter 8.1). The WWIK is intended for new artists, building up a profitable practice, and for established artists with a temporary decrease in income. Artists who want to make use of the WWIK, have to prove they received a higher arts education or have run a professional practice. Artists&Cultural Entrepreneurship has the legal obligation to execute these professional searches.

In addition to legislation, the government has many funds that provide support to the arts. For example, the Dutch Foundation for Literature [Fonds voor de Letteren] encourages the production of Dutch literature by offering scholarships to literary writers and translators, extra payments above their normal salary, start-up grants and travelling scholarships. The Netherlands Fund for the Performing Arts+ [Nederlands Fonds voor Podiumkunsten+, 2007

There are many collective bargaining agreements [collective arbeidsovereenkomst - CAO] in the performing arts and more generally in the cultural sector. CAOs are labour-agreements between employers and employees. This means that a CAO only applies to employees who are working with an employer. When this is not the case, the national legal agreements are enforced. The existing CAOs are used mostly in architecture, arts education, media (broadcasting, journalism, publishing houses), museums and exhibition halls, performing arts (dance, orchestras, theatre companies, and venues), public libraries, retail musical instruments and sheet music. Special trade unions exist to enforce or monitor these agreements. CAO-wages have risen in 2006, on average, by 1.8%.

17/ Norway

Grete Marstein, IAA Europe, IAA/AIAP, NBK

17/a Norwegian Visual Artists NBK, a short presentation:

Norske Billedkunstnere (NBK) is the national organization for visual artists in Norway. NBKs long-term commitment is to promote and secure the intellectual, social, legislative and economic interest of the professional visual artist. The government and parliament recognizes the organization as a negotiation and consultative body.

There are approximately 2,700 members in NBK (out of 4.5 million inhabitants). NBK is composed of 20 sub organizations: 14 regional organizations, 5 nation-wide skill-based associations and a society for the younger artists. Artists will normally be member of one regional organization and one or more skill-based organizations depending on their artistic expression. An executive Committee of 6 members and a chairperson, which are elected by the General Assembly every second year, govern NBK. The administration consists of 9 employees.

NBK is responsible for the annual state exhibition – [Høstutstillingen](#) – the major national contemporary art show held virtually every year since 1882. A national jury selects the artwork for the exhibition; Members elect the jury for a two-year period. NBK also allocates grants from the government grants for artists program as well as from funds controlled by NBK. NBK also publishes its own magazine, [Billedkunst](#), with 7 or more issues a year that provides important information for members in the organization.

In addition to the activities carried out by NBK centrally, the sub organizations carry out extensive exhibition programs in their own galleries as well as programs with travelling exhibitions on a regional or national level. The skill organizations publish their own specialized magazines; and the regional organizations run art centers with an extensive program aimed to promote art throughout their region. Some also manage their own pre college art education institutions.

NBK has made several notable achievements in recent years: It has promoted special tax legislation for the visual artist, increased grant budgets, promoted legislation for the public display of art, and implemented a new state institute for the promotion of Norwegian contemporary art abroad (OCA). Today, it takes action in behalf of its members: To preserve the grants and guaranteed income; improve the social security scheme; keep the artistic judgment within the artist's committees work for better studio conditions for the artists in the pressed urban areas and expanding the studio capacity; and to facilitate international exchange in the visual arts.

17/b Norway - Entrance requirements for membership in The Norwegian Visual Artists Association (NBK)

The Norwegian Visual Artists Association (NBK) is an umbrella organization and consists of 20 member associations; - 14 regional associations and 6 nationwide associations (5 skill associations (painters, drawing, sculpture, printmaking, textile) and The Younger Artists Society).

Membership in NBK can only be obtained through the member associations. The regional associations have common entrance requirements, but the nationwide associations have each their own additional requirements.

The entrance requirements for the regional associations in NBK are a combined evaluation of the applicant's artistic formal and practical competence. The criteria for membership have as aim to secure that the members of the association are professional gainfully active visual artists. The applicant must have accomplished an education in visual art and/or in gainful activities proved a professional level comparable with the competence of a Master (MA).

The following criteria will be emphasized during evaluation:

- **Education**
- **Artistic activities**
- **Commissions for Art in Public Spaces**
- **Purchase by public or private institutions**
- **Grants**
- **Awards**

In the regional associations: applicants who have a master (MA) in Visual arts from the national art academies in Bergen (KHIB), Oslo (KHIO), Trondheim (NTNU) and Tromsø (HITØ), will automatically be accepted as members.*This is also valid for applicants from comparable institutions abroad (to be documented).

For applicants with a Bachelor (BA) in Visual arts from KHIB, KHIO, NTNU and HITØ * the education will be evaluated combined with the above criteria. Applicants without a formal higher education in Visual Art will be evaluated by the above criteria and compared with the requirements a MA.

18/ Serbia

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist?

YES

2a/ Is your system completely different to the attached proposal?

NO

2b/ Is your system similar to proposal?

YES

2c/ Are there any benefits from being recognized as a professional artist?

YES

3a/ Do you agree with attached proposal?

YES

3b/ Do you think that something in proposal should or could be defined better?

NO

In Serbia, so far the law has no definition of a professional artist but just artists, and we believe that it is not clear enough. Changing the Law is ongoing and we are trying to change this article in the Law. It was assumed that the definition applies to professional artists, because the law also covers the work of an amateur. There are still artists working in state cultural institutions. So, there is no concept of an employed and an independent artist. Both are considered professional artists (Law on the culture article 58).

All artists under copyright contracts are recognized standardized costs, depending on which artistic activity is exercised, in the amount of 34% to 50%. (Law on Personal Income Tax Article 56) This means that the tax and contributions for artists are lower than the allocations for other professions.

19/ Slovakia

Preliminary summary of the situation

On 19th February 2013 after the last correction we basically reached consensus of members SCCD in connection with the prepared statute of artist and on 21st February we have sent the final proposal to all the members of the SCCD Coalition Council. On 28th February 2013 SCCD Coalition Council adopted the following resolution:

Coalition Council authorizes its representatives, in the working group on the status of the artist in the Government Council for Culture of the Slovak republic, to open formal negotiations on the form of the legal norm.

Proposal and associated explanations and comments were sent to SCCD members and since February 2013 they are available on the SCCD website. Therefore enough space for factual and transparent discussion is provided with a view to obtain justified stimuli from the artistic community, as well as the widest possible support and identification of artists with the final form of the status of the artist and we hope it will become a part of real life in the foreseeable future.

After combining objections Board of SCCD developed the latest version of the proposal - see Appendix V / c – page 43.

A different approach of artists was manifested more in technical details (specification of criteria and the name itself): usefulness and sense of complex legal norm - the status of the artist – was not called into question.

Some of the issues discussed:

- The name itself:
 - statute of a professional artist?
 - or statute of a registered artist?
 - or status of a listed artist?

- A minimal level of professional education:
 - a university education - master's degree, master of fine art and comparable degrees?
 - or a university education including bachelor's degree?
 - or other alternatives and exceptions?

- The required amount of income from artistic activities:
 - set in % of total income?
 - or set the minimal total amount required?
 - or income from artistic activities at any sum?

- Criteria for defining which associations or organizations should be accepted for the purposes of the statute of artist:
 - most of all statements were about the required minimal number of members

For now we left these and some other questions open: on the basis of discussions with representatives of The Ministry of Culture of the Slovak republic we will try to reach a mutually acceptable result.

I can conclude that the proposal **will not come easily and certainly not frivolously**. It is a really “hard-won” compromise:

- it was preceded by 20-years lasting general discussion among artists in Slovakia and then 6-year real and tough discussion especially of members of the Board, but also a wider range of colleagues, as well as negotiations of members of the Board within the working group at the Ministry of Culture since June 2012, so the proposal responds to some of the attitudes of the state

- each member of the Board, representing different fields of art, gave something in (from the perspective of the interests of specific areas of art no one is absolutely satisfied), but the resulting compromise can be a possible and acceptable basis for all

- we took into account the reactions from all over the world that keep coming on the basis of my initiative and presenting the proposal during the five international arts organizations

Key positives:

1 / simplicity: practical application of first part – to whom the status relates – it does not require the creation of any new structures, if approved it could be functional almost immediately

2 / chance of involvement for those who are really the part of art and artistic creation

3 / transfer of responsibility to artists

4 / protection against the consequences of subjective decision making: no one is provided a monopoly on decision-making

20/ South Africa

Anton Loubser, IAA/AIAP EC Member, Main Coordinator for Africa:

Dear Pavol, Please accept my apology for this delayed response to your questionnaire regarding the definition of a professional artist.

*Briefly, from official South African quarters, **there is no definition as to who may be considered as being a 'professional artist'**. Consequently, with regard to the availability of particular social privileges, benefits or concessions, no distinction is made between the status of a person who may be regarded as a 'professional artist' by UNESCO, the IAA or whoever, and any other mortal tax payer on a SA street. Sophisticated distinctions which mark social benefits that are afforded to various professions e.g. in various European countries, have not known such development here. Africa still has quite a way to go.*

***With regard to South Africa, probably in most African countries, traditional national values, crafts, etc continue to play an important role in considering who on the ground are regarded as 'professional artists'**. We should take care not to encourage, inadvertently, criticism that is sometimes expressed in non-Europe circles that European countries (and the USA) tend to dictate to the rest of the world. It is submitted that the rather flexible but very well construed definition by UNESCO in 1980 in Belgrade as part of the 'Recommendation concerning the Status of the Artist' is the closest we can get to cover the concept 'artist' in general in most countries of the world. For ease of reference, it reads: 'Artist is taken to mean any person who creates or gives creative expression to, or recreates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture, and who asks to be recognized as an artist whether or not he is bound by any relations of employment or association'. In an effort to avoid uncertainty about how to understand what is meant by 'an artist', it is suggested that this*

definition, which carries the blessing of UNESCO, be included in the Statutes of the IAA when the Statutes are to be revisited at the next General Assembly.

But then, shortly before the EC meeting in Antofagasta, Martine was good enough to furnish me with an undated document which she had apparently found in an IAA head office file, carrying the approval of both the IAA and UNESCO. This document, titled **'Notes of Guidance'**, makes a distinction between a 'professional artist' and an 'artist per se'. Having read it, and re-read it 'through African spectacles', I can understand that many African artists may find the document, as it distinguishes between what it regards as 'professional artists' on the one hand, and on the other hand 'artists' who by implication may not all be professionals, rather discriminatory and perhaps reminding of a 'European dictate'. The IAA **Statutes** refer only once to **'professional artists'** (in **'Rules for Meetings', par 3.3**) as follows:

'The title and prerogatives of 'delegate' may only be used by professional artists practicing one of the disciplines listed in Article 1 of the Statutes ...'

This leads to a rather confusing situation, as the disciplines mentioned in art 1 of the Statutes refer to 'comprising artists belonging essentially to the fields of painting, sculpture, printmakers and artists practising other forms of creative work in the visual arts ...'. It sounds vague, if not restrictive, unless **par 8.07** of the Notes of Guidance which were discovered by Martine are taken into consideration by adding to par. 3.3 of the Rules for Meetings of the Statutes **'or are known as such at least throughout his own country.'** After all, a reference to 'other forms of creative work' does not necessarily imply the production of physical objects. Can we deny the intellectual creativity of a properly qualified Arts Curator, a Professor of Fine Art who is too occupied in moulding and creating students to become fine artists thereby not finding the time to produce works of art himself, art critics, etc? Surely they are entitled to be regarded as professional artists'.

