



United Nations Educational,  
Scientific and Cultural Organization  
(UNESCO)

## **WORLD CONGRESS ON THE STATUS OF THE ARTIST**

organized by UNESCO  
in co-operation with the  
French Ministry for Culture and the  
French National Commission for UNESCO

with the collaboration of the Getty Conservation Institute

### **THE ARTIST AND SOCIETY**

(Paris, 16-20 June 1997)

### **CONCLUSIONS**

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## INTRODUCTION

The World Congress on the Status of the Artist, organized by UNESCO in co-operation with the French Ministry for Culture and the French National Commission for UNESCO and with the collaboration of the Getty Conservation Institute, took place at UNESCO Headquarters in Paris from 16 to 20 June 1997. The Congress was attended by some 600 participants from the various geographical regions and cultures and by representatives of non-governmental organizations of artists such as the PEN Club, the International Theatre Institute, the International Federation of Actors, the International Music Council, the International Federation of Musicians, the International Dance Council, the International Association of Art, the International Confederation of Societies of Authors and Composers (CISAC) and a large number of royalties-collecting agencies for authors and performers. The Congress comprised an opening meeting and a closing meeting, three round tables and four commissions, which each held three working meetings. It produced a final declaration, which is annexed hereto. The following pages give an overview of the important issues debated.

## OPENING MEETING

At the opening meeting the Director-General of UNESCO, Mr Federico Mayor, invited some of his official guests who were representing institutions or famous artists to take the floor. The following personalities spoke during this session: Ms Nadine Gordimer, Nobel Prize-Winner for Literature, and Ms Mallika Sarabhai, a dancer, Mr Jean Favier, President of the French National Commission for UNESCO, Mr Miguel Angel Corzo, Director of the Getty Conservation Institute, Javier Pérez de Cuéllar, President of UNESCO's World Commission on Culture and Development, Mr Valentine Klotz, representative of the International Labour Office, together with the poet Adonis, the artist Dani Karavan and the musician Lord Menuhin.

Three main themes were broached by most of the speakers at this first session: the artist and society, the role of art in society and art as a major challenge for the coming century. These themes are illustrated by extracts from the addresses delivered by the three main speakers. Full texts of speeches by participants may be obtained from the UNESCO Secretariat.

### 1. The artist and society<sup>1</sup>

'I think we must not forget that the status of the artist is determined twofold: one, by the nature of the artist's engagement with society, on the one hand; and two, by the attitude of the state to the artist, on the other. The first is a matter of the artist's individual choice; the second is a condition imposed upon the artist from without. It is aleatory.

For the artist, integrity to his or her talent is the basic relation to society; your society, your country, is served best by your doing your work as best you can and thereby enriching the artistic and intellectual consciousness of that society. We must write, paint, sculpt, compose, perform; propaganda is not our medium, no matter how great a loyalty to a cause. Propaganda is not a medium to be recognized by the arts, at all. But the artist is also a citizen, a citizen at home, and of the world. He or she, I believe, has civic responsibilities, just like everyone else, towards the pursuit of justice, peace, freedom from want - and I emphasize want - in the form

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1. The following text comes from the statement made by Nadine Gordimer at the opening ceremony of the Congress.

of the intellectual deprivation that exists among millions all over the world. For the artist, this specific civic responsibility means that the artist has an obligation to give time to nurture the latent talent in others whose circumstances have denied them the opportunity to develop, and to summon energy to assert an active part in a monitoring and innovative role in the structures and policies whereby states, cultural organizations, funding organizations, and financial institutions have the authority to create the status of the artist.

This status, as determined by the state, is first and foremost defined by two factors: censorship and funding. Where there is censorship, whether on political, religious, or other grounds, at worst the artist has been in a straitjacket, as in the old Soviet Union, lives now under a religious *fatwa* like Salman Rushdie or a secular *fatwa* like Wole Soyinka, and at best writes, paints, makes films and performs under threat of works banned from publication, exhibition or performance.

Where there is no censorship, there may be artistic freedom, but no concomitant state funding for the development of that freedom.

The fact is: there are very few states where the artist *has* status; and a real status, for the arts, is the first condition for acquiring state funding. There is, one might safely say, worldwide concern for the spread of education as the spearhead of human advancement, particularly within the philosophy of democracy. What is not recognized, though plainly to be understood, is that the arts *are* education in the best sense, the most widely effective sense, since they open up the sensibilities, of everyone who has access to them, to every discipline of learning, to the exploration of human possibilities, the fullness of mind and senses, the stimulation of the imagination without which the present ruling deities of science and technology could not have come into existence.

As our century ends, organizations of the arts - those great educators - have to go with the begging bowl to the philanthropic foundations, and the conscience of big business, for funds.

For the arts to flourish in the twenty-first century, the state must recognize that the arts belong in the government budget along with the millions earmarked for Defence; for the arts are themselves Defence of a vital kind: defence of the human spirit, in all its terrors and marvels of complexity' ... (Extract from Nadine Gordimer's paper.)

## 2. Art and society<sup>2</sup>

'Maybe the condition of the artist is the result of questions such as: Who needs the artist and his art? Does he give? To whom does he give? What does he give? Does he take? From whom does he take? Is he serving society? Whom does he serve? Should he be serving? Is he free in a society of marketing and media? The bombardment of Guernica gave birth to one of the most important paintings of our century, a painting by Pablo Picasso. Have I the right to ask you whether that marvellous painting saved one life? Other important painters continued to paint pastoral landscapes, portraits and "nature mortes" from the Côte d'Azur while transports to the gas chambers were leaving from Drancy.

