Call for a larger understanding of worker collectivities among students of industrial relations

- For many years i.r. specialists have been the intellectual prisoners of Fordism
- We envision the “typical” worker collectivity as a union in the Fordist model
  - A capitalist company employing workers
  - The capitalist company owns the means of production and the workers own no means of production relevant to the enterprise
- But nature of work is changing
  - From model a)
    - Hierarchical organization of work with subordination and dependency running downward from “the boss” to “the workers”
    - Power and profit flows upward from workers to boss
    - Work contract is “standard” legally enforceable contract of employment of long duration
    - Few things in common between workers and bosses (except overall health of industry and firm)
  - To model b)
    - Network organization of interlinking nodes with subordination and dependency running in many directions
    - Power and profit flows in many directions but primarily to nodes which hold valuable services and access
    - “Non-standard forms of work contract; self-employment is common; several jobs in an individual worker’s career, both serially and simultaneously
    - Many things in common among different parts of network even where in conditions of subordination; many alliances and “strange bedfellows.”

The diagrams below illustrate the general trend and the specificity of artisans in the film and video industry.
“Employment” in the arts and cultural sector is especially growing (see Chart from Hill¹)

---

**Chart 6: Growth in artists, the cultural sector and the overall labour force, 1971 to 2001**

- **Artists**
- **Cultural sector labour force**
- **Overall labour force**

---

- Angela McRobbie from “Everyone is Creative”
  - “‘Self-employment’ is the mantra. Set up your own business, be free to do your own thing! Live and work like an artist! You can make it if you really want! And this "selling" of creative work (or a creative attitude to work) is particularly appealing to youth because the implied emphasis on uncovering talent feeds off young people's proximity to the fields where the space for creativity seems greatest: popular music, film, art, writing, acting, fashion, graphic design”.

- In conditions of subordination and dependency, the network workers join together in collectivities
  - In model a), the most common and applicable form of worker collectivity is the trade union
  - But we must think of the larger concept of worker collectivities
    - Workers commonly seek interest representation in a multiplicity of organizational forms
    - Done in conditions of subordination
    - To protect themselves against exploitation by larger players in the market
    - Sometimes workers unite with those on same level; but sometimes they unite with those at several different levels e.g. sometimes workers make common cause with those who exploit them e.g. singer-songwriters seek copyright protection with large firms who produce recordings

- Collectivities under which workers organize themselves against the market
  - unions
    - engage in collective bargaining for a collective agreement
  - guilds: Krause³ describes guilds as worker collectivities that have power and control over
  - association
    - monopoly or independent power to exercise control over those in the group e.g. enforce or exclude membership, collect dues and fines, make rules that bind, training of initiates; replication of membership
  - workplace

---


• ownership of the means of production (tools and workshop); number and quality of products produced; speed of production

• market
  o monopoly over product produced or skill provided; control over training or skill; control of secrets or mysteries
  o power to extract rent from the fruits of one’s labour
  o power to establish boundaries between group and other competing groups and to control subordinate groups
    ▪ in Parkin’s words “exclusionary closure”

• state
  o autonomy from the local power (city, state, monarch) in establishing monopoly
  o exemption from tribute by the state (“the stronger the state, the more it extracted from the guilds” (Krause 1996, 6)

  ▪ professional societies
    • e.g. Canadian Medical Association; Canadian Nurses Federation (and their provincial equivalents)

  ▪ public protection societies
    • e.g. Colleges of Physicians & Surgeons; Colleges of Nursing
    • set up by governments to protect public interest
    • handle credential awarding, public complaints, discipline, suspension of credentials
    • in some jurisdictions, the professional society handles this function

  ▪ intellectual property capture agencies
    • copyright collectives (of which more, below)

• Fundamental dilemmas of the arts and culture “market”
  o Pure markets fail to ensure a socially optimal level of production of cultural products because of externalities and public good aspects involved
    ▪ chart from Grant and Wood showing the problem with cultural products

• Why Cultural Products Are Not Like Ordinary Commodities (after Grant and Wood)