We did not have the time in Antofagasta to thrash out the subtleties when referring to 'artists' and 'professional artists'. This seems to be an aspect that should be taken into account when considering possible amendments to the Constitution at the forthcoming EC meeting.

Comment Pavol Král: A colleague and friend Anton Loubser in his opinion reflects the ambiguity in the usage of the terms "artist" and "professional artist" (I agree: ambiguity is the problem) and also expresses some concern of the situation in Africa. I explained the difference between artists and professional artists as well as I expressed the definition of UNESCO in the analysis and proposal of the definition of a professional artist (see appendix **V/a Analysis of the definition of an artist – page 36**) and I responded on it in the beginning (see **III/ General mapping of the situation worldwide - preliminary evaluation of findings – page 9 - 10**), as well as on concerns from the perspective of Africa.

In the interests of openness and undistorted results of the discussion I attached statement of A. Loubser in full, although in some parts it is probably just a misunderstanding, for example:

- the status of the artist is not meant to deny, quote, "other forms of creative work, that do not necessarily mean the production of physical objects". Let me remind you that proposal presupposes a statute for all kinds of art (this is the aim in Slovakia and corresponds to the practice in

other states), including kinds of art of no physical object as a final product of artist work - as in artistic performance of actor or musician. So in that sense, there is nothing to be afraid of.

- this discussion should not change the status of IAA: it focuses on legislative solution of the status of artists in different countries.

21/ United Kingdom

AIR - Artists Interaction and Representation, www.a-n.co.uk/air

1/ Do you currently, in your country, have any valid system, allowing - as simply as possible, but definitely - recognize from point of view of tax or social insurance office worker who is a professional artist?

No. However, this eligibility (as below) is self-applied by artists in order to gain AIR membership (AIR being integral part of the a-n Artist Membership)

Using the following definitions of "practising artist" if you can say 'yes' to at least 3 you would be considered eligible for AIR membership and all its professional benefits.

- ***You hold a degree (or equivalent qualification) in a visual arts practice.***
- ***You've held at least one public exhibition, installation or live art performance (other than a degree show) in the recent period.***
- ***You have carried out on a paid-for basis at least one artist's residency or community project in the recent period***
- ***You have sold art or craft work through a gallery, exhibition space or retail outlet in the recent period.***
- ***Your work has been reviewed, featured or profiled in an arts magazine or website or other relevant publication.***
- ***You are a current member of another professional body for artists such as Contemporary Glass Society, DACS, Royal Society of British Sculptors, etc.***
- ***Your work has been commissioned on paid-for basis on at least one occasion by a public or private client.***
- ***You have received at least one prize, grant, award or bursary in your capacity as a practising artist.***
- ***You have had at least one work purchased for a public or a private collection.***

United Kingdom and Ireland - additional information from the web site

IFACCA and National Association for Visual Arts - NAVA, Australia:

‘The Year of the Artist defines artists as professional (defined by training or track record) practitioners, who are involved in the creation of work in any art form.’

From ‘the UK Year of the Artist, June 2000 to May 2001. The Year tried to ensure that all artists taking part were paid a minimum fee of £150 a day to emphasise that art is a profession’ (D’Art respondent).

V/ Appendices:

a/ Analysis of the definition of an artist, The definition of „PROFESSIONAL ARTIST“

Pavol Kral, MA
President of Slovak Union of Visual Arts
President of Slovak Coalition for Cultural Diversity
President of International Association of Art Europe
iaa.eur@gmail.com
October 2012

.....
Discussion of the draft (see questionnaire attached)
takes place in Slovakia and also in the international organizations of artists
IAA Europe, IAA/AIAP, ECA, IFCCD and ECCD.



FICDC



ECA

SXKD



A/ Why we should even deal with this issue:

The artist is often considered - despite major difference - as an entrepreneur, although the primary goal of business is profit. Cultural and artistic activities may have a different character.

A few quotes from the UNESCO Convention from 2005 (ratified by most countries, including Slovakia):

The objectives of this Convention are:

- to give recognition to the distinctive nature of cultural activities, goods and services as vehicles of identity, values and meaning. (I./ article 1/g)

Cultural activities, goods and services:

Cultural activities, goods and services refers to those activities, goods and services, which at the time they are considered as a specific attribute, use or purpose, embody or convey cultural expressions, irrespective of the commercial value they may have. Cultural activities may be an end in themselves, or they may contribute to the production of cultural goods and services. (III./ article 4 / 4)

We are not saying that artists are better. But in line with the UNESCO Convention we note that they are different.

And if they are different this should be reflected in the relevant legislation.

Based upon our everyday experiences we know that

- if we are not able to define very clearly who “professional artist” is,
- then it is very difficult or might impossible to negotiate about some specific rules for artists or about some specific solution in taxes, social insurance and in other form of support.

That is why this question is key starting point with high priority when we would like to work on improvement of social and legal right of artists and implement it to practical life - in line with the UNESCO Convention.

B/ Five often repeated answers to question „Who is an artist?“

- 1/ Everybody has natural right to create, so [everybody](#) is potential artist
- 2/ Definition of artist based on [Recommendation of UNESCO](#)
- 3/ Professional artist is [only a person who graduated from special art academy](#)
- 4/ Professional artist is [only a person who has earned money](#) from artistic activities
- 5/ Recognition of professional artist through [combination of two criteria: specific art education or verifiable results of their art activities](#)

C/Advantage and disadvantages of the alternative

“1”: Everybody has natural right to create, so everybody is potential artist.

This answer is very simple but [useless in real life](#):

- In practice, such a definition does not clearly distinguish artist from other workers ([from the point of view of tax, social security or other government institution officer worker](#))
- so the problem is to define [whom](#) the possible regularization would cover

“2” - Definition of artist based on Recommendation of UNESCO

“Artist“ is taken to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association.

Advantage: recognition based on philosophical and very general definition is correct as a starting point

Disadvantages: in practice, [such a definition does not clearly distinguish artist from other workers](#) ([from the point of view of tax, social security or other government institution officer worker](#))

We are not able to continue on negotiations with responsible representatives of state [without having a rules that are applicable in practice.](#)

Contrary to definition of UNESCO our target group are:

- 1/ [Artists who are dedicated to the art of long term and professionally](#) (we do not need special legislation to address the status of those who for their own pleasure sing in the shower...)
- 2/ [artists whose art work is involved for their income, have an impact on their taxes and social security](#)

Therefore, it is preferable to use unlike the UNESCO definition the term "professional artist"

"3" : Professional artist is only a person who graduated from special art academy

Advantages:

- simplicity: inclusion in the category on the basis of education is easily provable, dividing line is clear, such a definition does not require any complicated systems for application in practice

Disadvantages:

- **proposal is too radical**; there have always been exceptions in art - artists without education but with great results; to ignore this is therefore unfair

"4": Professional artist is only a person who has income from artistic activities

Advantage: simplicity - inclusion in the category on the basis of income is easily provable, dividing line is clear, such a definition does not require any complicated systems for application in practice

Disadvantages: recognition of artists just on income basis could be counterproductive:

- this could disqualify a considerable part of artists (also reputable, generally accepted artists) who are forced to earn their living in areas outside the realm of the arts

- it also disqualifies young artists who are just getting started and still do not have a provable income (and who need protection from the system the most)

- **recognition just on income basis doesn't take into account the artistic quality of results - it would give room for abuse from people that are not artists** („heroes“ of reality shows for example: Are they artists? Are they actors? We don't think so: their performances are often tasteless but often earn a higher income than real actors)

"5" - Recognition of professional artist based on combination of two criteria: specific art education or verifiable results of their art activities

Advantages:

- **the only solution, which would provide a guarantee of training** (though not a guarantee for a specific outcome)

- the only solution, which would allow to define the number of artists involved in the particular issue in question, which would permit a more rational and more targeted solutions from the part of the state

- This **solution provides a chance to reduce the risk of wasting public funds** in support of poor quality art, and allows the use of public funds (which will always be limited) to support those who have demonstrated professional readiness for their artistic activity

Possible additional benefits to society (not absolutely necessary):

- non-specialist consumers of art could verify professional expertise in a "register of artists"

- the registry could provide the information on the Web (for theorists, performers, journalists, organizers of cultural events or the wider public)

Disadvantages:

- the need to establish criteria and then judge who meets them

C/Advantages and disadvantages of these 5 alternatives – summary:

Recognition of professional artist based on combination of two criteria:

specific art education

or

verifiable results of their art activities

is the best solution.

D/ How it could work in reality

Artist would be added to the register of Professional artists after meeting one of two conditions:

1/ artists graduated from specific art academy (minimum - bachelor of art?) **would be added automatically** after his/her application

or

2/ artists without appropriate art education would be added after being approved as a member of a nationally recognized art association in his area of specialization (visual art, music, literature, etc) – this association would be the guarantor for state about who is professionally prepared artist

E/ Which art associations would have the authority to decide on the inclusion of the artist in the register of Professional artists

- **Representative associations** for the area of arts:
 - o **numerous enough** in proportion to the number of artists in the country (for example: in country with about 1 000 - 2 000 of artists a minimum of 100 members)
 - o with article in their statute that only **professional (visual, musical, etc) artists** can be members of this art association
- To maintain fairness and objectivity, it would be proper to give more than 1 art association for every area of art the authority to decide on the inclusion of the artist in the register

F/ Application process for association membership

a/ Criteria for application should be clear and available to public

b/ Proposal of conditions to be taken into account by art associations in the process of judging applications:

- [verifiable period of art activities](#) of applicant (similar to the usual art educational period in the state – 5 - 6 years?)
- [publication](#) of his/her artistic results (exhibitions, concerts, ...)
- [quality of his/her art activities results](#) (association should take into account decisions of other committees or institutions about the applicant's artistic work, for example awards, approved his/her artworks by jury of important national and international exhibitions, teaching activities in art subjects at art academies, in the case of musicians or actors work as a member of a recognized artistic institution, etc)

G/ Principles of recognition of the artist in Europe

(information from White Book, La Maisson des Artistes)

- [most European countries apply the combination of professional education and evaluation by colleagues](#) (Austria, Cyprus, Denmark, Spain, Greece, Hungary, Ireland, Latvia, Lithuania, Romania)
- [less often solely evaluation by colleagues](#) (Estonia, Finland, Portugal, United Kingdom, Sweden)
- [in only three cases a combination of administrative decision and evaluation by colleagues](#) (Germany, France and, Luxembourg)
- [and in two only administrative decision](#) (Belgium and Netherlands)

H/ Example of recognition of the artist in the non-European state

- o The Canadian statute of the artist takes into account [evaluation by colleagues](#) (...whether he is recognized by other artists as being an artist - 18/b/ii).