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2. The following text comes from the statement made by Mr Dani Karavan at the opening ceremony of the Congress.

My dream is Peace and Tolerance and I hope that those who have similar dreams will wake when a new dawn rises and that our dreams will become reality. I know it will not come by itself. I know that we will have to fight for it.

If so, what is the condition of the artist as a human being? Can he or she, should he or she, at least try to stop the destruction of the world and humanity?

This is my own personal situation as an artist today' ... (Extract from Dani Karavan's paper.)

### **3. Art: a major challenge for the coming century<sup>3</sup>**

'The 1970s were a period of great upheaval which led to major reforms in the field of culture. As countries gained their national independence they spoke up for the cultural distinctiveness of their peoples and demanded support and recognition for the artists of developing countries, to which our Organization has tried to provide.

The Recommendation of 1980 suggested that the work and lives of authors and performers should be protected by stressing the public usefulness of artists and the importance of recognizing their rights and providing the social protection that they need. It stressed in particular the need to find a true national audience for creators from young nations as a means of promoting their country's identity and cultural development.

As we approach the year 2000 we must assess the new relationship between the artist and society and the challenges to creativity and the communication of cultural values posed by the technological revolution.

Although art has in fact always both celebrated and challenged the community, it seeks to utilize the changes in contemporary society to nourish reflection on the material and legal conditions of artistic creation.

Artists have sometimes been outcasts - they were banished by Plato - and sometimes excommunicated, which had serious implications for the status of actors in France up to the time of Molière. Sometimes they have simply been lone individuals asserting the autonomy of the creative act in opposition to the standards set by society, as did Baudelaire. Today they are independent and respected members of the community. The place of culture and art has steadily grown and taken on more importance in our societies, and appreciation of art is becoming increasingly widespread, as witness the huge numbers of people visiting museums, going to shows or films, and reading books. Even in countries where inequalities persist, the right to culture has now become a popular aspiration and demand.

The World Decade for Cultural Development, during which UNESCO has striven vigorously and successfully for recognition of the cultural component of human activity, is coming to an end this year, and we now see a new question arising: how to foster artistic experience so as to create the rich culture so vital to the fulfilment of both individuals and society. Art is attracting an ever-growing number of amateurs, connoisseurs and professionals and is becoming a more and more integral component of ethical and political life. It can also serve the cause of peace and mutual understanding and can throw light on spiritual responses

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3. The following text comes from the statement made by the Director-General of UNESCO at the opening ceremony of the Congress.

to the crises sparked off by economic and political upheavals in today's world' ... (Extract from the address by Mr Federico Mayor.)

## THE ROUND TABLES

Three themes of general interest - funding of the arts, art education and the new technologies for artistic creation - were debated during round tables bringing together experts and artists interested in these questions, of particular relevance as the twentieth century draws to an end.

### 4. Round table on funding of the arts<sup>4</sup>

With Ms Lourdes Arizpe, Assistant Director-General of UNESCO, in the chair, the following personalities took part in this round table: Mr Miguel Angel Corzo (Getty Conservation Institute), Mr José Luís Martínez (Mexican National Fund for Culture and the Arts), Mr Francis Lacloche (French Caisse des Dépôts et des Consignations), Mr Roberto Memmo (Memmo Foundation), Mr Jasper Parrot (Harrison-Parrot International Artists' Management), Mr Bill McAllister (Soros Foundation) and Mr François Hers (Fondation de France).

The general points made in the statements and exchanges with the audience may be summed up as follows.

(a) *Private sponsorship.* It appeared that the primary purpose of private sponsorship was to help artists in their work. The main objective of the foundations represented at the round table was to back creative initiatives.

In this connection people were gradually becoming aware of the role art could play in encouraging responsible citizenship. This factor was reflected above all in the desire of artists to team up to organize joint artistic ventures, to establish centres in which they could present their works to the public and to seek audiences for their work. Private funding institutions were very interested in such initiatives which, as Lord Menuhin observed, were fundamental to the humanist approach.

However, it was considered necessary for artists to participate in the selection of initiatives that might be funded by private companies and foundations in order to ensure that the most interesting projects benefited from such schemes.

Despite the growing importance of private funding for the arts, tax relief measures and other compensatory advantages that encouraged philanthropic support for the arts and artists were not, in most countries, clearly defined.

(b) *Public funding.* In conclusion, the irreplaceable role of public funding in promoting artistic creativity was reaffirmed. In a democratic system, creative freedom depended on the arts being funded from the national budget.

### 5. Round table on art education

The following personalities took part: Ms Nadine Gordimer (writer), Ms Mallika Sarabhai (dancer), Ms Ana-Lucia Frega (International Society for Musical Education),

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4. This round table was organized with the support of the Getty Conservation Institute.

Ms Rachel Mason (International Society for Education through Art), Ms Josephine Pullein Thompson (writer), Mr Salah Abada (UNESCO), Mr Ion Caramitru (theatre director and Romanian Minister for Culture), Mr Bernard Zadi-Zaourou (academic and Côte d'Ivoire Minister for Culture), Agam (painter and sculptor), Mr Jean-Pierre Guingané (actor and director) and Mr Jorge Orta (plastic artist). Lord Menuhin also spoke, exceptionally, during the debate.

