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## PRELIMINARY OBSERVATIONS

The International Federation of Musicians has been representing music performers of all types of music on an international level since it was founded in 1948. FIM has participated in many work groups and negotiations aimed at improving work conditions for music performers. This has particularly been done within the framework of UNESCO, ILO, WIPO, the European Commission and the Council of Europe.

It is with great pleasure that FIM accepted, at the request of **the International Music Council and UNESCO**, to provide a report on the current situation of music performers.

**The report is based on the expertise of 50 national unions, which answered a questionnaire.**

The results obtained give us valuable information on the most important changes to the status of music performers. They are a good enough representation of the world wide situation except in three cases: The United States, which did not answer the questionnaire. China also did not answer. As for the African Continent, the lack of a proper unionist structure is such, that it has been very difficult to get reliable information, particularly in relation to statistical surveys.

The purpose of the UNESCO Congress is clearly to remind the concerned parties of the content of the Recommendation concerning the Status of the Artist dated 27 October, 1981. Its goal is also to look at changes due to the massive use of new media technologies of fixation and broadcasting of artistic performances.

**FIM wishes to stress the importance of UNESCO principles laid down in the Recommendation. These Principles are more current than ever, although many of them have gone unheeded. Nowadays, and even more seriously, they are often disputed on grounds of liberalism or information society particularly in developed and highly industrialised countries.**

## THE ARTIST IN OUR SOCIETY

### A The role played by the Artist and more generally by Culture

#### **UNESCO Recommendation of 27 October 1980**

Professionals have different points of view on the UNESCO Recommendation. In a majority of countries, they regard the Recommendation as having achieved expected results. However, in some European Countries (France, the Netherlands and Portugal), they have radically differing opinions.

The Recommendation has rarely been given a legal status, but there are cases in which this has occurred (Argentina). Nevertheless, bills related to the status of the Artist are being worked on in some countries (Canada, Belgium).

On the question of how the status of the artist has evolved over the last 15 years (since the enactment of the Recommendation), answers are very different. They mainly depend upon the economic situation of the country in question. Professionals from Latin American or Eastern European Countries emphasise the fact that the status of the Artist has deteriorated. In Western European and Nordic Countries, the situation has little evolved; On one hand, intellectual property rights have improved, but on the other hand, social rights have been breached.

It is also important to stress the disastrous situation of Portuguese musicians.

On the contrary, Japanese Unions report that their actions have led to an improvement in the status of musicians.

#### **Public financing**

All the professionals consider that music disciplines and permanent orchestras or institutions which benefit from public funds, have reached a very high artistic standard, including in the fields of both dance and opera. Permanent classical orchestras have played a key role in this success.

Furthermore, some States have no Ministry of Arts and Culture (Japan, Peru, Switzerland...) and may therefore have no cultural policy.

**The national allocated budget for culture is between 0,1 % (for Japan..) and 1% (for Germany...)**

#### **Situation of women practising the profession of performing musicians.**

It seems that women, in countries as different as Germany, Azerbaijan, Korea, Japan, Finland, Sweden, the Netherlands, the Czech Republic, or Romania, are faced with little sexual discrimination in their profession of performing musicians. Nevertheless, in some countries (Poland, France, Bielorussia...) a discrimination de facto, in permanent orchestras, has been noticed.

Maternity leave, as well as equal treatment principles (such as equal pay for example), are often laid down by statutory law.

**Nevertheless, child care is still the main problem** particularly in such countries as Germany, Finland, Japan, Switzerland.

But in some countries such as Israel, the Netherlands, child care costs are taken care of by employers.

### **General Observation**

**In spite of the UNESCO Recommendation, the status of musicians (in our society) is still not very elevated compared to other professions which require an equivalent amount of education.**

### **B. Professional practices**

#### **Employment situation and work contracts**

On average, the overall unemployment rate is around 25%. It goes up to approximately 40% in Israel, and 50% in Portugal.

**The percentage of full-time employed musicians goes from 25 to 50%.** Musicians are commonly unable to financially support themselves and therefore have another job in order to maintain a steady income.

Musicians are often hired for less than a one month period, except if they are employed by orchestras on a long-term basis.

Signing permanent contracts is the usual practice, even if in a large majority of States, the number of permanent positions is decreasing. There seems to be an increasing number of unstable jobs.

The overall **length of employment is decreasing.**

The number of freelance musicians employed by permanent orchestras seems to be increasing. However, these musicians have to take care of their own social protection and this generally costs them more than if they were employed on a permanent basis.