In conclusion to this proposal - recognition of professional artist based on combination of two criteria: specific art education or verifiable results of their art activities

This proposal would not prohibit anyone to create art: those artists, for whom it is only an occasional hobby, could continue in their art activities under the same conditions as of now. So their situation would not get worse. Defining professional artist is rather a protection against poor quality performances like reality shows.

On the other hand, to those who are dedicated to art as their profession and not just a hobby, the implementation of the proposal has a chance to improve their legal and social status. It would bring them closer to the conditions of artists in those countries that have already resolved some of these issues.

V/ Appendices:

b1/ Questionnaire of IAA Europe to the definition of „Professional Artist“

1/ Do you have currently at your country any valid system, allowing - as simply as possible but definitely - recognize from point of view of tax or social insurance office worker who is an professional artist?

Yes / No / I do not know

2/ If your answer on first question is YES:

2a/ Is your system completely different to the attached proposal? Yes / No

2b/ Is your system similar to proposal? Yes / No

2c/ Are there any benefits from being recognized as a professional artist? Yes / No

3/ If your answer on first question is NO or I DO NOT KNOW:

3a/ Do you agree with attached proposal? Yes / No

3b/ Do you think that something in proposal should or could be defined better? Yes / No

We would appreciate if we get answers to the Office IAA Europe - iaa.eur@gmail.com - at least to the first part of questionnaire (simply select just “yes” or “no”) by the January 30, 2013.

If you would like to add your comment there are some more questions:

4/ If your system is completely different to the attached proposal please briefly describe how it works in real life (please attach also rules or specific law if possible):

5/ If your system is similar to the attached proposal please briefly describe just differences:

6/ If there are any benefits from being recognized as a professional artist in your country please add examples (rules or specific law is welcome):

7/ If you think that something in the attached proposal should or could be defined better please briefly describe your opinion:

V/ Appendices:

b2/ Accompanying text to the questionnaire

Dear colleagues,

Improvement of social and legal rights of artists is one of the main goals of IAA. That is the reason why we would like to ask you to answer questions of our brief questionnaire. Before answering the questions please pay attention to the document The definition of „Professional Artist“ (attached).

We would like to investigate what is the situation in different countries: Who is professional artist in different country? Are there some specific rule how artists are recognised in practice, in real life? Is it useful for artists or not?

We would like to collect positive examples and prepare an analysis of it for all of you. International working group has 3 members actually: Pavol Kral from Slovakia, Werner Schaub from Germany, Marta Pabel Pérez from Puerto Rico. Proposal that is attached - The definition of „Professional Artist“ – is result of about 5 years of negotiations at Slovakia and is prepared for negotiation with representative of Ministry of Culture and Council of Government for Culture of Slovak Republic. But discussion about it has started also at network of 5 international art associations: International Association of Arts (IAA), International Association of Arts - Europe (IAA Europe), European Council of Artists (ECA), European Coalition for Cultural Diversity (ECCD) and International Federation of Coalition for Cultural Diversity (IFCCD).

Might there be some useful (or better?) solutions. Might it be possible to prepare the framework proposal not only for one country but generally for many countries all over the world. It is not a discussion about theory - we would like to prepare the proposal really useful for artists. Implementation of something like that in real life is always difficult but:

- it would be easier after collecting experiences of artists from more than one country,
- it would be easier with support of artists from more countries or more art associations,
- it would be easier after accepting the proposal and implementing it to the real life.

We believe that it is worth of it.

Looking forward to getting a lot of answers from all of you 😊

Pavol Kral,
President of IAA Europe

V/ Appendices:

c/ Draft of the Statute of an Artist – Slovakia (the latest version - April 2013)

Proposal of Legal Document – Statute of a Registered Artist

I Preamble

The Slovak Republic, in accordance with the principles of fundamental human rights, values and supports freedom of expression as one of the basic preconditions for artistic freedom and creative expression.

In today's market economy, it is necessary—besides the protection of the rights of employers and employees—to ensure a legal definition of the socio-economic status of those creators of artistic values who create their work as freelancers, while taking into account the specific character of their work.

In order to reach this objective, and in accordance with the UNESCO Recommendations on the Statute of an Artist from 1980, we hereby submit this proposal of the legal provision, of its purpose and goals.

II. Definitions (of terms)

1. An artist is a physical entity/person who, as an author or as a performer, creates artistic work in the visual arts, literature, music, dance, audiovisual production and drama.
2. An artistic creation is a creation fixed in shape, space or fixed in any other way, which is created as a result of the unique abilities and expressions of authors and/or performers.
3. Artistic activity is the type of activity in which artistic expression of a material or non-material character is created.
4. An author is a physical entity/person who creates works of art in accordance with the Copyright Law (618/2003).
5. A performing artist is a physical entity/person who performs works of art in accordance with the Copyright Law (618/2003).
6. A registered artist is a physical entity/person in accordance with Article II – 1,2 of this law, who also meets the conditions given by Article III – 1,2 of this provision.

III. Statute of a Registered Artist

1. The Statute of a Registered Artist /hereinafter as „The Statute“ only/ concerns physical entities/persons who develop their activities on the territory of the Slovak Republic and meet the following requirements:
 - a) They are educationwise qualified to perform artistic and/or creative activities or; they reach demonstrable artistic and creative results;
 - b) Their creative activities add to their taxable income and social and health care insurance.

2. For the purpose of this provision, „artist“ is a physical entity who meets the conditions set as follows in sections „a“, „b“ or „c“ of this article:
 - a. Generates income based upon contracts specifying the production and usage of the artistic property or artistic act while following the spirit of AZ 618/2003 and, must also be able to demonstrate meeting the criteria shown in item 1.a. above.

Or
 - b. Generates income for creative work based upon contracts specifying the production and usage of the artistic property or artistic act while following the spirit of AZ 618/2003 and, must be able to show a membership in a professional organization of artists in his/her field of interest/specialty.

Or
 - c. Generates income for creative based upon contracts specifying the production and usage of the artistic property or artistic act while following the spirit of AZ 618/2003 and, is considered a renowned authority by his peers in his/her field of creative arts.
2. Artist registration in accordance with the statute is performed by..... (to be specified later).
3. Registration is voluntary and its duration is not limited, but the artist is excluded from the register if unauthorized registration is proved or upon his/her own request.

The impact of a legal norm

I. Collective bargaining

1. Trade unions of freelance artists (within the statute) have the right to collective bargaining.
2. If all the trade unions of freelance artists show the interest, subjects that offer work to freelance artists, are required to bargain collectively with them.
3. The content and scope of collective agreements that these organizations will conclude, is determined by a special provision of the Ministry of Labour, Social Affairs and Family of the Slovak Republic (in cooperation with the Ministry of Culture).
4. If one of the parties should not agree with the content of the collective agreement, the procedure will follow applicable provisions of the Act on Collective Bargaining 2/1991 as amended.

II . Social security and payroll and taxation

1. The artists (creating according to the Statute) have the right to such measures in social security, the payroll and tax system that adequately take into account specific features of their profession.
2. The representatives of artists (creating according to the Statute) have the right to be invited

- to negotiations on the draft laws that affect their payroll and system of taxation,
 - to negotiations on the draft laws that affect their social security system.
3. The representatives of the artists are entitled to approach the relevant ministries with proposals that take into account the specific position of artists on the labor market in the light of the UNESCO recommendations.

III . Participation of artists in finding solutions of cultural and artistic development as well as in improving the conditions for creative work of artists in Slovakia

The representatives of freelance artists (creating according to the Statute) have right to participate in preparation of essential documents and draft laws regarding:

- the strategy for the development of culture and arts in Slovakia
- the preparation of systemic changes and actions in various fields of art, in culture and artistic education
- the preparation of draft laws that affect the conditions of work and the employment of artists (eg. construction law, public tenders in connection with the use of art in public space, the assertion of the original, domestic work in the public broadcasting media, the structure of arts education, protection of the results of creative work and intellectual property, etc.).
- the preparation of schemes and concepts to support culture (eg. laws and legislation on the grant or subsidy systems, art funds, etc.).

.....

Be they authors or performing artists, professional artists usually generate intellectual property and incomes that are not sufficient to keep them in creative work. Only a small number of artists earn enough money solely by their artistic/creative activities. Despite the booming development of the cultural sector / creative industries, their activities are often carried out in conditions that are less certain than in case of other professions. Atypical (project-based) and casual employment, irregular and unpredictable income, research and development stage without pay, accelerated physical depreciation and high levels of mobility are the most important factors that the current structure of laws, social security system and tax structure do not take into account. (Study of the EU, November 2006)

<http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=13248>

V/ Appendices:

d/ Statute of an Artist Canada – commentaries

1/ Charles Vallerand, General Secretary, International Federation of Coalitions for Cultural Diversity www.ficdc.org

Pavol, Here are the answers of the Quebec provincial Ministry of Culture, in French only however. Let me know if one of your committee members can understand it, otherwise I'll translate the main points for you. A reform is currently underway. Last December, the five major associations of professional artists representing 25,000 creators met with the new minister of Culture and Communication, Maka Kotto, on the occasion of the 25th anniversary of the Status of the Artist Act to propose improvements to the Act.

At the Federal level, the Status of the Artist Act of 1992 defines the professional artist in the following way:

“artist” means an independent contractor (Art. 5), who (Art. 6(2)(b))

- (i) are authors of artistic, dramatic, literary or musical works within the meaning of the Copyright Act, or directors responsible for the overall direction of audiovisual works,
- (ii) perform, sing, recite, direct or act, in any manner, in a musical, literary or dramatic work, or in a circus, variety, mime or puppet show, or
- (iii) contribute to the creation of any production in the performing arts, music, dance and variety entertainment, film, radio and television, video, sound-recording, dubbing or the recording of commercials, arts and crafts, or visual arts, and fall within a professional category prescribed by regulation.

(Art 18(b) in determining whether an independent contractor is a professional for the purposes of paragraph 6(2)(b), whether the independent contractor

- (i) is paid for the display or presentation of that independent contractor's work before an audience, and is recognized to be an artist by other artists,
- (ii) is in the process of becoming an artist according to the practice of the artistic community, or
- (iii) is a member of an artists' association.

For the complete text, see <http://lois-laws.justice.gc.ca/eng/acts/S-19.6/page-1.html#docCont>

2/ QUESTIONNAIRE DE L'IAA EUROPE AU SUJET DE LA DÉFINITION DE L'ARTISTE PROFESSIONNEL

M. Pavol Kral, président de l'International Association of Arts - Europe a transmis une demande de collaboration au directeur général de la Coalition canadienne pour la diversité culturelle afin qu'il lui fasse parvenir des éléments de réponse au questionnaire portant sur une définition

« opérationnelle » de l'artiste professionnel qui soit apte à permettre l'accès aux avantages fiscaux et à la protection sociale. M. Charles Vallerand a sollicité la collaboration du Secrétariat à la condition socioéconomique des artistes, Direction des politiques et des relations interministérielles, ministère de la Culture et des Communications du Québec.

La question principale qui est posée est la suivante :

1 Avez-vous actuellement dans votre pays un système valable qui permette aussi simplement que possible, mais certainement de reconnaître du point de vue de l'impôt ou de l'aide sociale qui est un artiste professionnel?