The main ideas expressed were as follows:

Art education should be central to the education system, with the same status as scientific subjects and languages. Art was fundamental to the harmonious development of a human being.

In a large number of traditional societies, in Africa or in Asia for example, an artistic apprenticeship began in early childhood: artistic experience (singing, dance, mime or one of the plastic arts) became part of the child's everyday life. This experience was passed on by the mother and other members of the family, with the result that the child's artistic apprenticeship was closely bound up with their discovery of the world around them. The children discerned forms, smelt smells and heard sounds at the same time: in other words, they discovered the world of symbols through these three senses, developed from birth.

This was why art education in schools should strive less to encourage apprenticeship in the arts than to develop the innate aptitudes of children and adolescents for creation and the transformation of sounds, words and forms; it should be concerned less with teaching techniques than with developing the child's creative and speculative instincts.

## **6. Round table on new technologies applied to artistic creation**

This round table was attended by the following artists and experts: Ms Milagros del Corral (UNESCO), Mr Jim Bower (Getty Conservation Institute), Mr Jeffrey Shaw (multimedia artist), Mr Jon Ippolito (Guggenheim Museum), Mr Nils Aziosmanoff (Art 3000), Mr Benjamin Weil ('ädaweb' site), Mr Frank Popper (art historian), Mr Brice Pauset (composer), Mr Eric de Visscher (IRCAM) and Mr Claude Poliart (European Commission).

The following points were reaffirmed:

The use of new technologies in artistic creation had changed the relationship between the artist and society. Despite the technological advances of our century, as Jeffrey Shaw demonstrated, this new relationship was similar to that current in the middle ages, in which an artist had to collaborate with other people: in other words, he worked in a workshop. As a result, he remained to a certain extent anonymous, as could happen in the case of artists working together on a major multimedia project. Lastly, the work of a team was more likely to attract private sponsors.

Although creations relying on new technologies were relatively recent, their capacity to move was exemplary despite the apparent 'coldness' of the technique. In fact, such works demonstrated that behind each machine the whole of humanity was waiting for the chance to express its feelings.

## **THE COMMISSIONS**

The Congress continued its work in four interdisciplinary commissions. Under each theme, artists and their associations put forward their points of view. The main points of the discussions are summed up in the following paragraphs.

### **7. Relations of art and the artist with society and the state<sup>5</sup>**

(a) It was emphasized that one of the major changes over the last 15 years was the disengagement of the state vis-à-vis the artistic professions in the former Socialist countries. This disengagement, a highly positive development in that it meant a return to freedom, had not been without negative consequences. Hence emphasis was laid on the capacity of the state to invest in culture and mobilize society. As regards the means of action open to artists to defend their rights, a number of speakers stressed that UNESCO's Recommendation had enabled them better to take their place as artists.

(b) It was important to be particularly attentive to political, social and economic processes that might marginalize art and artists and destroy national cultures under the impact of more powerful foreign cultures and, in so doing, encroach on the artist's freedom to create, which was a human right.

### **8. Cultural policies**

Many speakers stressed the need for the systematic development of national or international cultural policies in support of artistic creation and artists. It was generally agreed that artists themselves and their organizations should be given the leading role in framing such policies. One widely shared concern was the present tendency to favour private sponsorship in place of municipal, regional or national responsibilities towards the arts. The importance of private sponsorship was generally recognized but it should back up the cultural action initiated by cultural policy. Sponsorship could not take the place of cultural policy since, by its very nature, it was guided by criteria quite different from those of cultural policy in the full sense.

### **9. Role of professional organizations**

The framing of cultural policies for art and artists should therefore be left to artists themselves and their associations. At the same time, only such associations were capable of defending the interests of artists against their employers - if they had employers - or other contracting parties. It was also their job to safeguard values, both those inherited from the past and those arising from the creative process itself. Such continuity would make it possible to rise above the fragmentation of contemporary society. UNESCO was asked to encourage by all possible means the establishment and expansion of professional organizations for artists of that type and to urge governments to foster their development wherever they did not yet exist. It would then be up to such organizations to mobilize artists to defend their interests and promote artistic values.

### **10. Participation in artistic activities**

Attention was drawn to UNESCO's role in attracting a wider range of people to artistic activities and in particular to the need to encourage women to be active in the various

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5. Paragraphs 7 to 13 were based on the report by Mr Alexandre Blokh, Rapporteur of Commission A.



branches of art. Although genuine progress had been achieved over the last decade, equality was still a distant prospect.

## **11. Relations with the public**

Stress was laid on the importance of training the public and encouraging it to support contemporary artistic creation. The media - in particular television services, especially those controlled in one way or another by governments - should reserve a considerable proportion of their broadcasting time for coverage of art and culture, which should be regarded as an integral part of the social fabric and hence an aspect of the government's responsibilities towards society.

## **12. Art and the new technologies**

(a) The artistic profession is on the whole fully aware of the new means of communication and dissemination opened up for it by the new technologies. A number of artists and artistic disciplines also see in these new technologies opportunities for new approaches to creativity. In this regard, it should be remembered that these tools are expensive and require extremely complex installation facilities.

