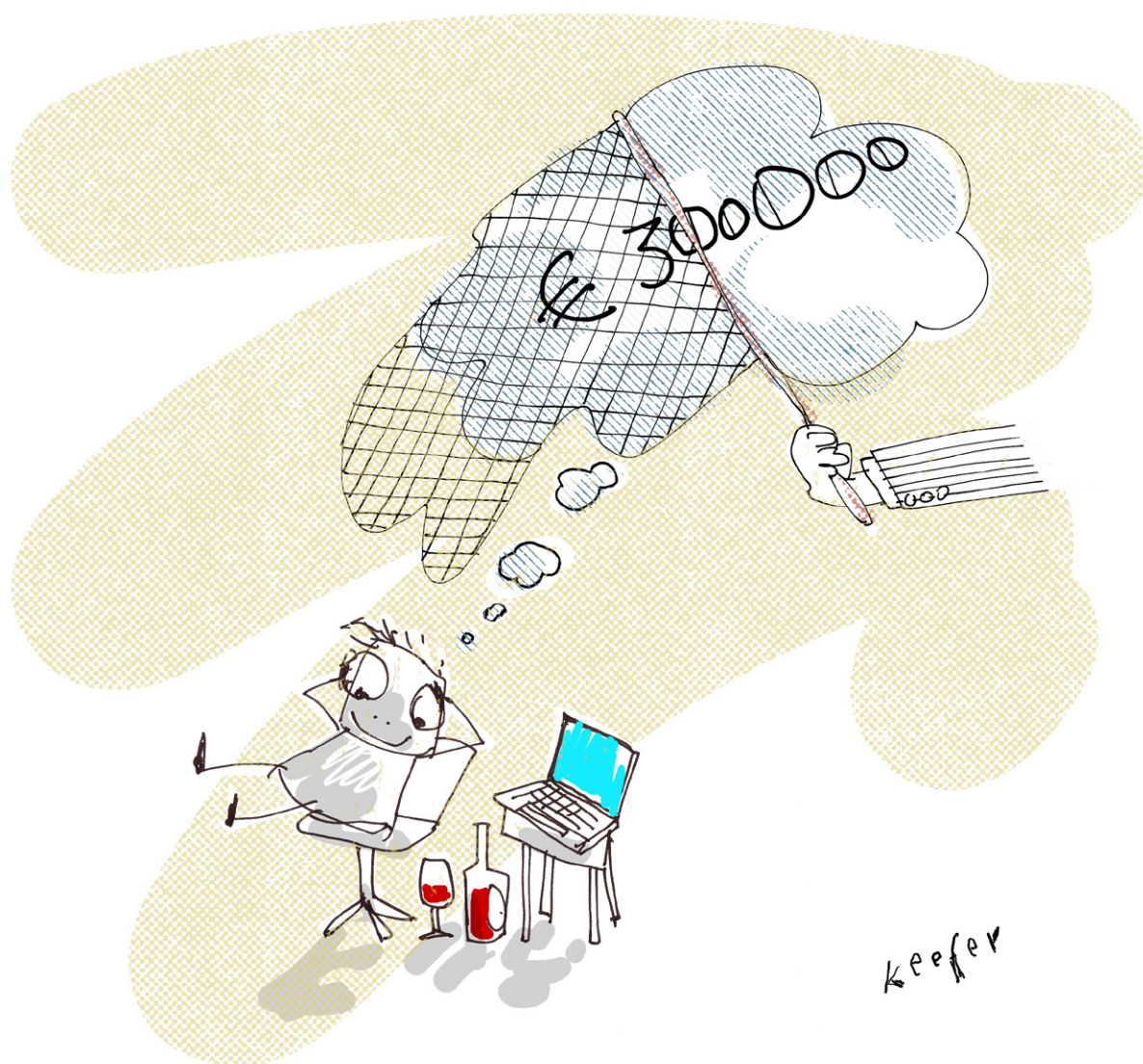


Digital Working in the Media, Arts & Entertainment Sector: Challenges and Opportunities



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Qualitative and exploratory study by TWIID & Doenker



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PREFACE

In recent years, the Media, Arts, and Entertainment sector has seen a significant shift towards digitalisation, with the COVID-19 pandemic further accelerating this trend. As certain parts of the creative sector are working increasingly online, and work migrates more and more to the digital sphere, it has become more challenging to protect the rights, working conditions, and interests of atypical workers involved in this field. Hence new challenges and opportunities are arising for trade unions, particularly in terms of protecting and advocating for the rights of atypical workers. The rise of digital work tools and platforms has also highlighted the need for trade unions to adapt, reassess, and stay ahead of the curve.

To address these changing dynamics, and the challenges and opportunities associated with them, the International Federation of Actors (FIA), along with its project partners FIM, UNI MEI, and EFJ, commissioned a qualitative and explorative study with working title 'Strengthening Social Dialogue and Freedom of Association: Organising & Representing Atypical Workers in the Media, Arts and Entertainment Sector'. The study was undertaken by Twee-eiige Drieling (TWIID) and Doenker, based on a call for applications launched in October 2021. The main tasks for TWIID and Doenker included:

- undertaking desk research to map the underlying business models and most commonly used tools (and the individual pros and cons of each) for developing online content (music, audiovisual, and media), with a special focus on new or established tools with an equitable ethos;
- conducting interviews with selected national trade unions to identify any good practice approaches to digital work, including collective agreements for online work or other approaches that equip members to make the most of digital opportunities;
- assisting the project steering group and attending its meetings where necessary to support the development of the concept and programme of the one-day event organised in 2022 on this theme;
- attending and actively participating in the one-day event on this theme and making a detailed presentation of the research being conducted;
- drafting the Digital Work Study;
- finalising the draft, taking account of the discussions at the one-day event and submitting it to the steering group.

This qualitative and exploratory research was conducted over a timeframe of 18 months from January 2022. Starting with a desktop study. This was presented to roundtables consisting of different trade union representatives, with the aim of defining the scope of the research and briefing, within the limited timeframe and budget. Experiences were also collated on advocacy work by different unions and tools developed for streaming and live-streaming during the Covid-19 pandemic. Since this study also focuses on the challenges and opportunities that artists and cultural workers are faced with, semi-structured and open interviews were conducted from June to August 2022, with a limited number of respondents, to gain insights from creators and artists working in the digital sphere. The study culminated in a one-day event entitled 'Digital Models and Decent Work for Creators', which was held on 2 December 2022 during the VR-days Immersive Tech WEEK in Rotterdam. Here, further experiences of artists, intermediaries, and unions were gathered and presented, along with developments at policy level.

This qualitative and exploratory study aims to provide an overview on the rapidly evolving landscape of the sector, to draw out good practices and experiences, and to identify approaches for equipping unions to address the challenges faced by atypical and economically dependent workers in the arts, media and entertainment sector.

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RESEARCH PROCESS

The arts, media, and entertainment sector has undergone a significant transformation in recent years, driven by the rapid advancement of digital technologies. The Covid-19 pandemic acted as a catalyst, further accelerating the pace of change. The emergence of the internet and social media has provided artists and content creators with greater opportunities to showcase their work and reach broader audiences. However, along with these opportunities, they have also encountered new challenges related to working conditions, economic dependence on platforms with opaque algorithms, and the complexities introduced by digitalisation to the already precarious and unpredictable revenue models inherent in artistic and creative practices.

This report aims to examine the challenges and opportunities faced by artists and content creators in the arts, media, and entertainment sector and explore the role of unions in improving the situation for these atypical workers.

Given the complexity of atypical working arrangements in the arts, media, and entertainment sector, as well as the impact of digitalisation and the growing trend of working in the digital sphere and on platforms, a qualitative research methodology was employed. Additionally, research in these areas is relatively new, with limited existing studies. Therefore, a qualitative, descriptive, and exploratory research approach was chosen. This methodology allowed the researchers to gather rich, in-depth, and non-numerical data, providing valuable insights into this complex phenomenon.

Desktop Research

The initial phase of the research involved conducting thorough desktop research. One of the key objectives of this research was to define the scope of the study and refine the research briefing. As the call for applications was drafted and launched during the Covid-19 pandemic, the focus on streaming and live-streaming became prominent. However, this narrowed focus on digitalisation in the context of streaming obstructed the broader goal of understanding the challenges and opportunities faced by artists and content creators in establishing sustainable business models.

For instance, it failed to address crucial questions such as the challenges faced by theatre companies when building a business model through live-streaming participative performances or the hurdles encountered by musicians and music producers in building a following and revenue model solely through platform-based dissemination. By solely concentrating on streaming and live-streaming of (pre-)recorded performances, these important aspects were overlooked.

Moreover, this limited focus would also restrict the target group of the research, as the emphasis on live-streaming and streaming, as well as fair remuneration concerns, was more relevant to the live-performing sector during the Covid-19 pandemic and its associated restrictions. The challenges faced by podcast makers or the hurdles encountered by content creators in building a following and revenue model through platform dissemination would not have been captured if the research solely focused on streaming and live-streaming of (pre-)recorded performances.

Through a comprehensive review of existing literature, news articles, blog posts, and social media statements related to digital working conditions in the arts, media, and entertainment sector, this initial phase of the research helped identify the emerging trends and developments resulting from the sector's digitalisation.

The findings of this desktop research were compiled into an ongoing list of 'current affairs' (see Appendix) and a slideshow, which was presented during roundtable discussions with representatives from FIA, project partners, and national trade unions.

It is important to note that this desktop research was conducted in January 2022.

Roundtables

The findings of the desktop research were presented during two roundtable discussions. The first roundtable took place on 4 February 2022, and was attended by representatives from the following trade unions: Musicians' Union (UK), Equity (UK), SMF (SE), Scen & Film (SE), Kunstenbond (NL), and SFA-CGT (FR). The second roundtable was held on 7 March 2022, with representatives from the Finnish Musicians' Union (FI), Näyttelijäliitto Skådespelarförbundet (FI), BECTU (UK), and Kunstenbond (NL).

These roundtables served multiple purposes. Firstly, they aimed to further refine the scope of the research and redefine the briefing by encompassing the trends and topics identified in the desktop research. This allowed the researchers to move beyond exclusive focus on streaming and live-streaming of (pre-)recorded live performances and address other concerns and trends relevant to artists and content creators working in the digital sphere.

Additionally, the roundtables aimed to gather case studies, experiences, and practices from trade unions and their representatives involved in collective bargaining for fair practices and remuneration related to the increasing demand for content streaming and live-streaming during the Covid-19 pandemic. Furthermore, the discussions provided valuable insights into the knowledge, tools, and experiences of the unions regarding other trends and topics faced by artists and content creators working in the digital realm. By gathering this information, the researchers sought to map the current state of knowledge within trade unions and assess their awareness of the challenges and opportunities encountered by atypical workers due to the changes and themes identified in the desktop research.

The roundtables were scheduled between February and March 2022. Following the roundtable discussions, a debriefing session was conducted with FIA and the project partners FIM, UNI MEI, and EFJ.

The findings and insights gathered from the roundtables were then utilised to shape the open questions for the subsequent semi-structured and open interviews with the targeted artists and content creators involved in the research.

Semi-Structured Open Interviews

The third step of the research involved conducting semi-structured and open interviews with a limited number (five) of artists and content creators. In order to maximise representation of the different (sub)sectors and trends and developments addressed in the desktop research, participants were chosen based on different parameters:

- an activity in one of the (sub)sectors;
- experience with digital streaming and content platforms (such as YouTube and Patreon), social media platforms (Instagram, Facebook, TikTok), NFTs and NFT market places, (live-)streaming.

Together with FIA and the project partners a deliberate choice was to select respondents within the network of the union representatives and the researchers, rather than organising an open call. The respondents were:

- Freek Clinckemaille (Rhymez Like Dimez),
- Chuki Beatz & Dries Van Overmeire (music),
- Joost Lieuwma (Frameorder - audiovisual sector)
- Tyrone Sanchez (music).

The following topics addressed in the semi-structured open interviews.

- What does your business model look like? On which platforms, streaming services, social media channels, online markets, are you active?
- What are the obstacles, challenges, and restrictions you are faced with?
- What can the role of a trade union be in improving the position of the artist or content creator working in the digital environment (atypical workers)?

These semi-structured open interviews were conducted between the period of June-August 2022. Permission was asked to record and transcribe the interviews, as well as to use quotes in the report. The respondents were also asked whether these transcriptions could include personal data. Since all of the respondents shared a lot of confidential information, their responses were analysed anonymously.

To also gather information on government subsidised (top-down) initiatives and new initiatives in advocacy a meeting was set up with:

- Cultuurconnect vzw (BE) on their livestream model of theatre productions in psychiatric wards and retirement homes;
- Sag-Aftra (US) on their new influencer initiative ('Influencer Agreement').