Les critères pour définir un artiste professionnel aux fins de l'obtention d'une bourse par exemple, ne sont pas nécessairement les mêmes que lorsqu'il s'agit de définir les conditions d'accès à une mesure fiscale ou à la protection en matière de santé et de sécurité du travail.

En regard de l'application des politiques sociales et fiscales, ce sont généralement les définitions de travailleur salarié et de travailleur autonome qui doivent être prises en compte.

Il n'existe pas une définition universelle de l'artiste professionnel qui puisse permettre l'application de tous les lois et règlements en vigueur. Toutefois, le Québec dispose de deux lois sur le statut de l'artiste comportant chacune une définition de l'artiste professionnel aux fins de leur application. On trouve en annexe une présentation sommaire des définitions de l'artiste professionnel selon ces deux lois. Ainsi, l'existence des deux lois sur le statut de l'artiste permet d'en faciliter l'interprétation lorsqu'il est nécessaire de déterminer si un artiste professionnel peut bénéficier de la protection ou des avantages qui sont offerts par ces lois.

L'adoption de ces deux lois par le gouvernement du Québec permet à plusieurs ministères et organismes de s'y référer pour l'application des lois sous leur responsabilité.

À titre d'exemple :

1. Le ministère du Revenu

Le ministère du Revenu fait référence à la loi S-32.1 dans son Bulletin d'interprétation portant sur le *Statut fiscal d'un artiste œuvrant dans un des domaines de production artistique visés par la Loi sur le statut professionnel et les conditions d'engagement des artistes de la scène, du disque et du cinéma*.

On trouve sur le site Web du ministère de la Culture et des Communications la référence aux bulletins d'interprétation de Revenu Québec touchant cette question : <http://www.mcc.gouv.qc.ca/index.php?id=3746#c22129>

2. La Commission de la santé et de la sécurité du travail (CSST)

La CSST a publié en 2006 un Bulletin d'information intitulé *Les producteurs du domaine artistique et la [Loi sur les accidents du travail et les maladies professionnelles \(LATMP\)](#)* lequel a été modifié en 2010 Ce bulletin répond notamment aux deux questions suivantes : *Qui est protégé par la LATMP ? et quels sont les droits des personnes protégées ?*

Ainsi, pour l'aider à déterminer si un artiste est un travailleur au sens de la LATMP la CSST s'est appuyée sur le régime de négociation établi par la **Loi sur le statut professionnel et les conditions d'engagement des artistes des arts de la scène, du disque et du cinéma**.

En voici un extrait :

« Après examen d'ententes collectives conclues en vertu de cette loi, la CSST considère qu'en fonction des critères qu'elle utilise pour déterminer le statut d'une personne physique, les producteurs⁸ ont, en règle générale, un statut d'employeur⁹ au sens de la LATMP lorsqu'ils retiennent les services personnels des artistes qui travaillent dans les secteurs de négociation couverts par les associations d'artistes¹⁰ suivantes :

- l'Union des artistes (UDA);
- le Guilde des musiciens et musiciennes du Québec (GMMQ);
- l'Alliance québécoise des techniciens de l'image et du son (AQTIS);
- l'Alliance internationale des employés de scène, de théâtre, techniciens de l'image, artistes et métiers connexes des États-Unis, ses territoires et du Canada (AIEST locaux 514 et 667);
- le Conseil du Québec de la Guilde canadienne des réalisateurs (CQGCR);
- l'Association des réalisateurs et réalisatrices du Québec (ARRQ)¹¹ ;
- le Canadian Actors Equity Association (CAEA);
- l'Alliance of Canadian Television and Radio Artists (ACTRA).

En conséquence, la CSST considère que les producteurs ont l'obligation de déclarer la rémunération de ces artistes lorsqu'un contrat d'engagement est conclu avec eux, **sauf lorsque ces artistes fournissent leurs services personnels par l'intermédiaire d'une personne morale**. Ces derniers peuvent alors souscrire une protection personnelle pour bénéficier de la protection de la LATMP. Il en est de même pour l'artiste qui est son propre producteur¹² et qui ne fournit pas ses services par l'intermédiaire d'une personne morale. Lorsque cet artiste embauche des travailleurs, il a toutefois l'obligation de s'inscrire à la CSST à titre d'employeur.

En ce qui a trait aux contrats conclus par les producteurs avec les artistes qui travaillent dans les secteurs de négociation couverts par les associations³ suivantes :

⁸ Producteurs de spectacles (théâtre, théâtre lyrique, musique, danse, variétés), organisateurs d'événements en arts de la scène lorsqu'ils agissent à titre de producteurs, producteurs d'enregistrements sonores (y compris la maison de disque lorsqu'elle agit à ce titre), producteurs de films et d'audiovisuels, producteurs multimédias, studios de doublage, organisateurs d'événements dans le domaine du cinéma et de l'audiovisuel lorsqu'ils agissent à titre de producteur, stations et services de radio ou de télévision, réseaux de radio ou de télévision, agences et services de publicité, tout organisme ou entreprise lorsqu'il ou elle agit à titre de producteur d'une activité secondaire ou complémentaire à son activité principale.

⁹ À l'exception de la Société Radio-Canada, de l'Office national du film et de TV-Ontario.

³ Secteurs de négociation et associations reconnus par la Commission des relations du travail..

¹¹ Uniquement dans le secteur de négociation du film de long métrage, à l'exception des films de langue anglaise réalisés dans la province de Québec.

Pour les autres secteurs d'activité des réalisateurs, comme il n'y a pas d'entente collective, le statut des réalisateurs et réalisatrices doit être établi en fonction des critères publiés dans le guide de la déclaration des salaires. Il en est de même en ce qui concerne les membres du Conseil du Québec de la Guilde canadienne des réalisateurs.

¹² Un artiste est considéré comme son propre producteur lorsqu'il agit pour lui-même à ce titre.

- Association québécoise des auteurs dramatiques (AQAD);
- Association des professionnels des arts de la scène du Québec (APASQ);
- Société des auteurs de radio, télévision et cinéma (SARTEC);
- Société professionnelle des auteurs et compositeurs du Québec (SPACQ);
- Writers Guild of Canada (WGC).

La CSST reconnaissant habituellement un statut de travailleur autonome à ces artistes, la déclaration de leur rémunération n'est pas nécessaire si, entre autres, la durée du travail effectué pour un producteur est inférieure à 420 heures par année civile. Ces artistes peuvent cependant souscrire une protection personnelle pour bénéficier de la protection de la LATMP.

Malgré ce qui précède, il est à noter que tout contrat d'engagement qui semble particulier peut être soumis à la CSST pour examen, à la fois par les artistes et par les producteurs.

En ce qui concerne les artistes représentés par le Conseil des métiers d'art du Québec (CMAQ), par le Regroupement des artistes en arts visuels du Québec (RAAV) et par l'Union des écrivaines et écrivains québécois (UNEQ), la CSST considère que ces artistes ont généralement un statut de travailleur autonome ou d'employeur, le cas échéant. Ils peuvent souscrire une protection personnelle pour être protégés en vertu de la LATMP ».

Par ailleurs, la CSST a publié en mai 2012, une note d'orientation intitulée [Démarche de détermination d'un statut de personne physique aux fins de la cotisation](#). La section 6 traite du statut de l'artiste et les questions suivantes y sont abordées :

1. Quelles sont les entreprises du domaine artistique ?
 2. Quels sont les artistes couverts comme « travailleur » ou comme « travailleur autonome considéré comme des travailleurs »
 3. Y a-t-il des exceptions ?
 4. Quels sont les artistes qui peuvent se couvrir comme travailleur autonome ?
3. Le Conseil des arts et des lettres du Québec

Aux fins de l'octroi d'une bourse, le Conseil des arts et des lettres du Québec définit l'artiste professionnel de la façon suivante :

- se déclare artiste professionnel;
- crée des œuvres ou pratique un art à son propre compte ou offre ses services, moyennant rémunération, à titre de créateur ou d'interprète, notamment dans les domaines sous la responsabilité du Conseil des arts et des lettres du Québec (CALQ);
- a une reconnaissance de ses pairs;
- diffuse ou interprète publiquement des œuvres dans des lieux et/ou un contexte reconnu par les pairs.

Source : <http://www.calq.gouv.qc.ca/faq/artistes.htm#1>

On constate ici que cette définition de l'artiste professionnel est semblable à la définition qui figure dans la [Loi sur le statut professionnel des artistes des arts visuels, des métiers d'art et de la littérature et sur leurs contrats avec les diffuseurs \(L.R.Q., c. S-32.01\)](#) (Voir annexe)

À la lumière des ces trois exemples, on constate qu'un artiste professionnel peut avoir, selon les différentes lois un statut différent et qu'un examen spécifique peut être nécessaire pour déterminer son admissibilité à une mesure de protection sociale ou fiscale.

Préparé par Gaétan Patenaude, coordonnateur

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5 février 2013

3/ Charles Vallerand, General Secretary, International Federation of Coalitions for Cultural Diversity, www.ficdc.org

Pavol, I will send you early next week comments based on the Quebec province experience. I've asked for an expert advice from the Secretariat of the socioeconomic condition of artists in the Quebec ministry of Culture. The new minister, Maka Kotto, a former professional actor, recently declared to the press that if there was one achievement he wished to be remembered for, it would be improving the conditions of artists "who are the fundamental driver; without them, the cultural offering and our own identity are fragilized". I'm also going to try to get some feedback from Gary Neil, the General Secretary of the International Network for Cultural Diversity, who also happens to be the author of two very good overview of the current state of things in Canada.

ABC on the Status of the Artist: A Model for Professional Relations in the Creative Economy?, October 2008

Status of the Artist in Canada: An Update on the 30th Anniversary of the UNESCO Recommendation Concerning the Status of the Artist, September 2010

4/ DEFINING A PROFESSIONAL ARTIST

EXTRACTS FROM NEIL CRAIG ASSOCIATES REPORTS

Report for Province of Ontario – 2007

For a variety of reasons, including maintaining professional standards, eligibility for grants, prizes and access to support systems, both artists' organizations and arts agencies also need to distinguish between professional artists and others who might occasionally write an article, paint a picture, or perform in a play. All of the associations, unions and guilds that represent artists have objective membership criteria that distinguish between professionals and amateurs.

The first federal Advisory Committee on the Status of the Artist, appointed shortly after the Report of the Siren-Gélinas Task Force was tabled, considered this issue in its *Canadian Artist Code*, a precursor of the *Status of the Artist Act*. The *Code* effectively synthesized the community's definition of what constitutes being a professional artist. The *Code* has no legal status and has largely disappeared from view; however, this definition was highly regarded by the community as being an excellent way to distinguish between a professional artist and an amateur or hobbyist.