(b) During the discussions, however, emphasis was laid on the vital need to safeguard the traditional means of artistic creation, such as oral traditions, as well as the artists who practise them and who need, especially where artistic property is concerned, to be defended against invasive new technologies. Participants stressed the need to enable traditional works, including elements of the cultural heritage which were essential to contemporary development, to be disseminated and communicated by means of the new technologies.

(c) The use of computers and the new means of virtual or participative creation raised the problem of the identity of works. Protection was needed in this field and involved broadening the very concept, modes of perception and identification of artistic property. It was also important to maintain and safeguard at the centre of these new modes of identification and perception (electronic legal experts) the notion of an actual human being, and to provide the necessary protection.

## **13. Training and information of artists in the new technologies**

(a) UNESCO was invited to encourage and take part in international conferences to inform artists of the new technologies, of the means available to them and of the means of defence they should set up to safeguard their rights in this field. Such training could be backed up by facilities to give artists and particularly young artists easier access to sophisticated and costly equipment not normally within their reach. In our information society, the corollary of freedom of creation is the right to communication. In order to preserve the plurality of approaches and cultures on the world market, it was recommended that Member States should aid professional training aimed at helping artists to master the new communication tools in order to guarantee equitable access to such instruments and the dissemination of works, with due regard to artists' rights.

(b) It was proposed that a parliament of artists should be set up under the auspices of UNESCO and remain permanently in session as a virtual forum, i.e. through the Internet, to look into all these questions (private or corporate status, collective or composite works, etc.).

(c) The debate set in motion within this framework should then move on to other essential questions: do the new technologies offer opportunities to the existing culture or, on the contrary, do they represent a cultural revolution whose consequences for art, for artists and for the new public thus attracted to their works, it was UNESCO's particular responsibility to assess?

#### **14. Employees, social security and taxation<sup>6</sup>**

(a) The right to social security is perhaps the most basic, but rarely achieved notion of the artist's right to live from his or her profession. At a time when artists in all disciplines are experiencing increasing difficulties in obtaining funding for their work, when secondary employment and short-term contracts are rapidly becoming standard practice, when artists routinely have to subsidize their own work, when employment is almost invariably insecure and for the vast and badly paid majority, the right to earn a decent living and to be socially protected needs reiterating and reconfirming by governments.

(b) The problems of self-employed status and permanent contracts, were discussed at length. Self-employed artists must be able to enjoy the same rights and freedoms as employed people - including the right to bargain collectively and to benefit from social security systems. This was far from being the case in far too many countries. An erosion was noted, where they existed, of permanent contracts, but participants, including some from countries in Eastern Europe and the CIS, as well as orchestral musicians and others, were at pains to point out that they were fighting this decline, and artists did not accept collectively that self-employed status for them was, or necessarily should be, the norm. Nevertheless, so-called flexible, or atypical working conditions were a growing reality for all categories of workers and society at large must adapt itself to them.

(c) Specialized research and high-level discussion on artists' taxation and social security, as well as on health and safety, was required. The Commission stressed the need for action at international level by UNESCO and the ILO, and critically the participation of ministers not just of culture, but also of finance, social security, labour and education within governments and internationally. Too many of the artists' problems result from the fact that their work falls between a wide range of ministries; governments must be made to take account of the needs of artistic professions and to take what was called an inter-ministerial approach to the economics of culture.

(d) There was great potential for harmonization of systems - at the level of the 1980 Recommendation. This important work was essential because of the fact that artists and their work were increasingly mobile. Just as their employers had become more and more international in nature, so should artists be able to organize within huge multinational media conglomerates and so should systems of tax deductions, professional criteria, VAT, and health and safety and social security facilitate rather than penalize the artist as was frequently the case at present. Specific professional groups - dancers, visual artists, actors and others, had specific needs which governments should not ignore.

(e) Concrete, international action and standard setting was entirely achievable in these areas. The Latin American participants in the Congress met to discuss the possibilities of creating a regional committee for the social protection of performers.

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6. Paragraph 14 of this report is based on the report submitted by Ms Katherine Sand, Rapporteur of Commission B.

(f) Finally, the committee called upon UNESCO to set up monitoring and legal mechanisms, in which NGOs would take part, to chase up governments and provide positive assistance and even model legal provisions to assist them in the adoption of measures. A good start would be for governments to sit down and actually re-read the Recommendation.

## **15. Art education<sup>7</sup>**

(a) There was general agreement that in all societies art education from an early age was necessary to create the appropriate precondition for the development of professional artists. Artists from Latin America and Africa pointed out that, in spite of the long tradition of artistic expression in their societies, professional training for artists was needed also here, because no one was born an artist.

(b) Subsidizing the arts and art education was a major governmental duty and could not be left to private sponsorship. Governments bore the primary responsibility for financing the continuous professional development of artists along with major contributions from employers, artists' unions and associations, and institutes of advanced learning.

## **16. Training of artists**

(a) Mobility and exchanges of students and teachers were extremely important for the personal development of artistic abilities. Therefore they should be encouraged and funded appropriately. Some participants recommended that UNESCO create a worldwide exchange programme, similar to the European ERASMUS Programme. Other participants proposed that retired art teachers, upon request by other countries, could be used as additional teachers. Some participants disagreed with this because of its 'paternalistic' dimensions.

(b) The employment qualifications for art teachers should not be strictly linked to formal criteria. Artistic knowledge and pedagogical commitment should be more important in artistic disciplines.

