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## **Employment relationships in the media industry**

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Sectoral  
Activities  
Department

# Employment relationships in the media industry

Andrew Bibby\*

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

**International Labour Office**

**Geneva**

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## Preface

This paper, written by Andrew Bibby, discusses how the changes occurring in recent years in the media industry have affected employment relationships. He assesses whether media employment is becoming less secure, if freelance work is increasingly prevalent, and how effectively social dialogue is addressing the challenges of the industry. The media industry is undergoing significant change, and information and communications technology has already had a major effect on the composition of the sector and on employment relationships within it. There appears to be a decline in employment for editors, writers and authors. The number of news journalists is declining, at least in some major economies. However, other media occupations have grown in employment in recent years. The media industry has always had more than its fair share of “atypical” workers, including freelancers of various kinds, but it appears that recent years have seen greater use of freelancers, as part of a shift away from traditional employer-employee contractual relationships.

The responsibility for opinions expressed in this paper rests with the author, and publication does not constitute an endorsement by the ILO of the opinions expressed in it.

This is one of two research studies prepared in 2013 for the Sectoral Activities Department (SECTOR) on employment relationships in the media and culture sector, and was reviewed by John Sendanyoye and Lucie Servoz. The other paper, on *Employment relationships in arts and culture*, considers the occupational characteristics of cultural workers and their employment relationships and income, the role of the State in cultural and creative industries, and to what extent arts and culture set the trend for the rest of the labour market.

SECTOR promotes decent work by addressing social and labour issues in various economic sectors, both at international and national levels. By tackling challenges for specific sectors, the International Labour Organization (ILO) assists governments, employers and workers to develop policies and programmes that generate decent employment and improve working conditions in each sector. SECTOR’s integrated approach links up with the entire Decent Work Agenda, allowing the ILO to respond comprehensively to specific needs of the sectors in relation to employment, social protection, labour rights and social dialogue issues.

John Myers  
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## Acronyms and abbreviations

BECTU	Broadcasting, Entertainment, Cinematograph and Theatre Union
BLS	Bureau of Labor Statistics (US)
CEPI	European Coordination of Independent Producers
EFJ	European Federation of Journalists
ESIEA	Athens Journalists' union
FIA	<i>Fédération Internationale des Acteurs</i> (International Federation of Actors)
FIAPF	<i>Fédération Internationale des Associations de Producteurs de Films</i> (International Federation of Film Producers Associations)
FIEG	<i>Federazione Italiana Editori Giornali</i>
FIM	<i>Fédération Internationale des Musiciens</i> (International Federation of Musicians)
FNSA	<i>Federazione nazionale sindacato autori</i>
GFA	Global framework agreement
GPA-DJP	<i>Gewerkschaft der Privatangestellten - Druck, Journalismus, Papier</i>
IFJ	International Federation of Journalists
ILO	International Labour Organization <i>or</i> Office
MEAA	Media Entertainment and Arts Alliance – The Alliance (Australia)
MPAA	Motion Picture Association of America
NUJ	National Union of Journalists (UK and Ireland)
PACT	<i>Producers Alliance for Cinema and Television (UK)</i>
OECD	Organization for Economic Co-operation and Development
SIPTU	Services, Industrial, Professional and Technical Union (Ireland)
SJF	<i>Svenska Journalistförbundet</i> (Sweden)
SNH	<i>Sindikát novinara Hrvatske</i> (Croatia)
UNI-MEI	UNI Global Union Media, Entertainment and Arts sector
WAN-IFRA	World Association of Newspapers and News Publishers

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## Executive summary

The media industry is facing a time of significant change. New technology has already had a major effect both on the composition of the sector and on employment relationships within it. We can expect the pace of change to be just as fast in the next few years, as further developments in digital technology achieve roll-out into the marketplace.

### *The media industries today*

Sales of *newspapers and magazines* in paper format are declining in Europe and North America, and increasingly news is being accessed electronically, for example from smartphones and tablet computers. The business model(s) for free online publishing are not clear, and there is a trend towards putting editorial material behind paywalls. At the same time, traditional advertising revenue is falling, with online advertising failing to replace lost revenue from print editions. Some traditional journalists' roles (such as sub-editors) are under threat whilst user-generated content ("citizen journalism") challenges both editorial standards and professional jobs.

*Book publishing*, dominated by the 'big six' international publishers, is also seeing a trend towards electronic formats (eBooks). EBooks are now the most important format for adult fiction in the US. Amazon's role has extended beyond book-selling into all aspects of publishing.

The global market for *films* remains buoyant. The number of films from the six major US studios has fallen somewhat in recent years, but there has been some increase in lower-budget films and in production for television. In Europe the climate for film financing is poor, but elsewhere the industry is in good health. 2013 marks the 100<sup>th</sup> birthday of the Indian film industry, whilst China is seeing a very rapid growth in box office revenue. The move towards on-demand streaming of films potentially threatens secondary income from video (DVD) sales.

In *broadcasting*, technological developments are leading a gradual shift from traditional transmission at set times towards on-demand streaming of programmes. This potentially poses a challenge to television advertising. Services such as Google TV search a range of platforms to enable users to select their own programming on demand. Recent years have seen a trend by broadcasters away from in-house production towards the use of independent production houses, although this trend is not universal.

### *Trends in employment in the media industry*

Data from the US and from Europe suggest that *jobs are disappearing* in some sections of the media industry. There appears to be a clear decline, at least in the US, in jobs associated with the written word (editors, writers and authors). The number of news journalists is declining, at least in some major economies. However, other occupational categories in the industry show *a rise in employment* in recent years.

The media industry has always had more than its fair share of "atypical" workers, including *freelancers of various kinds*. For example, perhaps half of the membership of the sectoral unit of the global union for the media industry – UNI-MEI – are freelancers and/or self-employed.

However, there are suggestions that recent years have seen *greater use of freelancers*, as part of a general shift away from traditional employer-employee contractual relationships. In this respect, developments in the media industry mirror broader trends in the world of work.

The term '*freelancer*', although convenient, covers a confusing range of work relationships. It should not necessarily be equated with self-employment, and freelancers

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may have different legal status in different countries. Treatment for tax and social security can also vary considerably.

Some countries have introduced the concept of '*economically dependent*' worker, as an intermediate legal category between employee status and self-employment. However, such a move can sometimes lead in practice to further problems of classification.

At least according to trade unions, there are instances in the media industry where individuals are '*fake freelancers*', claiming freelancer status whilst in reality in the position of being employees. This may be because employers are attempting to shed employment responsibilities; it may also be the worker who actively seeks the status of freelancer and who may resist any attempt (for example from tax authorities) to reclassify them as an employee.

For those freelancers where there is no suggestion that a traditional employer-employee relationship exists, further categorisation is possible between those who are broadly content with their status and those who are not.

Many freelancers in the media industry operate successfully and enjoy the independence of their position. Some would consider themselves as *entrepreneurs* engaged in the challenge of building their own business to the point where *they may be able themselves to take on employees*. Some freelancers in this position may still be active trade union members. In fact, it is possible for an individual freelancer to see themselves, at one and the same time, both as both a businessperson running their own creative microenterprise and as a worker.

There are also individual workers less content with their situation for whom *freelancer status has not been voluntarily chosen*, but has come about because of external factors, such as the need to find work of any kind. The term '*forced-lance*' has recently been used by some unions to describe this latter category. There are also a growing number of young people entering the media industry for whom freelance working is accepted (reluctantly or otherwise) as simply the way that work is organized.

#### *Taking steps for decent work: some challenges*

*Collective bargaining* is long-established in the media and entertainment industries in many countries, although recently there have been some suggestions of pressures within traditional social dialogue. In some countries there is a trend away from collective bargaining towards deregulated individual negotiations. Examples of countries where collective agreements have proved difficult to renegotiate include Italy, Germany and Switzerland.

There are currently no *Global Framework Agreements* in place with major multinational media companies, although some regional agreements have been negotiated. In the European Union, the social partners take part in formal *sectoral social dialogue* for the audiovisual industry.

Some *collective agreements cover freelance workers*. Examples are those in the United States negotiated for film directors and film writers. In some countries, collective agreements cover only those freelancers who are in an economically dependent role vis-à-vis their employer/client. However, *freelancers are often excluded* from collective bargaining.

In several countries, attempts by freelance workers to organize and bargain collectively have been judged to be illegal under *competition law*. Problems of this kind have emerged recently in, for example, Australia, Ireland and Denmark. As a result, many unions are cautious about how they work to support their freelance members. Media unions have called for the present conflict between labour rights and competition law to be resolved, so that freelance workers do have the right to association and representation.

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There are a number of countries where unions are legally *unable to recruit and organize freelance workers, or where freelance workers wishing to organize as a union cannot gain recognition*. Unions in some of the countries affected have called for changes to their national labour laws.

Freelancer members of unions often have *different concerns and work problems* from those of their colleagues in traditional employment. Unions have devised some imaginative ways of recruiting and organising freelancers, although servicing freelancer members can be time-consuming and expensive in officer time. Some unions have developed professional services for their freelancer members, and/or provide access to social protection such as health cover and pension provision. Some freelancers have organized their own separate unions.

*Industrial action* is not necessarily particularly straightforward for freelancer workers. However even where freelancers are legally considered to be running their own micro-enterprises, there are examples of such freelancers taking collective action, including strikes.

*Training and skills development* for all media workers has never been more important, given the changes taking place in the industry. Training needs are being addressed through social dialogue in some places (as for example in European social dialogue). However, elsewhere there are concerns that workers are being offered fewer training opportunities, at a time when technology and a fundamentally changed media landscape are requiring new skills.

*Intellectual property rights* – or authors' rights – are of particular importance in the media sector, and one reason why the industry gives such importance to combating digital piracy. For all media workers, and especially freelancers, moral rights (which include the right to be acknowledged as the creator, and the right not to have one's work distorted) are important in establishing and defending professional reputation. Economic rights (the financial value of the created product) are central to negotiations on fair compensation for work undertaken. In the US film industry, rights are successfully covered in collective agreements, but elsewhere the issue can be more problematic. Media unions complain that freelancers in particular are under pressure to give up their author's rights, without adequate protection or compensation.

In relation to *occupational safety and health*, the focus is increasingly on issues of stress and mental health. The ability of technology to permit 24/7 working through such tools as smartphones and tablet computers means that workers may struggle to reconcile their work and personal lives. Achieving work/life balance is increasingly an issue raised in collective bargaining.

*Women* play an important role in the media industry, although they still face discrimination and lower pay. In some countries, evidence is emerging that women are proportionately more affected by the fall-out from the economic crisis. However, at present this does not appear to be the case in the majority of countries.

*Young people* trying to enter the media industry are struggling to find a toe-hold, and are at danger of being exploited through the use of unpaid work experience or internship schemes, which often can continue for months and which offer no guarantee of eventual paid employment. One issue is the apparent imbalance between the large numbers of young people undertaking media courses and the ability of the industry to take on new workers.



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## 1. Introduction

The media industry is facing a time of significant change. New technology has already had a major effect both on the composition of the sector and on employment relationships within it. We can expect the pace of change to be just as fast in the next few years, as further developments in digital technology achieve roll-out into the marketplace.