<table>
<thead>
<tr>
<th>Attribute</th>
<th>Ordinary commodity (e.g. car, detergent)</th>
<th>Cultural Good or Service (e.g. book, CD, TV Broadcast)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of Product</td>
<td>Serves utilitarian purpose</td>
<td>Communicates ideas – information or entertainment</td>
</tr>
<tr>
<td>Nature of Production Process</td>
<td>Assembly line; each unit requires significant resources</td>
<td>Expensive one-time process; creates intellectual property that then can be cheaply stored, duplicated and delivered</td>
</tr>
<tr>
<td>Marginal Cost of a Unit of Product</td>
<td>Significant</td>
<td>Insignificant</td>
</tr>
<tr>
<td>Predictability of Demand</td>
<td>Demand largely predictable month after month</td>
<td>Difficult to estimate demand in advance of incurring cost</td>
</tr>
<tr>
<td>Substitutability</td>
<td>Large degree of substitutability with competing brands</td>
<td>Limited substitutability; product is perceived as unique; copyright law protects monopoly on each title</td>
</tr>
<tr>
<td>Time Line of Demand</td>
<td>Demand for product continues indefinitely until next product cycle (measured in years)</td>
<td>Demand falls off sharply after introduction of the product and when next product replaces it (measured in weeks or months)</td>
</tr>
<tr>
<td>Who Determines Demand</td>
<td>Ultimate consumer</td>
<td>Ultimate consumer in the case of books and movies within the choices made by gatekeepers; advertiser in the case of</td>
</tr>
</tbody>
</table>

---

5 Towse, Ruth. 2001. Copyright and Creativity in the Cultural Industries. manuscript. June.
### Setting the Price

<table>
<thead>
<tr>
<th>Setting the Price</th>
<th>Non-discriminatory; arbitrage precludes market differentiation</th>
<th>Within markets is often set at a conventional “going rate”; between markets is discriminatory (by market, nature of use, and time line of use); copyright law permits unlimited subdivision of markets</th>
</tr>
</thead>
</table>

### Pricing Latitude

<table>
<thead>
<tr>
<th>Pricing Latitude</th>
<th>Dependent on competitive forces of demand and supply; constrained by significant marginal cost and non-discriminatory pricing</th>
<th>Marginal cost is insignificant, and pricing of cultural products can be highly discriminatory between markets</th>
</tr>
</thead>
</table>

### Nature of Consumption

<table>
<thead>
<tr>
<th>Nature of Consumption</th>
<th>Each unit of product is consumed and is not available to others</th>
<th>Original intellectual property is not consumed but can be made endlessly available; “public good” attributes</th>
</tr>
</thead>
</table>

### Time Line of Advertising

<table>
<thead>
<tr>
<th>Time Line of Advertising</th>
<th>Continual advertising over many years to reinforce brand</th>
<th>Intense advertising at time of introduction of product before it is displaced by next product</th>
</tr>
</thead>
</table>

### Division of labour in production

<table>
<thead>
<tr>
<th>Division of labour in production</th>
<th>Hierarchical: Capitalist owns means of production; employed workers produce products at behest of capitalist</th>
<th>Network: Individual self-employed “creators” create basic product, often in concert with other self-employed individuals; larger network “nodes” organize production, disseminate product, act as gatekeepers</th>
</tr>
</thead>
</table>

- artists’ labour markets
  - Baumol’s “Cost Disease”\(^7\); endemic to labour-intensive enterprises; limited possibilities of improving productivity so cost of products is high; so markets increasingly unable to support high culture everywhere and even popular culture in smaller countries and regions
  - Highly skewed distribution among creators: many with very low income; few with very high income
  - “nobody knows” what will succeed in culture\(^8\); highly risky
    - so the purveyors of cultural products pass most of the risk on to the creators
    - creators earn small incomes and take big chances in the hope of “making it”
    - purveyors try “pick the winners”
  - Earning conditions of artists are poor
    - Artists are typically very poor and multiple job-holders
      - A survey of 3,300 artists in Ontario revealed that “67% had to work outside of their artistic activity to survive economically and, on average, the respondents spent 67.2% of their time on their artistic activity\(^9\).”
      - Artists respond to increases in income from both arts and non-arts work by spending more time on their art\(^10\)
      - Very few artists make a “living” from their works. Their average annual income is $23,500 (26% less than the Canadian average of $31,757.) To break it down further, conductors, composers, and arrangers make $27,381, actors $21,597, visual artists

---


\(^10\) Towse. 2001. p. 7
Their incomes can fluctuate wildly, creating a tax burden in years when they do make a significant amount of income, which would not be the case.