## **17. New technologies and artistic creation**

(a) Most participants agreed that new technologies should be made available as extensively as possible in art training. However, new technologies could never replace human creativity and live performances. One participant demonstrated the big difference between a natural performance and one performed with technical assistance.

(b) Multimedia applications, although they encouraged the creativity of their users, were also limited because of the reduced number of choices available in the programmes. Nevertheless, long-distance education would be made possible through these new technologies.

(c) Some participants pointed out that one should differentiate between new technologies as a means for art education and new technologies as a final goal in themselves. General agreement was reached on the fact that the human being should always be the measure of everything.

(d) Although live performances could not be replaced by technical equipment, co-operation between artists and developers of new technology should be strengthened. In this

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7. Paragraphs 15 to 19 were based on the report by Mr Franz Patay, Rapporteur of Commission C.

connection, it was said that digital technology had already passed the experimental stage as an art form, but its use for educational purposes had not yet been institutionalized; it was recommended that artists watch the further development of new technologies.

### **18. Professional training and professional life**

(a) General agreement was expressed that the training of artists should include preparation for professional life (project management skills, basic copyright issues, etc.). Artists must be aware of the fact that, in the future, they would be forced to take more responsibility for their own careers.

(b) Artists were partners of employers and employees in every country. UNESCO should therefore encourage co-operation and communication between ministries for culture and ministries for labour and/or social welfare.

### **19. Dancers and their professional lives**

(a) Special groups of artists with short careers, especially dancers, should be provided possibilities for transition into other professions so as to enable them to continue a fruitful professional life. Due to the fugitive nature of dance, the preservation of choreographies on video and their use for educational purposes was fundamental.

(b) One participant stressed the need for an international guide or source which surveyed the jobs and market requirements in the different fields of art, including statistics. Another participant added that, where training facilities for dancers existed, the job market should be adapted accordingly.

(c) Many participants felt that real art was not always marketable and that therefore criteria for quality should not be related to quantity.

### **20. Protection of intellectual property rights:<sup>8</sup> basic principles**

#### *Rights of authors*

(a) Many speakers pointed out that the basic rights of authors, independently of the new problems arising from the new technologies, were not always respected. In this connection, reference was made to Article 27, paragraph 2, of the Universal Declaration of Human Rights, which states: 'Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author'.

(b) It was stated that the basic principles of protection contained in international conventions and national legislation should be fully respected and put into practice in every country of the world, so that the rights of authors might be effectively guaranteed and protected.

(c) One of those principles was exclusive rights. A number of participants observed that authors' rights were exclusive rights and that each use of a work should require authorization by the author or authors and a corresponding remuneration. Several participants also stated that any person involved in the process of disseminating a work for commercial profit should be required to respect intellectual property rights and therefore to answer for

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8. Paragraphs 20 and 21 were based on the report by Mr Yves Goubiac, Rapporteur of Commission D.

their acts; that is to say (i) they must obtain the authorization from the author(s), (ii) they must remunerate the author(s), and (iii) they were punishable for non-respect of authors' rights.

(d) Participants were reminded that the principle of remuneration for each exploitation of an exclusive right related to a strict interpretation of the principle of remuneration of transfers. Several speakers said that this principle should apply chronologically, i.e. that the new forms of exploitation of works based on a new technical invention could not be regarded as covered by the authorization granted by the author at a time when that invention did not yet exist. When an author concluded a contract with a producer or publisher, that transfer of rights could not be deemed to cover means that were unforeseen at the time the contract was concluded. Moreover, several participants stated that the presumption of transfer of rights should be forbidden or, in cases when such presumption was unavoidable, that any exploitation of the work in such circumstances should at least give rise to remuneration for the author(s).

(e) Many observations were also made by participants on the moral rights of authors. These rights were even seen in a spiritual perspective - spiritual as opposed to material interests - or moral rights as against economic rights. Participants referred to moral rights not just as a legal standard to be respected in the same way as the right of reproduction or the right of representation, where economic rights were concerned; moral rights were regarded as the mark of the personality of the creative author.

(f) Lastly, in regard to the principle of the applicable law, several participants opposed applying the law of the place where the contract was concluded, which is what happens in principle in many cases, stating that preference must be given to the application of the law of the place in which the damage occurred, that is to say, where the work was exploited.

#### *Rights of performing artists*

A major issue raised by the Commission was recognition of the intellectual property rights of performing artists, particularly in the audiovisual field. All too many states, including a number of major producer states, have not yet enacted laws providing protection for the rights of performing artists.

The Commission was of the view that under the present circumstances, reforms were required:

at the international level, through the adoption of a treaty guaranteeing the rights of performing artists in the audiovisual field, and a revision of the Rome Convention;

at the national level, through the enactment of national laws providing effective protection to performing artists, including implementation measures and sanctions.

The members of the Commission stressed the importance of 'exclusive' rights (the right to authorize or prevent the use of a work by contract) in the new digital context, in order to ensure that performing artists may exercise proper control over the destination of recordings.

The transfer of rights must be freely negotiable, and this completely rules out all legal mechanisms whereby transfer is assumed.

The work of the Commission further highlighted the importance of guaranteeing that performing artists are able to engage in collective negotiations through their trade union organizations. It is only through collective negotiations that the exercise of rights can be properly ensured.

Remuneration must be proportional to the income generated by use, above and beyond the fee for the physical performance of the artist, except in those cases in which it is in the interest of the holders of rights to receive a lump-sum payment calculated from a fixed scale according to the type of use.