Ever faster mobile internet connectivity, for example, will accelerate the speed at which live streaming of digital content of all kinds is possible. On-demand film, video and music will increasingly replace scheduled transmission. News will be accessed more and more in digital form. Books, too, will be read electronically. The use of social media (such as Twitter and YouTube) will promote further the use of user-generated content, in contrast to professionally produced material.

This report explores the effects which the radical changes which have already taken place in recent years have had on employment relationships in the media industry. To what extent, for example, is it the case - as some have asserted - that employment in media has become more precarious, less secure and more intense?<sup>1</sup> In an industry which has long had strong traditions of collective bargaining, what evidence is there that social partnership is being used effectively to address the challenges of the present, and of the future? And, given the historically high percentage of workers in the industry who are freelancers or otherwise 'atypical', how are they faring and how are their needs being addressed?

This report begins with a short review of current developments in the media industries, looking in turn at newspaper and magazine publishing, at book publishing, at the film industry and at broadcasting. We shall attempt to identify key trends and challenges facing companies in the industries and the measures being taken to adapt to changing market conditions and changing business models.

We will then turn our attention to the effects these industry changes are having in relation to employment, looking in turn at evidence of job creation and losses, changes in pay and conditions, and evidence of a shift towards freelance and atypical working relationships. This will necessitate a short survey of different types of freelancing, and the different legal statuses under which freelancers may operate.

The fourth section is at the heart of this report. It aims to look in detail at the steps which are currently being taken to achieve decent work in the industry. First we review current developments in relation to collective bargaining. The important issue of the conflict between labour rights and competition law which has emerged in some countries in relation to freelance workers is considered. We turn to discuss the issues which unions are facing in organising freelance and atypical workers.

Further parts of this section look at issues which are arising in relation to training, intellectual property rights (author's rights), and occupational safety and health. We explore the particular situation of women workers at a time of rapid change in the industry, as well as that of young people. A brief section on migrant workers and delocalisation of work is included. Finally, the section concludes with a short account of the wider societal implications of the changes taking place.

The report ends with some concluding remarks.

<sup>1</sup> International Federation of Journalists 2006a, page vi.

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## 2. The media industries today, an overview

### 2.1. The newspaper and magazine industry

The final newsstand edition of the venerable American news magazine *Newsweek* came out on 31 December 2012. The decision to stop producing the traditional print edition (maintaining *Newsweek* solely as a digital publication) can be seen as a symbolic moment in the radical transformations currently transfixing the sector.

In most developed economies, sales of newspapers and magazines in paper format (what digital enthusiasts sometimes disparagingly refer to as ‘dead tree’ format) are in decline, in some cases very fast. At the same time, the number of online readers has correspondingly grown. According to a survey undertaken by the Pew Research Center, in 2012 almost one in three Americans owned a tablet computer and 45% had smartphones, and two-thirds of them used these devices at least once a week to get news.<sup>2</sup>

The *New York Times* (including its international edition) had 640,000 digital subscribers at the start of 2013. *Time* magazine boasted an average of 7.7 million unique monthly online users in 2012. Another United States magazine, *The Week*, grew its online readership from 700,000 to 1.1 million between 2011 and 2012.

Some publishers have responded to the decline in newsstand sales and subscriptions by raising prices (in the US, for example, this has broadly led to revenue remaining stable, despite falling sales<sup>3</sup>). There has also been an increasing tendency to attempt to obtain new sources of revenue by placing editorial behind pay walls. In the early years of the Internet, the vast majority of publishers in developed economies made editorial material available to online users free of charge, and this is still the approach adopted by some major newspaper groups, such as the United Kingdom’s Guardian Media Group which has put major resources into its online presence. It is still not clear, however, what the business model(s) will be for free online publishing.

As Pew reports for the US market, “After years of an almost theological debate about whether digital content should be free, the newspaper industry may have reached a tipping point in 2012. Indeed, 450 of the nation’s 1,4380 dailies have started or announced plans for some kind of paid content subscription or paywall plan.”<sup>4</sup>

Quite how successful general interest publications will be in charging for content is however not yet clear although there are more obvious opportunities for specialized publications, particularly those serving well-resourced audiences. It is no accident that two international business newspapers, the *Wall Street Journal* and the *Financial Times*, now have much editorial material behind paywalls.

Traditionally, newspapers and magazines depended on two sources of revenue, payments from their readers and advertising income. The second challenge facing media groups in developed economies is that advertising revenue is migrating away from their publications. Some once highly important advertising streams, including recruitment, property, car sales and small (classified) advertisements, have moved online. As the World Association of Newspapers and News Publishers (WAN-IFRA) has pointed out,

<sup>2</sup> Pew Research Center 2013, Key Findings, page 1.

<sup>3</sup> Pew Research Center 2013, Key Findings, page 5.

<sup>4</sup> Pew Research Center 2013, Overview, page 4.

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digital advertising revenues are not compensating for the ad revenues lost to print.<sup>5</sup> Online in-text display advertising has proved of only limited value; bespoke advertising targeted (using sophisticated algorithmic analysis of internet usage) to meet the interests of individual internet users is now seen as more promising.

To summarize, the traditional business model which supported newspapers and magazines for several generations has broken down, and the model or models which will replace it have yet to emerge.

For professional journalists, a further threat to their traditional role has come from the rapid diffusion of new technology, especially smartphones and social networking services such as Twitter, which enable members of the public to contribute editorial material and photographs. The importance of user-generated content (sometimes called ‘citizen journalism’) has grown rapidly in recent years. According to the British/Irish union the National Union of Journalists, professional photographers are a group particularly at risk: “Freelance photographers are already becoming squeezed between, on one hand, the market domination of the big image banks, aided by the ease of distribution that comes with digital technology, and on the other hand the use of ‘citizen journalism’ imagery”.<sup>6</sup>

Recent years have also seen the traditional role of sub-editor under threat and in some cases cut altogether, with reporters inputting their copy directly into pre-formatted page grids. Jobs in newspaper printing are also coming under pressure, with a trend towards concentrating and outsourcing printing operations.

It should be noted that these trends do not necessarily apply to the same extent outside Europe and North America, however. The World Association of Newspapers and News Publishers (WAN-IFRA) has found that circulations increased by 16% over the five years to 2010 in the Asia-Pacific region and by 4.5% over the same period in Latin America. As WAN-IFRA’s CEO put it colourfully, “Circulation is like the sun: it continues to rise in the East and decline in the West”.<sup>7</sup>

## 2.2. Book publishing

Book publishing is also confronting a potential existential crisis with the rapid growth in popularity of eBook and eBook readers, with Amazon’s Kindle and Apple’s iPad the market leaders. The American Association of Publishers reported that eBooks have become the most important book format in terms of net revenue for the very important adult fiction market.<sup>8</sup> eBook’s net sales revenue more than doubled between 2010 and 2011 and in February 2012 the format accounted for 31% of all adult trade sales.<sup>9</sup>

The Financial Times has drawn attention to the major role which Amazon, once simply an online book retailer, now plays in publishing: “Amazon has done plenty to make established publishers anxious. Already their largest retailer, it now occupies every link in the chain between author and reader. It is signing big name authors to its own imprint and publishing both eBooks and printed titles.”<sup>10</sup> In this respect, Amazon’s approach is similar

<sup>5</sup> World Association of Newspapers and News Publishers, 2011.

<sup>6</sup> National Union of Journalists, 2007, page 23.

<sup>7</sup> World Association of Newspapers and News Publishers, 2011.

<sup>8</sup> Association of American Publishers, 2012.

<sup>9</sup> Jopson and Edgecliffe-Johnson, 2012.

<sup>10</sup> *ibid.*

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to that elsewhere in the commerce sector, where major retailers are extending their reach in the supply chain and transforming once independent suppliers into subordinated partners.

Self-publishing (by established authors as well as by amateur writers) is a growing feature of the industry.

eBooks have yet to replace traditional books, however. The number of new titles published has been rising in recent years in Europe, for example. According to the Federation of European Publishers, new titles totalled 490,000 in 2007, 515,000 in 2009 and 530,000 in 2011. During this time, the number of titles in print and actively catalogued rose from 5.6 million to 8.5 million. Nevertheless, publishers' revenue from book sales has been sliding, down from EUR 24.5 billion in 2007 to EUR 22.8 billion in 2011.<sup>11</sup>

Long before the recent growth in eBooks, publishing companies had engaged in a major process of consolidation, so that whilst there remain a myriad of publishing imprints six international publishers dominate the trade. In late 2012, plans were announced by two of these, the German-based Bertelsmann group and the British-based Pearson Group to combine their publishing divisions. Between them Bertelsmann and Pearson own such familiar names in publishing as Random House, Doubleday, Penguin and Viking.<sup>12</sup>

The other major publishers also have international reach. Simon and Schuster is part of the US broadcasting group, CBS Corporation. Paris-based Lagardère Publishing (Hachette) runs publishing operations in France, the UK, Australia, North America and several European countries. Macmillan, often considered a UK publisher, is owned by the German-based Georg von Holtzbrinck Publishing Group; it also has extensive interests in the US. HarperCollins, a merger of major US and UK publishers, is a huge subsidiary of Rupert Murdoch's News Corporation.

### **2.3. The film industry**

The United States continues to be the heartland of the global film industry, with US-funded and produced films enjoying worldwide distribution. The industry is a significant one for the US economy and is responsible, according the Motion Picture Association of America (MPAA), for providing 280,000 jobs directly engaged in producing, marketing, manufacturing and distributing motion pictures and television shows.<sup>13</sup>

There has been a small decline in the number of full-length feature films made in recent years by the six major studios in membership of the MPAA. (The studios are Walt Disney Studios, Paramount Pictures Corporation, Sony Pictures Entertainment, Twentieth Century Fox, Universal City Studios and Warner Bros. Entertainment.) The number of MPAA member films beginning production fell from 139 in 2007 to 121 in 2009, 100 in 2011 and 99 in 2012. This decline is offset by an increase in the number of films made by non-MPAA members, although the majority of these latter films are relatively low-budget. The table below is taken from the MPAA's Theatrical statistics summary.

<sup>11</sup> Federation of European Publishers, 2012.

<sup>12</sup> Edgecliffe-Johnson and Wiesmann, 2012.

<sup>13</sup> Motion Picture Association of America (n.d.).

**Table 1. Films entering production**

	2008	2009	2010	2011	2012
MPAA member total	111	121	118	100	99
Non-members (USD 1m+)	368	325	372	399	377
Total films produced (est. USD 1m+)	479	446	490	499	476

Source: MPAA

It is suggested<sup>14</sup> that the fall in film production has, however, been matched by a recent rise in production for television so that, in very broad terms, the amount of work available has not changed. Tax concessions for film production have seen some production shift from California to the states of Louisiana and Georgia, as well as to New York.

In Europe, the climate for film financing has become more difficult, partly due to the financial austerity policies being followed by many countries. Separately, there is a requirement under European Union rules to ensure that state support for film production does not fall foul of the ‘state aid’ rules (unfair support by member states for their own industries).

The Indian film industry is celebrating during 2013 its one hundredth birthday, with a series of events plan to commemorate the release in 1913 of the first feature film Raja Harishchandra. ‘Bollywood’ is a highly developed and highly successful industry, with films often produced on multi-million dollar budgets. Major California studios such as Warner Bros, Sony Pictures and 20<sup>th</sup> Century Fox are among international investors in the Indian film industry<sup>15</sup>. Workers in the Indian film industry are generally well organized in trade unions, as in the United States.