The insights gathered through these semi-structured open interviews and meetings were further used to draft the programme for the one-day event taking place in Rotterdam (VR-days Immersive Tech Week), to hone the subject of the different panel discussions and to choose of the different members of the panels.

Panel Discussions

To further collect experiences and data, a one-day event was organised bringing together a variety of stakeholders. The event took place on 2 December 2022 in Rotterdam, during the VR days – Immersive Tech Week. Three panel discussions took place over the course of one day.

The first panel discussion consisted of artists and content creators who work in a virtual environment. The panel members were:

- Eva Moeraert, Podcast Maker & Co-Author of 'Zelf een Podcast Maken' (BE);
- Lucy Askew, Executive Director and Creative Producer at Creation Theatre, a pioneer in digital and site-specific theatre (UK);
- Kat Molesworth, photographer, social media consultant and online creator, founding member of The Creator Union (UK);
- Dries Overmeire, Manager for musicians & creatives in the online environment (BE).

For the next panel discussion, the future role of trade unions towards atypical workers was discussed along with further debate on the trends and topics from the first panel discussion. This panel was attended by a trade union representative, a centre of expertise representative and an expert on Artificial Intelligence (AI). The panel was entitled 'Opportunities and Threats: what actions are needed', and included:

- Caspar de Kieft, Kunstenbond, Trade Union for the Creative Sector in the Netherlands (NL);
- Dr Mathilde Pavis, Assistant Professor at the University of Reading, with a focus on AI and IP issues (UK);
- Jan Pauly, Knowledge Management & Research at VI.BE, centre of expertise for artists & music industry professionals in Belgium (BE).

The final panel was entitled 'Finding the Right Policy Framework: driving sustainable digital models in the Media, Arts and Entertainment Sector' and was moderated by Aric Chen, General and Artistic Director of Het Nieuwe Instituut. This panel further discussed possible steps and frameworks towards improving the legal position of artists and content creators working in a virtual or digital environment. The members of the panel were:

- Maaïke Verberk, Director of DEN, the Dutch Knowledge Institute for Culture and Digital Transformation (NL);
- Dr Wike Been, Assistant Professor of Sociology, University of Groningen (NL);
- Isabelle Schömann, Confederal Secretary, ETUC on regulating the impact of AI on labour protections.

The panel discussions were recorded and transcribed for the purpose of further analysis and reporting.

Analysis & Conclusions

The findings of the desktop research, including the distilled trends and developments, were presented and discussed at the roundtables, semi-structured open interviews, and a panel discussion held during the VR Days event.

Based on these identified trends and developments, specific topics or themes were identified, which serve as a basis for the subsequent analysis. This analysis will incorporate relevant quotes and themes collected throughout the various stages of the research process. It will be divided into two chapters. The first chapter will focus on analysing the data from the perspective of artists and content creators working in a digital environment. The second chapter will examine the initiatives undertaken by the trade unions that participated in the roundtables, taking into account the perspectives shared by artists and content creators during the interviews and panel discussion.

The purpose of this analysis is to draw comprehensive conclusions and provide recommendations based on the insights gained from the research.

DESKTOP RESEARCH

INTRODUCTION

At the start of this study, we looked at a lot of current events in the broad field of arts, media, and entertainment. This was the very first phase of our desktop research. We sorted these anecdotes, news facts, blog posts, etc. into different topics and clustered them into trends and developments. We then created a compilation of stories and events that we presented to unions at two roundtables.

In this chapter you will first find a representation of the trends and developments as presented after the first phase of desktop research at the beginning of 2022.

TRENDS AND DEVELOPMENTS

Based on the desk research we conducted, we identified important trends and developments within the following four major themes.

1. The growing complexity and importance of intellectual property.
2. The failure of labour rights in the digital realm.
3. Concepts of ownership are shifting.
4. Growing numbers of different (digital) revenue models.

For each of these topics, we selected cases from Belgium and internationally to inspire discussion. These cases were presented during the roundtable discussion with the unions at the beginning of 2022. In this chapter, we offer a concise overview of the cases that were presented, organised by the above-mentioned four major themes that were discussed.

The growing complexity and importance of IP

We presented two cases on intellectual property.

The first case discussed was about intellectual property in the context of streaming of captured theatre performances. During the pandemic, a Belgian organisation called Cultuurconnect launched a pilot project to capture live theatre performances and stream them to a wider audience, such as those in retirement homes and psychiatric wards. Cultuurconnect contracted with local cultural centres and theatre companies to capture and stream physical performances, and the cultural centres were responsible for disseminating the recordings to local retirement homes and other cultural centres. However, the proposed revenue model was criticised for not being fair towards the artists involved. There was also a lack of knowledge about intellectual property, especially in the performing arts sector, and how to contractually translate hybrid forms of live performance and live capturing/live streaming. There were also questions about admission fees for retirement homes, the exclusivity of the livestreams, and the impact on the theatre company's future tours. The files of the live capture were granted to the theatre company, but this posed new questions about the clearing of rights for music and other authors' rights to the live capture.

The second case was about collective rights management societies in Belgium. The pandemic led to more online meetings and the sharing of works protected by authors' rights in digital environments, such as sheet music and rehearsals of classical ensembles. Reprobel, a collective rights society, started collecting remuneration for the use of these works in a digital environment under the scope of the repository. However, there is still no legal framework or collective action in place for Playright, a Collective Rights Management Society for neighbouring rights, to collect for live streaming of their performances. This gap in knowledge and legislation means that individual parties cannot adequately defend their interests.

In conclusion, TWIID highlighted the importance of intellectual property, digital labour rights, digital ownership, and digital revenue models for unions and workers in the digital age. The cases discussed showed the need for more knowledge and action on these topics to protect the interests of all parties involved.

Labour rights failing in the digital realm

The next topic discussed was digital labour rights. There was no comprehensive academic summary of digital labour rights, but four main topics were identified: the right to be named as a creator and for source material to be fully credited; access to data; remuneration; and mental health for digital creators.

TikTok was cited as an example for the right to be named as a creator, as part of the TikTok community recently went on strike to demand that popular users give credit to original choreographers. TikTok responded by indicating that they would build an algorithm to automatically name the original creator of a choreography in each video that copies it. This was intended to lead to better recognition and remuneration for the original creators.

Access to data was deemed crucial, as it provides creators with insight into the people who consume their content, allowing them to develop their own business models and platforms. Spotify was cited as an example of a platform that is taking steps to provide creators with access to their subscribers' contact information, allowing them to work on building a direct relationship with their audience. However, creators on Spotify are still limited by the platform's pricing system for podcasts.

Remuneration was identified as a significant issue, especially for music and audiovisual streaming. There was a debate around a user-centric or fan-centric payment system, where part of the subscription fees would go directly to the artists that subscribers listen to most, instead of being divided equally among all artists. However, it was unclear whether this system would actually change the current situation, or if it would just result in bigger artists earning even more compared to lesser-known artists. This topic also applied to digital workers performing low-wage work, such as those in the blockchain game Axie Infinity. Some players would outsource the training of their dragons to gamers who could not afford to buy their own dragons, paying them very low wages.

Mental health for creators working in the digital space was also discussed, as digital labour can be taxing and stressful. Overall, the discussion emphasised the need for greater recognition, protection, and remuneration for digital creators, as well as the need for platforms to provide more transparent and equitable systems for creators.

Concepts of ownership are shifting

During the presentation we discussed the concept of ownership in the digital realm and how it goes beyond physical products and intellectual property. TWIID introduced the idea of NFTs (non-fungible tokens) as an example of this new way of thinking about ownership. In the presentation TWIID quoted Sophie Goossens, who described it as 'a feeling of ownership' since digital items themselves cannot be owned.

From a legal standpoint, the concept of NFTs is ingenious and yet very simple: if one cannot own a digital item made of free-flowing information, then let's find something else that may be 'owned': separately from the intellectual property. For example, an unfalsifiable certificate of authenticity, associated with that digital item. Authenticity certificates, issued by the item's creator in very small numbers, are indeed a very clever way of recreating scarcity, a sense of ownership and therefore of value without the need to assign or transfer IP rights to the acquirer of the token. What is being traded here is a unique connection with the digital work, and most importantly the much sought-after feeling of 'ownership'; be it only of a token encapsulating a certificate.

We mentioned an example of a Belgian cyclist named Wout Van Aert who sold his victories as NFTs. The platform through which these victories were sold stated that buyers were not purchasing anything physical, but rather buying bragging rights to own a digital certificate that says they own the victory. This example shows how NFTs can extend beyond the arts or entertainment sector and into other industries.

We also mentioned how NFTs are being used in the music industry, with some musicians releasing their work as NFTs, allowing buyers to purchase a connection to the work. This means that the music can still be exploited in other ways, such as through radio or streaming services, but the NFT provides a unique ownership experience.

We also saw how larger football clubs are using NFT currencies to explore new business models. They are using these currencies to pay for social interactions, which is an interesting development that we need to take into account. Overall, the presentation emphasised the growing importance of NFTs and the need to consider their implications for ownership in the digital realm.

Growing numbers of different (digital) revenue models

Creators and artists try to find new revenue models (or new versions of old revenue models). One such model is tipping or donations, which is already widespread on platforms like Twitch where viewers can tip or donate to creators as they stream live videos of gaming, music, or art. Another model is subscription-based, with Patreon being an interesting platform where creators can offer insights into their artistic practice in return for a monthly small subscription fee from followers. Big bands like Ben Folds Five use Patreon to offer diverse perks to fans, such as access to unreleased tracks, digital movie nights, and co-creation sessions.

TWIID noted that not only creators themselves, but also companies that work with cultural products like publishing houses or audiovisual production companies, could try to figure out what kind of insights and background information people want from their cultural products, and then monetise that through platforms like Patreon. The speakers also mentioned sponsorships and paid placements, which are in high demand by platforms like TikTok, Instagram, and YouTube. These platforms are investing in creating digital spaces where creators can meet or find companies looking for advertising or marketing opportunities, and the easier they make it for creators to gain access to these revenue models, the more confident the platforms are that people will stay on their platforms. However, there are no standards or guidelines on how much creators can ask for paid or advertising posts, making it a 'Wild West' environment.

Furthermore, we discussed the fan economy, which involves a direct one-on-one link between creators and their audience, often fuelled by blockchain technology. This model involves cryptocurrency tokenisation of fans. We presented the case of \$WIFT, which is a cryptocurrency that Taylor Swift could have issued and sold to fans from the start of her career.

This could have given her more freedom and control over her music, rather than having to sell her masters to a recording company. An artist token could also reward early fans and followers financially, as the value of the social token increases with popularity.

During the presentation we also mentioned the importance of the metaverse,¹ a digital space that Facebook (now Meta) is experimenting with, as they are currently losing the battle with their old models of Facebook and Instagram versus platforms like TikTok that offer complete interaction between creators and fans. In conclusion, the future of revenue models in the digital age will continue to evolve, and everyone will need to stay up-to-date with the latest trends and technologies to ensure success (and fair payment).

THEMES BEYOND TRENDS

We translated the four developments around which we clustered the desk research into five themes that we discussed with various artists. We believe these themes will remain a longer term issue, regardless of the technological trends and hypes that may exist at any given time. We explain each of the themes below.

Economic dependency & bargaining power

In the various digital revenue models mentioned in the desk research, but also on the platforms where cultural workers maintain relationships with audiences, the artists are dependent on rules and systems over which they themselves have no power. The negotiation space of an artist who posts content on YouTube in the hope of finding income there in addition to visibility is not small, but simply non-existent. Nevertheless, it is unthinkable for a lot of artists to be absent from channels such as YouTube, Instagram, etc.

¹ The presentation was held at the beginning of 2022. Over a year later the Metaverse hype seems to be almost completely over: <https://www.beyondgames.biz/28257/meta-the-end-of-an-error-the-metaverse-dream-sours-with-the-loss-of-11000-jobs/>

The absence of negotiation space places creators in a very weak and dependent position. If one wants to have certain rights safeguarded in court, one has to compete against the legal teams of these multinational companies, which creates a David versus Goliath situation.

Despite the fact that most workers in the arts combine different earning models and thus have different sources of income, the risk of economic dependence also exists here. This is nothing new. For example [this 2002 study](#) by the European Foundation for the Improvement of Living and Working Conditions states: ‘The concept of “economically dependent workers” refers to those workers who do not correspond to the traditional definition of “employee” – essentially because they do not have an employment contract as a dependent employee – but who are economically dependent on a single employer for their source of income.’² The absence of employment contracts is seen in quite a few activities of atypical workers in the arts, media and entertainment sector.

An influencer who derives income primarily from Instagram is 100% dependent on the extent and manner in which Instagram allows them to do so. Essentially, there is no relationship between client/employer and contractor. Yet there is a strong economic dependency. In this relationship, the creative worker has no seat at the table to negotiate these ‘rules’.