There are laws, or judicial decisions, in some countries which enable musicians who have been regularly but temporarily employed by a permanent structure, to change their contracts into permanent contracts.

Protecting permanent employment and ensuring the status of musicians as employees with social protection are the Unions' main priorities.

**In many countries, there are permanent orchestras in the Jazz music field :** Germany, Argentina, Azerbaijan, Bielorrussia, Croatia, Finland, France, Israel, Japan, New Zealand, Peru, Poland and the Czech Republic.

#### **Self made productions / Home studio recordings**

**It is becoming more and more frequent to see artists who self-produce their performances and more particularly sound recordings.** This means that music performers tend to organise themselves in such a way that they are able to manage their own productions, particularly for records, which they can then have commercialised by others (distributors).

Self-production is more common in countries with a high standard of living than in developing countries or countries with economic problems. Interestingly enough, this practice seems to be fairly uncommon in Japan.

### **Agents**

The majority of musicians have an agent. However, regulations on this profession vary considerably, which sometimes leads to abuse. There are regulations in France, Peru, Japan, Sweden, Romania, the Netherlands and Switzerland. There are none in Argentina, Korea, Croatia, Portugal, Israel and New Zealand. Agents generally receive a commission of 10 to 20%.

### **The influence of multimedia**

Interactive multimedia products are too recent to generate work for musicians on a major scale. In the music field, practices mainly consist of re-using pre-existing recorded material.

Despite the increase in the number of audio-visual productions for new digital broadcasting channels (satellites in particular), it is presently difficult to assess the impact of such development on the employment of musicians.

### **Sampling techniques**

The use of sampling techniques has reduced the number of musicians hired for live performances, and in a lesser measure, for recordings. But musicians do not feel that they pose a threat to their jobs.

### **General observations on the new technologies**

Opinions on the consequences of new technologies are divided. In some countries, new technologies are perceived as opportunities to grasp which fit in with their strategy for development. This is the case in Romania, for instance.

## **C. Unions and Collective Agreements**

### **Free bargaining and the effects of collective agreements**

The principle of free bargaining, which must be legally upheld in order for bargaining to be effective, is still being breached. This is particularly the case in Asia and several East European Countries (Romania, Poland and Croatia). The principle of free bargaining is ineffective in Portugal and it appears that it is not very effective in the UK. Furthermore, this principle does not exist in many African countries, due to a lack of democracy, and professional and representative trade union structures.

The agreements are related to work conditions during live performances (rarely for small theatre), and in a lesser measure, to sound or audio-visual recordings and radiobroadcasting programmes.

**Difficulties often arise in the fields of cinema and television regarding both the enforcement and the violation of these agreements.**

**This is also the case in leisure centres,** which reluctantly accept collective bargaining for musicians.

**Generally speaking, we have observed that musicians are individually pressured (work blackmail) into signing standard contracts which include clauses for giving up their intellectual property rights in return for their wages being paid.**

In a large majority of States, Unions expressed the view that collective bargaining has become more and more difficult over the last 10 years.

### **Unions as musicians representatives**

**The percentage of non-unionist musicians varies** from country to country. It is higher than 50 % in Argentina, Spain, France, the Netherlands and Portugal. It is lower than 25 % in the UK, Germany, Israel, Peru, Sweden and the Czech Republic.

**It appears that the overall number of members is decreasing, with the exception of a few cases (Israel, Netherlands..)**

This is mainly due to the decreasing number of permanent positions, and because affiliation in some states is no longer compulsory. (i.e.: Portugal).

**The Unions are mainly concerned with protecting job opportunities, the status of the employee, and collective bargaining in relation to minimum wages.**

**Furthermore, Unions are becoming more and more active in the field of intellectual property, including new media.**

**Musicians regularly call upon Unions for legal advice or help in cases where there is legal conflict.** It is obvious that few musicians can afford a lawyer and therefore unions which have expertise in the music field provide them with legal advice.

**Governments do not call upon unions enough before launching reforms.** Some Governments take in charge matters which are union privileges into their hands. They authoritatively set conditions on minimum wage which are related to collective bargaining, for example in relation to minimum wages.

An interesting example of this may be found in the UK, where the right of free collective bargaining has been under threat for the last several years. Union privileges are strongly restricted by statutory law.

Professional criteria for affiliation differ from country to country. This either means that it is truly difficult to define what a professional musician is, or that such a definition is useless . **Amateurs must have the same social status as « professionals », as soon as they begin working, even if they only work on an irregular basis.**

Collective bargaining is almost nil in multimedia productions (CD Rom...). This is particularly due to the fact that employers' unions in this field do not exist in most countries.