There are also important film industries in several other countries and areas, Argentina, Brazil, Chile, China and Hong Kong (China), Egypt, including Japan, Republic of Korea and Nigeria. The Chinese film industry is expected to double in the next four years.

The standard business model in the film industry sees films released first for cinema showing, then subsequently sold on video (DVD, BluRay and similar) and finally shown on television. These secondary revenue streams are often what determines whether a particular film makes a profit or loss. Payments from these uses, known as ‘residuals’, are important sources of income for workers in the industry in the United States. Indirectly they also help to fund the collective pension and health care schemes (overseen jointly by employer and union representatives). Recent developments, such as real time screening of films online through services such as Netflix, are already reducing the number of video sales and potentially could reduce secondary income and residuals. Piracy is also seen as a major problem; American film production companies work closely with US labour unions to seek to combat this risk to revenue.

Nevertheless, the film industry is perhaps less affected than other parts of the media by challenges from new media. An officer of the Writers Guild of America – West offers this assessment: “The existing business model is sound and stable for the next decade. But,

<sup>14</sup> Russell Hollander, interview with the author.

<sup>15</sup> <http://newsonair.nic.in/100-YEARS-OF-INDIAN-CINEMA.asp>.

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beyond that time, the digital outlets will have matured and found their place, and will eventually challenge the existing business models dramatically”.<sup>16</sup>

Currently, the global market for films remains buoyant. Revenue globally from box-office takings increased 6% in 2012, and has grown by over 30% in the past five years.<sup>17</sup> China in particular has seen a very rapid growth in box office revenue in the past few years.

## 2.4. Broadcasting

Television and radio are also finding their traditional ways of operating transformed by the internet.

Not everyone in the industry would necessarily go as far as Time Warner Cable chief executive Glenn Britt who is reported to have said in 2011 that “There’s no such thing as a TV anymore. There’s a video display device.”<sup>18</sup> Nevertheless, there is a significant trend away from watching scheduled television programmes at set times towards on-demand accessing of programming, both through conventional TV sets and via internet devices.

Google launched its new platform Google TV in 2010, an attempt to integrate the internet with TV programming which potentially allows users to find programming material through conventional TV schedules, locations for downloading or real-time streaming. Apple has a similar offering in Apple TV which offers films and TV shows from its iTunes store, as well as access to Netflix, You Tube and other streaming services.<sup>19</sup>

Technological developments such as these challenge in particular pay-TV operators, typically funding their business model through monthly viewer subscription. More generally, however, the ability of viewers to select what they watch, rather than watching scheduled programmes selected by someone else, means that television advertisements no longer have a captive market. The TV advertising business has been estimated at USD 65 billion a year<sup>20</sup> and is crucial to the industry.

In terms of production, recent years have seen a trend by broadcasters away from in-house programme development towards the use of independent production houses. Programmes are increasingly commissioned externally, with budget and staffing risks transferred to the independent. These include major multinational companies such as Endemol, the world’s largest independent production company which operates in over 30 countries and Fremantle (part of the RTL Group) which produces over 9,000 hours of programming a year in 22 countries. There are also many nationally-based independent producers.

The trend away from in-house production has a direct effect on staff working in television. Media unions report that many former employees of broadcasters are now working either for independents or as freelancers. In either case, the employment relationships have tended to become weaker than before.

<sup>16</sup> Chuck Slocum, interview with the author.

<sup>17</sup> Motion Picture Association of America, 2012.

<sup>18</sup> Gelles, 2011.

<sup>19</sup> Nuttall, 2010.

<sup>20</sup> Steel, 2012.

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The trend towards externalizing programming production is not universal, however. In some areas of Europe production is being brought back in-house, partly as a reaction to problems of quality and cost control that have been encountered. In the United Kingdom, the largest broadcaster by turnover B Sky B (partly owned by the UK's subsidiary of Murdoch's News Corporation) continues with a traditional approach both to programming and staffing.

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### 3. Trends in employment in the media industry

In 2006, in the report *The Changing World of Work*, the International Federation of Journalists began the executive summary with the following claim: “The nature of work in the media is changing. Employment in media had become more precarious, less secure and more intense.”<sup>21</sup>

Seven years on, organisations representing workers in the media and entertainment sector are repeating the same claim, if anything more urgently. There is a suggestion that an industry which, in a previous age, offered secure employment with good employment conditions and was associated with high levels of social partnership is now one where workers are facing increasingly precarious working conditions. One quote can stand for many others: “Work intensification, a sometimes drastic reduction in staff, dramatically worse conditions for those entering the job market and an increase in atypical employment relationships (spin-offs, subcontracted work, temporary contracts, dumping wages): these are just a few indicators of the perceived decline of a profession.”<sup>22</sup>

#### 3.1. Job creation and job losses

As this comment makes clear, one expressed concern is that jobs are being cut. In terms of the level of overall employment in the industry, however, the available data are very general and require care in interpretation. Across the whole media industry, there do not appear to have been wholesale job losses, however.

Within the EU27 region, for example, Eurostat data show an overall loss of around 90,000 jobs in the range of employment occupations categorized as ‘publishing activities’ in the five years from 2008 - 2012. However, Eurostat data also suggest that total employment in occupations associated with film, video and television production, sound recording and music publishing, and also in programming and broadcasting activities, increased in this period, at least until 2010 or 2011. (More recently, total employment has fallen somewhat in these areas too.)

The data are given in the table below.

**Table 2. Employment, European Union (EU27), 2008-2012 (in thousands)**

	2008	2009	2010	2011	2012
NACE J58 Publishing activities	1230.9	1216.8	1189.9	1131.3	1140.9
NACE J59 Motion picture, video and television programme production, sound recording and music publishing activities	423.9	398.3	418.4	453.3	439.8
NACE J60 Programming and broadcasting activities	296.7	341.6	340.5	332.4	332.5

Source: Eurostat

More detailed data have been obtained from Eurostat for three major European economies, Germany, France and the United Kingdom. These have been obtained for the

<sup>21</sup> International Federation of Journalists 2006a, page vi.

<sup>22</sup> International Federation of Journalists 2011, page 3.

next level down in terms of occupational groupings: for NACE J581 (Publishing of books, periodicals, and other publishing activities), J591 (Motion picture, video and television programme activities), J601 (Radio broadcasting) and J602 (Television programming and broadcasting activities). These data are presented in Table 3.<sup>23</sup>

**Table 3. Employment, selected EU countries, 2008-2012 (in thousands)**

	2008	2009	2010	2011	2012
J581 Publishing of books, periodicals, & other publishing activities					
Germany	311	287	276	284	292
France	79	79	87	84	80
UK	na	164	174	173	185
J591 Motion picture, video & television programme activities					
Germany	46	61	61	59	55
France	50	54	57	56	61
UK	na	69	79	95	93
J601 Radio broadcasting					
Germany	34	28	27	26	28
France	16	14	15	12	11
UK	na	15	17	16	16
J602 Television programming and broadcasting activities					
Germany	28	27	25	27	30
France	16	18	19	21	18
UK	na	48	37	44	49

Source: Eurostat

Data for the United States are available for occupational groups from the US Bureau of Labor Statistics. Data for 2008, 2009, 2010, 2011 and 2012 have been extracted for a range of media industry occupations, and are given in table 4.

**Table 4. Employment, US, selected occupational groups, 2008-2012**

	2008	2009	2010	2011	2012
27-2012 Producers and directors	78,060	79,780	83,520	82,880	87,010
27-3041 Editors	110,010	105,040	99,160	98,990	99,040
27-3043 Writers and authors	44,170	43,390	40,980	40,930	41,990
27-4011 Audio & video equipment technicians	45,200	46,070	47,510	49,180	54,310
27-4012 Broadcast technicians	33,550	31,220	30,520	30,360	31,640
27-4031 Camera operators, TV, video and motion picture	19,270	17,540	16,760	16,270	16,410
27-4031 Film and video editors	18,720	17,550	19,930	20,730	21,500

Source: Bureau of Labor Statistics (BLS), Occupational Employment Statistics

Even at the level of detailed occupational grouping, it is not easy to interpret these data. Whilst some occupations have clearly suffered over the past five years, others have

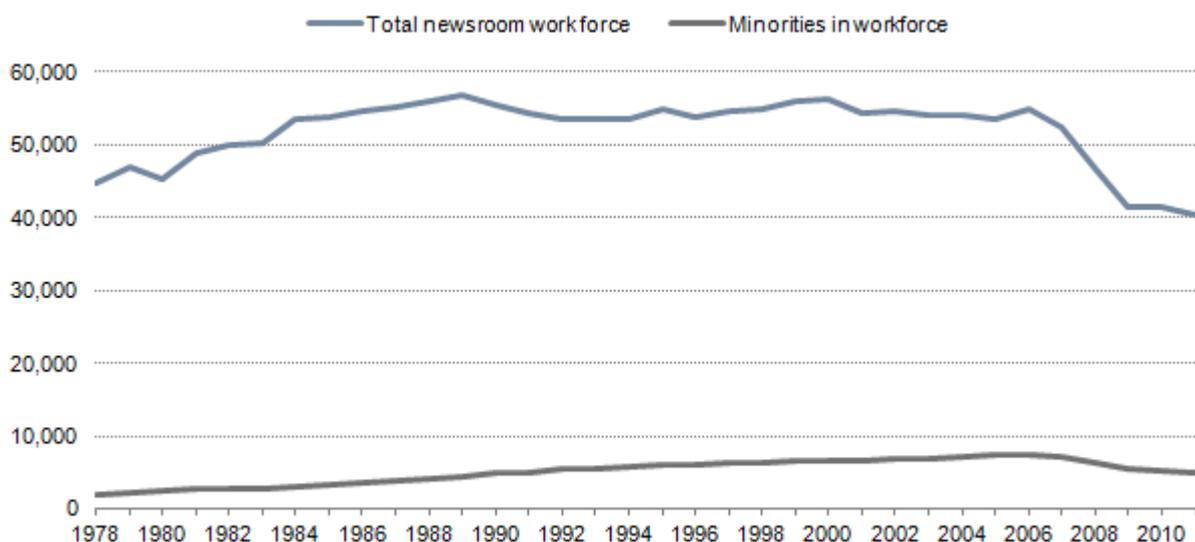
<sup>23</sup> Eurostat warns that, at these more detailed occupational levels, data may be less reliable.

seen employment increases. What does seem clear, at least for the US, is that there has been a fall in jobs associated with the written word (editors, writers & authors).

National and transnational data such as those from Eurostat and the BLS can be complemented from other sources. The 2010 OECD report *The Evolution of News and the Internet* considered in particular employment in the newspaper publishing industry. It found a clear trend over ten years towards a decline in employment in most major OECD economies (including the US, Germany, Japan and Sweden), although it also reported increases in countries such as Spain and Poland. However it was only able to monitor trends up to 2007, before the global financial and economic crises had their effect.<sup>24</sup>

Pew Research Center's 2013 survey of the US media reports a fall in newsroom staffing levels of 30% from 2000 to 2013. Pew includes the following figure, showing a steep decline in newsroom jobs in recent years.

**Figure 1. Newsroom workforce, US, 1978-2010 (number of workers)**



Source: Pew Research Center, using data from American Society of News Editors, Newsroom Employment Census 2010.