Under the *Code*, an artist is defined as a person who works as a creator, interpreter or performer in one of the "fields of artistic endeavours" found later in the *Code*. To qualify as professional, an artist must meet four of these tests, of which at least one must be (a), (b) or (c):

- (a) the fact that an artist receives compensation from his/her work including sales, fees, commissions, salaries, royalties, residuals, grants, awards, any of which may be reasonably included as professional or business income;
- (b) the fact that an artist has a record of income or loss relevant to the exploitation of his/her work and appropriate to the span of the artistic career;
- (c) the fact that an artist has received public or peer recognition in the form of honours, awards, professional prizes or by publicly disseminated critical appraisal;
- (d) the fact that an artist has presented his/her work to the public by means of exhibition, publications, performances, readings, screenings, or by any other means appropriate to the nature of the work;
- (e) the fact that an artist is represented by a dealer, publisher, agent or similar appropriate representative;
- (f) the fact that an artist devotes a reasonable proportion of his/her professional time as an artist to promoting or marketing his/her work, including attending auditions, seeking sponsorship, agents or engagements, or similar appropriate activities;
- (g) the fact that an artist has received professional training either in an educational institution or from a practitioner or teacher recognized within the profession;
- (h) the fact that an artist has membership in a professional association appropriate to his/her artistic activity whose membership or categories is limited under standards established by the association; or is a trade union or its equivalent.

Report for UNESCO – 2010

TAXATION

The *Recommendation states*: "Convinced of the uncertainty of artists' incomes and their sudden fluctuations, and of the special features of artistic activity ... Member States are invited ... to take into account in their taxation system the particular conditions of artists' work and activity."

Most countries need some way of determining whether or not a person is a "professional artist" for purposes of taxation. However, there is little consistency in how this is done and no comprehensive analysis of the impacts of different definitions. Typically, there are five ways to define "professional artist."

- An artist is defined as a professional if they are a member of a recognized artist association which has professional eligibility requirements.
- A committee of experts or artists' peers may determine artistic status. The Netherland's WIK scheme and the Mexican tax payment through art systems use this approach.

- The taxation authority may determine the status of each individual artist. The tax exemption scheme in Ireland uses this approach.
- An approach taken in some jurisdictions is to define an artist as someone who produces art, thus the output is determinative. However, this merely shifts the issue from “who is an artist,” to “what is art.”
- The artist is deemed professional if the work is undertaken as a business. Tax authorities in many countries, including Canada and Québec, the United States and Australia use this approach. Australia has an innovative approach which considers the “profit motive” to be pivotal, thus relying in part on the intention of the taxpayer.

Considering our earlier example of Vincent van Gogh, it is likely that if he were to have been assessed under any of these definitions during his lifetime, he would not have been found to be a professional, but rather a hobbyist. This highlights the challenge of definition.

The distinction between being a professional and a hobbyist is important because, in many countries, professionals may deduct business expenses from their income before calculating their taxes, while hobbyists either may not be able to deduct these expenses at all, or may be subject to limits. Also, in some countries, professionals who experience a loss on their business in one year may be able to use it to reduce the tax liability of other income they earned during that same year, or to carry it forward into a year in which they return to profitability.

The issue of expenses of artists can also be problematic for tax authorities because there can be a considerable time delay between when the artist incurs the expense and when the artist generates income from the work they create that relates to that expense. Particularly with the “just in time” production model, for most businesses, there is a close relationship between the input expense and the sale of the good or service.

Report for Canadian Conference of the Arts - 2010

5.0 Deductions of artistic expenses against artists’ income

The degree to which a professional artist can deduct artistic expenses against income earned from their art and from other sources depends on a variety of factors, including whether they:

- have “a reasonable expectation of profit” from their artistic activity,
- are considered to be self-employed for purposes of their artistic activity, or
- are considered to have entered into a contract of service and thus to be in an employee/employer relationship for purposes of their artistic activity.

Many of the interrelated issues that arise from an analysis of the deductibility of expenses are addressed in two Interpretation Bulletins published by the Canada Revenue Agency:

- IT-504R2 – Visual Artists and Writers
- IT-525R – Performing Artists

5.1 Reasonable expectation of profit

Generally, professional artists are considered to be carrying on a business. Section 9 of the *Income Tax Act* provides that a taxpayer's income from a business is the profit made in the year. Should the business expenses exceed the income, the loss is deductible for income tax purposes. Thus, any loss can be deducted from other income that is earned by an artist in the same year, regardless of the source of that income.

However, if the artist does not have a "reasonable expectation of producing profits," the artist is considered to be pursuing a hobby or personal interest rather than carrying on a business. Thus, any loss incurred is not deductible against other income, regardless of how many expenses have been incurred and the amount of revenue earned by the artist from their art in any year.

There are special rules for artists, including recognition that "a taxpayer (who is an artist) may not realize a profit during his or her lifetime but still have a reasonable expectation of profit." Despite these rules, some artists, considered by the community to be professionals, have been deemed by the Canada Revenue Agency and its predecessors to be hobbyists. In the past few years, several artists who have received grants from the Canada Council for the Arts have failed this test, even though artistic grants are only available to professional artists and are awarded by the Council on a rigorous basis adjudicated by a panel of peers. Jury members must have strong credentials in the field in which the grant is awarded.

It should be observed as well that the *Status of the Artist Act* contains a definition of professional artists, as follows:

Section 5

"'artist' means an independent contractor described in paragraph 6(2)(b):"

Section 6(2)

"(b) independent contractors determined to be professionals according to the criteria set out in paragraph 18(b), and who

(i) are authors of artistic, dramatic, literary or musical works within the meaning of the *Copyright Act*, or directors responsible for the overall direction of audiovisual works,

(ii) perform, sing, recite, direct or act, in any manner, in a musical, literary or dramatic work, or in a circus, variety, mime or puppet show, or

(iii) contribute to the creation of any production in the performing arts, music, dance and variety entertainment, film, radio and television, video, sound-recording, dubbing or the recording of commercials, arts and crafts, or visual arts, and fall within a professional category prescribed by regulation"

Section 18(b)

"in determining whether an independent contractor is a professional for the purposes of paragraph 6(2)(b), whether the independent contractor

- (i) is paid for the display or presentation of that independent contractor's work before an audience, and is recognized to be an artist by other artists,
- (ii) is in the process of becoming an artists according to the practice of the artistic community, or
- (iii) is a member of an artists' association."

This would seem to be an example where the world of the income tax system and its administration does not fully align with other government policies or with the artistic community, including certain agencies of government. For the tax authorities, the key factor is whether or not the artist is carrying on a business that has a "reasonable expectation of profit." For the cultural community, the key factor is whether or not the artist is a "professional" as that term is understood in the community.

V/ Appendices:

e/ Croatia - Law on the Rights of Independent Artists and Promotion of Cultural and Artistic Creativity

1. GENERAL PROVISIONS

Article 1

This act regulates the rights of independent artists, the founding and operation of arts organizations and measures to promote cultural and artistic creativity.

Article 2

Independent artists in terms of this act are non-employed artists with the artistic creation and operation as only and the main occupation.

Article 3

According to the areas of artistic creativity and activities, in order to accomplish common interests, artists may associate artistic association in accordance with the regulations of the associations.

The areas of artistic creation are literal, literary - translation, theater, film, music, musical-theatrical, ballet, dance, including performance art, visual arts and applied arts (painting, sculpture, architecture), artistic design, art photography, multimedia creation etc.

Article 4

Due to artistic creativity and action artists can set up arts organizations.

2. RIGHTS OF INDEPENDENT ARTISTS

Article 5

Independent artists on the basis of their artistic work are entitled to pension and disability and health insurance under the terms of this act.

Independent artist has the right to apply for his contributions for pension and disability and health insurance to be paid from the Croatian national budget resources.

The application from the previous paragraph solves the Expert Committee with subsequent approval of the Minister of Culture, in the process and the requirements laid down in Article 7 this act.

Article 6

The expert commission is composed of one representative from the Ministry of Culture and the Association of Independent Artists, and three members appointed from among its members by the professional association in the area of creation by the applicant, one of whom is an independent artist.

The method and procedure for appointing members of the Expert Committee and its work is determined by the Regulations under Article 7 this act.

Members of the committee are appointed for four years.

Article 7

Regulations about the procedures and conditions for the recognition of the rights artists to have their pension, disability and medical insurance paid out of the national budget of the Republic of Croatia (here in after referred to as the Regulations) issued by the Minister of Culture at the proposal of the majority of the existing professional art associations including the Association of Independent Artists.

Article 8

The Expert Committee has to at least once every five years, ex officio, review recognized rights of independent artists to pay contributions for pension and disability and health insurance funds from the Croatian budget.

Article 9

Professional and administrative tasks in the process as required by Article 5 of this act and the work related to the Expert Committee, are conducted by the Ministry of Culture, who may delegate it to a professional association or an association of independent artists, and provide the needed funds.

Article 10

An artist who is not entitled to payment of pension and disability and health insurance funds from the Croatian budget, has the right to pay these contributions by himself.

3. ART ORGANIZATION

Article 11

Nonprofit arts organizations are legal entities and can only perform an artistic activity for which they are registered.

Arts organizations can be found by artists.

Article 12

Decision on the founding of arts organization shall include the information about the founders and members of arts organization, arts organization name, its headquarters, artistic field

which will deal with, the basic provisions governing the organization of activities and the signatures of the founders.

The Statute shall specify, in accordance with a decision on the founding of arts organization, the matters referred to in paragraph 1 this Article, in particular the representation of the organization, acquisition and termination of membership in the organization of artistic, management, rights and obligations, and relations between members, the liability for the obligations of arts organizations, the cessation of its operation and distribution of its assets, and other issues important to the work of arts organizations.

Name of arts organization contain more precise indication of the arts, as a form of action (ensemble, art workshop, studio, multimedia workshops, etc.) and other notes and data that define the artistic organization.

Article 13

Arts organizations acquire the assets by the performance of its activities, donations, sponsorships, inheritance, the incomes from Croatian budget and budgets of local governments and other legitimate uses.

Arts organizations are liable for the obligations by its property.

Decision on the founding or a special contract shall determine the returning or property to its founders or members that entered the organization in the event of termination of their membership in the art organization.

Article 14

Arts organization is represented by one of its members who is the responsible person (director, director, art director etc.), has rights and duties and the position of head of the institution, unless this act provides otherwise.

The responsible person referred to in paragraph 1 of this Article shall be elected as provided by statute of arts organizations. Statute of arts organizations closely regulates the rights and obligations of the responsible person.

Article 15

Arts organization acquires legal personality and begins to work with the moment of enrollment in the Register of artistic organizations in the Ministry of Culture.

The content and manner of keeping the Register under paragraph 1 of this Article shall be prescribed by the Minister of Culture.

Article 16

The decision on enrollment of art organization in the Register of artistic organizations shall be brought by the Ministry of Culture at the request of the founder.

Application must be enclosed with the decision on founding of arts organization, its statute and a list of the founders and members with their personal information and confirmation of appropriate professional associations about their artist status, and a list of persons authorized to represent the arts organizations.

Article 17

Arts organizations must register to the Ministry of Culture any change of decision on founding and modification of the statute, the change of its legal representatives, and any change regarding the acquisition or termination of membership of individual artists, within 15 days from the date of change, or the acquisition or termination of membership.

Article 18

Arts organizations cease to exist when in accordance with the provisions of the act on founding and the statute regulations, decides on the termination of its work or the absence of assumptions provided by law for its establishment, especially when it is established:

- that the arts organization performs an activity for which is not registered,
- that the arts organization is acting contrary to law, the decision on founding or statute,
- that its action is prohibited.