In atypical forms of work, we see various forms of mismatch between economic dependence on the one hand and bargaining power on the other. Where dependence is immense, the extent to which creative workers can influence decisions is virtually non-existent.

As early as 2009, Mark Andrejevic wrote in his essay ‘Exploiting YouTube: Contradictions of User-Generated Labor’: ‘In this regard the form of exchange that characterises interactive sites like YouTube might be understood as a second-order result of forcible appropriation of labor power: users are offered a modicum of control over the product of their creative activity in exchange for the work they do in building up online community and sociality upon privately controlled network infrastructures’.³

Need for flexibility & ability to adapt

Dependency does not only have an economic component. This dependency also determines a lot of working conditions especially on content platforms. As a content creator, the degree to which your content gets visibility depends on how well you can respond to the algorithms that select content. This is why creators make adjustments to:

- the form of the content (e.g. in duration);
- the frequency of publication;
- the subjects they post about;
- the communication accompanying the content (hashtags, etc.).

² Pedersini, Roberto. “Economically dependent workers”, employment law and industrial relations.’ Eurofound, 2002, <https://www.eurofound.europa.eu/publications/report/2002/economically-dependent-workers-employment-law-and-industrial-relations>. Accessed 24 February 2023.

³ Andrejevic, Mark. ‘Exploiting YouTube: Contradictions of User-Generated Labor’. The YouTube Reader, edited by Pelle Snickars and Patrick Vonderau, National Library of Sweden, 2009.

The need to adapt what you do, how you do it and when you do it to what works on a given platform requires immense flexibility on the part of creators.

The changing algorithms (see below) also require a willingness of creators to be able to do adapt to the changing “rules” flexibly at any given time. It is not only about the algorithms that select content, but also about the technology itself or the requirements of the platform. It can also impact fundamental artistic choices. For example, do you make images in portrait or landscape? Does the platform crop images to a square format?

Lack of transparency and insecurity

Those who want to be successful on these platforms must be willing to continually adapt to the changed ‘rules’. These rules are imposed but not explained. Furthermore, you cannot read them anywhere. The algorithms that determine who will or will not see your content remain secret at all times. This leads to a lot of uncertainty and stress among content creators. In recent years, we have been hearing more and more about ‘digital burnout’, ‘YouTube burnout’, etc.

Sarah Thorne of the Memorial University of Newfoundland did academic research on this last year which she published as ‘#Emotional: Exploitation & Burnout in Creator Culture.’ She concludes:

Each clinical structure offers a particular response to the desire of the Other as both algorithm and audience, with none being more successful than another. Consistent across all three of these clinical structures, however, is the insistence that subjects are compelled to work incessantly to maintain channels or risk losing subscribers and even their eligibility for the YPP. This incessant activity is untenable and leaves creators in perpetual anxiety: creators are afraid to skip an upload day, let alone take a break (obsessional neurosis); exploring creative inspirations risks diverting from what has drawn their viewers (hysteria); and others are caught up in an escalation of increasingly extreme content to remain competitive (perversion). Those able to grow their channel under these conditions and join the YPP, where they will have the opportunity to share advertising revenue with YouTube or seek out brand deals of their own, still do not achieve the stability needed to take a break and remain competitive on the platform. The YPP, instead creates a hierarchical class structure between those who work at YouTube, and the waged and unwaged creators who make the platform more than an empty shell.⁴

⁴ Thorne, Sarah. ‘#Emotional: Exploitation & Burnout in Creator Culture’. *CLCWeb: Comparative Literature and Culture* 24.4 (2022): <https://doi.org/10.7771/1481-4374.4088>

Multiple job holding / revised career models

The [project handbook](#), 'The Future of Work in the Media, Arts & Entertainment Sector: Meeting the Challenge of Atypical Working' that was published in 2016 is the result of a two-year, EU-funded project: Reaching out to Atypical Workers: Organising and representing workers with atypical contracts in the Live Performance and Audiovisual Sectors. This handbook describes atypical work as follows:

The term 'employment relationship' has been traditionally associated with a concept of 'regular employment', which has three main characteristics: it is full-time, indefinite and part of a dependent, subordinate employment relationship. Other forms of work arrangements are becoming increasingly common and lack one or more of the characteristics of such employment. They may differ from one of the characteristics of standard employment described above (and sometimes more than one). Thus, we may identify atypical working-time arrangements (part-time, on-call, zero-hours, and so on); short-term/fixed-term contracts (fixed-term, project or task-based work,); and atypical work relationships (contracted or subcontracted work, self-employment or agency work). It should also be noted that the term 'atypical' reflects only the deviation from the standard employment norm but it is not a reflection of the prevalence of such contracts which are increasingly widespread.⁵

Careers in these sectors are rarely linear, nor in relation to one employer. The norm for just about all creative workers is 'multiple job holding'. Even those who are salaried combine multiple assignments, either because they are always temporarily assigned to projects for a specific creation (e.g., in the performing arts) or because they are connected to several projects at the same time (e.g., in the case of performing musicians) or because they combine different types of jobs (e.g., combining teaching with their own artistic practice).

Careers of digital workers can sometimes make very big leaps in very short periods of time. Content that goes viral can lead to a particularly rapid growth of attention, revenue and stakeholders approaching the creator with all kinds of proposals and questions. Sometimes this fame or hype dies down just as quickly. But again, it means that these digital workers must have the capacity to adapt quickly to changing circumstances. For example, the content of the kinds of agreements and licences you enter into as a creator (let alone the fees that come with them) change dramatically when you suddenly enjoy global fame.

Covid-19 also showed that career components that are usually relatively stable (e.g. playing concerts as a performing musician who is part of an ensemble) can suddenly fall away completely. The only certainty left is that there are no more certainties.

Digital platforms and technologies also impact the value chain and how value is created in industries. Gatekeepers that previously played a dominant role in the value creation of a sector are today seeing competition for their role coming from new actors. For example, radio station playlist compilers are no longer the only ones who determine what is heard. The playlist compilers of major music platforms like Spotify play at least as important a role. Therefore, artists also need to develop new networks and contacts to create the preconditions for a sustainable career.

⁵ <https://www.fim-musicians.org/wp-content/uploads/atypical-work-handbook-en.pdf>

Fundamentally new forms, such as NFTs, are creating new networks and power structures that differ significantly from the traditional art world. While some artists and collectors may participate in both worlds, the NFT art market represents a unique ecosystem with its own rules and players. According to Vasan et al. (2022),

In the traditional art space, collectors discover new artists through gallery and museum exhibits. In turn, gallerists work with curators to create opportunities for emerging artists to showcase their work, both in the galleries and in museums, bringing it to the attention of collectors. As the cryptoart space lacks the formal role of gallerists, curators and museums, success in this space is mediated by potential direct relationships between artists and collectors.⁶

Multiple revenue streams

Creators today typically have a combination of income from the activities they do. As an example, let's take a musician who also creates his own compositions, records, releases and tours with them. In addition to making and performing music, he also teaches and is sometimes hired as a session artist. Since he self-releases his music, he is not only an author and composer, but also a performer, producer, and publisher. If we look at the different tasks and roles he has to take on (necessarily) in order to carry out his activities successfully, we see that at the same time he is also a community manager (maintaining relationships with his fans), creating content for social media, and performing all kinds of business management tasks (creating contracts, preparing accounts, networking, negotiating, rights management, etc.).

Looking at the different types of revenue generated, we can see that this puzzle comprises several pieces.

1. **Wages:** for the performing work that he does, he usually receives some form of performance compensation. This may be in the form of a salary (as an employee) or on an invoiced payment (as a self-employed worker).
2. **Profits:** the sale of music carriers (CD, vinyl, etc.) and merchandise (clothing, accessories, etc.) generates costs and revenues. The result (profit) contributes to the artist's income insofar as he also had it produced himself.
3. **Copyrights:** the property rights he has as an author, as a composer and as a producer of phonograms generate different streams of copyright income. These include, for example, income from fees for public communication, reproduction, reprography, etc.
4. **Neighbouring Rights:** for his role as performer and also in his role as producer of his records, this artist gets a remuneration for the use of their recordings in public performances or broadcasts.

⁶ Vasan, Kishore, Milán Janosov, and Albert-László Barabási. 'Quantifying NFT-driven networks in crypto art'. Scientific reports 12.1 (2022): 1-11. <https://link.springer.com/content/pdf/10.1038/s41598-022-05146-6.pdf>

5. **Commercial Partnerships:** Creators may also earn income from commercial partnerships, such as product placement agreements on social media. The revenue model for YouTube content creators is also based on advertising income.
6. **Donations:** Donations from patrons or crowdfunding can be a significant source of income for creators. This can be especially helpful for projects that may not have traditional funding sources.
7. **Member Contributions** (Patreon, Fansly, etc.): Some creators may offer membership programmes, like Patreon or Fansly, where supporters can pay a monthly fee to access exclusive content or perks.
8. **Tokens:** Non-fungible tokens (NFTs) are a newer source of revenue for creators. NFTs allow creators to sell unique digital assets, such as art or music or even ‘the feeling of standing front row’, directly to their fans.
9. **Grants and Subsidies:** Creators can also obtain grants and scholarships that support their work. These awards may come from government agencies, private foundations, or educational institutions.
10. **Shares:** Finally, at least in theory, creators can earn income from shares if they have invested in stocks or companies that provide dividends. This could be a future way of collaborating with venues, managers, labels, etc. where artist and label both profit from success and have (more) equal power and income.

MULTIPLE JOB HOLDING / ROLE	Wages	Profits	Copyright	Neighbouring Rights	Commercial Partners	Gifts	Memberships	Tokenization / NFTs	Subsidies	Shares
Author / Composer	x		xxx						x	
Performer	xxx			xxx		x			x	
Session Artist	xxx			x						
Producer (label)		x		x				x	x	
Publisher			x							
Teacher	xxx									
Social Media Content Creator			x		x	x	x			
Community Manager					x	x		x		

The chart above shows the different revenue streams for one musician and also shows which streams within which role are the most important.

Of course, the concrete composition of the different roles that someone takes on and the different income streams on which their own practice is built depends on each concrete situation and also varies from sector to sector.

Performing artists, such as classical musicians, are less often also producers of the recordings they release, or performances they create. But for every ‘rule’, there are many exceptions. Atypical, after all, is typical of this sector.

Moreover, for each of these financial flows, the way in which it is created, and the degree of control the creative worker has, also varies. The type of aggregator a DIY producer partners with to place music on Spotify and Apple Music, and the type of agreement they enter into in the process, affects the percentage of each of the fees that flow from Spotify to the creator in his capacity as songwriter/label or producer/performer. Some fees arise by operation of law (e.g. home copying fees) and can only be received through a management company. Other fees have to be renegotiated each time (e.g. buyout fee or commercial collaboration). Still others depend on artistic or other judgement by committees (e.g. grants). Some streams are directly linked to the artist and the artist can also play a role in the negotiation (e.g. fee to advertise a product on its own channels) while others fees are negotiated outside the artist (e.g. collective management companies that set fees for certain uses).

Within the limitations of this study, it was not possible to delve deeper into each of the revenue streams and how they differ by sector and subsector. And which intermediaries have a defining position and/or negotiate on behalf of rights holders from collective bargaining power.

CONCLUSION

We started our desk research by listing current events in the arts, media, and entertainment sector. We made a reading list of these which we also delivered to the relevant unions. In two roundtables at the end of the first phase of desktop research, we presented several cases within four developments that we see in the sectors.

We then selected five themes that continued to guide the research:

1. economic dependency & bargaining power;
2. need for flexibility & ability to adapt;
3. lack of transparency and insecurity;
4. multiple job holding / revised career models;
5. multiple revenue streams.

These topics were discussed with digital creators in bilateral interviews and during the VR days in the panel discussion.

DIGITAL WORKERS SAY

INTRODUCTION

In this chapter, we let involved artists and cultural professionals have their say. From the various interviews and conversations, we extract quotes that we again cluster around the selected themes.

Within each theme, we break down responses based on the input we gathered from the conversations.

In the next chapter we contrast these with what the unions indicate they are doing to strengthen and how they are going to support atypical workers. The responses of the artists and digital workers involved to the question of what a union could do for them are also included in the next chapter.

ECONOMIC DEPENDENCY & BARGAINING POWER

The feeling of being a plaything of the platforms and the rules and fees forced upon you often came up in our conversations.

This led to different statements and insights about the position of the creative worker and how they themselves look at it. The economic dependence and lack of bargaining space is not just related to technology and globalisation, but is reinforced by other elements.