The Pew 2013 State of the Media report also monitors employment in US magazines. It reports that jobs in magazines fell 4% between 2011 and 2012, following a 1.7% fall the previous year.

Cuts in jobs in journalism have also been reported recently in, among other countries, Australia, where the media union MEAA has estimated that the number of full-time jobs fell from just under 8500 in 2001 to around 7500 in 2008. A survey of remaining journalists reported many complaining of increases in workload and stress: "We are constantly being expected to do more, with less staff," said one respondent.<sup>25</sup>

It also needs to be borne in mind that overall employment figures such as those from Eurostat and the BLS given above do not make any allowance for how over- or under-employed freelance workers are. Freelancers operate as a convenient safety valve for the labour market, able to absorb more work when times are busy but equally having no

<sup>24</sup> OECD 2010, page 20.

<sup>25</sup> Media Alliance, 2008, page 13.

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effective redress if work dries up. Several media unions have reported that work is harder to find for their freelance members, whose incomes as a consequence have dropped.<sup>26</sup>

According to the International Federation of Journalists, the number of unemployed journalists is increasing. In this respect, the IFJ mentions in particular Hungary and Spain.<sup>27</sup>

### 3.2. Pay and conditions

The 2006 report *The Changing World of Work* mentioned at the start of this section was based on a survey of 41 IFJ affiliate unions, who were asked among other things to assess what had happened to journalists' average rate of pay in 2006 compared with five years earlier. 39% of the unions replying reported that it had decreased, and a further 14.6% said that it had 'significantly decreased'.<sup>28</sup>

The trend appears to have been maintained in the period since then, at least in relation to journalism. Freelance journalists in particular complain that their pay rates have in practice remained frozen for many years. One Belgian journalist who has been freelancing since 1995 for two francophone Belgian publications reported in 2011 that their rate of pay had been the same for sixteen years, and asked rhetorically "which employed worker would accept working for the same pay for sixteen years?"<sup>29</sup> Another French freelance reported in 2012 to their union that they were earning less than they had done 12 years previously<sup>30</sup>. We look in more detail at the pressures facing freelancers below.

In the film sector, the comparatively healthier state of the industry appears to have led to less pressure on pay and conditions. Nevertheless concerns by the Writers Guild of America on the compensation to writers from residuals payments, raised in 2007 during collective bargaining with the Alliance of Motion Picture and Television Producers, led to the high profile 2007-8 writers' strike which lasted a hundred days. As mentioned above, residuals form an important part of the total remuneration received by many creative and craft workers in the industry. The strike was resolved with an agreement which addressed some of the writers' concerns.

### 3.3. A shift to atypical and freelance working

The decline in traditional jobs is also linked by several media unions with an increase in atypical working relationships, and especially an increase in the use made of freelancers.

It needs to be said that the media and entertainment sector has always had more than its fair share of 'atypical workers'. In an industry which makes use of human creativity and of specialized highly-skilled work, where success and commercial rewards can depend on the contribution of the 'talent', it is not surprising that employment relationships have developed somewhat differently from those in, say, manufacturing or the finance sector.

<sup>26</sup> Various, interviews with the author.

<sup>27</sup> Interview with the author.

<sup>28</sup> International Federation of Journalists, 2006a, page 3.

<sup>29</sup> [www.pigistepaspigeon.be/temoignages.php](http://www.pigistepaspigeon.be/temoignages.php).

<sup>30</sup> European Federation of Journalists/UNI MEI, 2012, page 71.

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In particular, freelancers have long been a familiar feature of the industry, a phenomenon acknowledged by employers and unions alike. The percentage of workers in this position can be significant. The then head of UNI Global Union's media and entertainment section MEI estimated in 2005 that broadly half of the membership of UNI-MEI's union affiliates were freelance or self-employed, and that a clear majority of their members were 'atypical' in some way.<sup>31</sup>

This is true both for the film and broadcasting sector covered by UNI-MEI and for the trade of journalism. Around half of the members of, for example, the Austrian union affiliated to the International Federation of Journalists are freelance. This sort of scale of freelancing is not universal (the number of freelancers in Nordic countries is relatively small, for example). Taken together, however, the IFJ estimates that, across all its affiliates (and excluding retired members and students), more than one in four members are freelance<sup>32</sup>.

The suggestion of a growing trend towards casualized and freelance working is not new. As long ago as 1999 the IFJ reported that "much of the new work in journalism is performed under more flexible and, from the point of view of journalists, more vulnerable and difficult terms of employment"<sup>33</sup>. Again in 2003 it claimed "there is growing evidence that freelance work is becoming a more prominent feature of the media industry"<sup>34</sup>.

However, very recent years do appear to have seen an acceleration of this trend. Another IFJ report, a survey of European journalists' unions in 2011, stated that "The view that the number and proportion of freelance journalists will increase is almost unanimous"<sup>35</sup>.

Such a development would mirror trends in other sectors, where there has been a shift away from traditional employer-employee relationships and towards other ways of working. This is a phenomenon not only in developed economies but also in developing economies. For example, Kamala Sankaran of the University of Delhi has drawn attention to the increase in informal forms of employment within the formal organized sector in India, up from 42.1% in 1999-2000 to 46.2% in 2004-2005 (28.9 million), which shows the trends towards the increasing use of informal employment relationships.<sup>36</sup>

Interestingly, the social dialogue committee which operates in the European Union for the audio-visual industry and which brings together employers' and workers' organisations has decided to address the issue of 'new forms of employment' for its 2013-2014 work programme. The union side identified one of the key challenges facing the sector as follows: "Many workers from our sector face irregular and unpredictable employment opportunities, atypical contractual relationships and lack of control over their working conditions. It means that safeguarding and enhancing a genuine professional status for cultural and media workers is vital to make a career viable."<sup>37</sup> The International

<sup>31</sup> Jim Wilson, personal communication to author, 2005.

<sup>32</sup> International Federation of Journalists/European Federation of Journalists, 2012, page 6 (data adjusted to excluded retired members and students).

<sup>33</sup> International Federation of Journalists, 1999, page 5.

<sup>34</sup> International Federation of Journalists, 2003, page 3.

<sup>35</sup> European Federation of Journalists, 2011a, page 12.

<sup>36</sup> Sankaran, 2012.

<sup>37</sup> European Commission, 2010, page 27.

Federations of Musicians and Actors (FIM and FIA) noted that “In the current climate, trends towards greater ‘flexibility’ and mobility threaten the livelihood of performing artists,<sup>38</sup>, which are also affected by the fall in public funding in most European member states. The social dialogue committee began its discussions on this issue in mid-2013.

The British and Irish journalists’ union the NUJ and the British film/television union BECTU have provided membership data which they say bears out this trend (tables 5 and 6).

**Table 5. Freelance members compared with all (paying members), National Union of Journalists (UK and Republic of Ireland)**

Year	Total full (paying) members	Total freelance	% of union paying members who are freelance
2005	28,678	6,985	24.3
2007	28,311	7,163	25.3
2008	28,170	7,172	25.4
2009	27,766	7,339	26.4
2010	26,619	7,133	26.8
2012	26,521	7,334	27.6

Source: National Union of Journalists

**Table 6. Freelance members compared with all (paying members), BECTU (UK)**

Year	Total full members	Total freelance	% of union members who are freelance
Nov 2004	26,316	9,744	37.0
Nov 2008	25,764	11,097	43.1
Nov 2012	23,962	122,281	51.2

Source: BECTU

As will be seen, both unions have experienced a fall in membership in recent years, but in both cases the number of freelance members has actually increased. For BECTU, in particular, a majority of union members are now operating on a freelance basis.

### 3.4. The legal status of freelancers

At this point, we need to look more closely at the term ‘freelancer’.

The exact legal status of freelancers is a complex issue, and one which varies from country to country. The term ‘freelancer’ should not be considered synonymous with self-employed, although many freelancers in the media industry do indeed have self-employed status (and thus effectively can be considered to be running their own micro-enterprise).

With the growth of various kinds of freelancing in recent years, there has been increased interest in this area of labour and employment law among academics and practitioners. Mention can be made, for example, of the influential Supiot report, a report commissioned by the European Commission under the chairmanship of Professor Alain Supiot which was presented in June 1999. This report offered a critique of conventional labour law, and recommended among other things that labour law should be broadened to include self-employed workers.<sup>39</sup> More recently Judy Fudge of the University of Victoria, British Columbia, has brought together a series of academic essays exploring this theme

<sup>38</sup> FIM/FIA, 2009, page 1.

<sup>39</sup> Supiot, 1999.

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further. She talks of the increased blurring of traditional economic and legal boundaries, such as that between employment and commercial law, within the context of a trend towards the transferring of responsibilities linked to an employment relationship from the enterprise receiving the service to third parties, either freelancer workers or enterprises.<sup>40</sup>

Guy Davidov of the Hebrew University of Jerusalem has explored the different classifications of freelancers in labour law and the possibilities of creating new 'intermediate' forms of labour status between traditional employees and independent contractors.<sup>41</sup> In many states there is no legal middle ground between employed and self-employed status, even if there can be a considerable grey area of overlap in practice, but some states (Germany and Italy are two examples) have one or more additional legal forms of employment status which define workers who (even if not technically employees) are in a position of economic dependency towards a particular company or employer. Spain, too, has followed a similar route, the 2007 Self-Employed Workers Act ("LETA") having created the concept of the *Trabajador Autónomo Económicamente Dependiente* (economically dependent self-employed worker).<sup>42</sup>

This approach is clearly intended to help address some of the critiques made of conventional labour law, although it can also be argued that creating 'intermediate' categories of worker risks replacing one potentially troublesome grey area of uncertainty of employment status with two potential grey areas. More philosophically, there is a further difficulty: many microenterprises (including those privately owned with a handful of staff) are in reality in economically dependent relationships with very major customers. Is it appropriate to distinguish between single-worker economically dependent businesses (for whom economically dependent worker status may be given) and only slightly larger businesses?

A comprehensive *Study relating to the various regimes of employment and social protection of cultural workers in the European Union*, looking at the exact legal, taxation and social protection frameworks being employed in different European countries for workers in the media, arts and entertainment sector was undertaken by The European Arts and Entertainment Alliance in 2001. Some of the complexity of the situation regarding 'freelancers' comes out clearly from this study. For example, as it pointed out, workers who were not considered as employees could in some situations be totally or partially covered by the social protection measures made available to employees. And it noted that: "The notion of employer is not always easy to define in the entertainment and audio-visual field. In France, a performing artist may be an employee and himself employ musicians, choir members or dancers who accompany him. These two capacities are not incompatible. Moreover, the apparent employer may not be the actual employer and courts are able in certain countries to designate the real employer... without taking account the content of agreements".<sup>43</sup>

The study also warned against too broad a use of the term 'self-employed worker', preferring instead the usage 'non-employed worker'.

This approach would seem to be borne out by another significant study of the self-employed, that undertaken in 2010 by the European Foundation for the Improvement of Living and Working Conditions. This reported: "In all of the countries covered by the study, distinct definitions of self-employed worker exist according to various regulatory

<sup>40</sup> Fudge, 2012.

<sup>41</sup> Davidov, 2012.

<sup>42</sup> Zapirain, 2012.

<sup>43</sup> European Arts and Entertainment Alliance, 2001, page 5.