The decision on termination of the arts organizations brings the Ministry of Culture.

The decision on termination of the arts organizations shall determine its removal from the Register of artistic organizations.

Article 19

Regulations considering associations shall be adequately applied to the matters considering work, management, termination of existence and other issues related to artistic organizations that are not regulated by this act.

Supervision over the work of artistic organizations is conducted by the Ministry of Culture.

4. FINANCIAL MEASURES TO PROMOTE CULTURAL AND ARTISTIC CREATIVITY

Article 20

Amounts received under Article 21 of this act to the amount of HRK 20,000.00 per year are not considered as income of independent artists.

The amounts referred to in paragraph 1 of this Article shall be allowed on the bank account. For expenditures under Article 21 of this act and the receipts from the first paragraph of this Article, the donor and recipient needs to have proper documents.

Income does not include remuneration in respect of per diem and travel expenses of official staff of cultural institutions and other persons engaged in cultural and artistic activity, received to perform these activities and to the amount set by the Minister of Finance.

Article 21

The provision was repealed by the Law on Income Tax (Official Gazette 177/04).

Article 22

Nontaxable part of artistic royalties for the work of art is determined at 25%.

The work of art is determined by confirmation of the competent professional arts organizations or agencies authorized when paying royalties.

5. TRANSITIONAL AND FINAL PROVISIONS

Article 23

Working communities of independent artists who are established and operate pursuant to the Independent Artists Law ("Official Gazette" no. 48/79. and 55/84) continue to operate as arts organizations under the provisions of this act and they must make their organization, activities and documents comply with this act within two months from the date of its entry into force, and an application for registration of artistic organizations must be submitted within one month from the date of entry into force of the Regulations under Article 15 Paragraph 2 of this act.

If the work communities do not act under the paragraph 1 of this article or their application for registration of artistic organization is finally refused, the competent administrative body shall issue a decision on its termination.

Article 24

Community of Independent Artists established by the independent artists, continues to work as an association called the Croatian Freelance Artists Association.

Duties under Article 9 of this act shall be performed by the Croatian Freelance Artists Association. Funds needed to perform these tasks will be provided to the Association by the Ministry of Culture.

Article 25

The minister of Culture shall issue a Regulation under Article 7 of this act within one month after artistic associations propose its adoption.

Article 26

The minister of Culture shall issue the Regulation under Article 15 of Paragraph 2 of this act within one month from the date of entry into force of this act. Until the entry into force of the Regulation, the Guidelines on the registry working community of independent artists ("Official Gazette" no. 1/80.) shall apply.

The minister of Culture, arts organizations and the Croatian Freelance Artists Association are required to appoint their representatives for the members of the Expert Committee within 15 days from the date of entry into force of the Regulations under Article 7 of this act.

Article 27

Independent artists who, until the entry into force of this act, have recognized their rights for contributions for pension and disability and health insurance funds to be paid from the Croatian budget, retain the right to the end of 1996. A further exercise of that right will be decided under the provisions of this act pursuant to the requirements imposed on independent artists.

Article 28

Upon the entry into force of this act, the Act on independent artists ("Official Gazette" no. 48/79. and 55/84.) shall be abolished.

Article 29

This act shall enter into force eight days after its publication in "Official Gazette".

Class:
Zagreb, 17 May 1996.

612-01/95-01/03

V/ Appendices:

f/ REPUBLIC OF LITHUANIA LAW ON THE STATUS OF AN ARTIST AND THE STATUS OF AN ORGANISATION OF ARTISTS

15 August 1996 No I-1494

Vilnius

(As last amended on 9 November 2010 – No XI-1101)

CHAPTER ONE

GENERAL PROVISIONS

Article 1. Purpose of the Law

This Law shall establish the grounds and procedure for granting and revoking the status of an artist and the status of an organisation of artists.

Article 2. Definitions

1. **Artist** means a natural person who creates art works, performs them in a distinctive manner and on this ground is granted the status of an artist.

2. **Organisation of artists** means an association which is granted the status of an organisation of artists and which unites artists according to art forms or combinations of these art forms. Its goals shall be to implement creative programmes, to protect creative, professional, social rights, copyright and related rights of artists, and to represent artists in accordance with the procedure laid down by laws.

3. **Creation of art** means the totality of artworks created by a person or a group of persons or performed by him/them in a distinctive manner.

4. **Artwork** means an original result of creative work, regardless of a mode and form of expression.

5. **Professional artistic assessor** means a person with a higher university education who develops knowledge in the sphere of culture and art and publishes results of such activities in monographs, studies, reviews and articles in Lithuania and/or abroad.

6. **Professional art** means original creation of high professional and artistic value, recognised as such by professional artistic assessors.

CHAPTER TWO
FOUNDATIONS AND PROCEDURE FOR GRANTING AND REVOKING
THE STATUS OF AN ARTIST AND
THE STATUS OF AN ORGANISATION OF ARTISTS

Article 3. Grounds and Conditions of Granting the Status of an Artist and the Status of an Organisation of Artists

1. The status of an artist shall be granted to a person who creates professional art, if such person's creation of art conforms to at least one of the following grounds for granting the status of an artist:

1) the person's individual or collective creation of art has been positively evaluated as professional art in monographs, reviews or articles published by professional artistic assessors, or their recommendations and thus recognised as professional creation of art;

2) the person's creation of art is included in general education curricula, vocational training programmes and higher education study programmes approved in accordance with the procedure laid down by the law;

3) the creation of art by a person or a group of persons has been honoured with the National Culture and Art Prize of Lithuania, the Art Prize of the Government of the Republic of Lithuania, the Art Prize of the Ministry of Culture or an international art prize, other prizes and awards given by organisations of artists, or a laureate's diploma of an international competition of professional art creators and/or performers (except competitions of pupils and students);

4) the person's artworks have been acquired by national museums or galleries of Lithuania or foreign states;

5) the person has published art-assessment articles and reviews in Lithuanian or foreign publications for not less than five years; as well as the person who has been awarded the Doctor of Science degree or the Doctor of Arts degree for research activities in an appropriate art form; 6) the person who teaches subjects of the art study field and holds the position of professor or associate professor at a higher education institution which prepares professional artists according to art study programmes;

7) the person has been, individually or with a group of artists, selected and represented Lithuania at internationally recognised events of professional art.

2. The status of an artist which has been granted to a person in one art form may be recognised in another art form, provided that his creation of art meets the requirements referred to in paragraph 1 of this Article. The status of an artist may be granted in pursuance of the procedures laid down in Article 5 of this Law.

3. The status of an organisation of artists shall be granted to an association, if it conforms to all the grounds for granting the status of an organisation of artists:

- 1) not less than 25 artists have founded the association;
- 2) only artists or organisations holding the status of an artist and uniting not less than five members – organisations of artists – are members of the association;
- 3) the association promotes creation of art of high professional value, its diversity and dissemination;
- 4) the association set conditions for creation of art, creative work and professional development of its members;
- 5) the association arranges for accessibility of art works to the public;
- 6) the association represents artists of the whole country (not one of its regions).

Article 4. Statutes of an Organisation of Artists

Apart from the mandatory information provided for in the Civil Code of the Republic of Lithuania (hereinafter referred to as the “Civil Code”) and the Law of the Republic of Lithuania on Associations (hereinafter referred to as the “Law on Associations”), statutes of an organisation of artists must indicate that creation of art of new members admitted to the organisation of artists should meet the requirements laid down in paragraph 1 of Article 3 of this Law.

Article 5. Ways of Granting the Status of an Artist

1. The status of an artist shall be granted:
 - 1) on the decision of an organisation of artists, when admitting to this organisation a person whose creation of art conforms to at least one of the grounds for granting the status of an artist, laid down in paragraph 1 of Article 3 of this Law;
 - 2) on the decision of the Council for Granting the Status of an Artist and the Status of an Organisation of Artists – if a person does not belong to an organisation of artists which is recognised as such in accordance with the procedure laid down in Article 7 of this Law.
2. The decision of the Council for Granting the Status of an Artist and the Status of an Organisation of Artists to grant the status of an artist shall be approved by the Minister of Culture.

Article 6. Council for Granting the Status of an Artist and the Status of an Organisation of Artists

1. The Council for Granting the Status of an Artist and the Status of an Organisation of Artists (hereinafter referred to the “Council”) shall be set up by the Minister of Culture. The Council shall be

a public institution granting by a collegial decision the status of an artist and the status of an organisation of artists.

2. The Council shall consist of seven members. The term of office of the Council shall be two years. All the organisations holding the status of an organisation of artists shall each submit to the Ministry of Culture one candidate for Council members; the Minister of Culture shall appoint from among the submitted candidates five Council members representing different art forms and two members from among professional artistic assessors.

3. The Minister of Culture shall approve the regulations and composition of the Council.

4. If an organisation of artists amends its statutes, it must submit them to the Council within 30 days. The Council shall evaluate whether or not the amended statutes conform to the requirements of this Law.

5. When the Council carries out inspection, an organisation of artists must present to the Council a copy of its statutes, a list of its members and a report on its activities drawn up in compliance with Article 10 of the Law on Associations.

Article 7. Procedure for Granting the Status of an Artist and the Status of an Organisation of Artists

1. Applications of persons concerning the granting of the status of an artist or the status of an organisation of artists shall, with the exception of the cases referred to in paragraph 6 of this Article, be considered and decisions shall be taken by the Council in accordance with the procedure laid down by the Rules on Granting the Status of an Artist and the Status of an Organisation of Artists. These Rules shall be approved by the Minister of Culture.

2. A person seeking the status of an artist must, together with an application, submit to the Council the following documents:

- 1) a copy of the document confirming his identity;
- 2) a list of main art works and publications about creation of art and/or the artist;
- 3) copies of the documents confirming the awarding of prizes, conferring of the title of a competition laureate, a research degree, an academic title;
- 4) copies of the documents confirming that the art works created by him have been included in study and training programmes, that they have been acquired by museums;
- 5) copies of the documents confirming that his creation of art conforms to the grounds for granting the status of an art laid down in paragraph 1 of Article 3 of this Law.

3. An association seeking the status of an organisation of artists must, together with an application, submit to the Council the following documents:

- 1) a copy of the statutes of the association;

- 2) a copy of the memorandum of association;
- 3) a copy of the certificate of registration of a legal person;
- 4) a list of the association members and copies of the decisions of the Council or the organisation of artists, approved by the Minister of Culture, proving that its members have been granted the status of an artist;
- 5) a report on the association's activities since its start, prepared in compliance with Article 10 of the Law on Associations.

4. The Council, having considered the applications and established that the natural person's creation of art, the statutes of the association, the memorandum of association, the composition and activities of the association members meet the requirements of this Law, shall take a decision to grant the status of an artist or the status of an organisation of artists. Having established that the natural person's creation of art, the statutes of the association, the memorandum of association, the composition and activities of the association members do not meet the requirements of this Law, the Council shall take a decision to refuse to grant the status of an artist or the status of an organisation of artists.

5. The Minister of Culture shall approve a decision of the Council to grant or to refuse to grant the status of an artist or the status of an organisation of artists within 14 working days from the day of receipt of a respective decision of the Council. This fact shall be communicated in writing to the interested persons within five working days from the date of approval of the decision of the Council.