Earning nothing is better than being invisible

An artist today, especially in the more popular sectors, is valuable for the size of the audience he reaches and can move. The concert organiser's willingness to pay is equivalent to estimating how many tickets can be sold at what price. Reaching out to current and future fans is therefore part of the 'normal labour' to be performed as an artist. Whether that labour is remunerated is another question.

*Audience is obviously very important. So, you don't really have a choice. You have to learn about these new platforms trial and error-wise, be present on those platforms while sticking to your own personal brand and personality, but obviously always reshaping it towards the new platform that you kind of have to be active on. **Whether it pays you or not. You have to stay in the attention span of people.** So, you really have to be on every new platform every time. (Dries)*

Who forces you must pay you

An original angle was put forward by Kat Molesworth, Founding Member of Creator Union UK. She made the link between the 'content creation obligation' that exists, and the responsibility that those who impose this pressure should be given to also provide fair compensation.

*If you are going to show portions of rehearsals, if you're going to advertise the show, you should be paid for that by the people who are expecting you to do that. Personally, I think we should see the platforms paying everybody themselves because they make huge, vast amounts of money from advertising because you're bringing attention to their platform. So, I think **illustrators and actors who aren't necessarily there to monetise in a commercial way with a brand should be paid for the attention they bring to the platform.** (Kat)*

Installing a free culture does not lead to willingness to pay

Eva Moeraert, the podcast creator who joined us at our roundtable added that deciding for yourself how much money you charge and whether you charge money are decisions that cannot be separated from context. Maintaining a listening audience as a podcast maker forces you to be careful about tucking away content behind a paywall or embedding advertising in your podcast. The fact that 'free' is the norm makes the whole thing even more difficult.

*We have this podcast, we have 5000 listeners every week and we try to do some crowdfunding. I didn't put it behind a paywall because I want to keep my audience. I just told my audience that if I have 300 people who are paying me €50 a year, I can make a fourth season. And we now have 70 people out of 5000 who do that. It seems like there's a cultural aspect to it as well, where people are not willing to pay for a podcast. **We're used to having all these podcasts for free on Spotify. So why would we pay for it, if there are a million more podcasts to listen to?** (Eva)*

Amateurs are hard to compete with

In our conversations with artists, additional elements were also brought out that play a part in the difficult position in which artists find themselves. After all, on top of the complexity of the 'relationship' with platforms, most creative entrepreneurs are also required to compete with amateurs. These so-called amateurs are start-up or hobby artists and creatives who charge unreasonably low fees for what they provide. In addition to the lack of willingness to pay on the part of clients, in the economically dependent position you also collide with unbeatable competitors (on price).

***But if you're a plumber, you're not up against a lot of people going in the evenings, 'I like to do plumbing and I'm going to do it for free and I'm going to undercut you'. And I think that's where a lot of the issues come from - the amateur hobbyists, young people, emerging artists. It's why you start out and why you're doing it for the fun of it and how it becomes makes the transition to being professionalised.** (Lucy)*

What if we increased the difference between amateur and professional? What if we created a 'label' that made it clear who you were dealing with. So that clients would choose more consciously between having something done or made by a professional versus by an amateur? Lucy speaking again:

*I don't know. I think it's a provocation more than knowing what I think would fix it. And I think for a lot of young people, I think, you know, if you go into schools and you work with children and you say, what do you want to do when you grow up? A lot of kids, besides the ones who want to develop Roblox games, want to be YouTubers. And I think part of it is creativity and freedom of expression. And part of it is a misconception about it being a get-rich-quick thing. **And they all think that they will become a YouTuber and buy a mansion or become an influencer. And I think more transparency around how the industry really works and how everyone wants to be an actor and thinking that they're going to become an A-lister. I think there's probably an education piece there as well.** (Lucy)*

Collective bargaining does make a difference

Uniting stakeholders increases impact. The more artists together draw the line for what a minimum fee must be to be reasonable, what is acceptable and what is not, the more likely it will become enforceable.

*I think there has to be an agreement between industry and freelancers. **I do think that collective bargaining is the way that we're going to do that.** So having many voices behind something like the Creator Union would be very useful because we can then go out and do what the actors unions have done so well and create standard payments and minimums. We can create standard contracts and we can make sure that these contracts are not predatory. We can make sure that there are standard terms. I think in television production, in the U.K., there's really good standard terms of engagement so that you know that when you're creating a television show for the BBC, for example, you retain the rights to sell that internationally or that's negotiated into the contracts for money because it has value. And I do think that creators, digital creators, digital musicians, anyone who's working online is going to benefit from bringing those in and making sure that especially in advertising and marketing, there is a ground level of what is acceptable. (Kat)*

NEED FOR FLEXIBILITY & ABILITY TO ADAPT

The inscrutability of the algorithms that determine to what extent your content gets visibility is a frustration of many. After all, it's like playing a game in which the rules are constantly changing.

Plug and pray

If the time schedule of public transportation is changed, it will be announced well in advance so that travellers using it can proactively adjust. When content platforms adjust their algorithms, they do so unannounced and underhandedly. What worked perfectly yesterday does not have the same effect today.

*I think, you know, the income is obviously largely affected by the platform that you create your content for. For example, one of the biggest creatives that I manage is a producer who also has a YouTube channel that's pretty big. As an example, this algorithm for YouTube is constantly evolving without, you know, us having real insight in what it is changing towards, it is like a content process of adapting to something that you have no real knowledge about except for trial and error. You have to continuously adapt to that. **The one thing that you figured out and that is working today might not be working the next day.** I think it's also in the nature of creative people to adapt fast, to be flexible and to take things lightly. So, we are not constantly in stress or complaining, but it is a real thing that it's not always a very sustainable climate to be in. (Dries)*

Outsmarted by technology

It is not just about the algorithms that filter content either. It is equally about the technology itself. A telling example was given by Lucy Askew of Creation Theatre during the panel discussion in Rotterdam:

*In the early days of *The Tempest*, the first few weeks of that run, we would be able to say to the audience: click your fingers to make the sound of rain so you had a whole audience of 200 people clicking their fingers and it was beautiful; rub your hands together for the sound of the wind; bang your hands for the sound of thunder and you got this beautiful cacophony of sound. Of course, Zoom got cleverer without warning and developed the amazing AI-tech that now prioritises the human voice so well that if there's building going on in your house, the person in the call doesn't even know it's happening and all they can hear is you. **So overnight, suddenly all that beautiful audience interaction just died. So, we then had to slightly fake it.** We know the show is up and running. We had to kind of do a slightly sneaky recording of the actors doing a voice and still ask the audience to do it and still spotlight them and still have the facades of the interaction. But you don't know – when you're working with platforms, whenever you press updates, update the app – what's going to come out the other end. (Lucy)*

LACK OF TRANSPARENCY AND INSECURITY

When AI takes it from you

Technology today is evolving so fast that it can barely keep up. For artists, it is difficult to estimate when and how, for example, artificial intelligence will impact their profession. In some sectors, however, that impact is already very clear. One example is the voice acting sector.

*Voice synthesis is a highly effective technology that is already being used commercially. In fact, there are examples of performers who work with companies to generate ads and record one gig or stand, and then later hear their voice used in completely different contexts. One example of this is **a performer who worked on a contract involving Microsoft's research and development of the algorithm. She later heard her voice being used to say inappropriate things on TikTok** in a completely different context because her voice had travelled. (Mathilde)*

The emergence of AI as a content creator and performer (e.g., in synthetic voicing) also creates new opportunities for digital workers. It may allow them to work faster. But what if that faster work becomes the norm, further increasing the pressure on these creators? Again, Mathilde Pavis speaking:

*The ability for you to produce content that will look like you or sound like you – **whether you're a composer for sound or a performer – without you physically performing or helping, speeding that up is a big advantage.** But what does it say about [the pressure to be] producing, producing, producing, are we adding to that mill? And the other aspect is, will your followers be okay with that? Because when there's a discussion at the moment around synthetic media, A.I. Generated media when it looks like it is real, do you have to disclose that to the person engaging with the media, the consumer, the user? (Mathilde)*

MULTIPLE JOB HOLDING / REVISED CAREER MODELS

That careers of creative workers are not linear was made clear earlier. Also, in our interviews with artists, they repeatedly pointed out elements related to the particularities of careers for atypical workers. One of the elements mentioned was the necessity of keeping 'gaps' in the employment:

*Even as an artist, you're unable to, although you might have a lot of income coming from performing, to perform 12 months a year. **You have to take gaps. You have to develop new shows, new music in terms of YouTube, create new shows, new content, new formats.** So, to have some basic level of income, even in the months where you're not totally out there, is very important as well. (Dries)*

To cope with the pressure of creating all the time, new technologies could come in handy, says Mathilde Pavis:

*But voice-over artists, at the moment, are really engaged with the topic because the technology is working really well in their work and, if we get the contractual terms right along with the remuneration rights, it will improve their working conditions. Some at least expect that because **there's a whole bunch of work that they do commercially, especially ads and items that they don't really enjoy because they're less creative, high volume, and they set an algorithm that could generate that for them so they don't sit for hours on end doing that work and have more time for creative work and other projects, it would be really useful to them. But that can't come at the cost of making them redundant.** (Mathilde)*

The challenge is to align the pricing you use as a content creator with what is reasonable in relation to value and reasonable within the comparison in the market. Newcomers to this market often don't know the value. And unlike minimum wages for labour, there are no standard fees for commercial collaborations, for example. All those involved in this value chain also prefer to keep secret how much they paid or how much they were paid.

*And I think on that: when I go out and I look for people to create content for brands and I ask them, what do you charge? I've met Tiktokers who have thousands, tens of thousands of followers who are saying £50 for video, £100 for video, because that's what they're being offered. And that was bad in 2007. That was bad money to put something on my blog in 2007. It is terrible money now. What can you do with that? Because I couldn't put a creative forward who undermined the whole collective of what I'm doing. So, there are brands out there who are really undercutting people's value. **And unfortunately, €100 for a job is shockingly common in video, even with thousands of followers.** And you know, videos are going somewhere and reaching people in their hundreds of thousands. They're being offered terrible money. (Kat)*

MULTIPLE REVENUE STREAMS

Testimonials

We started the panel discussion with artists and content creators by asking them: where do you get your income from? Their answers are a good testimonial for the diversity and complexity of the different revenue streams.

*I'm not a content creator myself, but I fulfil a management role for several content creators, mostly from the music field. So, my job is to build a sustainable business around these people, doing what they love to do the most. So yeah, I think the income streams for these people are very scattered, like you mentioned before, **you have small bits coming in from a lot of streams. The challenge for these people is to organise themselves in the best way and to, like, collect all these things.** (Dries)*

*I'm a podcast producer. **Luckily, I'm a teacher as well,** so my income half of the time comes from university and my other incomes occasionally come from public funding, crowdfunding, merchandise of my podcasts, sometimes organisations, workshops I give. And I would love to have some advertising in my podcast, but it didn't work out so far. (Eva)*

*I've worked as a creator, a digital creator since 2007. **My income now comes from consulting and supporting brands and companies in how they work with creators** and sourcing great creators for campaigns. Previously, it came from publishing online ads myself. I also ran conferences for creatives and had a podcast which again didn't have any advertising. (Kat)*

*We're sort of slightly lazy in our business model and we picked up exactly what we would do in the analog world and we charge people a ticket price. So we have a show that happens at a particular time and you can only see it at that time and you buy your ticket and that's how you enjoy it. **We have a small amount of income that comes from digital shows that have been bought by streaming platforms.** HBO+ has one of our shows. We get some public sector funding as well, which we find is particularly more accessible for digital work because of the innovation within that. And we increasingly get work through academia in the UK. So we find that digital work enables us to do far more niche texts. So, we do a lot of early modern literature that is very rarely performed, that attracts a global audience of people who really want to see those plays brought to life. But it also means there's a knock-on effect of being invited to do workshops and talks and read through and special performances for universities. (Lucy)*

For none of the four panellists was the remuneration for the content they create their main source of income. For Eva, the biggest 'use' of her creations led to the least income.