In respect of a contract which may be subject to more than one national legislation, the legislation to be applied must, allowing for exceptions, be that of the country in which protection is sought, or, if not, that which provides the highest level of protection.

The members of the Commission unanimously considered collective management to be indispensable for the implementation of rights, particularly in the new digital context.

The members of the Commission stressed the need to exempt collection agencies and trade unions from anti-trust laws and from all regulations governing commercial competition, given that collective management could not be deemed to be a 'market' in which there was a need to protect freedom of competition.

The Commission raised the issue of 'national treatment' (the extension to foreign nationals of the protection provided under national laws), in view of the need to protect the diversity of cultures and national or regional identities by restricting such treatment.

## **21. Means of establishing effective protection**

(a) Participants all agreed that collective management was the best way of guaranteeing the rights of authors and performers concerning both payments in return for an exclusive right and payments in connection with their simple right to remuneration. Collective management was regarded as an absolute necessity. It was also stated that collective management might, in some cases, have to be extended to non-members.

(b) The methods of collective management gave rise to a number of comments which brought out the need to improve methods of distribution. Several participants said that authors and artists, even though they could see that their works or performances were being exploited, often received no remuneration and that, in an age of new techniques, it was still common for collecting agencies to resort to the sampling method. The system of payment by bank card, which handled payments between banks automatically (thus enabling a user to withdraw money from any bank) and the payment system set up for pay-TV were cited as examples. Several participants regretted that methods of distribution did not make use of the most up-to-date techniques. Others, however, pointed out that the introduction of technical equipment of that kind would require very substantial investment. They added that efforts were currently being made: the coding of works and performances, for example, was almost ready for use.

(c) The status of collecting agencies was also mentioned, in particular in the light of the obstacles they encountered under competition law. Participants observed that the rules of competition law, which had been devised for business concerns operating in a competitive market, could not be applied to collective management. If they were to be applied, they would have to be adapted to the specific nature of collective management. The same observation was

made in regard to collective negotiations with trade unions, which should not be subjected to the rules of ordinary competition.

(d) Several participants hoped that states would help authors and artists to join forces for the purpose of organizing the management of their rights collectively. Authors and artists should be free to set up such collective management, though states should supervise the distribution of the sums paid into such agencies. The participants also hoped that UNESCO would encourage authors and artists to group together in or join such agencies.

(e) Lastly, in regard to contracts which authors and artists, as members of collecting agencies, concluded with producers, it was recalled that collecting agencies should ignore such contracts so as not to diminish their strength and bargaining power in regard to users and producers who, of course, would like to deal directly with right-holders as being weaker than collecting agencies.

(f) As a result of technical developments, especially broadcasting via digital networks, works and performances could circulate easily and be used without the authorization of the right-holder. Moreover, they were extremely simple to modify or transform, naturally without the authorization of the right-holder. Much was said about methods of identification in this connection.

(g) Lastly, the role of UNESCO was often emphasized as a means of increasing and improving the protection of authors and performers, for example by encouraging the adoption of new standards, helping to make them efficient and effective and, as already stated, helping authors and artists to organize themselves more effectively, in particular by joining forces.

## **CLOSING MEETING**

The closing meeting, chaired by Ms Lourdes Arizpe, Assistant Director-General for Culture at UNESCO, approved the Final Declaration of the Congress (see text below). After reiterating UNESCO's thanks to all its partners who had made the Congress possible, Ms Arizpe gave the floor to representatives of the non-governmental organizations attending the Congress: Alexandre Blokh for the PEN Club, Una Walker for the AIAP, John Morton for the IFM, François Parrot for the IFA, Jean-Pierre Guingané for the ITI and Milorad Miskowich for the IDC.

The speech by Jean-Pierre Guingané, actor, theatre director and president of a cultural centre in Burkina Faso, accurately summarized the general feeling of participants in the Congress. Here is an extract:

'At a time when our television screens and radios are showing us nothing but images of a shattered world, at a time when we might well wonder in what state our civilization will enter the twenty-first century, the eminent artists and men of culture who have come from all over the world to attend this meeting have borne witness to their faith in UNESCO. And I can say, after all we have heard, that they have not been disappointed. Certainly, the Congress concentrated on the preoccupations of the year 2000, with lively debates on the new technologies, but its main concern was the renewed interest in the human dimension. Much was said about artists, about their living and working conditions, and about the conditions governing the production and protection of their works, etc. This Congress has rehabilitated the concrete issue of the creative artist and his or her creation. It has also affirmed the importance of art education. All these aspects

of the discussions are of concern to us ... because we are trying in our own areas to promote art by taking account of local situations ... throughout the world. We were afraid that this Congress, like certain others, might fall into the trap of Euro-centredness. We are delighted to say that it has managed to avoid that trap ... ' (Extract from the address by Mr Jean-Pierre Guingané).