6. In the cases when the status of an artist creator is granted in the manner prescribed in subparagraph 1 of paragraph 1 of Article 5 of this Law, the Minister of Culture, taking into consideration the lists of artists submitted by organisations of artists and the adopted decisions to grant the status of an artist, shall approve the granting of the status of an artist within 14 working days from the date of receipt of the said documents. Organisations of artists shall be informed in writing about this within five working days from the date of approval of the decision of an organisation of artists.

7. The status of an artist or the status of an organisation of artists shall be deemed granted from the date of approval of the decision of the Council or the organisation of artists.

Article 8. Loss of the Status of an Artist and the Status of an Organisation of Artists

1. The status of an artist shall be lost:

- 1) when the Council establishes that a person has acquired the status of an artist upon submitting incorrect documents concerning his creation of art;

- 2) where the court establishes the fact of plagiarism of the creation of art;
- 3) where the dissemination of results of the artist's creation of art goes unnoticed.

2. The decision of the Council on the loss of the status of an artist shall be approved by the Minister of Culture.

3. The status of an organisation of artists shall be lost:

1) when the Council establishes that the organisation of artists does not conform to the grounds laid down in paragraph 3 of Article 3 of this Law and when the Council takes a decision on the loss of the status of an organisation of artists. The decision of the Council on the loss of the status of an organisation of artists shall be approved by the Minister of Culture. The interested persons shall be informed in writing about the decision on the loss of the status of an organisation of artists within five working days from the date of approval of the decision;

2) when the organisation of artists ceases to exist in accordance with the procedure laid down by the law.

Article 9. Accumulation of Data on Artists and Organisations of Artists

1. Data on artists and organisations of artists shall be accumulated within the computerised information system of artists and organisations of artists, which is managed by an institution authorised by the Government. The Council and organisations of artists shall furnish the data to the institution authorised by the Government and managing the computerised information system, except orders of the Minister of Culture regarding the granting of the status of an artist and the status of an organisation of artists.

2. The following data of an artist shall be entered in the computerised information system of artists and organisations of artists:

- 1) registration number of the artist assigned by the information system;
- 2) date and registration number of the order of the Minister of Culture regarding the granting the status of an artist;
- 3) name (names), surname (surnames) of the artist;
- 4) personal number of the artist.

3. The following data of an organisation of artists shall be entered in the computerised information system of artists and organisations of artists:

- 1) registration number of the organisation of artists assigned by the information system;
- 2) date and registration number of the order of the Minister of Culture regarding the granting the status of an organisation of artists;
- 2) code of the enterprise;
- 4) name;

- 5) head office (address), telephone number and, if available, fax number, e-mail address;
- 6) names, surnames and personal numbers of the members of the organisation of artists.

CHAPTER THREE

RIGHT OF ARTISTS AND ORGANISATIONS OF ARTISTS TO STATE SUPPORT

Article 10. Promotion of Creative Activities of Artists and Organisations of Artists

1. State grants and prizes shall be granted with the aim to promote artistic activities of artists.
2. The Government shall lay down the procedure for awarding state grants and prizes to artists.
3. Artists shall have the right to bring, in accordance with the procedure laid down by the Government, into the Republic of Lithuania the art works created by them at the events held by the foreign states other than the Member States of the European Union.
4. Activities and creative programmes of organisations of artists shall be financed from appropriations of the state budget allotted for the Ministry of Culture.

Article 11. Social Security of Artists

1. Support shall be granted to artists from the Programme for Social Security of Artists which is approved by the Government.
2. Social guarantees for artists shall be established by other laws and legal acts.

Article 12. Programme for Social Security of Artists

1. The objective of the Programme for Social Security of Artists shall be to provide support to artists receiving low and irregular income as well as to artists who are in creative standstill.
2. The Programme for Social Security of Artists shall be administered by an institution authorised by the Government in accordance with the procedure laid down by the Government. All artists shall be equally entitled to state support.

Article 13. Sources of Funding of the Programme for Social Security of Artists

Funds of the Programme for Social Security of Artists shall consist of targeted appropriations of the state budget provided for an institution authorised by the Government.

CHAPTER FOUR

ASSOCIATION OF ORGANISATIONS OF ARTISTS

Article 14. Association of Organisations of Artists

1. An association of organisations of artists shall be a public legal person of limited civil liability established under the Law on Associations, which unites associations having the status of an organisation of artists and the purpose of which is to implement the cultural policy in the field of professional creation of art as well as to defend the interests of artists.

2. An association of organisations of artists shall, in its activities, act in compliance with the Law on Associations, the Civil Code, this Law and other laws as well as its statutes and other legal acts.

Article 15. Functions and Rights of an Association of Organisations of Artists

1. The functions of an association of organisations of artists shall be as follows:

1) to carry out monitoring of the social situation of artists;
2) to carry out monitoring of the development and dissemination of the creation of art;
3) to perform functions of the expert on the issues of professional art in courts and other institutions;

4) to submit conclusions to Government institutions or institutions authorised by the Government when preparing drafts of legal acts;

5) to accumulate information and statistical data related to artists, their organisations in Lithuania and abroad.

2. An association of organisations of artists shall have the right:

1) to represent the interests of its members and to defend them;
2) to present proposals regarding the amendment of effective legal acts;
3) to participate in the solution of issues related to the development and dissemination of professional art;

4) to cooperate with state, municipal institutions, creative, professional and other organisations from Lithuania and foreign countries;

5) to pursue economic and commercial activities which are not prohibited by laws and which are inseparably connected with the objectives of their activities;

6) to exercise other rights specified in the statutes of the association of organisations of artists.

Article 16. Property and Sources of Income of an Association of Organisations of Artists

1. An association of organisations of artists may possess by the right of ownership buildings, vehicles, equipment and other property necessary for activities provided for in their statutes; such property may be acquired from the sources of income specified in paragraph 2 of this Article.

2. Sources of income of an association of organisations of artists shall be as follows:

- 1) membership fees and targeted contributions;
- 2) funds of state and municipal budgets intended for implementation of the assigned functions and creative programmes;
- 3) property and funds transferred by natural and legal persons for no consideration;
- 4) inheritance granted under the will to the association of organisations of artists;
- 5) interest paid by credit institutions on the funds deposited in these institutions;
- 6) other funds obtained legitimately.

V/ Appendices:

g/ Morocco: Edict No. 113.03.1 issued on 18 Rabi I 1424 (19 June 2003) to implement Law No. 99.71 concerning the Status of Artists

Law No. 99.71 concerning the Status of Artists

Considering the cultural heritage of the Kingdom of Morocco, which has always stood out for the richness and variety of its creativity and forms of expression;

On the basis of the exalted regal guidance contained in Letters addressed by His Late Majesty Hassan II, may God rest him in peace, to artistic meetings and conferences in our country, and the outstanding solicitude which His Majesty Mohammed VI, may God send him victorious, continues to show for the legal status of artists and for the structures whereby their creative work is produced and distributed;

In view of the fact that the development of artistic production mechanisms requires that the conditions in which artists work be regulated, artistic enterprise be encouraged and modern traditions in the distribution of artistic products be consolidated;

Conscious of the fact that Moroccan artists, with their different schools and forms of expression, help to preserve national identity, strengthen ties and protect Moroccan culture among the nations;

In expression of the desire of His Majesty Mohammed VI, may God preserve him, for artists to enjoy a legal standing that conserves their dignity, regulates their profession and opens the way for them to continue to contribute to society.

Chapter I Preliminary Measures Article 1 Definitions

1. "Artist" means any natural person who practices artistic activity, either continually or intermittently, in return for remuneration and in the context of a contract of work or employment, or who performs an artistic work to sell or rent it to others, or produces it for the public administration, local authorities or public institutions.

2. "Artistic activity" is any activity involving artistic creation or artistic performance, where:

(a) "Artistic creativity" is any artistic work by a natural person, particularly in the field of audio visual art, photography, fine arts, music, theatre, literature (either written or spoken) or choreography.

(b) "Artistic performance" is any activity involving the artistic presentation or execution of all or part of an artistic work by a natural person, in any way, especially in the fields of music, theatre, variety shows, circus or puppetry.

3. "Impresario" is any natural or juridical person who concludes a contract of work or employment with an artist, for the purpose of undertaking artistic activity in return for remuneration.

4. "Individual contract" is any individual agreement concluded between an artist and an impresario. "Joint contract" means any agreement concluded between a group of artists and an impresario.

5. "Art services agency" refers to any juridical person who undertakes to bring the demand and supply for artistic services together, while not being a party in any artistic working relationship that may result therefrom.

6. Under this Act, a professional card is granted to everyone to whom the above definitions apply. The conditions and mechanisms for granting the card are defined in the regulations.

Article 2

For the purposes of this Act, "artistic revenue" is considered to be:

(a) Any monetary sums and the like, either in cash or in kind, which an artist receives in return for carrying out artistic activity.

(b) Any remuneration which an artist receives in return for ceding privileges or intellectual rights which have arisen as the result of artistic creativity or of an artistic performance.

Chapter II Relationship between Impresarios and Artists

Article 3

The contract between the impresario and the artist is concluded for a specified period of time, or for the performance of a specified artistic activity.

Article 4

The contract concluded between the impresario and the artist is considered as being a contract of work.

The contract may be a joint work contract concerning a group of artists for the presentation of a specific performance or for their jointly carrying out an artistic work. In this case the contract must include the name of each artist individually, specifying his or her remuneration. After it has been signed, the artist must be given a copy of the joint contract which, if necessary, must specify whether the performance or performances are free of charge.

A joint contract may be signed by just one artist of the group, on condition that he or she has written power of attorney signed by each artist whose name appears on the contract.

The joint contract must stipulate each artist's remuneration, next to his or her full name.

Article 5

In the case of a joint contract concerning a group of individuals, only the artists are considered to practice artistic activity within the context of the contract.

Whether the contract is an individual or joint contract, neither the method of remuneration nor the amount thereof, or the name given to the contract by the parties, alters its status as a work contract between an impresario and artists. This is so irrespective of whether the artist owns all or some of the equipment he uses, either individually or with others, as long as he participates personally in the performance.

Article 6

The artist working under contract, whatever name is given to that contract, is an employee to whom the provisions of employment law apply, unless covered by a special text in that or other laws, and taking account of the provisions issued for protecting literary and artistic works or artistic activities carried out by artists who belong to public professional organisations.

The relationship between an impresario and an artist is based not only upon the provisions of the law, but also upon respect for professional artistic ethics.

Article 7

The work contract concluded between the impresario and the artist must be written.

The work contract between the artist and the impresario must be amended whenever there is a change in the artist's professional status, the amount of remuneration or the period of the contract.

Article 8

Any arbitrary termination of the contract entitles the other party to compensation, which is estimated in accordance with the contract itself. If this issue is not covered by the contract then the provisions of employment law visàvis the arbitrary termination of contracts apply.

Chapter III Remuneration

Article 9

If the presentation or execution of the artistic activity requires more than fifteen (15) days, the artist and the impresario may establish payment dates by mutual agreement, on condition that the artist receives advance instalments every fifteen (15) days, in such a way that he or she has been fully remunerated at the termination of the contract or at the conclusion of the artistic activity.