I would be very stressed out if I didn't have that job, I guess, because I always work for one or two years on a podcast or documentary podcast, fiction podcasts, very big productions with four or five people who I want to pay fairly as well. So, you have to find the budgets and public fund things. And a lot of the times I already start a project without having the budget. In the end, most of the time I'm not getting paid because I want to pay my people and I want to have the audience and keep it free for them. So, it's kind of complicated. I always have to say to people that we don't get paid by Spotify. Musicians are getting paid by Spotify, a little bit. but we're not. And you all pay Spotify, and you get podcasts for free. But I don't get a cent. (Eva)

Can't afford to do it for free

At the beginning of the pandemic, lots of artists were frantically trying to keep in touch with the audience. In their desire to do so, they did not bother asking for a fee. Creation Theatre was an exception, not because they were smarter, but because free was never an option:

*It was a fascinating moment, at the start of the pandemic, certainly in the UK where – for theatre – no one had digitised or shared their content and that was for us, as people who were really excited about digital, a potentially slightly frightening moment where all the big players in the UK threw everything online for free. So, the National Theatre, the RC, **everyone started publishing their content completely for free and we were looking at it all wondering what we could do? We can't afford to do that. This is our only income stream. This is the only way we'll pay freelancers, the only way we'll stay in.** The only way we can give a lifeline to our freelance teams at the moment, is that we have to monetise this. So, we really early on went: 'there is a ticket price. We're not doing this for free'. And there was a brilliant, I can't recall who wrote it, brilliant article that came out where someone was saying, you know, the theatre has to be really careful they don't go down the route of newspapers in the UK where they put everything online for free and ever since have been trying to backpedal that and find a way to monetise that content when everyone's got used to it being freely available. (Lucy)*

Getting paid with gifts you can't eBay fast enough

Underpayment – next to the willingness of creators to work for too low budgets – is still a common practice in the arts, media, and entertainment sector. But some even go beyond that and try to pay with goods rather than money.

*And it's still something that we cannot shake off as an industry. Gifting was seen as absolutely adequate pay but it's not. **You can't pay your mortgage with gifting; your house fills up with things which you can't eBay fast enough.** And obviously there's a taxation issue if you are agreeing to do work in exchange for gifting. So that's where the industry started out. At the same time, people were selling ads online. You know, these things have been happening since the beginning of the century, but in the last five to seven years, you've really seen the commercialisation and the viability of making your full-time living for a vast number of people online. And that's exciting to see. But what we get with that is a lot of the same practices of creating insecure work by telling people that they should cut their prices or they'll just go somewhere else. (Kat)*

Consider talent in pricing & pay in advance

Even if a client is willing to pay, the problem does not immediately go away. A lot of freelancers are in a position where they start assignments without compensation. This sometimes leads to situations where those who have done the work have to go to great lengths to actually receive the payment to which they are entitled.

*I think all freelancers should be paid in advance. One of the biggest time wastes that you have and that trickles down the amount you earn on a project is chasing invoices for weeks, months, sometimes years. I'm still chasing an invoice on behalf of somebody with one of the very big platforms that was due in 2018. It's not a big invoice, but we've spent a lot of time chasing it. So, I think moving to payment in advance and insisting on that or 50% on signature as a minimum industry standard would be good. I also think that people need to factor in the amount of time outside of creating they spend on working on their craft, on maintaining their audience, on emails that go nowhere for days on end. You know, you spend huge amounts of time administering everything. It's not about creating one image or one video or one piece of writing. It's about everything around that that brings the audience to you. And so, I think people need to price that in. And as somebody said on Twitter the other day, **prices often don't account for talent. They will be looking at numbers, but they're not looking at the uniqueness or the ability of that person to speak to an audience and to develop something that nobody else can.** So, I do think that you need to consider your talent in your pricing.*
(Kat)

CONCLUSIONS

The themes we extracted from the desk research received a lot of support from the artists we spoke with. It is clear that these themes cannot be viewed in isolation as they mutually influence and overlap with each other. Shattered revenues are the result (but partly the trigger) of new career models. The combination of revenue models and multiple job holding that an artist needs to survive leads to a further weakening of bargaining power. If some form of compensation determines only a small percentage of your income, the willingness to fight hard for it may also be reduced.

WHAT UNIONS DO

INTRODUCTION

In this chapter we distil quotes, cases and actions already been taken by the trade unions to strengthen and represent (atypical) workers.

The extracted quotes, cases and actions will be clustered around selected themes. Traditionally trade unions are centred around bargaining power, and their instruments at hand are collective bargaining and advocacy on a policy level. Out of the different roundtables, we can already conclude that unions are evolving towards new forms of services for their members, are rethinking criteria for membership, and are reflecting upon their role. The themes that were covered during the roundtables were:

- collective bargaining power;
- self-employed;
- advocacy for fair rights management;
- education and tools;
- policy work (on a supranational level);
- innovation and experimentation.

Where applicable, the responses of artists and digital workers during the semi-structured interviews were integrated into this report, as well as quotes or ideas that emerged during the panel discussion with the artists and content creators that took place on the VR-days.

COLLECTIVE BARGAINING POWER

And they tend to look at the forest and not the trees. And we have to make sure that the voices of individual artists are being heard in making the future. (Caspar de Kieffe, Kunstenbond)

Unions have gradually come to understand that the increase in atypical forms of work can weaken their capacity to play their traditional political, societal, economic, ideological and legal role unless they succeed in attracting these types of workers as members. More so because these workers are confronted with the precariousness, with the same challenges as typical workers but also with different challenges in different packaging. However, the awareness within unions, which was a central thread throughout the roundtables, is that their traditional position as a bargaining agent still holds nowadays. In atypical forms of work, we see various forms of mismatch between economic dependence on the one hand and bargaining power on the other. Where dependence is immense, the extent to which creative workers on an individual level can influence decisions is virtually non-existent.

*It's very difficult for the solo performer, the solo actor or copyright holder to ensure their rights to fair and proportionate remuneration because they are not in a good **bargaining position**. The employer, the producer of the streaming platform, is in such a position of power. So solo performers really do need the collective. And it's a challenge for us as a union to keep up because there are a lot of new players and the utilisation and the distribution of the arts are so fast paced and changing all the time. So, we really do have to work to keep up. And in some areas, we are lagging behind, and in some areas, we are more in line with the times. (Scen & Film)*

This idea was also debated during the panel discussion with the artists and content creators working in a digital environment. Some of the panel members also think that a union is the best suited organisation to grant the right to agency on behalf of their sector.

So, you'll have contracts from companies who work with photographers and perfectly understand that you pay extra for licensing for commercial use. They will try and get that licensing worldwide in perpetuity from a creator for the amount that they have negotiated down to put on an Instagram post. And unfortunately, it's such a widespread practice that we need collective bargaining in order to deal with that. (Kat)

The numbers game, the collective of members and talking to these bigger companies. Starting conversations with them requires some transparency, some answers and I think also, you know, maybe sharing information among the members, which is very valuable. (Dries)

Well, I think a union can bring stability to my industry and it can bring an end to scarcity and bullying tactics from agencies and brands. Holding all the power and influencers being on their own and standing alone. And I think if we can stand together, we can bring some surety to people's work. (Kat)

Despite the lack of collective bargaining agreements for some of these types of atypical workers, especially due to the lack of a legal framework, other strategies are emerging for attracting these atypical workers, and progress can be made by collectivising their challenges. For instance, granting members access to healthcare and pension benefits, as CMOs did and are doing, SAG-AFTRA in the United States has attracted influencers as members. In providing legal services and template contracts, and subjecting members to soft law, they create a level playing field. This was also a main issue addressed by the artists and content creators during the interviews and the roundtable.

If a company offers me an unfair pay for something and I just say no, and they can directly go to the next person until someone says yes, then we are all losing at the end of the day. So, I think it's very important to have these relationships, whether that is under a union or whatever shape or form that may be, you know, to have these standards or these relationships with each other where we agree to not sell each other out. (Dries)

Bargaining power and strength in numbers is also closely related to the economic and legal role of the trade union. Initiating litigation is a commonly used strategy amongst unions, but some unions are venturing into new strategies that also cater to atypical and economically dependent workers.

So, we do a lot of investigation and detective work into clawing back fees for musicians and looking after that. And I think we all know about YouTube and all the rest of it and we do have about 90% success in takedowns if we have to do that. (Musicians Union)

*So, it's maybe not really a question, but more of a statement or something that can open up the discussion a bit. I like to think in terms of solutions. Let's take the YouTube example. We're seeing that content creators are having difficulty taking a vacation because the algorithm forces them to provide content each week. You could say from a traditional union perspective, we would start organising all these content creators, bringing them together and **making claims** to YouTube management. But this is easier said than done. This is a massive challenge, and even with good cooperation between unions all around the world, this is maybe too much to ask. Let's be honest; this will be very difficult. **An alternative could be to work towards more legislation.** As a union, we can talk to lawmakers and try to convince them to make legal frameworks that oblige the YouTube platform to provide a system like this.*

This role for unions was also touched upon by some of the artists in the interviews and panel discussions.

SELF-EMPLOYED

Throughout the process, the roundtables, the interviews and the panel discussions it became clear that the digitalisation and new forms of work are drivers for some unions to reconsider their position on organising self-employed workers. It is very important in the framework of what trade unions can do for self-employed persons in the arts, media and entertainment sector to make a distinction between the recruitment of self-employed workers, the services provided to this group, and the forms of representation (collective bargaining among others) for the self-employed workers.

Within this framework it is again worth mentioning the strategy used by SAG-AFTRA. By for instance granting members access to healthcare and a pension plan, such as CMOs did and are doing, SAG-AFTRA in the United States has attracted influencers as members. Recent initiatives such as Freelancers United (ACV) and initiatives on behalf of Kunstenbond also show this interest.

The Kunstenbond initiative of even led to an active role of drafting a collective bargaining agreement for self-employed, freelance musicians. This led to the FNV Kunsten case at the European Court of Justice, and resulted in guidelines on the application of Union competition law to collective agreements regarding the working conditions of solo self-employed persons drafted by the European Commission.

*The thing is, it was not possible. We were not able to do collective bargaining for the self-employed. And within the scheme of this project we have, for years now, and also as the Kunstenbond in the Netherlands, by starting a law case from 2007, been working and working and working and lobbying to make a change there. And nobody ever believed that it would happen. **And now we are in the position that we are able to do collective bargaining for the self-employed.** So that's a good, good thing that we got this tool now that we didn't have before and we can work from there. And it also shows that unions are able and we are pretty good sometimes. And this time it took a long while, but nevertheless it was a change that a lot of people didn't believe would happen and we were able to pull it off. Besides, we were not the only ones working on it, but it did work and we are quite good sometimes in making a case to the politicians. But we have to be informed before that and that is what we are building up now at first. And we have to make sure that we get that we are able to do this bargaining. (Kunstenbond)*

With the uncertainty in certain countries, since the nature of the guidelines of the European Commission, of the legal framework for collective bargaining agreements for self-employed and/or atypical workers in the arts, media and entertainment sector, conversations with the respondents during this research revealed that other strategies are used on a legal and micro-level with, among others, an emphasis on raising awareness about and rehabilitating existing legal frameworks. For example, to be granted subsidies, the Executive Order to the Arts Decree of the Flemish Government negotiated with trade unions and employers' unions. Applicants need to comply with the following provision.

properly compensate all employees, **regardless of their status**, who provide a service in the context of the project, and for whom the applicant is the direct commissioning organisation or employer.

In the framework of this legal provision, an initiative JuistisJuist (CorrectisCorrect) was set up, and gave further substance to this legal provision. Taking the collective labour agreement as a basis,

The professional arts sector pays **correctly in all contractual relationships**. If a contractor is working with an employment contract, via Article 1bis or via a social bureau for artists (SBA), then the applicable CLAs determine his or her minimum gross salary. **The minimum fee for a self-employed person is calculated on the basis of the wage cost of a regular employee in a similar position.**

ADVOCACY FOR FAIR RIGHTS MANAGEMENT (CMO VERSUS ADVOCACY VERSUS COLLECTIVE AGREEMENTS)

Although trade unions have become increasingly aware of the impact of IP law, they are still struggling to find a common position that is suitable for defending the rights of their (potential) members.

*And on live streaming and streaming, if this becomes a significant revenue generating kind of model, then we expect our remuneration to reflect that. So, I mean, it's a clear kind of synergy between: if somebody is making money out of this, then we expect some of that money to come to us. I don't think in their minds they see a difference between live streaming or something as captured for a recording at a later date. The point about it being recorded and played at a later date, of course, is where the difficulty comes in, in keeping track of you know who would stream. **Because we're not musicians, we're not actors, we're not used to dealing with those kinds of future payments or recurrent payments. We're more used to dealing with things on the day. So that's something we're going to have to address and find an answer to.** (Bectu)*

During the roundtables, different approaches were mentioned. Basically, they fall into four categories: creating awareness on the importance of Intellectual Property Rights; policy making and advocacy on IP-rights; collective bargaining and filling in the gaps not addressed by CMOs; and collaborating with the latter. It should be stated that a lot of these initiatives mainly cater to non-atypical workers.

*Most of this we do in coordination and collaboration with our CMO, at least one of the CMOs, and we are sometimes in competition with them. **Because we like to integrate these things when we can into collective bargaining agreements that include the labour part.*** (SFA-CGT)

*Maybe start with the **traditional approach, which is to try to set tariffs or make collective agreements on the sector or on the digital uses.** And maybe just to sum up what we've done there. In the summer of 2019, we introduced a streaming tariff for live streaming. Which includes tariff for video, audio and also for real time streaming where there's no recording.* (Finnish Musicians' Union)

This focus on typical workers also resulted in a large number of examples put forth by the different unions attending the roundtables, where collective agreements were bargained for, some of which were negotiated during the COVID-19 pandemic.