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domains: self-employed worker is defined in various ways in employment law, tax law, trade law or social security law. As a further complication, in some cases the legal definitions of self-employed workers are different from those used by national statistical institutes, such that the collection of data on socioeconomic indicators related to the different employment contracts may prove particularly difficult.”<sup>44</sup>

The present report does not propose to focus on the precise legal and technical frameworks being used in particular countries, an approach which can rapidly descend into detail and in the process lose sight of the key strategic issues. For convenience, we will be using the generic term ‘freelancer’, to represent all those workers who are not in a conventional employee relationship with an employer. Whilst recognising that some freelancers may be classified in some countries as entrepreneurs and some in other countries as quasi-employees, many of the same broad employment issues and concerns arise and it is these high-level issues which will be the focus of this report.

### **3.5. The motivation behind freelancing**

It is possible to categorize freelancers in other ways. Media unions frequently choose to distinguish between those freelance workers described by them as ‘fake freelancers’, used to describe a worker who it is claimed is effectively in a standard employment relationship but who has been declared to be freelance (often to enable an employer to avoid their full employment responsibilities) and those who are more genuinely freelancers. For the former group, the union approach is straightforward: it is to demand that the worker be reclassified to reflect their real situation as an employee. This tends also to be in line with the approach adopted by governmental tax and social security authorities keen to avoid evasion and loss of state revenue. However, it must once again be stressed that in real life there can be grey areas, and that it is not necessarily straightforward to determine for individual freelancers whether an employment relationship really does apply. It must also be noted that sometimes (even when ‘fake freelancing’ is alleged) it is the worker, rather than the client/’employer’, who actively chooses the status of freelancer. These workers may positively welcome this status and may resist any attempt to reclassify them as employees.

In the case of genuine freelancers, or in other words those where there is no suggestion that an employer-employee relationship in practice exists, some further categorisation is possible between those who are broadly content with their employment status and those who are not.

Many freelancers in the media industry operate successfully in terms of their remuneration and working conditions and enjoy the independence of their position. Undoubtedly some would consider themselves as entrepreneurs engaged in the challenge of developing their particular client base and building their own business to the point where, sometimes, they may be able themselves to take on employees. Some freelancers in this position may still be active trade union members, for the benefits which come from belonging to what can be seen in many respects as operating as a professional association but also sometimes out of a sense of solidarity and commitment to trade union principles. In fact, it is possible for an individual freelancer to consider themselves, at one and the same time, both as both a businessperson running their own creative microenterprise and as a worker. In other words, any attempt to squeeze freelancers into traditional categories recognised by labour law can be problematic!

<sup>44</sup> European Foundation for the Improvement of Living and Working Conditions, 2010a, page 14.

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However, there are also freelancers less content with their situation, those workers for whom freelancer status has been imposed upon them because of external factors, such as the need to find work of any kind. The term ‘forced-lance’ has recently been used by some unions to describe this latter category.

An officer of the British film and broadcasting union BECTU goes a step further, and suggests that freelancers can in fact be divided into three broad categories.<sup>45</sup> There are those, he says, who have always been freelance and who are well enough known in the industry to be able to find work most of the time and earn a living. There are also those he describes as ‘reluctant freelancers’, often former employees previously with full-time positions in the industry who have been made redundant and who now perforce find themselves looking for work on a freelance basis. (Some in this position may describe themselves as freelance even if their freelance earnings are very low, as a way of avoiding having to declare themselves to potential employers as being unemployed.)

However he also suggests that there is a third group, the generation of young people who have very little expectation of being able to find conventional permanent full-time employment and who enter the industry through casual employment relationships (often initially through internships). He says that this third group is one that his union often struggles to recruit and organize.

There is evidence that, even for those freelancers who actively welcome their status, recent years have brought increasing difficulties. The IFJ and UNI-MEI solicited comments from several hundred journalists in France and Britain for a 2012 mapping exercise and it will be appropriate to conclude this section with two comments which are representative of many comments received from that survey, one from each country:

“I’ve been a journalist for 42 years, freelance for 33 of them, and this is the worst time to be a journalist in terms of making a living – freelance or staff – that I’ve experienced.”

“Le métier de journaliste se précarise énormément en France. Le statut de pigiste qui était un choix de vie devient la norme et un passage obligé pour tout jeune (et moins jeune) journaliste. Dans le secteur de la télévision et d’Internet, les journalistes doivent être polyvalent... Aujourd’hui, on peut dire que ces journalistes font trois ou quatre métiers à la fois, pourtant ils sont généralement moins bien payés qu’une seule personne à l’époque où les tâches étaient séparées”<sup>46</sup>.

<sup>45</sup> Tony Lennon, BECTU, interview with the author.

<sup>46</sup> *The trade of journalist is becoming much more insecure in France. The status of pigiste [formally recognised freelance] which was a chosen way of life is becoming the norm, and an obligatory stage for every young (and not so young) journalist. In the TV and internet sectors, journalists have to be multi-skilled.... Today it’s fair to say that they are doing three or four jobs at the same time, but in general they are less well paid than one person was at the time when these tasks were undertaken by separate workers.*

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## 4. Taking steps for decent work: some challenges

### 4.1. Collective bargaining

Collective bargaining is long-established in the media and entertainment industries in many countries, and has historically been recognized as valuable by employers' bodies and by unions representing workers.

More recently, there have been some suggestions of pressures within traditional social dialogue, however, and of moves away from collective bargaining in some countries, particularly in relation to the print media. The International Federation of Journalists – as far back as 2006 – claimed to have identified a trend “away from collective bargaining towards deregulated, individual negotiations”.<sup>47</sup> It returned to this issue in its 2011 report *Managing Change*: “In many countries, the context of and approach to collective negotiations is changing... The negotiations are conducted more rigorously and often take up a lot of time; in some cases they even last years.... It is increasingly the case that no negotiations are held at all... There is a distinct trend towards an attempt to abandon industry-wide agreements, in favour of company-based pay systems.”<sup>48</sup>

In Italy, collective negotiations have been held between the newspaper publishers' association FIEG and the journalists' union the FNSA for a century, having begun in 1911. However, the latest negotiations were, at least according to FNSA, very difficult, taking a total of four years and involving about eighteen days of strike action from workers. The collective agreement which was eventually signed applies to all journalists, including those working online, and fixes minimum working time, seniority, holidays, redundancy procedures, and social security. The agreement extends to companies outside the FIEG, most notably Rupert Murdoch's News Corporation, which had previously tried unsuccessfully to negotiate individual contracts.<sup>49 50</sup>

In Germany, a breakdown in negotiations between publishers and the unions in 2011 also led to several strike actions, as well as a campaign by the unions to persuade the public of the value of journalism. The collective agreement was eventually renegotiated. However, according to the IFJ, around 50 companies have dropped collective agreements in recent years, using more casual and lower paid workers instead.<sup>51</sup> Another development in Germany has been the decision by Axel Springer to establish a separate entity for its publication *Computer Bild*, so that staff there are outside the collective agreement which would otherwise apply.<sup>52</sup>

<sup>47</sup> International Federation of Journalists, 2006b.

<sup>48</sup> European Federation of Journalists, 2011a, page 15.

<sup>49</sup> International Federation of Journalists, 2012, page 2.

<sup>50</sup> European Industrial Relations Observatory, 2009.

<sup>51</sup> International Federation of Journalists, 2012, page 3.

<sup>52</sup> Michael Hirschler, interview with the author.

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There have also been problems in Switzerland, where the previous collective agreement for the publishing sector has not been renewed by the employers.<sup>53</sup>

In relation to film, traditional social dialogue structures and collective bargaining appear to be coming under less pressure, although UNI-MEI has suggested that some affiliates in the United States are reporting more difficulties in collective negotiations.<sup>54</sup>

Technological convergence has brought operators from other industries, including the telecoms sector, into broadcasting. The International Federation of Journalists' General Secretary has drawn attention to issues which have arisen in Brazil and elsewhere in Latin America where telecoms operators running cable television services were not initially prepared to negotiate with local media unions.<sup>55</sup>

Given the number of freelance and atypical workers in the sector, one key question to address in relation to collective bargaining is the extent to which collective agreements also cover freelance workers. The picture is mixed.

On the one hand, in the film industry in the United States there is a long and highly successful record of agreements between employers' organisations and labour unions such as the Writers Guild of America (WGA-W and WGA-E) and the Directors Guild of America, whose members are generally almost exclusively freelancers. The same is true in other film production centres. In the United Kingdom, for example, the BECTU union has a collective agreement which covers freelancers with PACT, the Producers Alliance for Cinema and Television. In 2002, a long campaign by BECTU and the Directors' Guild of Great Britain resulted in the re-establishment of multi-employer bargaining for freelance directors.<sup>56</sup> Freelancers are also covered in various collective agreements with the BBC state broadcaster, and a similar agreement is currently under discussion with the main commercial television operator ITV.<sup>57</sup> In the United Kingdom the journalists' union the NUJ has some collective agreements covering the use of freelancers' work as casuals in employers' premises, as well as one agreement (with The Guardian Media Group) covering minimum rates for editorial supplied by freelance contributors.<sup>58</sup>

Where formal collective agreements are not in place, some unions are attempting to use other measures to encourage employers to adopt good practices. BECTU, for example, has unilaterally drawn up a Charter for workers in the factual television sector in the United Kingdom. It is inviting employers to voluntarily sign up to the Charter, and is publicizing examples of companies which refuse to endorse it.<sup>59</sup>

In Germany and Austria, collective agreements are extended to cover certain categories of freelance, effectively those categorized legally as being in an economically dependent relationship with the host company.<sup>60</sup>

<sup>53</sup> European Federation of Journalists, 2011b.

<sup>54</sup> UNI MEI, 2011, page 6.

<sup>55</sup> Beth Costa, interview with the author.

<sup>56</sup> Heery et al., 2004, page 29.

<sup>57</sup> Tony Lennon, interview with the author.

<sup>58</sup> John Toner, interview with the author.

<sup>59</sup> Tony Lennon, interview with the author.

<sup>60</sup> European Foundation for the Improvement of Living and Working Conditions, 2010a, page 40.

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On the other hand, the vast majority of freelance workers in the print media are not included in collective agreements.<sup>61</sup> There is a specific – and very significant – difficulty here which has occurred in several countries, in relation to a clash between employment rights and competition law. Because of the significance of this issue it will be considered in more detail.

## 4.2. Competition law

The right of individual workers to freedom of association and protection of the right to organize is recognized as a human right and underpins the work of the International Labour Organization. It recognizes the fact that workers are not in an equal position with employers when bargaining on their pay and conditions. It aims to ensure, as the ILO put it in its 1944 Declaration of Philadelphia, that “labour is not a commodity”.

Anti-cartel law is also designed to remove the risk of potential exploitation of the market by dominant forces, in this case by groups of enterprises banding together to fix the prices they charge their customers. National competition authorities have a vital role to play in preventing this abuse of power.

The problem that has emerged, however, is that in some countries, competition regulatory authorities are choosing to use their powers against unfair competition to prevent freelancers from participating in collective bargaining or indeed from taking collective action to improve their circumstances. The issue affects those freelancers whose legal status is technically that of self-employed. In other words, they are deemed to be enterprises rather than workers.

It seems unlikely that when competition law was originally drafted, it was intended to reach down in this way to those who, potentially at least, are some of the most vulnerable members of the labour force. There can also be considerable uncertainty, where apparent contradictions exist between employment rights and labour law and competition law, which of these has legal precedence.