Article 10

The amount of the remuneration must be included in the contract.

The distinction between the two forms of remuneration pursuant to paragraphs (a) and (b) of article 2 must be indicated in the contract.

Article 11

When remuneration is paid a receipt must be issued showing the applicable fees and deductions, and the shared obligations as defined in article 13 below.

Article 12

Artists benefit from the privilege defined in section 1248 of the Code of Obligations and Contracts promulgated by the Edict published on 9 Ramadan 1331 (12 August 1913), concerning the payment of any monies owed to them by the impresario from the impresario's moveable goods, in accordance with that section and the conditions defined therein.

The legal compensation arising from the arbitrary termination of the contract by the impresario is part of the same privilege and has the same standing.

Chapter IV Social Security

Article 13

Artists to whom the provisions of this Act apply benefit from legislation covering accidents in the workplace, social security and basic health cover.

The governmental authorities responsible for culture are working to establish mechanisms to finance social services for artists, in the context of current law.

Chapter V

Juvenile Artists

Article 14

It is forbidden to employ any juvenile under the age of eighteen to act or appear in a public performance, without advance written permission from the labour inspector. This must be with the agreement of the juvenile's guardian and after having informed the governmental authorities responsible for culture.

The labour inspector has the right, by means of a justified decision made either of his own accord or at the request of any qualified party, to withdraw the permission he had previously granted.

Article 15

It is forbidden for anyone not undertaking research or study in the context of media or academic activities, to publish in any way, any comment, news or information concerning a juvenile under the age of eighteen, save for information connected with that juvenile's artistic activity. It is likewise forbidden to make any exploitative form of announcement aimed at inducing juveniles to practice the artistic professions by highlighting the lucrative nature of those professions.

Article 16

It is forbidden to make juveniles under the age of sixteen play dangerous games, or to oblige them to participate in performances which threaten their life, health or morals.

Article 17

If the provisions of articles 15 and 16 are infringed, the labour inspector shall request the local administrative authorities concerned to intervene to stop the offending performance, and the Public Prosecutor's Office shall be so informed.

Chapter VI Art Services Agencies Section One Establishing an Art Services Agency

Article 18

An art services agency may be established after having received authorisation from the competent authorities, as stipulated in the regulations. Thereafter it may, in exchange for payment, undertake to seek employment for artists in theatres, musical ensembles, variety shows, cinema, radio, television, cinema or circuses, or other such work in the world of entertainment.

Article 19

Authorisation to practice as defined in article 18 may only be granted to art services agencies established in the form of commercial companies.

An authorisation may not be granted, or maintained, for an art services agencies run by an individual who has suffered a definitive conviction for a crime against morality.

Article 20

The request for authorisation to practise must include information about the art services agency, particularly the following: its address, the nationality of the director, the nature of the artistic activities it intends to pursue, models of the contracts it uses as per the regulations, its account number and the amount of its capital.

The art services agency may at any time be asked to provide supplementary information.

Section Two Art Services Agencies' Fees

Article 21

Staff of art services agencies, when undertaking their function of seeking employment for artists, may not receive or accept deposits or collateral of any kind.

The impresario alone bears responsibility for the fees requested by the art services agency, while the artists employed pay nothing.

Article 22

The amount of the fees art service agencies receive from impresarios may be no more than: 2 per cent of the artist's remuneration for periods of employment not exceeding fifteen days. 5 per cent of the artist's remuneration for periods of employment between fifteen days and one month. 10 per cent of the artist's remuneration for periods of employment of longer than one month.

For the purposes of this article, remuneration is calculated as per the remuneration defined under paragraph (a) of article 2.

Article 23

Art services agencies must keep records in order to allow monitoring of the extent to which employment provisions in the artistic world are respected. The form and requirements of this register are defined in the regulations.

Chapter VII Exceptional Measures

Article 24

Employees and officials of the public administration, local authorities or public institutions may practise artistic activity outside working hours, either on their own account or for third parties, on condition that such activity does not have repercussions on the productivity of their work, and that it is not of a preponderantly commercial nature.

Article 25

Payment associated with artistic activities carried out by the category of persons defined in article 24 for the State, local authorities, public institutions or agencies in which the State holds at least 50 per cent of the capital, are not considered as a double wage.

Article 26

If the performance of the artistic activity necessitates absence from the workplace, the employee or official may take unpaid leave. This must not exceed fifteen days in six months and is renewable once.

Article 27

A contract between the public administration and an artist may be concluded individually and directly, notwithstanding any laws to the contrary, merely on the basis of a sworn statement on the part of the artist including his or her name, family name, national ID card number if Moroccan, passport or residency card number if a foreigner, current account number in a post office, bank or the public treasury, and an undertaking to perform the contracted artistic activity as per the agreed conditions and times.

Chapter VIII Violations and Penalties Section One Violations

Article 28

Police officers, as well as officials appointed by the administration for the purpose, have the duty of establishing whether violations, as defined in this Act and the texts issued for its implementation, have taken place.

Section Two Penalties

Article 29

The following acts are punished with a fine of between 300 and 500 dirhams: Employing juveniles under the age of eighteen in contravention of article 14 of this Act. Publishing information about a juvenile under the age of eighteen, other than information associated with that juvenile's artistic activity. Inducing juveniles to practice the artistic professions by highlighting the lucrative nature of those professions. Making juveniles under the age of sixteen play dangerous games, or participate in performances which threaten their life, health or morals.

Multiple penalties are imposed in proportion to the number of employees for whom the above provisions are not implemented, to a maximum for all fines of 20,000 dirhams.

Article 30

Anyone practising the activities of an art services agency without having obtained authorisation, pursuant to article 19 of this Act, shall be punished with a fine of between 10,000 and 20,000 dirhams.

Article 31

Any member of staff of an art services agencies who receives or accept deposits or collateral of any kind for undertaking the function of seeking employment for artists, in contravention of article 21of this Act, shall be punished with a fine of between 10,000 and 20,000 dirhams.

Chapter IX Concluding Provisions**Article 32**

All provisions contrary to this Act especially those contained in labour legislation concerning art services agencies and the employment of juveniles in artistic activities are abrogated.

V/ Appendices:

h/ Definition of UNESCO(1980)

UNESCO's recommendation on the status of the artist proposes a formal definition for all artists: 'Artist' is taken to mean any person who creates or gives creative expression to, or re-creates works of art, who considers his [sic] artistic creation to be an essential part of his life, who contributes in this way to the development of art and culture and who is or asks to be recognized as an artist, whether or not he is bound by any relations of employment or association'.

V/ Appendices:

i/ Additional information from the web site IFACCA and National Association for Visual Arts - NAVA, Australia:

D'Art Topics in Arts Policy no.1, March 2002

IFACCA and the National Association for the Visual Arts (NAVA), Australia

Most countries need some way of determining whether or not a person is a 'professional' artist for tax and benefit purposes. There is, however, little consistency in approach to definition. Some countries even have different definitions within their own jurisdictions. Moreover, there appears to be no comprehensive analysis of the impacts of different definitions. This D'Art report details five common approaches to definition:

Definition through membership: A person is defined as an artist through membership of a recognised artist association

Definition by committee: a committee of experts or artists' peers determines artistic status. The Netherlands' WIK scheme and Canada's Status of the Artist Act use this approach.

Definition by authority: The taxation authority determines artistic status. The tax exemption scheme in Ireland uses this approach.

Definition by association with artistic output: An artist is someone who produces art. This approach is taken in many jurisdictions, but merely replaces the question of 'What is an artist?' with 'What is art?'

Definition by nature of arts activity: The artist is deemed professional if the arts work is undertaken in a businesslike manner. Tax authorities in many countries, including Canada, the United States and Australia use this approach.

The definition of an artist in Europe is not uniform

Some common approaches to definition

The methods and criteria used to define artists for tax and benefit schemes vary widely between jurisdictions. Five common approaches are set out below with examples from a number of countries. Often a mixture of these approaches is adopted.

1. Definition through membership: a person is defined as an artist through membership of a recognised artist association (eg a society of professional artists).

One consideration for determining professionalism under Canada's Status of the Artist Act 1992 is whether an independent contractor is a 'member of an artists' association' (Department of Justice Canada, 2001; clause 18(b)iii).

Although administratively simple, this approach still begs the question of which *associations* are to be officially recognised. And, as Heikkinen and Karttunen (1995; 4) find, the

complexity of definition is compounded by the need to adopt different membership criteria to ensure comparable definitions across the various art forms.

2. Definition by committee: artistic status is determined by a committee, such as a committee of 'experts' or of artistic peers.

In the Netherlands, an 'independent advisory body' determines the professional status of artists applying for eligibility under the Income Provision for Artists Act, or 'WIK' (Ministry of Education, Culture and Science, 1998). In Mexico, a committee of art 'experts' determines and ranks 'artists' under a scheme to allow artists to pay taxes with works of art instead of cash (The Washington Post, 1999). Under the Canadian Status of the Artist Act (1992), a tribunal determines who is and who is not a 'professional' artist for the purposes of actions under the tribunal's jurisdiction

(Department of Justice Canada, 2001).

3. Definition by authority: the taxing authority determines eligibility.

Under Ireland's acclaimed artists exemption scheme, artists submit a claim to the Revenue Commissioners' Office (Revenue Commissioners' Office, 2001). While the Office makes the final decision, it is able to consult externally in making its decision.

The obvious problem of the designation by committee or authority approaches outlined above is how to ensure objectivity, fairness, or lack of bias in decision-making. Fairness depends on how decision-making is structured and how deciding bodies are appointed and overseen. This issue is particularly relevant since 'The Establishment' is regularly in tension with 'the arts', particularly the 'arts of social change' (Whitaker, 1993).

4. Definition by association with artistic output: the definition of an artist derives from the definition of artistic output; ie, an artist is someone who produces art (artworks, copyrighted materials and so on).

This type of definition exists in France (Syndicat National des Sculpteurs et Plasticiens, 2001), in the UK (Inland Revenue, 2001) and in the Republic of Ireland (Coffey, 1998; section 2.4). In the case of Ireland, the Revenue Commissioners' Office determines whether an 'original and creative work' has, or is generally recognised as having either cultural or artistic 'merit'.

In this approach, many of the problems of defining an *artist* are merely substituted with problems of defining *art* (or art products). Comprehensive definitions therefore tend to be long and complex, as in the four-page appendix defining eligibility under Ireland's artists exemption scheme (Revenue Commissioners' Office, 2001). Schemes with these definitions also tend to be for the production of 'original' or copyrighted output, which favours 'creative' artists rather than 'interpretive' artists (see note in 'other issues' below).

5. Definition by the nature of arts activity: an artist is deemed professional if their arts work is undertaken in a 'businesslike' manner.

This type of definition is particularly evident for retail sales tax systems, such as Value Added Tax (VAT) and Goods and Services Tax (GST), and for tax averaging schemes. In these situations, determination must be made about the nature of arts work. Characteristics common to arts work pose a number of problems for making such a determination, as it is not always obvious from a financial perspective whether someone is undertaking arts work as a 'serious' artist or simply a 'hobbyist.'