## **E. Evolution of industries**

### **Influence of concentration**

This phenomenon has not had much influence on collective bargaining, with the exception of France, Sweden and the Netherlands.

It is quite clear, that some large groups of communication such as Disney, Bertelsman or Warner, have an anti-unionist strategy.

### **Increasing number of small societies of production**

**While distribution is mainly controlled by large international groups, the number of small independent producers is increasing.** Unfortunately they have little chance of growing as they can not compete with large groups. They quickly go bankrupt (very often without paying the artists...) or if they are successful, they are bought by large groups.

### **Public service withdrawal concerning distribution/broadcasting means.**

**The authorities do not seem to have taken into consideration the extent of the merging of business and its consequences on the field of broadcasting and distribution (dissemination) of culture.**

Therefore, we have observed that both diffusion and distribution companies are being privatised and that the authorities have given up trying to maintain public service in the field of culture.

This is particularly true in relation to Radio or Public TV Orchestras.

### **Film productions**

Film productions benefit from public funds. However, such financial support does not exist in countries such as Japan, Peru, Sweden, the Netherlands or Romania.

### **Phonogram productions**

Public financing of phonogram productions is rare. Collecting societies of performers' rights and producers' rights are starting to play a key role in selectively financing such productions.

**Record companies finance performers' tours and more generally artists' performances (for promoting their records).**

### **Jazz music market**

There is a large discrepancy between the number of new records, high standard musicians, students, development of music schools and clubs, and the very limited dissemination of this type of music, which is nevertheless a major one and much appreciated by the public.

### **Digital broadcasting by satellite**

It is obvious that this type of distribution, which limits technical costs during relays while increasing capacities of hertzian frequency use, is increasing all over the world; specifically including sound programmes.

### **Internet network**

Musicians' performances are mainly used (without their agreement...) via Internet for promoting products which are commercialised in other ways.

Several projects to improve direct sales of self-produced recordings - via Internet - are in process. This could be a way of avoiding traditional distribution channels which are inaccessible for such recordings.

## TRAINING OF THE ARTISTS

### A. Categories of teachers and institutions

#### General situation

Music is generally taught as a simple introduction in primary school (but this is not the case in Peru or Portugal, for instance).

The same is true in secondary school, but it is often an optional subject (Such as in Spain, France, Israel, Norway, New-Zealand, Peru, Poland, Romania and Croatia).

Music education at school may often be dedicated to popular music and not only to classical music. Schools rarely offer instrument classes. Therefore, music education is limited to both reading music and basic music courses.

Instrument classes are mostly provided exclusively by music schools during the school year.

We have observed that there is an increasing number of specialised schools in which music is taught part-time, together with academic subjects, during the entire school year. Some of these institutions are experimental.

After schooling, music classes are taught in a large number of public and private institutions. In most countries, (excluding a few such as Portugal..) students have the opportunity of receiving grants.

#### Perspectives

**In some countries, States do not contribute in financing public music institutions. This is the case in New Zealand, the Netherlands, Poland, Sweden and Switzerland.**

We have noted that financing public music institutions is decreasing in Germany.

**We have also observed that music schools are increasingly being privatised in Argentina, Japan, the Netherlands and Portugal. However, few institutions have closed down.**

Both jazz music and popular music education is increasing in traditional institutions due to the higher number of private schools.

The number of public institutions is particularly high in some Eastern European Countries, as well as in Germany ( 1.000 music schools in addition to 23 Music Academies )

#### Education in private institutions

Private institutions are generally legally controlled. Their number is increasing in every country.

More and more people are considering that these institutions are competitive with public institutions, particularly in Argentina, Israel, Japan, Portugal or Switzerland. But they are not necessarily financially available to everyone...

## **Home schooling**

Home schooling is generally not controlled by institutions or companies except in Japan, Peru and Switzerland.

This type of teaching is rarely legally controlled. Therefore, it is unusual for a music degree to be required for teaching such classes. Their number is increasing in many countries, but is not financially available to everyone...

## **Continuing Training**

Continuing training for professional musicians varies from country to country. It exists in Argentina, Finland, France, Israel, New Zealand, the Netherlands, Peru, Poland, Sweden, Switzerland or Romania. However, it does not exist in Germany (...), Croatia, Portugal or Spain.

## **B. Number of teachers and number of students**

### **Statistical trends**

With the exception of a few countries, our statistical survey is insufficient to ascertain the number of students and music teachers.

Figures show a large number of music students and teachers in some Eastern European countries as well as in Germany.