As self-employed, they are also not eligible for employment insurance, workers compensation and are required to pay both the employer and employee share of the Canada (or Quebec) pension plan, unlike employed workers.

Even as self-employed workers, their tax position is precarious. The Canada Revenue Agency has attempted several times in the past to classify them as employed, thereby denying them the right to charge their expenses against their income for tax purposes.

Older artists are particularly vulnerable: their lifetime earnings are low; they probably will not have contributed to the Canada Pension Plan or have any type of private pension plan.

Creators and other workers involved in the cultural industries produce works with potential value but lack capital with which to valorize their product.

Must ally with intermediaries with more capital:
- This is an alliance of necessity but also of inequality
- There is a commonality of interests – e.g. in “exploiting” the value of the creation, in selling the finished product and maximizing the return
- But also a clash of interests -
- Lorinc describes the problem in words that bear comparison to the Communist Manifesto (“Workers of the World Unite, You Have Nothing to Lose but Your Chains”) or the Wobbly Creed: (“The working class and the employing class have nothing in common.”)
- “The interests of creators and producers are neither identical nor even parallel.”
- “Throughout history, human beings have felt compelled to express themselves by creating works of art – good, bad and indifferent…. Suffice it to say that the expectation of financial gain is just one of many complex motivations for creators. Indeed, the vast majority of creative work never reaches “the market.”
- “The commercial entities that deal in marketable creative works – publishers, music labels, media conglomerates, theatre companies, etc. – function in much more straightforward ways. With a few exceptions, these companies seek out creative works

that can be expected to attract audiences, then, devise strategies for marketing and distributing them. Such firms often make a substantial creative contribution to the “finished product” (editing, sound mixing, etc.). And some have extremely high standards, a fact of corporate life that enhances our culture generally. But the overriding motive for these firms is to earn a profit for their shareholders. They achieve this goal the way companies in all sectors do: by maximizing their revenues, minimizing their expenses, and protecting their assets from rivals.12

- Capital is multiplicitous
  - money capital (funds or access to finance)
  - reputation capital
  - social capital
  - knowledge capital
- Under common law, any work produced by a worker under a regular contract of employment in the course of employment belongs to the employer, unless there is an agreement to the contrary
  - Self-employment means the creator owns the work
- But ownership of the work may do the creator little good unless s/he can get it to market, which often means the need for considerable capital
- Access to capital often induces artists to sell rights to their work for a period or forever
  - Musicians regularly do this when they sign with record companies
- When it comes to battles in culture, the clash of interests is often expressed as between “creators” and “users” and certainly when it comes to copyright, these two groups do have different interests. Users or “consumers” of culture want to get as much of it as they want at as low a price as possible. Creators need to make a living and are driven to try to maximize their returns.
- But often the intermediaries or cultural industries are lumped in with creators and set off against users. This is a misleading dichotomy.

- As Lorinc says:
  - “In Canada, as in many other countries, the discussion has been largely cast in bi-polar terms, with “users” (everyone from libraries to file-swappers to “electronic frontier” activists) in one corner, and copyright owners in the other. Due to the nature of our policy/political process, the copyright owners camp has been dominated by the media and entertainment industries, which can afford to hire lawyers, lobbyists and experts to represent their interests to decision-makers.

---

As this debate has unfolded, the views of the creators themselves have been overwhelmed by those of producers, publishers and media conglomerates, and assumed to always coincide. Creators are also users. Indeed there is considerable work being done lobbying for artists’ rights as appropriators of the works of others. Artists must carefully manoeuvre the political terrain, among intermediaries and users. A new credo can be set forth: “Creators of the world unite. You have nothing to lose but access to the proceeds of your intellectual capital.”