This issue has arisen in recent years in several countries. Ireland is a case in point, where the country’s Competition Authority in March 2003 investigated a 2002 collective agreement in place between the trade union Irish Actors’ Equity SIPTU and the Institute of Advertising Practitioners in Ireland, which had been negotiated to establish minimum fees for actors. The 2002 collective agreement was the most recent of several similar agreements, which the Competition Authority accepted had been in force for at least fifteen years. The Authority ruled however that the agreement violated Irish and European competition law and the parties to the agreement subsequently pledged to withdraw from any agreement on fees<sup>62</sup>.

This ruling had an immediate knock-on effect for other media unions, including the Irish part of the joint Irish/UK National Union of Journalists. The National Newspapers of Ireland (NNI) pulled out of a longstanding pay rates agreement with the NUJ as a consequence.<sup>63</sup> Although the Competition Authority’s verdict has been politically controversial and government action to remedy the difficulty has been proposed, no legislative change has yet been forthcoming. The Irish Congress of Trade Unions has

<sup>61</sup> European Federation of Journalists, 2011a, page 17.

<sup>62</sup> Competition Authority (Ireland), 2004.

<sup>63</sup> European Foundation for the Improvement of Living and Working Conditions, 2010a, page 43.

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raised the case as part of the UN Universal Periodic Review process for Ireland and at the ILO in the context of the European Charter of Fundamental Rights.<sup>64</sup>

A similar situation has arisen in Denmark, where in 1997 the Competition Authority instituted proceedings against the Danish Union of Journalists over a leaflet it had produced entitled *Recommended Terms for Freelance Journalism*. The union appealed the Authority's ruling to the Competition Appeals Tribunal, which found in favour of the union. In its finding the tribunal found – among other things – that journalists who do work for a media enterprise of the same nature as that done by permanent staff cannot be regarded as conducting independent commercial activity merely because the work is assignment based. Nevertheless this ruling has not fully clarified the situation for all freelancers, and a request by the union to obtain a general declaration of non-intervention on matters concerning freelancers from the Competition Authority has proved contentious and the request has now been withdrawn.

In practice, the union is now being “very careful in its guidance to freelancers”.<sup>65</sup> It reports that one in five of its members (about 3000 people) are now freelance, about two-thirds of whom are treated by the authorities as independent contractors rather than as having equivalent employee status. The union also reported that a 2010 collective agreement for journalists working for magazines published by Aller Media only covers 80 of the 700 freelancers who, but for concerns over the stance of the Competition Authority, would otherwise have been included in the agreement.<sup>66</sup>

Issues of freelance media workers being at risk of being caught in anti-cartel initiatives by competition regulators have also been reported in, among other countries, Spain and the Netherlands. It was the subject of a letter written by the European Federation of Journalists' President Arne König to the European Commissioners for Competition, and for Employment, Social Affairs and Inclusion in June 2011. Mr König called for legislation or non-legislative guidelines which would allow the exercise of freedom of association and right to collective bargaining by freelance media workers.<sup>67</sup>

Nevertheless, and in situations where collective agreements are not in place, in some countries media unions do attempt to maintain some basic levels of remuneration by freelancers by offering advisory recommended minimum rates. In Europe, for example, recommended freelance fee guidance is offered in countries such as Belgium, Germany, Finland, France, Norway, Sweden and the United Kingdom.<sup>68</sup>

This issue remains a key one which media unions wish to try to resolve, arguing that it represents a distortion of the reality of power relationships in the industry: as one Belgian freelancer has put it, “the relation between the freelancer and the media client remains totally controlled by the latter”.<sup>69</sup> On the other hand, companies in the media industry who are seeking services from external contractors may naturally operate on the expectation that the tendering process will be a transparent and open one, enabling them to find through open market mechanisms the best value or most appropriate contractor for their needs. It can also be noted that, in many jurisdictions, imbalances in power between

<sup>64</sup> PowerPoint presentation by Esther Lynch, Freelancers' Collective Bargaining Rights, European Federation of Journalists/ETUI conference, Florence, 2011.

<sup>65</sup> Information supplied to the author.

<sup>66</sup> International Federation of Journalists, 2012, page 5.

<sup>67</sup> European Federation of Journalists, 2011c.

<sup>68</sup> European Federation of Journalists, 2009.

<sup>69</sup> International Federation of Journalists, 2003, page 21.

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those trading in open market situations are in any case increasingly subject to provisions controlling unfair contractual terms.

Issues of competition law for freelancer workers have been addressed in a recent academic article by Shae McCrystal of the University of Sydney (Australia), who poses the question of whether collective bargaining could offer an opportunity for independent contractors to act collectively in situations where they have been recruited through competitive tendering with the aim of reducing labour costs.<sup>70</sup>

### **4.3. Other examples of social partnership**

Unlike other sectors, there are at the moment no examples of Global Framework Agreements in place with major media multinationals. UNI Global Union has advertised its desire to reach a GFA with the Disney Corporation, and hopes to begin negotiations shortly through its sectoral organisation UNI-MEI. UNI-MEI has facilitated negotiations for an agreement with the Asia Pacific Broadcasting Union signed last year, as well as with Malaysia-based Media Prima and the Indonesian news agency Antara.

A Framework Agreement between the International Federation of Journalists and Westdeutsche Allgemeine Zeitung Mediengruppe (WAZ) was agreed in 2007, but has since been discontinued.

The European sectoral social dialogue committee for the audio-visual sector, mentioned above, brings together (for the employers) the European Broadcasting Union, FIAPF (The International Federation of Film Producers' Associations), CEPI (The European Coordination of Independent Producers), the Association of European Radios and the Association of Commercial Television in Europe and (for the workers' representatives) the UNI-Europa performance and media branch EURO-MEI, the European Federation of Journalists, the International Federation of Actors (FIA) and the International Federation of Musicians (FIM). The committee has, among other initiatives, adopted a joint declaration on promoting social dialogue in the sector, and an agreed Framework of Actions on Gender Equality<sup>71</sup>. This is discussed in more detail below.

### **4.4. Issues in organising freelance and atypical workers**

Generally speaking, media unions have long experience of organising freelance workers. As we have seen, some unions (such as the US writers' and directors' guilds) are almost entirely composed of freelance workers. Elsewhere, freelancers comprise a significant minority of union membership, with the trend being upwards.

However, some unions are prohibited by national law from being able to recruit freelance workers. This has been an issue, for example, in Croatia. According to an officer of the journalists' union SNH, "Croatian labour law regulates labour relations in the Republic of Croatia. In Article 2 it defines a worker as an employed person which performs certain work for an employer. This definition is the cause of problems for freelance and other informal workers, because protection of labour rights refers only to employees, staff workers with signed employment contracts".<sup>72</sup>

<sup>70</sup> McCrystal, 2012.

<sup>71</sup> European sectoral social dialogue – audiovisual 2013.

<sup>72</sup> Communication with the author.

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The journalists' union in the Former Yugoslav Republic of Macedonia reports a somewhat similar problem where reportedly labour law recognizes only those with contracts from employers as eligible for union membership: "There is no legal provision for a freelance journalist. This means that the journalists who are not permanently engaged or are not registered as employed by the employer (although de facto they work full-time) are being treated as unemployed."<sup>73</sup>

In Portugal, there is a legal disagreement between the Portuguese government and the Sindicato dos Jornalistas as to whether freelancers can be organized by the union. The union was required to withdraw a reference to freelancers in its statutes as a consequence. The union has considered a legal appeal, but is currently choosing not to progress this.<sup>74</sup>

The IFJ has suggested<sup>75</sup> that this issue also applies in certain other countries, primarily in central and eastern Europe.

Conversely there is also the example of Greece where the journalists unions' statutes restrict their membership only to journalists working as employees and therefore where freelance journalists cannot become members. These measures, which can be seen as a continuation of traditional attempts by skilled unions to control entry to a craft, are now under significant pressure given recent developments in the country. In practice, some flexibility is being shown. The ESIEA (the union of the Athens daily newspapers) reports that more and more non-employee journalists are now among its membership.<sup>76</sup>

More broadly, there is evidence that unions are responding to changes in employment relationships in the media sector by adapting both their procedures and their ways of working in order to be able to represent more effectively freelance and other atypical workers. This was the theme of a 2011 IFJ publication which observed that "Unions are indicating that they want to change their structures, procedures and services in order to improve their work for freelance journalists."<sup>77</sup>

In some countries, unions are showing some considerable creativity in how they recruit and then organize freelance members. One German media union, IG Medien (now part of ver.di) was a very early user of a telephone call centre service when it pioneered the Mediafon advice service<sup>78</sup>. In Austria, the Gewerkschaft der Privatangestellten (GPA, now GPA-DJP) was also an early adopter of technology, launching an online forum (a kind of online union 'branch') called work@flex in 2001.<sup>79</sup> In the UK and Ireland, the NUJ operates a freelance online discussion forum for its freelance members, and there are also dedicated freelance branches in three major cities.<sup>80</sup> In Denmark, the Danish Union of Journalists has a 'Freelance Gruppen', currently with 1800 members.<sup>81</sup>

<sup>73</sup> Communication with the author.

<sup>74</sup> Communication with the author.

<sup>75</sup> International Federation of Journalists, 1999, page 9.

<sup>76</sup> Communication with the author.

<sup>77</sup> European Federation of Journalists, 2011a, page 19.

<sup>78</sup> Pernicka, 2005, page 217 ; UNI Global Union, 2005 ; European Foundation for the Improvement of Living and Working Conditions, 2010a, page 44.

<sup>79</sup> Pernicka, 2005, page 216.

<sup>80</sup> John Toner, interview with the author.

<sup>81</sup> International Federation of Journalists, 2012, page 4.

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However, organising freelance workers is in some respects considerably more of a challenge than organising employees working in a traditional workplace. Firstly, as several unions have made clear, freelance workers tend to require more individual attention from officers and therefore may require more union resources than their employed colleagues. As one officer put it, “freelancers expect personal service”.<sup>82</sup>

Particularly when freelancers are not covered by collective agreements, the work-related problems they bring to their unions are also rather different. Unpaid invoices are for some union officers the most common issue of all, making the union a kind of debt collection agency for its members. Other reported common issues dealt with in relation to freelance media workers include tax problems, legal problems, health and safety concerns whilst at work, help after an industrial accident, and general enquiries about employment rights. One union officer described the work involved in servicing freelance members as “incredibly demanding, much more so than for the permanently employed”.<sup>83</sup>

The cost of servicing freelance members has been raised as an issue by some unions, concerned at their long-term ability to be financially sustainable from members’ subscriptions and therefore retain their independence of operation. One union advises that, because of the lower subscriptions paid by freelancers, it effectively has to find two new freelance members to replace every employee member who leaves the union. In the longer term, the increased use of informal employment relationships in the media industry, through the effect it has on unionization rates, could also affect the quality and effectiveness of social dialogue for all media workers, employees as well as freelancers.

One issue which arises where unions have freelancer members is the extent to which industrial action may be possible, particularly where those freelancers are deemed to have the status as self-employed. Clearly, freelancers are less likely to have recourse to the forms of industrial action available to employees operating in a collective workspace. Nevertheless (and as a sharp counter to those authorities who approach freelance workers solely as micro-businesses) there are some interesting examples where freelancers have chosen to take collective action.