***And since the pandemic we came up with special streaming rates because there's nothing for live performers to do in terms of our orchestras and ensembles.** We had to look at ways we could help them because they couldn't have an audience. We granted concession that a digital stream could be made in lieu of an audience, so we didn't normally charge for those rights, and we forgave those rights for 24 hours. I mean, if someone wanted to stream a concert, a live concert with no audience for, say, three months, then we'd start making a fee and that fee would be up to six months with just a progressive fee. But normally a 24 hour, absolutely free of charge stream in lieu of an audience would happen.* (Musicians Union)

*We've also had long-term agreements with organisations like the Royal Shakespeare Company, the National Theatre, and a number of the opera and ballet companies within the UK. And again, the basic premise of those agreements is that it delivers payment for members above and beyond the fee that they already get for the live performance. They will have this standard weekly engagement fee for doing the theatre show or the opera or the ballet or whatever. And then when there's talk of putting it on the BBC, broadcasting it, putting it in cinemas, **additional payments are due for that with a royalty structure, depending on how long they want that to take place.*** (Equity)

Some of the unions at the roundtable are already well acquainted with the flexibility in negotiating tariffs and have an approach in differentiating these tariffs and consent depending on the commercial or non-commercial nature of the exploitation, the types of exploitation, et cetera.

*Now, when the use is strictly **non-commercial**, so when a producer will record the show and distribute it to schools for free, then our members receive around £150 for each 30 days of non-commercial usage. And then when that spills over into commercial usage, when some of them start sending it to schools, for example, we negotiate separate fees on top of that. There's a clear division between non-commercial usage and commercial usage. Even for the non-commercial usage, when the producer is not receiving a penny for passing the work on, that still attracts a fee for our members, which we think is quite an important principle in respect of their labour rights, performance rights and so on.* (Equity)

*And then after we had some theatres go through with it, we used the same model in many theatres because most of the cases were very similar. How we did this was to sell the rights with a lump sum for a very short period. It doesn't mean that those streamings will continue or the rights have been sold for a longer time than that minute or that live performance. That's why we are going to have negotiations with our counterpart theatres to add something about that in the collective agreement. But at this moment, we don't know yet what we would like to have in the agreement. So that's why we are going to **collect more data, more details, kind of get more ideas on how to tackle this later.** (Näyttelijäliitto Skådespelarförbundet)*

Other unions struggle with this question of flexibility in rates linked to the growing forms of exploitation of works or performances protected by authors' and/or neighbouring rights. They acknowledge that their traditional model needs revision.

***And I think that we need to be more flexible.** We've only had solid rates in the past. You know, this is a rate and it's been quite traditional. And now we will consider a lot more flexibility for different uses, different media and are looking at that. We haven't done a tremendous amount of work, **but we've always been traditionally inflexible, I think, the musicians union, and hopefully that will ease.** (Musicians Union)*

And what we can see generally, again, there are a few exceptions, but rarely and fairly that the result of these negotiations is either no remuneration for the rights or very low remuneration for the rights. And there are, I think, 37 local branches in Sweden. So, there are just as many solutions and models for the remuneration. And not all of them, of course, have agreed on these kinds of agreements because not all theatres wanted to do digital distribution. But no local agreement is exactly like the other. There are a lot of different solutions. (Scen & Film)

Several unions also acknowledge that working together with CMOs is a possible and unavoidable strategy.

***But we also recognise that some of it we can no longer include in the collective labour agreement. And we have to have an articulation with a specific agreement that covers rights where we try to integrate the CMO where we can,** even though the employers hesitate to engage with the CMOs. We are the go-betweens or it's the courts that can be sometimes the go-betweens. (SFA-CGT)*

*And we set up a system where the producer of the streaming would notify Gramex. That is our collecting society for the music neighbouring rights. And if they do not notify Gramex within 30 days, the payment to the performance rightsholders will happen through Gramex. And this has been in practice for almost two years now or more than two years now. And it's working. **This is our strategy: to try to direct this type of payments for rights through Gramex, which is paying performers a couple of times a year. It is much easier for the producers to take care of the payment if they don't have to do it themselves.** (Finnish Musicians' Union)*

During the COVID-19 pandemic some unions noticed an increase in questions on fair remuneration and IP. They also acknowledge that there are opportunities in the domain of advising and advocating. This raises questions on the knowledge within the organisation and structure of the respective union.

We do get a lot of questions that are not related to our business, and those are usually based on how much should I charge for these rights and how should we make a deal between ourselves, maybe to ensure that we have our rights secured and thus it's very difficult for us as a union to give advice on that when it's not in our area of expertise in our business. We do see an increase in those kinds of questions and we have the opportunity to help.

(Scen & Film)

*I should say as well that one of the advantages that we have is that we have our own in-house distribution service that collects the money due to our members from cast albums, TV shows, feature films, and so on. Members are also familiar with that concept of the union getting money for them and in connection with collective bargaining agreements, because it's the union that collects that cash and then distributes it out to people. **What we've found is that we've been able to really heighten our members' awareness of the fact that the terms and conditions they work under, they work under because the union has negotiated it for them. That's been a definite step change since the distribution service was entirely set. And so, it's been good for raising that consciousness.*** (Equity)

*We helped our members to negotiate the contracts; we have collective agreements on theatres but, you know, there's nothing about streaming or selling those rights. It means that everyone has to be asked personally. **The only solution is to have a personal contract. But how we did it was to provide advice.** There was always someone who started, you know, either it was someone from the group or some actor from the group that was involved who took care of the negotiations. And we provided advice. So it was that simple.* (Näyttelijäliitto Skådespelarförbundet)

Some unions are confronted with the limitations arising from the structure of the union or obstacles in current laws.

*What you have seen during the pandemic mainly is that there are a lot of new players on the market, and there's the theatres that want to show their stage performers digitally because they couldn't have an audience in the theatre, of course. And for the government-supported theatre in Sweden, we have a separate bargaining agreement, a collective bargaining agreement. **And the structure in that one is that the negotiation of the remuneration for digital rights are actually delegated to the local union branches. And we have seen several issues during those negotiations.*** (Scen & Film)

*And just to give a super brief overview of those issues is that, of course, the employer is in a position of power vis-a-vis the employees. There are very difficult issues, such as **difficult legal issues, that our members of the local branches don't grasp.*** (Scen & Film)

This transformation in what a union can do for its members, or the role they can take on was also addressed during the panel discussion with artists and content creators.

*Well, I understand from a brand perspective that it's difficult to do that because, based on what metric do you police these standards? Is it as soon as someone has 10,000 followers, it's this much and starting at 50,000, it's this much because, you know, **these metrics do not always take into account the uniqueness of the creator and the match with the brand, the niche audience. They do not even always show real followers or real engagement. I do recognise that it's a difficult discussion to have these standards being imposed from both sides.*** (Dries)

EDUCATION AND TOOLS

There's a lot of reinventing the wheel and everyone trying to make up their own kind of contracts on their own terms and trying to work those out (Lucy, Creation Theatre)

During the roundtables, some of the trade unions also elaborated on the initiatives taken in the fields of education. Especially during the Covid-19 pandemic, it became clear to some of the unions that there was a lack of knowledge amongst their members about authors' and neighbouring rights and streaming.

*We are planning to apply for money **to start an education** in helping musicians know their rights with the streaming business. (SMF (SE))*

And I think the training of creators is huge and important at the same time. Time is pressured also, so when you have to dedicate time to content generation, do you want to hear about exclusive licensing in perpetuity? I think that's one pushback for performers to say, do you hire or send me a contract that I can read so we can work? But again, that goes back to [weaker] individual bargaining power. How much can you demand of someone who has the upper hand in knowledge resources?. (Mathilde)

Other unions also elaborated on the idea of education and learning new skills.

*We have started to think about whether there's a need for **upskilling** or maybe different skills in the future, not just in the kind of technical apparatus or the technical performance of this, but in things as basic as wigs and makeup or hair and makeup on stage is a different proposition to hair and makeup for something that's being filmed potentially in high definition. (Bectu)*

As much as a lot of unions and their representatives want to take up this role of knowledge sharing and education, a significant part of them acknowledges that a success factor for taking this role is in building up that knowledge within the structure of the union itself. On certain topics, this knowledge is insufficient or lacking, which also has consequences for the traditional roles unions take on.

And I think that's also one of the reasons why we're having this, is to start building up this knowledge. And it is actually absolutely necessary to have that knowledge to be able to change the laws. It is a starting point to know, because it's very difficult to have a conversation with somebody when you're lobbying or if you are negotiating, if you don't know exactly how the technique works or you don't have to know exactly, but you have to know enough not to be blown away from the table. (Kunstenbond)

These initiatives and insights are also being supported by the statements made by content creators and artists in the panel discussion. For these atypical and economically dependent workers in the arts, media and entertainment sector, they lack a structure or organisation that gathers knowledge, shares this knowledge and provides courses and education. Instead of self-educating and having the idea of 'reinventing the wheel', there is a strong need to centralise this knowledge.

We also need collective education because as freelancers, we don't have the structures in place to support each other. And people who are new to the industry don't have a one-stop shop to go and find out this information and protect themselves. (Kat)

*And I think nowadays you can no longer say, well, I'm an artist and I only want to be an artist and I don't want to be involved in anything else business wise. But still, you have to have your main focus on being creative and being an artist. **And I think having organisations or people to talk to and, like, to know that the knowledge is there and you don't have to build that knowledge yourself, is I think, crucial.** (VI.BE)*

One might ask whether the gathering and organisation of this knowledge needs to be a role for unions. The lack of collective bargaining agreements for atypical workers, however, calls for other strategies of protecting the right to fair remuneration and fair practices. Currently, the key to this safeguarding, seems to be education and the sharing of knowledge. Or as Dries stated:

*I do think that education in all of these fields and sharing experience and knowledge with each other is super valuable because I think that's where **there's a lot of power.** **And in sharing that knowledge with each other in terms of fair pay, obviously, because, you know, if a company offers me unfair pay for something and I just say no and they can directly go to the next person until someone says yes, then we are all losing at the end of the day.** (Dries)*

And even if this is a role that the unions should play, one might ask whether this role should be taken up solely by the Unions or whether new collaborations need to be built with e.g. centres of expertise in the arts, media and entertainment sector and the emerging federations and coalitions of artists and creatives.

*I really think that and it's getting boring because I'm repeating myself over and over and over, but in building **knowledge and building expertise and sharing that knowledge,** it's really important **to work together very closely and to listen to each other and to be willing to talk to each other as well.** (VI.BE)*

*What we are doing now in the Netherlands is building a creative coalition which is built by unions and associations. **And we are together now with 43 organisations trying to build one large voice for creatives.** But then again, I mean, we are the only big organisation within all these groups. And we have, I mean, I'm sorry to say that we have more knowledge than an association who works with volunteers. It's more difficult, of course, and they still want to be separate. We are trying to find a way for them to have their own voice, but use our force and also find a way to get enough money because otherwise we will disappear anyway. And then the strong part has gone. It's not to their benefit if the union goes away. But it is a difficult, difficult question. (Kunstenbond)*

POLICY WORK (ON A SUPRANATIONAL LEVEL)

An important traditional role for trade unions is its political function on a national and supranational level. As a social partner, it can have not only an impact on the drafting of collective bargaining agreements but also on the law-making process. It should be noted that from recent experiences, e.g. in Belgium, this role is being challenged. More and more federations of specific collectives of artists are involved in the law-making process and are being actively asked by policy makers to provide input and ideas, in place of the traditional trade unions.

Nevertheless, we still see trade unions having a big role and responsibilities in the law-making process.

There was a great deal of discussion about the translation of the word proportionate, and we were able to get the notion of proportional rather than proportionate, which in French means that they have to pay a percentage basically of what comes in rather than something that would be a part of what comes in. (SFA-CGT)

An alternative could be to work towards more legislation. As a union, we can talk to lawmakers and try to convince them to make legal frameworks that oblige YouTube to provide a system like this.

We need incentives and we are trying to include all those little incentives in all different laws and all different possibilities. And if you as a government subsidise a company in the Netherlands or if you are negotiating a trade deal, we have to make sure that there is some incentive to be able to talk to these guys and to be able to be at the table and to have this table.

The existing legal framework and laws provide Unions with an incentive for negotiating collective bargaining agreements, laws, etc. In the roundtables it was noted that the legal framework does not always provide enough leverage however, and a shift towards collecting data and statistics in order to argue for change is a possible and more robust strategy. Influencing policy can be a way to create a better framework for artists, but it is difficult to match the lobbying power and strategies of the big players like Google and Youtube, who further have the advantage of being able to present a lot of data that gives weight to their arguments. In light of this, Unions may want to consider other strategies, such as developing standard contracts with better terms, which may sometimes have more impact than continuing to try to convince policymakers to make better laws.

