

# ► Social Protection Spotlight

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## Extending social protection to the cultural and creative sector<sup>1</sup>

### Closing social protection gaps for cultural and creative sector workers

Workers in cultural and creative sector (CCS) often lack effective access to social protection. The type of contractual arrangements and the organization of work prevalent in the sector may impact their coverage and the adequacy of the benefits they receive. The extent of coverage of workers in the CCS varies between countries but also between the different categories of workers within this sector.

For the purpose of this brief, CCS includes:<sup>2</sup>

- authors, writers and journalists;
- visual artists;
- musicians, singers and composers;
- dancers and choreographers;
- film, stage and related directors and producers, actors, announcers on radio, television;
- technicians from broadcasting and audio-visual and telecommunications engineering.

Diverse forms of employment have historically been common in the CCS. Workers in these occupations can be self-employed or in an employment relationship, with one or multiple employers, in open-ended or temporary employment (often for very short periods of time), or in full-time or part-time work.<sup>3</sup> CCS workers' effective access to social protection benefits is often limited: many of them work in types of employment that are not, or not



adequately, covered according to national social security legislation. Partly as a result of this, they often contribute to social security only sporadically. What's more, the increasing fluidity of employment relationships within the sector brings about critical challenges to existing social protection systems.

The COVID-19 has painfully highlighted, and in many cases exacerbated, already existing inequalities and gaps in social protection systems. Workers in the CCS sector are among the hardest hit by the crisis, especially those that were already previously vulnerable due to their insecure employment status (OECD 2020). In response, countries have taken measures to address this (see box 1).

The extension of social protection coverage to CCS workers is crucial and decisive to promoting decent work. Based on a more comprehensive publication (Galian,

<sup>1</sup> This brief has been prepared largely on the basis of the ILO working paper "Social Protection in the Cultural and Creative Sector: Country practices and innovations", No. 28, 2021.

<sup>2</sup> While the definition of "artists" varies across countries, this list follows the definition of the International Standard Classification of Occupation (ISCO).

<sup>3</sup> Some of them are in disguised/dependent self-employment, i.e. those dependent on one main client for their earnings but still considered self-employed on paper or those purposefully misclassified as independent self-employed workers, even though they are in a subordinate employment relationship.

Licata, and Stern-Plaza 2021), this policy brief stresses specific challenges that hinder the extension of social security to CCS workers and explores some possible response strategies, in line with international experience and guided by ILO social security standards.<sup>4</sup>

#### ► Box 1: COVID-19 policy responses for workers in the CCS

Many governments have taken emergency measures to support persons not covered by existing schemes, including self-employed and other categories of CCS workers, who often find themselves in the informal economy.

- Some countries have used existing social protection mechanisms and extended their coverage to self-employed workers, including the CCS workers. For instance, Germany has extended the coverage of the “short time work allowance programme” (Kurzarbeit), which is a partial compensation payment by the Federal Employment Agency for the loss of earnings caused by a temporary loss of work. In the United States, the Pandemic Unemployment Assistance (PUA) has allowed self-employed workers – including CCS workers, who otherwise are ineligible for unemployment benefits under state and federal law, to qualify for such benefits.
- Other countries have provided ad hoc benefits to CCS workers. Brazil has passed a Cultural Emergency Law which set aside around €500 million to support the art and cultural sector. The United Kingdom has implemented a one-off payment up to £2,500 (around €2750).
- France temporarily modified the eligibility conditions to the unemployment insurance scheme for artists and technicians on short-term contracts in the entertainment sector (*régime des intermittents du spectacle*), extending the duration of unemployment benefit rights until August 2021. Alongside, a specific temporary emergency solidarity fund for CCS workers not eligible to unemployment benefits has been set up. This fund, endowed with €5 million, provides them with access to lump sum benefits (between 100 and €1,000).

## Challenges in extending social protection

### Legal exclusion

When social security coverage is limited to certain categories of employees, some CCS workers, including independent contractors, may be excluded. In some cases coverage may be offered on a voluntary basis to self-employed workers, however, international experiences show that it often results in low coverage rates. This is important because many CCS workers may be misclassified as self-employed even though, in practice, they are in an employment relationship and should be correctly classified as employees.<sup>5</sup>

Similar exclusions may exist for employees who work part-time or on a short-term or temporary basis. The situation may be exacerbated by the fact that in some countries, particularly developing countries, a relatively high proportion of CCS workers may work without a (formal and/or written) contract.

