



**International  
Federation  
of Journalists**

**JIM BOUMELHA**  
President

**Beth Costa**  
General Secretary

Farida Shaheed  
Special Rapporteur in the field of cultural rights of the UNCHR  
Office of the United Nations High Commissioner for Human Rights (OHCHR)  
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Jim Boumelha  
IFJ President

Beth Costa  
IFJ General secretary

Brussels, 12<sup>th</sup> September 2014

**Public consultation by the Special Rapporteur in the field of cultural rights of the UNCHR: “The impact of intellectual property regimes on the right to science and culture”**

Dear Ms Rapporteur

On behalf of the International Federation of Journalists which represents 158 unions and associations of journalists around the world we would like to submit the attached statement in response to the public consultation on “The impact of intellectual property regimes on the right to science and culture”.

While we truly value and protect freedom of information including the right to receive and impart information, we are also strong advocate of authors’ rights protection for all creators, including journalists and photographers.

This consultation raises important issues for our member which we hope you will take in due consideration in your final report.

We remain at your disposal, you should need any additional information.

Yours sincerely,

A handwritten signature in black ink that reads 'Beth Costa'.

Beth Costa

A handwritten signature in black ink that reads 'Jim Boumelha'.

Jim Boumelha

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**IFJ submission to the Public consultation by the Special Rapporteur in the field of cultural rights of the UNCHR on “The impact of intellectual property regimes on the right to science and culture”**

The International Federation of Journalists represents 158 unions and associations of journalists around the world. We defend social justice, trade unions, press freedom and solid authors' rights protection for journalists and press photographers.

We believe that the right of people to enjoy and access cultural heritage without discrimination is a core element of any democratic society and forms an integral part of international human rights laws. Cross border cultural exchanges are essential to enhance a better understanding among the peoples and inspire creation across the globe.

As authors of literary and artistic works, both in print and audio-visual, journalists also need to access cultural heritage. We believe that a fair balance should be put in place that reconciles the protection of authors' rights and the *“right of people to enjoy and access cultural heritage”*.

As authors, journalists enjoy economic and moral rights on their creation, as enshrined in Article 27 of the Universal Declaration of Human Rights.

The importance of providing fair compensation to authors for the use of their work is key to secure journalists' income, and thus their incentive to create and be able to function as dedicated, independent professionals. In particular, exceptions to authors' rights protection must ensure that fair compensation is paid to the authors. The public's perception of the legitimacy of an exception including compensation will occur when they are confident that a share of this compensation is distributed to the author.

Problem can occur when journalists do not receive any remuneration for the use of their work for specific uses such as research purposes. This can be the case when they are forced to sign away their exclusive rights to their employers. We believe that journalistic works must be accessible for research as long as the source including the authors' name is mentioned and the non-commercial purposes of the activity are respected. If journalists have not assigned their exclusive rights to their employers, collecting societies are responsible for licensing these uses on their behalf.

General practices show that despite journalists' willingness to make their work accessible to the widest audience they struggle to get proper recognition and protection of their authors' rights.

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Journalistic works generate authors' rights protection by their very existence and are not subject to any formality as required by article 5.2 of the Berne Convention.

They usually license to publishers and broadcasters their exclusive rights in their works for specific purposes, for a limited time period. This can be done either in a contract for an individual piece of work, in an individual employment contract or in a collective agreement. Licences usually mention the place where the work will be exploited, be it in the analogue or digital environment.

When their rights have not been assigned, or have reverted to journalists following a specific time period, journalists can also decide to grant collecting societies exclusive rights or allow them to manage secondary uses of their works on multiple territories – or issue further individual licences for re-use of the work. All these possibilities represent important sources of income, enabling journalists to continue to work as independent professionals.

Collective agreements remain the best solution to ensure that journalists are paid for primary (first publication or broadcast) and secondary uses (archiving, publication in another title, in the other media group, rebroadcasting, sale to another newspaper) of their works.

These agreement should be combined with the work done by collecting societies duly representative of journalists, to collect remuneration for other secondary uses such as private copy, reprography, lending. Collective agreements should also include freelance journalists and photographers who are often considered as self-entrepreneurs with no possibility to act collectively and being forced to assign their exclusive rights for a unique lump sum, independent of the futures uses that can be made of their works. Section 32 of the German Copyright Act provides a sound basis for revising contracts that are deemed to be unequitable.

This being said, journalists are very often forced to sign individual buy-out contracts whereby all their authors' rights are transferred to publishers and broadcasters without any geographical limits and without additional remuneration for these uses. This is a great concern as it prevents our members from significant income. Additionally, journalists may be forced to sign away their moral rights, thus preventing them from opposing any substantial modification of their work and preventing the integrity and authenticity of their creation.

The 2013 UN report on *The right to freedom of artistic expression and creativity*<sup>1</sup> rightly points at “coercive contracts that authors and artists identify as a primary obstacle to fair remuneration”. Under such contracts, which are frequent, creators sign away all their rights to their creation in order to gain a commission for creating a work. Consequently, they lose control over their creation, which can be used in contradiction to their own vision”.

We believe that a number of unfair clauses should be prohibited in international law in order to compensate for the uneven bargaining situation that journalists and other authors have to face. For

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<sup>1</sup> <http://www.ifj.org/en/articles/un-report-on-the-right-to-artistic-expression-and-creation>



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instance, clauses that assign rights in future works for unknown uses, buy-outs clauses (lumps sums agreed in return for the transfer of all exclusive rights for an indefinite time), clauses allowing for moral right transfer, clauses unreasonably restricting the right for journalists to work in a similar sector, clauses that only allow a journalist to be paid in authors' rights and not in salary thus impeding him/her for social protection and social benefits.

Another area of action is the need for professional associations and trade unions to be able to start legal proceedings against those who use these types of contracts is crucial to avoid freelance journalists becoming isolated and black listed for future assignments.

Finally, it remains difficult to identify the use of journalistic works in the online environment. Identifiers are crucial in that context and in the reduction of the number of "orphan works" in circulation. While press articles are generally put online without specific identifiers, photographers usually incorporate a specific tag to protect their work. Metadata incorporated in a photograph with sufficient information about its author can enable the latter to track the uses of his/her work. It also allows users to find a specific photographer more easily. Additional thought should be put into ways to enforce the use of identifiers and secure the recognition of authors in the online environment.

Brussels, 12 september 2014

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