## ANNEX

### FINAL DECLARATION OF THE WORLD CONGRESS ON THE STATUS OF THE ARTIST

This Declaration contains the main demands  
formulated at the Congress by artists and their respective organizations

1. We, artists, authors and performers, from all regions, brought together from 16 to 20 June 1997 by UNESCO, with the help of its partners, at the World Congress on the Implementation of the Recommendation concerning the Status of the Artist, reaffirm on the eve of the third millennium, that artistic creativity constitutes the cultural heritage of the future.
2. We emphatically recall that the creative faculty is a special capacity whose strength and originality emanate from within the artist, and that it is therefore important to encourage the discovery and fulfilment of each person's talent as the expression of a fundamental freedom.
3. We also recognize, within the context of the changes that occur as contemporary societies evolve, that artistic creativity constitutes a decisive factor for the preservation of the identity of peoples and the promotion of a universal dialogue.
4. We are thus fully aware of the essential contribution that can be made by the arts and artists to improving the quality of life, to the development of society, and to the progress of tolerance, justice and peace in the world.
5. We therefore proclaim that the encouragement of creativity, the protection of artistic works and the promotion of artistic activities shall be founded on the observance of human rights and on the pursuit of the individual and collective self-fulfilment of the inhabitants of the planet.
6. With regard to existing cultural policies, we welcome the adoption by certain states, which have thus set a good example, of constitutional, legislative and regulatory measures inspired by the UNESCO Recommendation concerning the Status of the Artist (1980), the growing devolution of responsibilities to the local authority level, in many countries, and international, regional and subregional collaboration, which should, however, be further enhanced.
7. We are convinced that artists should be involved in the design and implementation of national cultural policies, in order both to monitor changes in their own status and to play a more effective role as advisers to their governments and local authorities.
8. To this end, it is particularly important that the development of independent professional organizations be encouraged, and that mechanisms for consultation and co-ordination be established where these do not already exist.
9. We voice our concern over the reduction in the level of public funding for artistic creation and call the attention of public authorities to the risk that such a reduction may entail.
10. We are aware that the trend towards uniformity in patterns of thought and cultural productions, which are often based on maximum and immediate profitability, constitutes a threat to creative diversity. While we appreciate the growing interest of the private sector in

the encouragement of artistic creation, particularly when such contributions help to avert the loss of creative talent owing to a lack of means, we wish to reaffirm the importance of maintaining public funding of the arts.

11. We also consider it indispensable that the role of creators within the society as a whole be recognized. This will involve using all possible means, and in particular education and information, to sharpen public interest in the arts and artistic creativity.

12. Artistic education shall be introduced and developed at all levels of formal and non-formal education. The contribution of artists is an indispensable element in a strategy which must be defined jointly.

13. Information through the media constitutes one of the principal means of democratizing access to art and awakening interest in artistic activities.

14. The new technologies help to promote artistic exchanges. These technologies constitute a vast field of investigation for artists in terms of their creative and training potential. At the same time, they raise questions regarding the future of certain forms of artistic expression and the observance of established rules. There is consequently a need for legal measures to ensure that artists are better protected and that works of art are preserved in their entirety.

15. Because today's society is already an information society, it is the business of artists, looking towards the future, to chart the path of a new alliance linking ethics, technology and aesthetics. The future of societies depends in large measure on listening to artists and respecting their status.

16. The 1980 Recommendation is more relevant than ever. Enriched by new international instruments, it is an indispensable source of inspiration for the state and for society.

17. The World Congress has accordingly decided to adopt the following proposals for the enhanced implementation of the UNESCO Recommendation concerning the Status of the Artist.

### **Funding of the arts**

18. In every country, every year, at least 1 per cent of total public funds should be allocated to artistic activities of creation, expression and dissemination. New means of private funding, from major foundations to small companies, must be encouraged as supplementary sources of funds, particularly with a view to supporting the creation, the expression and the dissemination of contemporary works.

19. Public and private funding sources are invited to respond favourably to requests made by artists in developing countries or countries in transition. UNESCO's intervention is particularly necessary in order to identify and publicize existing opportunities for private funding of the arts worldwide.

20. The best way to ensure the safeguarding of creative freedom is to involve artists in the selection of works that are to receive financial support. Several mechanisms have already proved their effectiveness in this respect; these include the establishment of interdisciplinary artistic committees and the development of consultative networks.

21. The creation of artists' groups, particularly in the case of innovative projects, is a positive factor in the mustering of resources. The creation of small cultural industries, managed by artists themselves, is a mode of production and dissemination which deserves to be encouraged.

### **Support for artistic creation**

22. UNESCO's action should promote the exchange of experiences with regard to cultural policies in order to highlight which policies have been successful, taking into account the great variety of contexts.

23. Artists in all countries shall be encouraged and helped to form associations. Their organizations shall receive the support they need to create their own structures and make their action effective.

24. It is the task of UNESCO to promote the gathering and dissemination of all data which may be of use to artists in ensuring that they are free to exercise their profession, by sensitizing states and seeking the collaboration of non-governmental organizations.

25. With regard to access to and the pursuit of artistic careers, no form of gender-based, racial or religious discrimination shall be tolerated. Women and men shall be considered equal, both de jure and de facto.

26. Public authorities at all levels are invited to make available to artists premises suitable for the pursuit of their activities, particularly in the context of the rehabilitation of certain urban areas.

### **Artistic education and training**

27. In view of the key role of the arts and artistic creation and experience in the intellectual, physical, emotional and sensory development of children and young people, the introduction to and teaching of various artistic disciplines shall be placed on an equal footing with other subjects in the education systems.

28. There are basically two complementary ways of integrating artistic education into the educational process: on the one hand, by teaching the disciplines for themselves, and, on the other, by using the various means of artistic expression in the teaching of other subjects.