It is useful here to refer to information gathered by the organisation which groups together all the main representatives of music schools on a European level (see Handbook of the European Union of Music Schools » 1995 / ICM member).

### **Perspectives**

**It is quite obvious, that the gap between the number of musicians trained to practice their art professionally and the number of job vacancies is getting wider.** This stresses a fundamental question about the functions of higher education institutions.

This highlights even more the consequences of the decreasing number of jobs, particularly for musicians of permanent orchestras.

## **C. Professional Status**

### **Music degrees**

A music degree is required to teach in public institutions (including during the school year) .

But this is rarely the case in private schools. In Europe, it is only compulsory in Switzerland and Spain (as well as in France concerning dance).

In public institutions, the level of salary for teachers is set by regulations or collective agreements, according to degrees. It is rarely based upon professional experience.

Foreigners with equivalent degrees generally receive the same treatment as nationals ( such as in Argentina, Finland, France, the Netherlands and Poland).

## **Professional experience.**

In public Institutions, degrees are more important than professional experience.

However, unions claim that professional experience should be taken into account as well as the practice of an music instrument, and that University degrees should not be the sole criterion for employment.

## **Contracts**

Upon signing an employment contract, teachers benefit from both job and social protection.

**Nevertheless « unsteady » contracts, which authorise employers to limit employment to a school year, are increasingly being used. If need be, they may decide not to renew a contract and are not required to justify their decision.**

When a musician has worked with an unsteady contract for a period of several years on a regular basis, past legal cases ( particularly in France) have made it possible to impose that this type of contract are changed into a permanent contract.

In some countries, social protection is attributed only to the employees when teaching is their main activity, or if they are under permanent contract.

In some countries, a specific employment framework has been created for teachers (notably in France, Spain, Poland and the Netherlands).

**The number of hours worked for full-time employment varies between 12 and 30 hours of teaching per week. The average is 18 hours per week in countries with sufficient protection.**

It is important to take into account (in this assessment) the time taken for preparing classes and participating in different exams taken by students.

It is quite clear that teaching instruments involves certain constraints, which require periods of rest, particularly in relation to sound.

Holding down more than one job, particularly if it is a full-time job, is forbidden except if specifically authorised, in several countries ( for instance, in Spain, France and Peru).

Nevertheless, holding down more than one job in the musical field of activity is relatively frequent, including for those employed by permanent orchestras, but for a necessarily limited number of teaching hours.

Teachers who give private classes are almost always « free lance », and are therefore faced with the problem of social protection.

## **Wages**

There are still no minimum wages in several countries such as Israel, Japan, Norway, New Zealand and Portugal.

**Generally speaking, the salary of full-time teachers does not depend upon the number of hours taught. However, this is not the case in Israel, Portugal and Romania.**

The amount of social contributions greatly varies :

. On average, 6 to 15 % is paid by the employee.

. On average, 15 to 35% is paid by the employer.

**It is unusual for teachers to benefit from specific tax advantages. However, in some States they may declare their wages as musicians income which gives them advantages. (for instance, in Argentina, Spain, Finland, Israel, Norway, the Netherlands and Poland).**

We have furthermore noticed that in the Netherlands, music teachers may deduct their professional expenses (instruments, books or sheet music, etc...).

### **Collective agreements**

There are very few collective agreements which apply to music teachers only, particularly for those who work in private institutions.

### **D. Collective representation**

#### **Unions : which one ?**

**There is some confusion relative to collective representation for music teachers.** Sometimes they are represented by teachers unions, which are not always able to take into account music teachers' special claims. They may also be represented by musicians unions, but very often, the profession is not well represented among unions ( including on managerial level).

**Therefore, musicians unions have to more specifically take the interests of music teachers into account. They need to negotiate adequate collective agreements for this profession (particularly in the private schooling sector).**

#### **Unions' main claims**

Here below, are examples of national actions currently being undertaken by unions on behalf of music teachers :

Azerbaijan : Reducing the number of class hours for full-time employment for an equivalent salary.

Spain : Increasing salaries and the standard of education.

France : Improving the status of musicians who work in public institutions.

Japan : Granting financial subsidies for setting up continuing training.

The Netherlands : Setting up continuing training, setting up a teachers office in each institution, monitoring teachers results by way of grades.

Poland : Providing legal assistance, participating in government work groups for reforms, granting financial subsidies to schools, improving the retirement pension program..

Portugal : Taking into account the professional experience of musicians.

UK : Setting up a fund to be managed by teachers for purchasing instruments at lower prices.