The example of the writers’ strike organized by the Writers Guild of America as part of the collective agreement negotiations in 2007-8 has been mentioned already. A more recent example, also from the film sector, is from the UK where freelance hair and make-up workers (primarily women) on contract for the production of *Les Misérables* threatened collective action to ensure they were paid for the necessary overtime they were required to put in.<sup>84</sup> In journalism, two hundred British freelance workers operated an informal withdrawal of labour in 2010 in agreeing jointly to decline to continue contributing to a major magazine publisher as part of a dispute over authors’ rights ownership.<sup>85</sup> In Germany, freelancers participated in the 2011 strikes during the renegotiation of the journalism collective agreement.<sup>86</sup>

Unions are developing a portfolio of collective services to meet some of their freelance members’ needs. In Denmark, for example, the union helps media employers and organisations find union freelancers through its ‘Find a Freelancer’ database.<sup>87</sup> In the

<sup>82</sup> John Toner, interview with the author.

<sup>83</sup> Tony Lennon, interview with the author.

<sup>84</sup> Clark, 2012; Clark, 2013.

<sup>85</sup> National Union of Journalists, 2010.

<sup>86</sup> International Federation of Journalists, 2012, page 2.

<sup>87</sup> European Federation of Journalists, 2011b.

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UK, BECTU has negotiated comprehensive public liability insurance, a standard requirement for freelance workers in the film industry.<sup>88</sup> Several unions have free tax advice lines and services.

Unions also offer access to social protection for freelance members. As reported above, both the Directors Guild of America and the Writers Guild of America are actively participating in the health care provision and retirement pension schemes for their members, provisions which have been negotiated through collective agreements in the sector.

Training provision is another major area of attention for unions with freelance members, a subject which will be considered in more detail in the next section of this report.

#### 4.5. Training and lifelong learning

Given the changes which new technology is bringing to the media industry, training has never been more important. Both employers and individual workers have a direct interest in ensuring that adequate training is available.

The subject of training was one of the issues investigated by the Australian media union MEAA in a members' survey carried out in 2008. The union reported: "One of the biggest concerns involves training – or the lack of it in newsrooms seeking to expand into new platforms and new forms of delivery without paying for new staff. Asked 'what sort of training have you received in new media platforms?', only 1.94 per cent replied 'very comprehensive – I'm getting all the multi-media skills'. Some 40.72 per cent said 'just what I need to do my job'. Distressingly, the majority, 57.34 per cent replied 'None, I'm expected to pick it up as I go along'." (About 10% of the union membership responded to the survey.)<sup>89</sup>

Also in the media sector, the British/Irish NUJ claimed that "there is a real gap between what journalists are expected to do and the training they are receiving for carrying it out".<sup>90</sup>

The 2010 OECD report on the effect of the internet on news publishing also addressed the issue of training: "Fostering the skills of journalists who increasingly have to be multimedia journalists is central to maintaining a high-quality news environment. News organisations have to invest heavily in the creation of a versatile workforce. The role of the universities (and the teaching of journalism, namely entrepreneurial journalism) in the new media ecosystem is also large and growing."<sup>91</sup>

In the European context of sectoral dialogue between the social partners, the audio-visual committee is currently focusing among other things on the issue of training and skills. In collaboration with the social dialogue committee for the live performance sector, the committee is undertaking a feasibility study for a sectoral skills council.<sup>92</sup>

<sup>88</sup> Tony Lennon, interview with the author.

<sup>89</sup> Media Alliance, 2008, page 16.

<sup>90</sup> National Union of Journalists, 2007, page 18.

<sup>91</sup> OECD, 2010, page 72.

<sup>92</sup> International Federation of Journalists, 2011.

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Freelance media workers face a particular challenge, in that they are likely to be responsible entirely for ensuring that they have the training and skills they need. There are some examples of unions working to meet these needs. In Sweden for example the media union SJF has established a special training company which enables its freelance members to receive free professional training.<sup>93</sup> In the UK, BECTU provides a similar service for its members.<sup>94</sup>

#### 4.6. Creators' rights/ Intellectual property rights (IPR)

The media industry is unusual in that much of its economic framework is predicated on the exploitation of intellectual property rights, and in particular copyright on created products. This is the reason why digital piracy is considered such a serious risk to the industry and has become a major focus of lobbying and enforcement work.

For workers in the media sector, intellectual property rights also loom large as an important issue in negotiations over how their labour is remunerated. Freelance workers in particular have been very concerned to ensure that they receive a fair share of rights payments for work they have created.

Different jurisdictions treat rights on created material differently, and there is a broad division internationally between those countries where copyright principles apply and those based on the principle of author's rights. Because author's rights are rights of the individual whilst copyright comes from the law of property, media unions tend to prefer to use the former term.<sup>95</sup> Author's rights are also sometimes described as creator's rights.

Author's rights comprise both moral rights and economic rights. An author's moral rights cover such things as the right to be named as the creator of a work and their right not to have their work distorted or manipulated against their wishes. For all media workers, and for freelance workers in particular, moral rights can be highly important in establishing and defending professional reputation and in attracting further work.

Economic rights refer to the financial value of the created product and are therefore even more fundamental to employment relationships in the media sector.

In some countries (such as the United Kingdom, Ireland, Poland, Hungary and the Czech Republic<sup>96</sup>) employees are legally deemed to have relinquished their economic rights under their employment contract with these rights passing to the employer. Sometimes this extends also to moral rights. However, even in those countries where this is not the case (three examples are France, Germany and Sweden), the issue of rights takes on a fundamental position in collective negotiations and in social dialogue.

In the US film industry, rights are successfully covered in the collective agreements negotiated between production companies and the labour unions. This applies also in the case of freelance workers, such as writers and directors.

Elsewhere, the issue can be much more problematic. Media unions have been particularly concerned about the situation facing freelancers negotiating individually with businesses for which they are undertaking work. The European Federation of Journalists

<sup>93</sup> Arne König, interview with the author.

<sup>94</sup> Tony Lennon, interview with the author.

<sup>95</sup> International Federation of Journalists, 2011, page 10.

<sup>96</sup> International Federation of Journalists, 2011, page 6.

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launched a campaign in 2011 called Fair Contracts for Journalists, and the EFJ has also produced a comprehensive handbook for members on authors' rights.<sup>97</sup> In the Netherlands, the Nederlandse Vereniging van Journalisten (NVJ) union has established a Project Fair Share on authors' rights. In the UK, several media unions have together established the Creators' Rights Alliance (formerly the Creators' Copyright Coalition). The UK has seen several high-profile disputes between freelancers and client businesses over alleged 'rights grabs' by publishers. One publisher received particular notoriety when it tried to demand full rights "throughout the universe", including in "media yet to be invented".<sup>98</sup>

In Germany, ver.di and nine major publishers have successfully negotiated an agreement covering author's rights which includes self-employed workers.<sup>99</sup>

It should be noted that collecting societies (set up and run collectively by their members) provide an established route in collecting royalty payments from the exploitation of rights. Collecting societies operate in many countries, on behalf of groups such as authors, photographers and musicians, and income from collecting societies can form a very significant part of the total income received by creative workers. In Argentina, the film directors' union DAC (Directores Argentinos Cinematográficos) campaigned for over 50 years for legal recognition as rights holders in films, a campaign which was successfully concluded in 2003 with a modification of the country's intellectual property law. DAC has now been recognized as performing the role of collecting society for Argentinean directors, and the first payments were made in 2011. In 2012, DAC signed an agreement with the country's hotel and business trade association FEGHRA, which will see royalties from films shown in hotel rooms paid to directors through DAC.<sup>100</sup>

Google's desire to make in-print and out of print books available electronically (originally it had announced its desire to make all books ever published available) has led to lengthy legal action in several legal jurisdictions, focused on rights remuneration. Limited settlements were reached in 2012 in both France and the United States.<sup>101</sup> Google's approach has drawn particular attention to the potential importance of 'orphan works', those publications for whom the authors and rights-holders cannot now be traced. The International Federation of Journalists has suggested that there is insufficient attention being given internationally as to how orphan works can be avoided in the future for works being created now. The IFJ says that this issue affects photographers in particular, given how easy it is for photographs to be utilized electronically without authorship attribution.<sup>102</sup>

#### **4.7. Occupational safety and health issues**

The introduction of computer technology into the media industry in the final years of the twentieth century saw particular concerns raised over the risk to workers of musculo-skeletal disorders such as repetitive strain injury, brought about by excessive keyboard usage.

<sup>97</sup> International Federation of Journalists, 2011, page 42.

<sup>98</sup> International Federation of Journalists, 2011.

<sup>99</sup> European Foundation for the Improvement of Living and Working Conditions, 2010a, page 41.

<sup>100</sup> <http://www.dacdirectoresdecine.org.ar/gestion.html>.

<sup>101</sup> Waters and Edgecliffe-Johnson, 2012; Daneshkhu, 2012.

<sup>102</sup> Renate Schroeder, interview with the author.

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The focus now has shifted somewhat as increased work pressure both on employed workers and freelancers has led to particular concern regarding issues of stress and mental health. Linked to this is the question of work/life balance, especially as new technology allows media workers to work whilst they are travelling, at home, and on vacation. One French freelancer commented on how their experience of using an ‘always on’ 3G smartphone had made the boundary between work time and personal life extremely porous.<sup>103</sup> The UK/Ireland union the NUJ reported one magazine news editor who had gone on long-term stress-related sick leave as saying: “I cannot physically carry out the tasks they are asking me to perform, let alone mentally. You would need to be an octopus to be able to do everything they want doing.”<sup>104</sup>

The NUJ has twice undertaken a ‘well-being’ survey of its freelance members, exploring the extent to which issues such as isolation, depression, over-reliance on alcohol or drugs, and loss of self-esteem may be issues for workers who spend much of their time working alone. Its original 2004 report reported that “for a minority of the union’s freelance members, work-related pressures are leading to significant health problems” although it also reported “evidence that many individual freelancers are conscious of health issues and... attempt to take steps to ameliorate the risks.”<sup>105</sup> The survey is due to be re-run in 2013.

Stress has also been reported by the International Federation of Journalists as an issue which is being surveyed by other media unions, including those in Sweden and Belgium. Stress was one of the topics covered in an ILO SECTOR working paper on the performing arts and journalism.<sup>106</sup>

The IFJ also draws attention to the particular safety risks as a greater proportion of freelancers are used to report from war zones. For many younger journalists, war reporting is seen as a high-profile way to develop a professional reputation. Nevertheless, freelancers often travel to areas of considerable danger without the training or back-up resources which employed journalists can rely on, and without access to specialist equipment (such as flak jackets and helmets) or to adequate personal insurance.<sup>107</sup>

#### **4.8. The position of women in the media industry**

Women play a significant role in the media industry, although there remain significant differences between the genders. Some trades (particularly some trades in the film industry) remain in practice the domain of men; there are other trades (such as make-up and hair) where women predominate.

The European Federation of Journalists has estimated that women represent 42% of the membership of its affiliates. Women comprise approaching 44% of employee members and 42% of freelance members.<sup>108</sup>

<sup>103</sup> European Federation of Journalists/UNI MEI, 2012, page 69.

<sup>104</sup> National Union of Journalists, 2007, page 20.

<sup>105</sup> National Union of Journalists, 2004, page 4.

<sup>106</sup> Sabir Giga et al., *Violence and stress at work in the performing arts and in journalism*, Sector Working Paper WP.201, Geneva, 2003.