Given the diversity of work arrangements, and high labour mobility in the CCS sector, legal exclusions may result in a patchwork of coverage and inadequate protection. In addition, the existing legal framework may not be sufficiently adapted to account for the specificities of CCS work. For example, it does not adequately take into account the irregularity of income for the purpose of social security contributions. Such considerations can have a direct impact on the ability of CCS workers to comply with the conditions necessary to access certain benefits. Ultimately, the scope of legal frameworks can affect the extent to which CCS workers would be covered by existing schemes, either explicitly or implicitly.

### De facto exclusion

#### Diversity and fluidity of employment relationships

Many CCS occupations combine short-term employment, salaried, self-employed, and other working arrangements, interrupted by periods of study, rehearsing, practicing, etc. Such interrupted employment histories can result in sporadic social security contributions, which in turn result in low or insufficient contribution density. They can also lead to periods during which CCS workers are no longer

<sup>4</sup> And notably Social Security (Minimum Standards) Convention, 1952 (No. 102) and Social Protection Floors Recommendation, 2012 (No. 202). For more information visit the Toolkit on ILO Social Security Standards at <http://standards.social-protection.org>

<sup>5</sup> Employment Relationship Recommendation, 2006 (No. 198) can provide guidance in this respect.

legally covered under existing contributory schemes, impacting their ability to access social security benefits, including unemployment, sickness, maternity or work injury benefits.

In addition, the high labour mobility of CCS workers may impact their effective coverage. For instance, in countries with fragmented social protection schemes and inadequate arrangements for the transferability of entitlements, CCS workers with a diversity of employment relationships and work arrangements may end up contributing to different funds but might not be able to combine such periods to reach the minimum contribution thresholds (vesting periods) required to secure their entitlements.



### Irregular and diverse types of remuneration

While some occupations within this sector often benefit from a clear employment relationship where salaries are regularly paid by employers, as may be the case for technicians or journalists, other workers in CCS occupations may earn income from several sources (e.g. writers receive royalties and artists or media technicians receive irregular flows of income when their artwork is sold or a recording is finalized) and remuneration may not be settled on a regular basis. Furthermore, in certain CCS occupations, income fluctuates highly depending on the demand for the artist's work. Irregular and fluctuating remuneration, especially for those with low incomes, can affect the contributory capacity as well as the periodicity of contribution payments, which in turn will impact the extent of social protection, both in terms of access and levels of protection.

For self-employed CCS workers, contributing to a social security scheme may not be affordable – as they are responsible for both the employer's and employee's share of contributions (unless the employer's part is subsidized

by the government). In such cases, CCS workers may be inclined not to participate when affiliation is voluntary, even where they are not excluded from social protection schemes by law.

### Hidden working time in creative occupations

Some workers in the CCS invest significant time in undertaking research for their projects, rehearsing or working on their next shows or performances. This is commonly referred to as "hidden working time"; employment contracts often do not assimilate these periods as "work" and they are consequently not remunerated for them. Where this is the case, they are usually not accounted for under social insurance schemes. This too can have an important impact on meeting minimum qualifying conditions.

### Uneven union representation

Trade unions may face challenges in organizing CCS workers, especially considering their employment status, and in ensuring the improvement of their working conditions, through collective action. In particular, it is difficult for these unions to attract self-employed workers in their membership if they cannot bargain collectively on their behalf – often prohibited by competition rules – unless they can provide other services that are relevant to such workers. Where CCS workers are not represented by trade unions, the ability of these workers to engage in social dialogue and collective negotiations as a means to improve their social protection will be hampered.

## Strategies for extending social protection

Taking into account the particular challenges that CCS workers face, the following strategies, based on internationally agreed principles and best practices, can serve to guide the effective extension of social protection to this group.

### Anchoring the rights of CCS workers in a strong legal framework

Social security law should ensure that CCS workers in all types of employment are covered, under existing social protection schemes by making the necessary adaptations. In addition, the legal framework should clarify the nature of the employment relationship of CCS workers and serve to prevent the misclassification of employment, especially

relating to disguised self-employment in line with international standards.<sup>6</sup>

For example, Germany, established an intermediate worker status, known as 'quasi-employee' or dependent self-employed workers, to address issues relating to dependent employment and the emergence of "bogus" self-employment (*Scheinselbstständigkeit*), which would be covered by social insurance (see box 2). The legal coverage should further translate into de facto coverage and should be based on the principles of equality of treatment and adequacy of protection.