#### **E. Identification listing of teachers**

Listings of graduates or teachers are unusual. However, there are such listings in Spain, Finland, New Zealand, the Netherlands and Romania, but they are not available to the public (except in the Netherlands).

#### **F. Dialogue between teachers and students or parents of students**

Conferences are generally not organised in Argentina, Finland, Japan, New Zealand, Portugal, Romania and the UK.

They take place in Bielorrussia, Spain, France, Norway, the Netherlands, Poland and Switzerland.

**Poland has a very efficient system. Indeed, compulsory annual programmes are submitted to the students' approval.**

#### **G. The marking process.**

Marking varies from country to country.

In Israel, marking is based upon a questionnaire which has been distributed to the students.

In France, like in Netherlands, the system is strictly hierarchical.

In both Peru and Poland, marking is based upon aptitude or evaluation tests.

#### **H. Particularities**

**In Argentina** popular music education is considered to be essential.

**In France** a conflict is occurring concerning paying salaries during school holidays to those who have no permanent contract.

**In the Netherlands:** The Union is fighting against the increasing number of « freelance » position, and more generally against « flexibility » in teachers jobs.

**In Poland:** a law enacted in 1991 has strongly modified the number of class hours allocated to teachers. The new system seems to be more flexible and gives the Administration of each school more freedom.

## SOCIAL RIGHTS

### **A. Income and standard of living**

The income of music performers compared to average wages varies from country to country. In Spain, Finland, Israel, Peru and Portugal, this income is higher than the average. However, it is generally lower in Argentina, Azerbaijan, Bielorrussia, Japan, Norway, New Zealand, the Netherlands, Poland and the Czech Republic.

Musicians benefit from minimum wages even when their employers are not under collective agreements. Collective agreements play the role of regulator, including for employers who are not legally bound by them.

Compared to teachers, musicians generally have the same or a lower salary. .

**Only 1 to 5 % of musicians have a higher income. It reaches 10% in Finland, Israel, Japan, Norway and Sweden.**

A large majority of musicians mainly live off of live performances. (over 80%).

However, in the UK where record production is high, 40% of musicians incomes come from recordings.

Rights for secondary use of recordings are still low. Incomes are mainly provided from broadcasting of phonograms. Private copying is not (yet) a significant source of income.

### **B. Social Protection**

#### **Status of salaried employee.**

Almost all musicians are salaried employees: 95% in Germany, 100 % in France, 90 % in Croatia and 80 % in the Netherlands. However, these numbers do not show that all the musicians who should benefit from this status are registered.

Illegal work is still very common and is insufficiently punished.

In some countries, where the economic situation is not very good, the number of « freelance » musicians is still very high ( 50% in Argentina, 50% in Spain, 60% in Israel, 60% in Peru, 50 % in Poland, 90 % in Portugal).

**In New-Zealand the status of salaried employee does not exist for musicians. The same is true in South Korea!**

**Freelance work is still very common in Switzerland (50%), Norway (60%) and most of all in the UK (80%).**

A large number of countries give musicians **financial allowances for purchasing instruments** or tax deductions in compensation (i.e.: 30 % in Poland).

## **TAXATION**

Musicians have no tax exemptions, except in Ireland where they benefit from a very specific system.

**Tax deduction for professional expenses is unusual.** This deduction, granted in France, will gradually be abolished.

In many countries, there is a system of deducting income tax at the source. Except in France, the Czech Republic and Portugal.

## **Social Security**

The status of salaried employee gives access to medical care insurance, pension assurance and unemployment benefits (when contributions are made by both the salaried employee and the employer ).

**Musicians having a status other than that of salaried employee, do not benefit from unemployment benefits.**

Unions rarely manage pension plans on behalf of musicians (yet this is the case in Peru).

However, many unions manage a medical care scheme (like in Argentina, Finland, Japan, New Zealand and Peru).

**Few musicians choose to contribute to an individual and private retirement pension scheme.**

## **The role of collecting societies**

Collecting societies collect and distribute intellectual property rights for performers.

Collecting societies have recently begun contributing to social matters due to the increase of income generated by rights given to performers of which part may not be individually distributed.

### **For example :**

Germany's collecting society contributes to a social fund.

Argentina's collecting society contributes to financing an insurance policy.

Spain's collecting society contributes to financing life and disability insurance and gives study grants.

Japan's collecting society contributes to financing a retirement pension scheme.

## **C. Professional diseases**

### **Legal protection**

In most of the countries where FIM conducted its survey, a law on health and accidents in the work place has been enacted and musicians are protected by it.