29. Artistic education shall be multicultural, take into account culture in all its diversity, and shall resist any attempt to establish a hierarchy of the various forms of artistic expression belonging to different cultures.

30. Artistic education should be accessible throughout life. In view of the new needs emerging, regular development and reform of artistic education are, and will continue to be, required.

31. The mutual recognition by states of courses and diplomas in the arts should be promoted.

32. It is the responsibility of governments to finance on a permanent basis the training of artists, to promote its development and to support the reconversion of certain categories of artist, such as professional dancers. UNESCO is requested to establish an international

network for the dissemination, discussion and updating of data on 'successful experiments' in the education and training of professional artists.

### **The arts and the new technologies**

33. The new technologies cannot be a substitute for direct contact between artists and their public or for traditional branches of the arts.

34. The success of electronic information and communication networks depends to a large extent on the quality of the contents that they will be able to transmit. For this reason:

- (a) the information technology sector should be encouraged to facilitate the provision of the necessary equipment to art teaching institutions, particularly in the developing countries;
- (b) artists should be encouraged to become better acquainted with the new technological tools with a view to increasing their creative opportunities. Co-operation between artists and experts in the new technologies should be strengthened to that end;
- (c) it is recommended that the new technologies be used for the safeguarding of the cultural heritage and oral traditions.

35. So as to preserve artistic and cultural diversity, states are requested to support professional organizations of artists in their efforts to master new communication tools, with a view to guaranteeing all artists free access to the distribution of their works while safeguarding their rights.

36. A universal parliament of artists, which might take the form of a virtual forum, could provide an excellent means of exchanging ideas at the world level. Special efforts would be necessary to enlist the participation of artists from all regions. This new facility would be placed under UNESCO's auspices.

### **The rights of authors and the rights of performing artists**

37. The states are called upon to reinforce, clarify and render effective the protection of the legitimate rights of authors and performing artists by enabling them to control the different types of exploitation of their works and performances, particularly in the audiovisual field, and to receive fair remuneration for their creative effort.

38. It is particularly important that:

- (a) exceptions to rights in the digital field should be confined to uses which do not unduly harm the legitimate interests of authors and artists;
- (b) the transfer of the rights of authors and performing artists should be placed within a legal framework setting the conditions for such transfer and creating a temporal connection between authors and artists and the income derived from different types of exploitation of their works and performances;
- (c) users, including distributors, should be legally bound to provide authors and performing artists, or their representatives, with the information identifying works

and performances, such information being necessary to determine the remuneration due and its equitable distribution to right-holders;

- (d) authors and performing artists should be supported, with industry participation, in their attempts to achieve compulsory national and international standardization of the techniques and procedures of identification that will enable them to be continuously informed of the exploitation of their works and performances in the digital environment;
- (e) in the general interest, the collective administration of the rights of authors and performing artists and collective negotiation should be encouraged by regulation, without being subject to the law of competition or any other binding legislation.

39. UNESCO is invited:

- (a) to sensitize states to the issue of recognition of, and respect for, the moral rights of authors and performing artists;
- (b) to suggest that they study ways and means of enabling them to control digital manipulation;
- (c) more generally, to encourage the protection of the rights of artists throughout the world within the framework of the 1980 Recommendation.

40. UNESCO, ILO and WIPO are invited to propose the revision of the 1961 Rome Convention and to continue to promote its ratification.

41. International trade should not undermine cultural diversity. It is also necessary to support the endeavours of developing countries to protect and promote traditional and popular culture through intellectual property.

### **The working conditions, taxation and health of artists**

42. Artists have the right to proper remuneration for their professional activities. That must be reaffirmed, particularly where new multimedia productions are concerned.

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

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

45. More effective co-ordination at the national level between the relevant governmental bodies is indispensable in order to ensure that artists enjoy appropriate living conditions, taking into account the shortness of their professional careers, particularly in the performing arts.

46. Discussion should take place between the relevant governmental and intergovernmental bodies, at national level, with a view to promoting equitable conditions in respect of taxation, social security and working conditions for the artists of all countries, taking into account increased international mobility in artists' employment. UNESCO is invited to draw up an inventory of tax-deductible expenses for artists in the various countries. It would be desirable to envisage a joint meeting of artists and representatives of the various governmental bodies concerned for the purpose of re-examining the tax and social security systems and proposing harmonized measures which are suited to the distinctive characteristics of the artistic professions.

47. UNESCO, ILO, WHO and states are invited to undertake, at the global level, studies on the health and safety conditions under which the various professional artists carry out their activities. These studies should be used as a basis for the adoption of specific international instruments.

### **Promotion of the 1980 Recommendation**

48. Noting that the Recommendation of 1980 remains the principal text relating to the status of the artist, and regretting that it has been implemented by only a limited number of states, the Congress invites UNESCO to strengthen its dissemination by all possible means, and to urge all states to re-read it. It is strongly recommended that a periodic review mechanism be established with the help of international NGOs representing artists; such a mechanism would have the task of monitoring the progress achieved in the various states, of reporting to the governing bodies of the Organization, and of proposing new initiatives aimed at the implementation of the Recommendation.

49. UNESCO is invited to draw up, with the help of international NGOs representing artists, model provisions which may be adapted to the different legal and economic systems and to the various cultural contexts and which may guide national legislators in the implementation of this Recommendation.

50. The conclusions adopted by the Congress shall be brought to the attention of the governing bodies of UNESCO.