#### ► Box 2: The German Artists' Fund

In 1983, Germany passed a Social Security Act creating the Artists' Fund (Künstlersozialkasse). The fund is financed through contributions from CCS workers and art users as well as Government subsidies (50%, 30% and 20% of the total contributions respectively). Independent artists and authors enjoy the same protection as salaried artists (183,796 members in 2016). Self-employed artists are covered on a mandatory basis if:

- They meet the occupational definition
- Practice artistic profession commercially
- Do not have more than one employee
- Earn at least €3,900 per year from this work

Furthermore, experience shows that mandatory affiliation is more likely to translate into effective coverage than voluntary affiliation, while avoiding adverse selection and promoting sustainability as well as social solidarity.

As brought to light by the COVID-19 crisis, in line with international social security instruments, the national social protection legal framework should additionally encompass non-contributory mechanisms. This would ensure that low-income and vulnerable segments of CCS workers, and in particular those not covered through existing contributory schemes, can rely on essential health care and basic income security as a right and thereby not fall into poverty and exclusion.

## Adapting systems to the particular situation of CCS workers

Adapting social protection schemes to the characteristics of CCS workers is key, in particular ensuring that the eligibility criteria of contributory mechanisms are more flexible and adapted to the realities of CCS workers and that these are reflected in the legal framework.

This can be achieved by adapting eligibility criteria and qualifying conditions to the particular situation of CCS workers, including their income and employment patterns. This can be done among others by increasing the flexibility of the minimum thresholds on income required for eligibility.

In addition, the level, frequency, calculation and collection of contributions should be adapted to the situation of CCS workers. For example, a flexible contribution collection schedule should be considered to help in adjusting the system to the income patterns of certain types of CCS workers. This could include annual, rather than monthly, income; lump sum or quarterly contributions; as well as the option of deferring contributions during interruptions in employment (ILO 2021a). Uruguay and Argentina provide interesting examples of how contribution mechanisms can be adapted to the labour market realities of CCS workers (see box 3).

#### ► Box 3: Adapting social protection systems to the particular circumstances of CCS workers: Uruguay and Argentina

In Uruguay and Argentina, the social protection system has considered the employment patterns of CCS workers to adapt the contributory requirements.

For example, in Uruguay's old-age pension scheme, a full year of service is accrued when an artist contributes for at least 150 working days. If it is fewer than 150 days, a full year of service will also be considered for those who have held at least four contracts in the year. This is especially beneficial for casual, on-demand and temporary CCS workers.

Similarly, in Argentina, any artist with 120 consecutive or non-consecutive days of work can accrue one year of service. If the period of work completed is less than that, the total amount of monthly contributions will be divided by the minimum monthly contributions (based on the minimum salary).

<sup>6</sup> ILO Employment Relationship Recommendation, 2006 (No. 198). "4. National policy should at least include measures to: [...] (b) combat disguised employment relationships in the context of, for example, other relationships that may include the use of other forms of contractual arrangements that hide the true legal status, noting that a disguised employment relationship occurs when the employer treats an individual as other than an employee in a manner that hides his or her true legal status as an employee, and that situations can arise where contractual arrangements have the effect of depriving workers of the protection they are due".

► **Box 4 : France : presumption of salaried employment relationship for some CCS workers regarding unemployment insurance**

CCS workers (employed and independent) are covered under the general social security scheme and thus benefit from comparable benefits to those guaranteed to other workers (health, maternity, old age, work injury, family benefits).

Specific unemployment insurance scheme for CCS workers: according to the Labour Code, performing artists and CCS technicians working on temporary contracts (*intermittents du spectacle*) are presumed to hold a dependent salaried position and are mandatorily covered under a special unemployment scheme (*régime des intermittents*). Its design has been adapted to their specificities (e.g. contribution collection is adapted to actual sources of income, i.e. royalties, copyright fees and commissions). The unemployment protection scheme in France is co-administered by the National Inter-occupational Union for Employment in Industry and Commerce (UNEDIC) who is responsible for the regulation and the collection of contributions (and where all resources are pooled), and Pôle Emploi is responsible for delivering benefits and services.