But the law rarely meets musicians' needs. It is nevertheless the case in Azerbaijan, Bielorrussia, France, Peru and Poland.

**The definition of accidents in the work place is often poorly adapted to orchestra musicians or dancers in permanent troupes.**

### **Increasing risks.**

**The need for protection is particularly important nowadays due to a general increase in the risks of professional illnesses.**

This is due both to changes in the materials which are used (for example for soundproofing), the increase in the unsteadiness and length of employment (with physical and psychological consequences), and to the careless attitude of an increasing number of employers which do not take into account rules of prevention.

### **Actions lead by unions**

**Solutions, which take into account the specific needs of musicians in the work place, may be found in the collective agreements which have been negotiated by unions.**

This implies that unions are given the right to negotiate this type of agreement...

Such agreements exist in Azerbaijan, Bielorrussia, Finland, Israel, the Netherlands, the Czech Republic, the UK and Sweden.

It is important to stress that such agreements do not exist in Germany, Argentina, Spain, France, Japan, Norway, New-Zealand, Peru and Switzerland.

### **Contents of protection**

The following measures are possible:

- ( a ) National Advisory Committee: in charge of preparing reforms and giving views on a national scale.
- ( b ) Statutory book on Health and Safety;
- ( c ) Regular inspections in the work place;
- ( d ) Mandatory presence of a specialised doctor in certain work places and institutions.

The first three measures exist in most of the countries which answered the questionnaire, but the results are quite different.

The Netherlands is the only country where the last provision has been legally considered.

Yet this provision is the one which seems to be most important. Indeed special problems can only be understood if the doctor is in the work place. Particularly during rehearsals (for example in relation to sound for hearing problems).

We have noted that overall, very few funds are put into medical research and specialisation is very low in the field of music as compared to sports. Nevertheless, the stakes are certainly not

any lower. They concern a large number of professionals, and illness and health problems are not rare in this field.

Furthermore, employers (orchestra managers, studios, producers, entertainment producers, broadcasters) do not take the issue of safety at work seriously into account.

Useful conclusions were made, following the International Conference held last March in York at the Initiative of FIM, and with the very active participation of the British Association for Performing Arts and the British Musicians Union. More than 300 medical experts and music professionals (including management of orchestras) gathered together. You will find enclosed results of a FIM survey based on answers from musicians in 56 permanent orchestras (1.639 answers) conducted in preparation for the York conference.

## INTELLECTUAL PROPERTY RIGHTS

The new WIPO Treaty adopted in December 96, current negotiations for a Treaty which will also protect performers in the audio-visual field, and European Directives which have been adopted or are being prepared, have created an increasing awareness of performers' intellectual property rights.

This great interest has been sparked by the inadequacy of old norms which are not adapted to new technologies of recording and distribution of artistic performances, and therefore for the need of adequate protection for performers.

We may recall that over the last 50 years, FIM has constantly put forward several proposals on recognising performers' intellectual property rights...

**A. Patrimonial Rights** (fixation, reproduction, distribution, rental and borrowing, making available to the public, communication to the public).

### General Observations

Everyone clearly admits that **Performers, like authors, should have the opportunity to control the multiple means of exploitation of their work** ( public address systems, local broadcasting, satellite digital programmes, DAB system, Internet and other telecommunication networks, video-transmission, etc...) and **to benefit from the considerable income generated by such uses.**

This is what the UNESCO Recommendations of 27 October, 1980, clearly lay down.

We have observed, that there is an increasing awareness of these rights. They may constitute an additional source of income for performers and may compensate for the decreasing wages paid for live performances.

**Representatives of authors are not against such rights (including in the audio-visual field) as they were in the past when they thought it would create problems in managing copyrights.**

**Nevertheless, large producing States, such as the USA, India, and some Asian States, are still opposed to recognising intellectual property rights which benefit performers; particularly in the audio-visual field.**

In these States, performers may benefit from rights if they are freely and completely transferable to producers, including by way of legal mechanism of presumption.

It was clearly underlined during the WIPO Diplomatic Conference held in December, that such procedures make these rights ineffective.

The attitude of these States, as well as their means of exerting pressure internationally, may explain why the WIPO Treaty is limited to phonograms, which in reality is meaningless due to the use of new digital technologies.

Indeed, it is currently, very common to incorporate images onto traditional CDs.

This practice will spread with the growth of both the digital base reader with images and the broadcasting of digital programmes.