- Features of copyright
  - Copyright is a non-market mechanism imposed by the law “marketize” a product subject to market failures, to protect artistic creation; gives the creator a monopoly to:
    - Sell the product or part of it or use of it
    - claim royalties on use of product
    - claim “moral right” to protect integrity of the product (e.g. Michael Snow’s Canada Geese in Eaton Centre)
  - Copyright holders are not all creators; many creators sell all or part of the work to others
  - Copyright creates property rights but doesn’t ensure flow of income
  - Exclusive right to authorize the copying & dissemination of the work
  - Works need to be “fixed” in some way (recorded, printed, stored in electronic format) in order to be covered by copyright
  - Copyright is limited in most countries by principle of “fair use” or “fair dealing” (Canada) in which consumers and producers can use a certain (small) amount of the work without permission of the copyright holder and without paying
  - Big debate on copyright throughout the world now
    - Between
      - the copyright maximalists: can’t use unless specifically allowed
      - And the copyright minimalists: can use unless specifically forbidden
    - Particular problem is that many creators are also users (standing on the shoulders of giants)
      - Using the works of others is an integral part of creativity
    - This is especially a problem because cultural artifacts are so much part of our surroundings. Many creators “use” cultural artifacts of others (and especially those of powerful economic forces e.g. McDonalds, Disney etc) in order to express themselves
    - Also exacerbated by technology: presence of internet and other devices that allow users to copy easily without permission
    - But technology also makes it easier for rightsowners (with the proper resources) to track use of their works by others.
    - There is also Digital Rights Management tools which prevent access; but this may close the otherwise open access
  - The debate is also replicated between large exporters of popular culture (e.g. US) and smaller markets (e.g. Canada) with smaller economies of scale
    - Exporters want open markets; importers want protection of local, indigenous, national and regional culture
    - Also want to protect local artists and producers
  - Dilemma is that
    - If copyright regime too weak – insufficient incentives to creators to produce
    - If copyright regime too strict – discourage use of works and cost creators too much to use
    - Example is the ownership of stock archival newsreel footage and music – makes it difficult to play non-commercial works e.g. Eyes on the Prize; lack of funding for documentaries combined with dramatic rise of rights clearance costs make it impossible to show this critically acclaimed
  - Important that a fair and balanced regime emerge
    - But in Canada it is tipping in direction of copyright maximalism
    - Bill put forward by Liberal government before last election shelved; new Conservative government even more favourable to large commercial interests

---

13 Lorinc. Cited above.
Due to tremendous lobbying power of cultural producers and disseminators (recording companies, movie companies) plus fear of the impact of illegal downloading

- Digital technologies are more of a threat to the intermediaries (firms) than to the individual creators
  - Firms which produce cultural material have most to lose (e.g. loss of CD sales by recording companies)
  - In any case, may become easier, not harder, to track use (so says Falzone)
  - Technologies are enabling creators to produce their own material far more cheaply than before
  - This liberates creators more and more from dependence upon firms
    - Example of creating, producing, distributing music all from your own basement
    - A little more difficult in the highly collaborative arts e.g. film
  - Many creators are choosing either to self-produce and market (and then make much better deals with firms when they do sign) or
    - Give their work away free on the web and make their money from sale of other products (merchandise, live performance etc)

- Description of how copyright collectives (CCs) work
  - While individual creators often own the copyright to their works, they are often not in position to make it available to users, to give permission, to monitor use, and to collect royalties
  - So they often pool their resources in copyright collectives or “collective management organizations”
  - We will call these organizations copyright collectives (or “CCs”)
  - Throughout the world, copyright is often administered by these organizations
  - Canadian Copyright Act recognizes three main rights:
    - The right to produce or copy the work.
    - The right to reproduce the work, including mechanical rights (such as cassette and digital audio or video reproductions) and synchronization rights (such as music in films, videos, and multimedia productions).
    - Performing rights, which are the rights to perform a work in public (such as a live concert, a recording or any other type of public performance) and the right to communicate to the public by telecommunication (e.g., a broadcast).
  - In Canada, the Copyright Act empowers copyright collectives to administer rights under the Act
    - “A ‘collective society’ means a society, association or corporation that carries on the business of collective administration of copyright or of the remuneration right conferred by section 19 or 81 for the benefit of those who, by assignment, grant of licence, appointment of it as their agent or otherwise, authorize it to act on their behalf in relation to that collective administration, and (a) operates a licensing scheme, applicable in relation to a repertoire of works, performer's performances, sound recordings or communication signals of more than one author, performer, sound recording maker or broadcaster, pursuant to which the society, association or corporation sets out classes of uses that it agrees to authorize under this Act, and the royalties and terms and conditions on which it agrees to authorize those classes of uses, or (b) carries on the business of collecting and distributing royalties or levies payable pursuant to this Act.” (Emphasis added)