“What was really interesting is that we got a bit beaten at the post by bigger organisations like Google and content hosts and content creators that are concentrated because they could turn around what looked like evidence for changing the law in this and this way, which, to a policymaker, looked more compelling than the evidence that several smaller unions were able to generate or even academics. [...]It’s a flaw in the system in policymaking, that will favour those with big resources who can turn around a report and show quantitative data quicker than the smaller scale organisation, which may have its finger on the pulse, but whose primary purpose is not to lobby government. So we shifted the focus to look at new contractual terms and bargaining agreements and start rolling out that for Equity and then have that flow over to other unions.” (Mathilde)

The above-mentioned change in Belgium has even resulted in legislation for arts federations to be recognised in the framework of their membership in the Artworkers Commission. The question remains whether this fragmentation of advocacy and the political role is a positive change. What's more, these federations do not have international networks which is an obstacle to its political function as a bargaining agent on a supranational level. This is where the trade unions still have a strong position and network that they have built over time.

INNOVATION AND EXPERIMENT

During the roundtables, a last theme was refined. Although their strategy is not widespread, the experiments and innovation of the Finnish Musicians' Union is worth mentioning as a possible direction for other trade unions. The motto of this experiment and innovation could read as follows: by and for the sector. By investing in such innovations, the creative sector is put in the driving seat and takes authorship and control over the business models implemented, instead of top-down initiatives such as the live-streaming initiative of Cultuurconnect in Belgium.

*In 2016, we created a digital toolbox that included software to run a music venue, a restaurant, and it had an integrated mobile app for the audience. They could browse events, buy tickets, and also order drinks and food at the venue, basically do all the transactions on mobile. And this app also now includes a streaming platform, which means that as the venues have a state-of-the-art streaming infrastructure, the audience can also – when you buy a ticket – have the option to watch the event while you're sitting on a tram, getting to the event when you're late, at home if you decide not to come at all, or you can watch the event afterwards. In 2016, we didn't know anything about COVID-19 then, but all of the features on the app are quite useful for the digital use of this type of venue. Actually, we got some funding from the EU structural funds to develop the concept of a digital club further. And we are doing some additional features on these applications right now. And this is one of the key features of what we are doing now. **We are trying to convert a traditional live venue to a digital venue where you have features that you can connect and you can be a customer digitally.** All the transactions are done digitally through the app. (Finnish Musicians' Union)*

It is also clear that for this type of innovation and experiment, partnerships are key, or at least need to be reflected on. In these partnerships contractual obligations can also protect the rights and interests of atypical workers.

*Then as a third thing, what we did during the pandemic was a project where we wanted to increase the amount of music live streaming when there was a fast-developing streaming market at the beginning of the pandemic. And in this project, we had a partner, a company that was expanding its operations into this market. And there was also a third partner, one of the major ticketing companies in Finland. And what we aimed at was to provide **work for music performers as they had lost their live engagements**, the possibility to work live. And we also wanted to be a catalyst in improving the quality and increasing the audiences of live music streaming. **But maybe the main point with us in this project was to study the economic model of risks and profits and how they can be shared in this type of activity. We developed a model where the economic risk was shared with all the involved parties, the performers, the venue, the streaming producer, and the technical team.** And it was rather complicated as there were many different roles for the various players. Sometimes the streaming was initiated by the artist, sometimes by the venue or the live agency or a record label. **And our idea was, of course, to avoid a situation where the risk would only be on performers.***

And what we ended up with was maybe around 50 streaming productions through this project. And we had some funding to ensure that the performance would be, in the end, paid for fairly and that this experiment was successful in many ways, providing of course, employment to performers and helping them to cope with this difficult situation. But it failed in one critical aspect: the demand for streaming teams providing the technical service. Demand increased dramatically and eventually they had no interest in sharing the risk. On the contrary, they were raising the prices because there was such high demand for their services. So, we couldn't actually test that part of the structure. (Finnish Musicians' Union)

CONCLUSIONS

AMIDST DREAM AND REALITY

In this last chapter, we put the pieces of the puzzle together: what changes and urgent matters do we see emerging? what do the creative workers themselves say about this and what are the trade unions already doing about it?

This chapter also addresses topics and elements that are outside the sphere of work of trade unions, but rather have to do with new legal and policy frameworks that could be or should be implemented.

At the end of this chapter, we dare to dream by proposing some out of the box ideas as well as inspirational models from other sectors that can provide new strategies or give rise to new visions.

PRECARITY AS WE KNOW IT, WITH ADDED LAYERS OF COMPLEXITY

A first conclusion is that atypical workers working (partly) in the digital realm are confronted with precarity as we know. The multiple job holding or multiple platform activities and revenue streams linked to these business models and the economically dependent nature of platforms and their remuneration model, or lack thereof, means these workers face a precarious labour and income profile similar to that of atypical workers, freelancers, and other workers working in the arts, media, and entertainment sector.

This precarious model, as demonstrated by the desk research, artist statements and the figure on page 18, is characterised by extra layers of complexity when working in the digital realm. Firstly, this is a consequence not qualifying as employees in the relationship with such platforms or enterprises, due to its voluntary nature. The qualification as a non-employee is deliberate and of no small importance. In some Member States, such as Belgium, this income can be qualified as a revenue out of the licence or transfer of copyright and/or related rights which is not necessarily considered subject to the social status of 'self-employment', and thus is not taken into account for social benefits, pension, etc. The absence of a decent legal framework in social security law adds an extra complexity to the precarity of these atypical workers.

This observation and qualification as a non-employee has further consequences for the applicability of labour law. Since labour law is not applicable in these relationships, the artists, content creators and other atypical workers that were interviewed addressed the terms & conditions unilaterally imposed by platforms, which puts them into an economically dependent position. Furthermore, they state that they have no negotiation framework and are in a weak position, due to the standardised character of these terms & conditions. They highlighted that transparency on how the algorithms work and change is lacking. Trying to remain competitive in a non-transparent and uncontrollable environment in which they lack bargaining power creates a situation of insecurity, uncertainty, and stress.

This leads to self-guided strategies and working methods, as mentioned by the respondents, with an uncertain income and a poor return on the work put into creating this content. Some of these working methods include:

- pushing content to stay relevant to the platform's viewers and consumers, regardless of earnings;
- finding ways to engage and reference different platforms, to 'earn' more viewers and followers;
- pushing free content or working on platforms that provide free content, to solicit for commissioned work based on viewers' and followers' value.

Many of the respondents further elaborated on the inscrutability of the algorithms that determine to what extent content gets visibility. Playing a game whose rules are constantly changing feels exhausting and uncertain. When platforms or software providers adjust their algorithms or launch new software, they do so overnight and unannounced. This calls for a need for flexibility and ability to adapt in a timely manner.

The accessibility of these (user-generated) platforms, and the lack of a gatekeeper, adds new dimensions to the game of competition. On top of the complex relationship with platforms, most of the interviewed artists state that they are facing competition from non-professionals which adds to their precarity. These non-professionals often do not have any economic incentive, charge unreasonably low prices, and take a part of the cake. This results in professional artists, podcast makers, and content creators trying to differentiate and to stand out by creating higher quality content. This in turn leads to more production costs and time, which doesn't necessarily result in increased income. In this context, the idea of creating a label to distinguish professionals from non-professionals was mentioned by some of the artists. This label would, under the presumption of a better bargaining position, eventually result in a differentiated remuneration model.

The above problems are also seen in the multiple job holding and revised career models these online platforms create. To try to stay ahead of this fast-moving game, breaks from the online environment are necessary in order to work on creating new formats, developing new shops, making new content, etc. These breaks then need to be financially bridged without any entitlement to a replacement income such as unemployment benefits. Closely linked to this change is the problem of pricing. What is reasonable and what represents value in relation to the activity of others/competitors? The lack of standard fees and minimum pay is a big issue frequently mentioned by the interviewed artists, and adds to the race to the bottom.

The last complexity that is added to the precarity as we know it, results from the number of platforms our interviewees are forced to work with and the multiple revenue streams related to them. Most of the interviewed artists and artists in the panel discussion do not generate their main income from the content they create for such platforms, although a lot of time is invested in generating content. A simple conclusion could be to not make content, free or not, for such platforms but in doing so their business model would collapse. This online presence and content provides them with the commission, advertising deals, partnerships, etc. that are necessary to provide a steady income.

THE ROLE OF UNIONS VERSUS URGENT MATTERS IN THE SECTORS

With the lack of collective agreements, a level playing field, fair remuneration guidelines or bargaining power that these atypical workers are confronted with, comes a possible more dangerous implication for trade unions and their current members. In not being able to attract these atypical workers, and not venturing into strategies to cater to their needs, these atypical workers themselves become competitors to the legal frameworks constructed within the social dialogue as well as to current members of trade unions. What's more, by not considering such strategies the role of trade unions on a policy and political level may deteriorate, the first signs of which were seen in Belgium during the debates on a new Art Workers Status. The panel discussions and interviews, however, show that trade unions can still play a significant role in preventing this dystopian future.

Throughout the process, the roundtables, the interviews and the panel discussions it became clear that digitalisation and new forms of work are drivers for some unions to reconsider their position on organising self-employed and atypical workers. It is very important in the framework of what trade unions can do for self-employed and atypical workers in the arts, media and entertainment sector to make a distinction between the recruitment of atypical workers, the possible services provided to this group and the forms of representation (collective bargaining among others) for atypical workers. Whose union? Whose knowledge?

Whose union?

At its core, a trade union is a membership organisation. Due to the digitalisation and increase in atypical work in the arts, media, and entertainment sector, two big questions have arisen.

First of all, the question that needs to be answered is whether the union as a membership organisation wants to attract, gather and represent individuals active in a certain sector, regardless of their legal status. Or is membership only open to individuals with a specific legal status? If trade unions want to cater to all precarious workers, working in a relationship of subordination or economic dependency, this question is easily answered.

It is clear that attracting these atypical workers, regardless of their legal status, will not only require new strategies but will also create new demands and needs. During the interviews and panel discussions this was also addressed by the atypical workers, most of them working under the legal status of self-employment. While they acknowledge the traditional trade union role of collective bargaining, they also call for a different approach and demand different services. In general, they want the collective and the bargaining.

The second question thus is whether the focus needs to be on collective bargaining and constructing collective agreements. To compare, the strategies to attract customers and members deployed by public and private actors in the arts, media and entertainment sector – such as temp agencies and payroll advisors – is not only characterised by explaining their core business but also by providing information sessions, workshops, network events, fairs, focus groups, etc. They provide a means of gathering knowledge, creating an environment to share knowledge around building the necessary skills for creating a sustainable artistic practice. In doing so, they create a strategy where they teach individuals, but also apply a strategy of learning from them.

Some trade unions are already rolling out these strategies by thinking about or providing upskilling workshops, advice on intellectual property questions and contracts, starting education and training. All these are topics that cater to typical and atypical workers in the arts, media and entertainment sector.

A common thread throughout the interviews and panel discussion was the need for atypical workers to create a level playing field by imposing fair remuneration through collective bargaining. They expressed hope for binding collective agreements and the attribution of that role to trade unions. The interviews and panel discussion demonstrated that these collective agreements or the collective bargaining does not only need to focus on fair remuneration and the parameters of what is fair, but also on the demand for a different approach. Transparency, articles on long-tail income, stipulations on well-being, etc. also need to be addressed.

Whose knowledge?

As mentioned earlier, this research started at a time when the COVID-19 pandemic was still fresh in people's minds. It was also a time when NFTs were receiving a lot of attention and were seen by some as the future. It was a time when numerous companies were heavily investing in the metaverse, with full belief in its potential. Barely a year later, all of this seems like the distant past. Today, artificial intelligence is a hot topic, and the possibilities of this technology are evolving at a pace that is difficult to keep up with. Composing music for a short film using a text prompt, where you can request a two-minute Ennio Morricone-like intro before quickly transitioning into an exciting build-up reminiscent of Indiana Jones and finally transitioning into a romantic piano ballad, seemed like complete science fiction just a few months ago but is now almost taken for granted. The impact on numerous creative professions is immense, and the level of preparedness (artists, atypical workers, and unions) is inversely proportional.

The complexity of the mechanisms that collectively influence the ability of cultural workers to work under decent conditions and receive fair compensation is increasing. It is challenging to maintain a precise understanding of the influence of algorithms, the multiplicity of value chains, and unique combinations of revenue models. This is why sharing knowledge, expertise, and experience is an essential challenge, not only for unions but for all parties involved in striving for decent working conditions for atypical workers, namely federations, CMOs, support centres, intermediaries, etc. By sharing analyses, research, and good practices publicly, and engaging in cross-sectional and cross-sectoral collaborations, unions can try to set a good example.