UNESCO, which could not legally intervene during the WIPO Diplomatic Conference of December 1996, has been granted the right to intervene during the next Intergovernmental Committee for the application and revision of the Rome Convention from 26th October, 1961.

This Committee meeting will be held in Paris from 30 June to 2 July, 1997.

### **Role of Unions**

Musicians' Unions are frequently asked by governments to contribute in working on national laws .

They can generally collectively negotiate wage rates as well as conditions for transferring some rights ( for example to record producers).

Collecting and distributing sums which have been gained collectively are being more and more often collected by collecting societies working together with unions.

However, many of these collecting societies still have to be set up and some of them only theoretically exist.

Except for some countries (such as in Portugal, which is not in conformity with the European Directives), a work contract does not provide for transferring the rights of musicians.

If the employer wishes to get rights for exploiting a work (for fixation, reproduction or its communication to the public ), authorisation must be obtained on behalf of the musician(s).

This is the current situation in States where performers' intellectual property rights, are particularly granted.

### **Right of fixation**

This is the right to authorise the recording of a non-fixed live performances on any material form.

It is a fundamental right in both the sound and audio-visual fields.

It gives performers the opportunity to fight against illegal recording or « piracy » of their performances. With such rights, they can also lay down the conditions of their authorisation, particularly for legally limiting the destination of a recording.

This right is granted by the Rome Convention of 1961, in regards to both sound performances and audiovisuals, as well as in the WIPO Treaty for 21 December, 1996.

It is also recognised in European Union Directive 92-100.

## **Right of reproduction**

Reproduction means making up one or more copies of a fixation.

Thus, reproduction may be limited to a simple technical act which is necessary in creating a new way of distribution (archive, synchronisation with images for making audio-visual products, storage for setting up a data base, sampling...etc...).

Authorisation is needed, except if national law considers that this particular use constitutes an exception (for instance, ephemeral reproduction by broadcaster).

Reproduction may result from a limited edition for publication.

This right is provided in the 1961 Rome Convention, as well as in the WIPO Treaty of 21 December 1996, but only for protecting sound performances fixed on phonograms.

It is also recognised by European Union Directive 92-100, but for both sound performances and audiovisuals.

In the 1961 Rome Convention, the right of reproduction depends upon the destination. This means, for instance, that an authorisation given for technical reproduction is not an authorisation to make an edition for publication in commerce.

## **Rights of distribution, lending and rental**

They are composed of different ways of making available sounds and audio-visual bases to the public.

Such rights are not provided in the Rome Convention.

These rights are granted by the European Union in the Directive 92-100 of the European Commission, for both sounds and audio-visual performances (with a specific mechanism of presumption for transfer and obligation for equitable remuneration for the sole audio-visual products rental).

Rights of distribution and right of rental are recognised in the 21 December, 1996, WIPO Treaty, but only for protecting sound performances fixed on phonograms.

## **Right of making available**

The WIPO Treaty from 21 December, 1996, gives performers the exclusive right of authorising the making available of phonograms by wire or wireless means, as soon as any member of the public « has access to them from a place and at a time individually chosen» .

This right is not included either in the Rome Convention or the European Directives.

In relation to existing norms, on both a national and international level, this is a new right, including in the copyright field.

It applies to « on demand » uses in the scope of telecommunication networks.

## **Right of remuneration for Broadcasting and Communication to the Public of Commercial phonograms.**

The WIPO Treaty from 21 December, 1996, provides the protection which is found in the Rome Convention in the field of broadcasting and communication to the public of commercial phonograms.

It is based upon a right to a single equitable remuneration.

This right is also recognised in European Directive 92-100.

The WIPO Treaty from 21 December, 1996, specifies that this right includes direct and indirect uses of phonogram, and States must set up ways of collecting and distributing this remuneration by performers and phonogram producers.

The Treaty authorises States to ratify it (according to the principle already given in the Rome Convention) while partially or totally excluding this right of remuneration by way of notification of reservation, which is strongly regrettable as it is a fundamental right.

The WIPO Treaty from 21 December 1996 widens the notion of phonograms « published for a commercial purpose » by including phonograms made available in such a way that all members of the public can access them at a place and the time of his or her convenience.

### **Limitations and exceptions**

The WIPO Treaty from 21 December, 1996 (as is found in the Rome Convention), makes reference to the possibility for States to make similar provisions for limitations and exceptions to those which are in place for authors' rights (in national legislation).

The limitations and exceptions are nevertheless confined to certain special cases which do not conflict with a normal exploitation of the performance or phonogram, and do not unreasonably prejudice the legitimate interests of the performers or of the producer of the phonogram.