'*Intermittent du spectacle*' is not a defined legal category, rather a particular employment situation authorized by law for certain professions and characterized mainly by frequent and derogatory recourse to fixed-term contracts. In 2018 there were 274,000 workers registered as "*intermittent du spectacle*". Musicians and dramatic artists are the main sub-occupations of artists, whereas audio, video and image technicians are the most important category among the technicians.

**Ensuring adequate financing through diverse and innovative solutions in line with the principle of solidarity**

From a financing perspective, in many cases, schemes have been developed in such a way as to rely on a diversity of financing mechanisms. For instance, France and Germany obtain contributions from cultural and art users (radio broadcasters, art galleries, etc.). This is indeed key given that for some CCS workers, contributions are low and irregular. This will also have implications for the financial sustainability of the scheme and in turn, for guaranteeing CCS workers' entitlements. Financial sustainability can be better secured by broad risk-pooling and solidarity. For example, in France, the resources of the general unemployment scheme and the specific CCS employees' scheme (see box 4) are pooled. It will be

equally necessary to consider additional financing sources and innovative approaches, such as through earmarked taxes on art users or collecting contributions from emerging online platforms for music or movies, as a means to achieve an optimal balance between the responsibilities and interests among those who finance and benefit from social security schemes.

**Simplifying administrative and financing arrangements by harnessing technology**

Simplification of administrative processes and the promotion of social security affiliation is particularly important for the CCS sector, to ensure workers and employers can fully benefit from the gains led by technology and globalization. Digital technology could be used to facilitate CCS workers' enrolment and payment of social security contributions. Social security institutions should consider, where possible, adopting innovative digital solutions such as using SMS, digital access to artistic creation applications, or digital applications for registration, contribution collection and/or delivery of benefits, while adhering to the principles of data protection and privacy (ILO 2021a). For example, in Spain, the social security agency sent an SMS to potential beneficiaries informing about their entitlements and the procedure involved in registering and claiming their benefits under a social assistance scheme.

Such adaptations of social protection systems can contribute to the provision of universal, comprehensive and adequate protection for all, which in turn can support and protect workers and employers during their life and work transitions. For example, integrated delivery mechanisms, such as "single window services" or "one-stop-shops" are being established to facilitate access to a complete range of benefits and services at reduced cost. These can also support the implementation of integrated and holistic approaches that combine social protection measures with other needed economic, social and financial services (such as in the case of the Republic of Korea, see box 5).

**Improving coordination and portability**

Coordination across the social protection system is important to avoid fragmentation and ensure access to social protection, particular for those with high labour mobility, such as CCS workers. In France, where specific eligibility conditions to unemployment allowance exist for CCS workers, the system allows combining these specific benefits with general benefits from other jobs (see box 4).

The issue of portability is indeed part of the broader debate concerning the capacity of a social security system

to harmonize the different entitlements and contribution systems across different types of contracts and throughout the employment life of a worker. This includes moving between independent and dependent employment, combining different types of contracts or moving from one country to another. Unifying the different components of the social security system will serve to improve the protection provided throughout the working lives of CCS workers, as well as in their old age. It could also facilitate the recognition of social security rights. In parallel, it will be important to develop effective mechanisms that facilitate labour market transitions.

Taking into account that CCS workers are often required to travel between countries, coordination mechanisms between States are of particular importance, and can be improved by the conclusion of bilateral and multilateral agreements.

## Promoting information and raising awareness

Knowledge and information about social protection is important to ensure that CCS workers are effectively covered under social protection schemes. Workers and employers need to know about existing social protection schemes, what their ensuing rights and obligations are and how they can access such schemes (ILO 2021b).

The schemes should therefore be able to provide easily accessible information, including through websites and portals, and make this information available in different languages. Timely and transparent information are particularly crucial for mobile artists and cultural professionals since opportunities for touring, training, working in another country may arise with short delay and must be seized quickly. In this regard, national/regional administrations must improve their coordination and provide consistent information on the issues concerning mobile artists including as regards the portability of benefits between different social protection schemes, but also as regards mechanisms in place that address mobility between States (e.g. social security agreements, etc.).