<sup>107</sup> Interview with the author.

<sup>108</sup> International Federation of Journalists/European Federation of Journalists, 2012, page 6.

The data from British/Irish National Union of Journalists reproduced in Table 5 above are available disaggregated by gender. Analysis (Table 7) shows that the bulk of the increase in NUJ's freelance members between 2005 and 2012 has been primarily from women rather than men. This could be a reflection of the fact that journalism students are now more likely to be women than men and that graduates are entering the profession as freelancers. It could also suggest that women who lose staff posts are more likely to remain in the industry as freelancers whilst men are more likely to leave the industry.

Table 7 also reveals some trends among employee members: although proportionately the union has lost more male than female employee journalists, there has been a sharp fall in the number of women employees in the past two years. Whilst it is difficult to draw definitive conclusions from one limited data set, this could suggest that women have been particularly adversely affected by recent job losses. In this respect, we can note that a 2012 survey of members of the European Federation of Journalists found some affiliates (including those in France, Spain and Estonia) reporting that the crisis was affecting women particularly. Nevertheless this was a minority position, according to the EFJ: "The majority of respondents did not see a direct effect of the crisis on women and reported that it has affected union members regardless of gender".<sup>109</sup>

**Table 7. Male and female paying members, National Union of Journalists (UK/Ireland) 2005-2012**

	Total freelance members	M	F	Total employee members	M	F
2005	6,985	4,408	2,577	21,693	12,796	8,897
2007	7,163	4,454	2,709	21,148	12,362	8,786
2008	7,172	4,446	2,726	20,998	12,318	8,680
2009	7,339	4,512	2,827	20,427	11,940	8,487
2010	7,133	4,358	2,775	19,486	11,152	8,334
2012	7,334	4,475	2,859	19,187	11,211	7,976

Source: National Union of Journalists

Little research appears to have been done to compare the experience of women freelancers to that of their male colleagues. It has been suggested in writings on home-working<sup>110</sup> that, because of women's traditional home and childcare duties, it is more difficult for women than men to achieve an appropriate work/life balance in the home: put crudely, male freelancers are less likely perhaps to notice the dirty clothes or washing-up. A move by previously employed women journalists into 'forced-lancing' from home could be less easily managed than a similar move by a male worker. However, no direct evidence of this has been found during the research stages for this report.

In this context, it is interesting to note the text of the Framework of Actions on Gender Equality, agreed by the European audiovisual social partners in 2011. The comprehensive statement (which also addresses gender portrayal in the media, gender roles at work, equal pay and equality in decision making) includes the following observation of work/life balance: "It is critical when considering working arrangements which support the reconciliation of work and family life that these can be taken up on a voluntary basis by both women and men, and are designed in a way that does not undermine their long term participation and position on the labour market. Some of the practices aiming at creating a better work-life balance may have adverse effects on the careers of women in particular. Indeed, surveys show that flexible working practices are more used by women than men.

<sup>109</sup> International Federation of Journalists/European Federation of Journalists, 2012, page 6.

<sup>110</sup> See for example Huws, U. et al, *Telework, Towards the Elusive Office*, 1990.

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In many cases, this has resulted in, inter alia, career stagnation, a pay-gap and lower pensions.”<sup>111</sup>

#### 4.9. Young people and the use of internships

As has been mentioned above, particular concern has been expressed by some media unions at the situation facing young people trying to join the industry. It is suggested that young people are particularly likely to find themselves obliged to accept freelance working, rather than posts with employed status.

A report submitted by the French journalists union SNJ to the European Federation of Journalists suggested that young people in France were accepting unpaid hours as a way of trying to gain a foothold in the industry<sup>112</sup>. This same phenomenon exists in several other European countries. In the UK/Ireland, for example, the National Union of Journalists has stated: “An increasing number of casual journalists are not paid at all. The abuse of ‘work experience’ trainees is becoming a scandal, with large numbers of new jobless graduates offering themselves for free to publishers in the distant hope of getting, if not a job, then at least a line for the CV<sup>113</sup>.”<sup>114</sup> A UK-based pressure group, Intern Aware, initially started as a Facebook group, has put pressure on the BBC to abolish unpaid work experience at the broadcaster.

One issue is that there would appear to be an imbalance in some countries between the (large) number of young people undertaking courses in media at university level and the ability of the industry to take on new workers. According to the International Federation of Journalists, some unions are now visiting journalism schools to point out to students just how difficult the market is.<sup>115</sup>

#### 4.10. Migration and relocation of work

Although there is widespread recognition of the increasing internationalisation of the media industry, there would appear at present to be only limited evidence of work being delocalized to lower-cost destinations. Generally, media companies have historically congregated in particular geographical locations (Hollywood is the classic example), and these have developed as centres where skilled and specialized workers can be found.

Limited editorial offshoring has been reported: for example, Thomson Reuter has relocated some legal abstracting work from developed economies to East Asian countries. Some financial monitoring work for the media is also offshored. The publishing industry has long used offshore locations for book printing (and for certain highly specialized tasks such as the engineering of children’s pop-up books).

The mirror side of offshoring is labour migration. Again there is little evidence (outside of the role of Hollywood as a magnet for actors, writers and directors) to suggest that the media industry is particularly associated with widespread labour migration. But the quote from an Irish journalist now relocated to the UK is perhaps a reminder of the

<sup>111</sup> EU Audiovisual Sectoral Social Dialogue Committee, 2011, page 20.

<sup>112</sup> International Federation of Journalists/European Federation of Journalists, 2012, page 20.

<sup>113</sup> Curriculum vitae (US: resume).

<sup>114</sup> National Union of Journalists, 2007, page 17.

<sup>115</sup> Renate Schroeder, interview with the author.

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personal challenges which such a move can represent to individual workers: “Moving country is difficult and isolating, and very very hard.”<sup>116</sup>

#### 4.11. The wider implications of changing employment relationships

Changes in employment relationships in the media sector may also have a significant effect on broader issues, such as the cultural and democratic life of the societies they serve.

According to the International Federation of Journalists, the risk is that increased workloads, reduced workforces and more precarious employment conditions will directly affect the quality of journalism. ‘Journalism matters’, it claims: “Journalism matters when it exposes the reckless dumping of nuclear waste in the Pacific or the illegal logging of the Amazon or Borneo forest. It matters when it reveals police abuse and torture... It matters too when it provides citizens with accurate relevant and balanced information on issues that directly affect them, from school board meetings to municipal regulations...”<sup>117</sup>

A similar point is made by the Pew Research Center in its 2013 survey of the US media: “Efforts by political and corporate entities to get their messages into news coverage are nothing new. What is different now – adding up the data and industry developments – is that news organizations are less equipped to question what is coming to them or to uncover the stories themselves, and interest groups are better equipped and have more technological tools than ever.”<sup>118</sup>

The link between trends in employment and these broader societal issues were summarised in the IFJ report *The Changing Nature of Work*:

- Insecurity of employment leads to timid reporting
- Employment changes dictate a decline in critical and investigative reporting
- Media concentration and government pressure leads to bland news
- Media has been tamed by advertisers and governments
- Low wages leads to a decline in ethical reporting<sup>119</sup>

The Pew Research Center also points out that technology is already being used to provide automatic content, targeted at readers’ interests: “A growing list of media outlets, such as Forbes magazine, use technology by a company called Narrative Science to produce content by way of algorithm, no human reporting necessary”.<sup>120</sup>

<sup>116</sup> European Federation of Journalists/UNI MEI, 2012, page 62.

<sup>117</sup> International Federation of Journalists, 2010, page 5.

<sup>118</sup> Pew Research Center, 2013, Overview, page 1.

<sup>119</sup> International Federation of Journalists, 2006, page 4.

<sup>120</sup> Pew Research Center 2013, Overview, page 2.

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## 5. Concluding remarks

The media industry has a long history of social partnership, which has enabled it successfully to meet previous challenges, including the original introduction of digital technologies in the last two decades of the twentieth century. There is a strong case for working to strengthen further the mechanisms of social partnership in order to ensure that the current opportunities and changes bring benefits both to businesses in the sector and to media workers. The ILO has a key role to play, at global strategic level, in overseeing this work.

Collective bargaining is long-established in the sector. When working effectively it brings benefits both to employers and to workers. Unfortunately, in some countries, collective agreements appear to be becoming more difficult to achieve, and that some companies are choosing to withdraw from collective bargaining. Collective bargaining remains at the heart of a well-functioning labour market in the media industry. Collective agreements could be extended as appropriate to cover media workers working in new media platforms, including online content creators.

Global framework agreements between multinational companies and global union federations have demonstrated their value in other sectors, but have not so far been a significant feature in the media sector. There is scope to develop such agreements in this sector. Well-functioning framework agreements can lead to good human resources policies and committed and productive workers.

In a time of rapid change, training and skills development become particularly important. Well-trained workers are better able to perform their jobs efficiently and to be able to deal with new digital technologies. Training and skills development could be key topics for dialogue between the social partners in the media industry. Young people entering the industry should have the opportunity to be enrolled on formal training/apprenticeship programmes.

Freelancers are a fundamental part of the labour market in the media sector, and their interests and rights as workers – including as regards freedom of association and collective representation – need greater consideration. Ways to extend coverage in collective agreements to freelance workers and to permit freelancers and other atypical workers to seek collective representation could be examined.

There is an onus on media unions to ensure that their rule books, procedures and working methods are adequate for meeting the needs of freelance as well as employed members. Unions need to ensure that they are able successfully to organize media workers working in new media platforms, including online.

Intellectual property rights (author's rights), both moral rights and economic rights, are important to all media workers, and especially to freelance workers. Recent attempts by some companies to require workers to sign away their author's rights without adequate compensation are leading to tensions. Workers' moral rights should not be assignable; compensation for the economic rights created is an appropriate topic to be resolved through social dialogue and collective agreement.

Stress is becoming more widely recognized as a serious occupational health issue. The ability, created by modern digital technology, for workers to be permanently in touch with their work can increase stress levels through work requirements encroaching more and more into personal life, so appropriate ways for workers to achieve a healthy work/life balance should be considered.

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Women occupy a significant role in the labour force in the media industry but face significant disadvantages and discrimination in relation to their male colleagues. Evidence from some countries suggests that women may be proportionately more affected by industry trends towards casualization and freelancing. Further work could be undertaken to assess any differentiated effects on women workers of recent changes in employment relationships in the media industry.

With youth unemployment very high in many countries, this is a particularly difficult time for young people to begin their careers in the media industry. Their efforts are not being helped by the use by some employers in some countries of unpaid internships, often stretching over a period of months or even years, with no guarantees that paid work will eventually be forthcoming.

Young people are particularly at risk of finding themselves undertaking work as ‘forced-lances’ or in other situations of precarious work. Where appropriate, recognized apprenticeship schemes and/or adequate training should be instituted.

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	<i>Year</i>	<i>Reference</i>
Reducir la pobreza a través del turismo (Dain Bolwell and Wolfgang Weinz)	2008	WP.268
Industrial relations and social dialogue in the oil and gas industries in Indonesia (based on a field study) (Ratih Pratiwi Anwar and Muyanja Ssenyonga)	2009	WP.269
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<sup>121</sup> Working Papers Nos. 1-267 are not included on this list for reasons of space, but may be requested from the Sectoral Activities Department.

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