### **B. Moral rights**

The WIPO Treaty from 21 December, 1996, provides to performers a moral right.

Neither the 1961 Rome Convention nor the European Union Directives, recognise this right.

The moral right of performers is based upon the following two points :

. The right to be identified as the performer of his or her own performance in case of use made by way of fixed (phonogram) or unfixed (live) performance, except where omission is dictated by the manner in which the performance is used.

. The right to object to any distortion, mutilation or other modification of his performances which would prejudice his or her reputation.

Acknowledging that performers have a moral right, on an international scale, represents an important step forward.

**Indeed, the existence of moral rights establishes the fact that rights given to performers are rights of intellectual property, in the same way as for authors.**

## **JOINT RECOMMENDATIONS WITH FIA (International Federation of Actors)**

FIA and FIM wish to highlight the following key areas necessary for any improvement to the status of performers. These will be developed by the Federations during the International Conference in June 1997.

### **1. Implementation of the Recommendation on the Status of the Artist**

We regard it as essential, if the Recommendation on the Status of the Artist is to have any effect on the lives of performers, that greater efforts be made to ensure its implementation at national level by governments. It is also necessary that governments reaffirm and commit themselves to the principles contained within the Recommendation.

The elements of the Recommendation are increasingly important in order to protect performers all over the world as the power and influence of global multinationals continues to grow. In developing countries, the Recommendation provides an important guide for the establishment of professional and cultural policies and protections and we urge its promotion by UNESCO. In addition, the Recommendation must be updated to take account of and be relevant to new technologies.

#### ***Recommendations :***

The establishment of a Monitoring Committee (including representatives from international NGOs) to meet annually to consider mechanisms for the implementation at national level, make reports to UNESCO Governing Bodies and to consider initiatives for promotion of the Recommendation around the world.

The establishment of a Legal Committee (including representatives from international NGOs) to prepare, by the end of 1998, legal principles to be adopted into national laws implementing the Recommendation on the Status of the Artist.

### **2. The intellectual property rights of performers**

The protection of performers' neighbouring rights is of fundamental importance in the new digital environment and the Global Information Society. Particularly relevant to this development is the urgent need for the recognition of performers' rights in the audiovisual field as it is obvious in the age of multimedia that former distinctions between sound and audiovisual products are obsolete.

#### ***Recommendations :***

UNESCO should play an active role in the continuing revision of the Rome Convention (in conjunction with the new WIPO Performances and Phonograms Treaty), promote its further adherence by governments and develop its protection of performers' rights.

UNESCO must support unequivocally, in all international fora, the extension of performers' rights protection to audiovisual media.

### **3. The rights of self-employed performers and job security**

In many countries of the world, the contracts of permanently-employed musical and theatrical performers are being cut, creating huge instability among these professions. Simultaneously, it is becoming increasingly difficult to establish and enforce the social and employment rights of self-employed performers.

#### ***Recommendation :***

UNESCO should strive to ensure that governments are both conscious of the need to protect performers with permanent contracts or those whose permanent contracts of employment are under threat, and also that they take all necessary steps to afford the growing number of self-employed performers adequate social protection, thereby ensuring that they are not discriminated upon because of their freelance status.

### **4. The funding of the Arts and Entertainment Industries and the role of government**

Throughout the world the public funding of the arts, and public service requirements for broadcasters are being reduced. Performers have always recognised the importance of commercial sponsorship and the vast input of the private sector into the arts and entertainment industries. However, not all artistic expression can be financially self-supporting or commercially profitable, and it is essential that governments remain committed to supporting the arts, creating a balance between public and private funding thereby protecting new creation and diversity. Equally, ways should be found to ensure that all parts of the arts and entertainment industry, both public and private, contribute to the development and support of the professions on which they depend.

#### ***Recommendations :***

UNESCO should establish a Monitoring Group (including representatives of some international NGOs) to find ways of achieving a healthy balance between private and public funding, to report to UNESCO Governing Bodies and to commission authoritative research.

UNESCO should establish a Legal Committee (including international NGO representatives) to consider initiatives for the protection of the cultural professions, including examining the consequences of concentrations of ownership in the arts and entertainment industries.

### **5. Trade union freedoms**

The right of performers to organise is critical to their ability to protect themselves in what are increasingly unstable and difficult times, with the growth of digital technologies and the convergence of the media industries.

#### ***Recommendation :***

The Recommendation of the Artist must be strengthened to allow all performers, regardless of employment status, to enjoy the right of Freedom of Association and to bargain collectively with employers and producers.