## Taking a holistic approach

A holistic approach that combines social protection benefits with other relevant services can translate into increased social protection coverage. For example, providing an integrated approach offering a package of employment services, including training, job offers, and unemployment benefits, as well as childcare services and old age protection through a one-stop shop approach (e.g. The Republic of Korea, see box 5) can support CCS workers in accessing social security protection, and improve their

livelihoods and development opportunities, empowering them to better manage life and work transitions. Such an integrated service may also provide additional incentives for workers to join social protection schemes.

### ► **Box 5 : The South Korean Artist Welfare Act**

In November 2012, The Republic of Korea passed the Artist Welfare Act in order to protect artists' job security and rights as they are often excluded from two major types of insurance — employment and employment injury. A key priority of the Act is to extend employment injury insurance to performing artists.

The Act sets up an organization – instead of a Fund – called the Artist Welfare Foundation, a public institution with the aim of promoting creative activities of artists and contributing to the development of art by providing systematic and comprehensive support for the welfare of artists. The Foundation is in charge of managing all the social benefits, including contribution subsidies for social insurance, work injury, medical expenses, loans for low-income artists, legal advice and prevention of sexual violence and support for artists.

In 2019, the Foundation received 31,209 million KRW (around €23 million) in Government subsidies, the amount has almost tripled from 2014.

## Social dialogue

Social dialogue is key to build strong and inclusive social protection systems, ensure stronger coordination between the various social protection mechanisms and effective delivery, facilitate the portability and transferability of entitlements across schemes, and avoid duplication and coverage gaps. CCS trade unions and guilds as well employers' organizations (producers, broadcasters, etc.) should therefore be more meaningfully involved in discussion and reforms to ensure the specific needs of this sector are reflected in the policy design and implementation.

In particular, their participation in the broader debate on enhancing the portability of benefits between different social security schemes and employment statuses can help reduce coverage gaps and ensure continued protection for those with high labour mobility. In addition, social dialogue will be important to reduce fragmentation and strengthen internal coordination mechanisms between different institutions and between central and local levels of government, with a view to ensuring a more integrated and comprehensive approach (ILO 2016). Examples of initiatives can be drawn from efforts made by countries, including Bangladesh, Canada, Croatia and Ghana.

Partnerships with workers' and employers' organizations, are also essential for devising agreed systems to simplify registration and increasing flexibility of eligibility conditions and contributions. Involvement of CCS workers in policy and administrative design will be critical to maximize the potential benefit of social security affiliation. In this regard, pilot mechanisms could be used to engage with and enrol CCS workers in social security schemes, which could be later extended to other sectors in which independent work is prevalent. For instance, Ireland has developed a simplified scheme for visual artists and writers based on the means-tested programme, the JobSeekers' Allowance scheme, which provides protection for all unemployed or partially unemployed persons. The latter can access the scheme if registered as self-employed and derive at least 50 percent of their income from professional artistic work.

In sum, social security agencies and governments should seek to reach out to workers' and employers' representatives in the CCS sector to organize consultation processes. The involvement of CCS workers' and employers' representatives can also be achieved by ensuring their participation in the management of the schemes in line with the principle of participatory management.

## Conclusion

Considering the wide range of types of employment and diversity of work arrangements in the cultural and creative sector, solutions need to be adapted to the challenges faced by the different categories of workers in this sector. This includes revising existing legal frameworks, adapting

the rules concerning eligibility and contribution payments, seeking diverse financing solutions, simplifying administrative procedures and ensuring coordination between countries, between schemes and between other economic, social and financial benefits and services. Social dialogue should be the vector for designing and implementing such social protection schemes.

States now have an opportunity to build on the temporary measures implemented to respond to the COVID-19 crises to guide more sustained and longer-term responses, as well as innovative solutions in line with international social security instruments (ILO 2021a). These would be necessary to ensure that CCS workers are effectively enjoying their human right to social security.

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Social Protection Department  
[socpro@ilo.org](mailto:socpro@ilo.org)

Sectoral Policies Department  
[sector@ilo.org](mailto:sector@ilo.org)

Friedrich Ebert Foundation

The Editor of the Social Protection Spotlight brief series is Shahra Razavi, Director, Social Protection Department.

### Contact information

**International Labour Organization  
 Social Protection Department**  
 Route des Morillons 4  
 CH-1211 Geneva 22  
 Switzerland

T: +41 22 799 7239  
 E: [socpro@ilo.org](mailto:socpro@ilo.org)  
 W: [www.ilo.org](http://www.ilo.org)  
[www.social-protection.org](http://www.social-protection.org)