THE NEED FOR NEW (LEGAL) DEFINITIONS

Digitalisation and increased working on platforms challenge the definitions used to describe workers working within the digital realm. Freelancers, atypical workers, economically dependent workers, are just some of the definitions used to describe differences between these types of workers, who are looking for new legislation and frameworks to address what ultimately binds them: a precarious legal status and unpredictably income model. Closely linked to these changes is the surge of new concepts such as flexicurity, and its difficult stance in catering to workers and businesses at the same time.

It can be disputed whether these new definitions allow a rethink around adequate protection by social security and labour law. If being forced by an algorithm to make more content is the issue rather than whether you are an economically dependent worker or not, is the real question: is this labour? And is that platform an employer since you create added value to their business model and brand? From the current perspective of labour law, the answer would be no; is the conclusion therefore that the traditional and historical concept of labour is in need of revision? And this is even more the case in connection to accessing social security. Is income out of copyright and related rights not always the fruits of labour, and thus subject to social contributions and enabling access to social benefits? In some Member States this is not the case. The implementation of tax benefits, credits and schemes is sometimes deemed a suitable way of catering from precarious workers and individuals, but without due consideration of the impact that this will have in relation to their access to contributory social protection systems as well as the safeguarding and viability of such social welfare systems.

The question is whether the current societal context still requires the strict dichotomy between employed and self-employed, and the consequent difference in applicable social security law. Does article 15 of the EU Charter of Fundamental Rights not grant everybody the right to work, regardless of their legal status in social security and labour law? And what about the ILO's use of the right to decent work. And what if the national Member States fail in this respect? This strict dichotomy leads to solutions such as rebuttable presumptions of employment, or presumptions of self-employment, which in itself is the acknowledgment of this dichotomy perhaps being outdated.

Furthermore, digitalisation, the growing emphasis on success and copyright-driven remuneration models, shares in advertising income, etc. stretch the definition of what is considered remuneration, and in the framework of the latter of what is considered fair. Are the number of views and followers, the added brand value, length of the content, and other parameters fair as a basis for remuneration. And if so, which role are trade unions willing to take in these apparently ephemeral discussions?

RECOMMENDATIONS

STRENGTHS, OPPORTUNITIES, ASPIRATIONS & RESULTS

In the report 'The Future of Work in the Media, Arts & Entertainment Sector - Meeting the Challenge of Atypical Working', particularly in the chapter 'The Challenge of Reimagining Services to Meet the Needs of Atypical Workers', several aspects and examples were already mentioned of how unions are seeking to address the specific needs of atypical workers in unconventional ways. Below, we provide some additional suggestions for actions and steps that could be taken.

This research was an exploratory study that involved conversations with various respondents. These respondents offer their own (and therefore limited) perspective on a complex reality. In addition to this qualitative research, it would be beneficial to conduct a more extensive survey among atypical workers to gain a deeper and more objective understanding of their most pressing needs. For example, one could inquire about the forms of support that would be most valuable. Is there a greater need for better guidance and support in terms of education, training, and skills development? Or do people believe more in the development of standard agreements, licensing models, or a union that represents artists in negotiating (licensing) fees? Expectations regarding unions are likely to vary across countries and sectors. The role that unions play today differs significantly from country to country and from sector to sector.

However, the fact that unions assume different roles in various sectors and countries is also an advantage. They can learn a lot from each other and find inspiration. Bringing together unions across sectors seems to have only advantages.

It is evident that atypical workers require atypical approaches from unions regarding typical union themes, such as maintaining or improving employment conditions, including better wages and benefits, improved working conditions, enhanced safety standards, establishing complaint procedures, developing regulations governing employee status (promotion rules, just-cause conditions for termination), and protecting and increasing workers' bargaining power. This also means that the organisational structure of unions may need to be examined (membership, conditions, financing, competencies, etc.).

A strategic exercise that could yield valuable information is the development of a SOAR analysis. This analysis is a variant of the SWOT analysis. While the SWOT analysis also focuses on negative elements (weaknesses and threats), the SOAR analysis solely concentrates on positive elements. What opportunities and strengths do we see, and what aspirations and results can we collectively emphasise? This way, a joint narrative of ambition can be crafted, generating positive energy both internally (among unions) and externally (towards current and future members and clients). In these challenging and sometimes dystopian times, positive energy and ambition are more necessary than ever.

GO FOR REASONABLE QUICK WINS

The bilateral conversations, panel discussions and roundtables demonstrate that one of the main propositions for trade unions to consider is the creation of strategies to attract atypical workers as members by more closely working together with each other, atypical workers and other partners. Before being able to draft collective agreements, do advocacy and policy work, and create new strategies to improve their precarious situation, firstly there is a big hurdle to overcome in attracting these atypical workers. During the different phases of the research, we elicited the following main issues that need to be addressed and can be part of these strategies:

- more knowledge gathering and sharing;
- going into partnerships;
- making IP part of the mission.

From the roundtables, it became clear that different methodologies are being used by different trade unions, such as: providing tools, creating innovative and artist-centred models, collective bargaining, etc. Sharing these initiatives and sharing the gathered knowledge on a regular basis, and collaborating on them, seems essential to bridging the gap between the different methodologies being used and deployed.

What's more, certain trade unions stipulate that they lack certain knowledge to adequately provide an answer to the questions of atypical workers in the arts, media and entertainment sector. In building this knowledge, a revision of the organisational structure of trade unions, and venturing into partnerships, seem key. Working together with sector federations, such as in the example of *Kunstenbond (NL)*, and with other advocacy groups and CMOs can be an important part of the strategies. These alliances and partnerships can then further be strategised in advocacy, policy, and collective bargaining work.

What also becomes clear from the interviews, panel discussions and roundtables is the importance of knowledge and advocacy concerning intellectual property. Whereas some national legislation allows trade unions to make this part of collective labour agreements, knowledge on intellectual property is still lacking, as well as strategies that go beyond collective labour agreements which will be necessary to offer meaningful support to self-employed or other atypical workers. This explorative research moreover teaches us that there is a strong need for more knowledge on this topic, and an acknowledgement that the bargaining power provided by trade unions can work in their favour. Hence trade unions could take a more proactive role towards the gathering and disseminating of knowledge on intellectual property amongst their members and atypical workers, creating awareness of its importance within the framework of a sustainable practice and revenue model, in collaboration with other actors or not.

A TIME FOR OUT OF THE BOX SOLUTIONS?

In the postface of this research, we want to dream further or address specific questions that have arisen. Throughout the different phases of the research, out of the box ideas have emerged. Out of the box ideas can further be used in advocacy and policy work with the aim of improving the position of atypical workers and addressing their precarious income and labour profile, but this requires further research and discussion.

From personality rights to Authors rights (AI and voice-overs)

Despite much of it pre-dating digital reproduction, the legislation on copyright and related rights has nonetheless proven a robust framework also in relation to new technologies and new forms of (re-)use of works and performances protected by this framework. However, current profound, AI-driven change will require urgent re-assessment of the adequacy of this framework. During the roundtables and the discussion panels, urgency was felt on the impact of Artificial Intelligence on voice-over artists. AI allows the data of an original recording, such as the voice of an actor, to be reused and appropriated to a different context as if it was a recording of the performance of that specific actor or actress. In being able to do so, this software puts voice-over artists in a precarious position. Not only because it is their livelihood, but also because this technology allows others to reuse their voice and put it into a different, possibly even harmful, context.

It is clear that this question relates to the personality rights of the voice-over artist and that the legal framework on copyright and related rights is deemed to be insufficient. A first recommendation is for a more elaborate legal framework, such as the moral and economic rights in copyright and related rights legislation, to improve the position of voice-over artists and other artists facing this new dynamic. In practice however, we find that such a legal framework in itself is not sufficient.⁷ In addition to this legal framework, or in the absence of a framework, an agent such as a CMO is deemed necessary to protect the position of these artists, their remuneration, and to define the context in which the re-use of this data is allowed.

The AI software can itself provide a solution. Software can provide a threshold of proof of prior consent of the original personality rights holder.

From stakeholder to shareholder

During the bilateral conversations and the panel discussion, a topic addressed several times was the economically dependent relationship with platforms and social media companies and their untransparent algorithms and business models. Whereas artists, content creators, musicians, composers, influencers, etc. provide content for these actors in the arts, media and entertainment sector, and provide these organisations with data, this relationship is imbalanced and unilateral in favour of these platforms and companies. In return, the creators of this content lack security on the workings of the monetisation and success-based models used by these platforms, while attracting viewers and advertising partners, and thus revenue, for these entities.

⁷ Menell, Peter S., and Ben Depoorter, 'Using Fee shifting to promote fair use and fair licensing', California Law Review 102, 53 - 85, 2014.

This has a very big impact on the working conditions, well-being and business model of those creating and performing in the arts, media, and entertainment sector. They are being considered a stakeholder and yet have no direct impact or say in the business and governance models deployed by these platforms, in contrast with the shareholders of these companies.

Closely linked to the transition or imposing of rules to consider these platforms as enterprises, research can be conducted on alternative governance models that transition towards shareholdership instead of stakeholdership. In the realm of this research the question is, after all, whether 'fair' only means fair remuneration, or whether it also means looking into new models that grant artists a fair share of power or influence to make impactful decisions at company level that have an effect on the precarious and capricious income model of atypical workers.

This topic is not new, at least not in the sector of football. In the German Bundesliga and the Swedish Football league there is legislation called the 51% rule, which is an important and key rule that clubs need to comply with in order to get a licence to play in the respective league. This rule stipulates that 51% of the voting rights need to be owned by the club itself. This rule allows supporters and fans to be involved in the decision-making process and prioritises the wishes of supporters over profit.

This legislation also teaches us that a licensing framework to operate and to do business in a certain geographical area can also provide a framework to impose further rules around fair practices, fair remuneration, etc.

APPENDICES

Current Affairs

At the start of this study (2022), we looked at a lot of current events in the broad field of arts, media, and entertainment. We sorted these anecdotes, news facts, blog posts, etc. into different topics. These sources are listed below.

A. General

1. [About attention economy and 1-on-1 relationships with fans](#)
2. [We should fear this model](#)
3. [Dancers & NFT's/DAO's/Metaverse...](#)
4. ['creator economy' vs music streaming](#)
5. [Is a platform artist/creator-centred or not?](#)
6. [Why NFT's are fun](#)
7. [What are NFT's?](#)
8. [Will financialisation of music lead to perpetual copyright?](#)
9. [NFTs as community-financers](#)
10. [New models of collective rights models in the DJ world](#)

B. Decentralised Autonomous Organisations

1. [Example of a DAO doing projects in the real world](#)
2. [A research community organised as a DAO.](#)
3. [What are DAOs?](#)
4. [Autonomous Artists - DAO](#)
5. [Sone DAO](#)
6. [What DAOs and co-ops can learn from each other](#)
7. [Artist-fan relationships](#)

C. NFT/Blockchain music

1. [What's NFT music?](#)
2. [The state of NFT-music right now](#)
3. [What's NFT music from a contractual standpoint?](#)
4. [How this actually works](#)
5. [Example of concert/performance as an NFT](#)
6. [More examples of NFT music](#)
7. [Co-creation in NFT Music](#)
8. [Example of CC0-Library where you can mint automatically](#)
9. [Example of deadmau5](#)
10. [NFT regulations](#)
11. [Music NFT Contract Builder](#)
12. [NFT giving access to...](#)
13. [AmplifyLive earns musicians income from a gig AFTER the gig through investment fund](#)

D. Streaming

1. [About Tidals revenue model](#)
2. [And how it will not lead to artist income](#)
3. [About equitable remuneration user centric pay models](#)
4. [Apparently there's a game that teaches people about decentralised finance through 'farming mechanics' that now has its own music streamer](#)
5. [Is income from streaming to be treated as licence royalties or sales?](#)
6. [Spotify for artists](#)

E. Podcasts

1. [About revenue models and access to data/information](#)

F. Audiovisual streaming

1. [About TikTok and 'digital labour rights'](#)
2. [How does YouTube process automatic Copyright claims?](#)
3. [How can you make money on TikTok?](#)
4. [Syncing on TikTok](#)

G. Metaverse

1. [What does 'ownership' mean in the metaverse?](#)
2. [What will property look like in the metaverse?](#)
3. [Roblox concerts](#)
4. [Metaverse concerts review](#)

H. NFT-Gaming

1. [NFT-gaming = mini-capitalism](#)

I. Miscellaneous

1. [Coachella sells lifetime tickets as NFTs](#)
2. [Warner mints 'shared memories'](#)

J. Mental health

1. [Digital burnout](#)