- Creators assign their copyrights to the collectives
- The collectives propose tariffs for different users and use types with the Copyright Board; the Board consults with interested parties and approves a tariff
  - Tariffs published in the Canada Gazette and can be looked up
  - E.g SOCAN tariff for playing recorded music on radio and at concerts
    - for commercial radio is “Monthly fee: 1.5 % of music station’s advertising revenues for stations where SOCAN’s repertoire is broadcast less than 20 % of broadcast time. For

---


any other music station, 3.2% on its first $1.25 million of annual revenues and 4.4% on the rest.\(^{17}\)

- for popular music concerts: “Fee per concert: a) Where admission is charged: 3% of gross receipts from ticket sales, exclusive of sales and amusement taxes. (minimum $20.00 per concert); b) Where no admission is charged: 3% of fees paid to singers, musicians, dancers, conductors & other performing artists (minimum $20.00 per concert).

- The collectives collect records of uses not only in Canada but around the world (with reciprocal agreements with similar collectives in other countries).
- In some cases, users submit lists of works played to the CC; in most cases, the CC samples music played and thus determines the proportion of proceeds to go to members. This favours more mainstream artists and poorer members sometimes complain this short-changes them.
- Gervais\(^{18}\) classifies collectives by several criteria: the way rights are acquired from rightsholders (voluntary, voluntary with legal back-up, legal licence); the way they are structured (for-profit, nonprofit); their governance or management method; how they licence (work-by-work, blanket); how they distribute funds\(^{19}\)
- one of the places where creators and intermediaries ally is in copyright collectives
- however, not always
  - SOCAN is example of where creators and intermediaries ally; but that allows the big players to use the small players as pawns
  - ACTRA Performers Rights Society and Directors Rights Collective of Canada are two examples of CCs that are run by unions/guilds for their members and do not involve large commercial interests
- While a few countries (e.g. Italy) create legal monopolies for CCs, and many other countries discourage competition for the same group of rightsholders, in Canada, it is voluntary, not only for individual rightsholders to join or opt out of the CC which generally represents them, but also to form their own CC if they want to; users of copyrighted works also have this option, though it is not common (freedom of ass’n under Charter)
  - Although exclusive representation is a cornerstone of Canadian collective bargaining law and has been upheld by the Charter (no group is bound to stay in a single union but they must choose or leave a union as a bargaining unit)
  - Indeed, where Status of the Artist laws have been enacted, they give exclusive bargaining rights to a single bargaining agent for any one bargaining unit
  - Perhaps advisable for licences between rightsholders and CC to be of minimum duration but this is not the case in Canada right now
- With 36 CCs, Canada has the largest number in the world, not only as proportion of population but in absolute terms

**Copyright Collectives in Canada**

- **Audio-Visual and Multimedia**
  - Audio-Cine Films
  - Canadian Screenwriters Collection Society (CSCS)
  - Criterion Pictures
  - Directors Rights Collective of Canada (DRCC)
  - ACTRA Performers Rights Society (FRS)
  - Producers Audiovisual Collective of Canada
  - Société civile des auteurs multimédias (SCAM)
- **Educational Rights**
  - Educational Rights Collective of Canada (ERCC)
- **Literary (Literary works, dramatic works, texts, etc.)**
  - Access Copyright, The Canadian Copyright Licensing Agency
  - Playwrights Guild of Canada (PCC)
  - Société des auteurs et compositeurs dramatiques (SACD)
  - Société québécoise de gestion collective des droits de reproduction (COPREC)
  - Société québécoise des auteurs dramatiques (SoQAD)
- **Media Monitoring**
  - Canadian Broadcasters Rights Agency (CBRA)
- **Music**
  - ACTRA Performers Rights Society (FRS)
  - American Federation of Musicians (AFM)
  - Artist
  - Audio-Video Licensing Agency (AVLA)
  - Canadian Musical Reproduction Rights Agency (CMRRA)
- **Private Copying**
  - Canadian Private Copying Collective (CPCC)
- **Retransmission**
  - Border Broadcasters Inc. (BBI)
  - Canadian Broadcasters Rights Agency (CBRA)
  - Canadian Retransmission Collective (CRC)
  - Canadian Retransmission Rights Association (CRRA)
  - Copyright Collective of Canada (CCC)
  - Direct Response Television Collective (DRTC)
  - FWS Joint Sports Claimants (FWS)
  - Major League Baseball Collective of Canada (MLB)
  - Society of Composers, Authors and Music Publishers of Canada (SODAC)
- **Visual Arts (photographs, paintings, etc.)**
  - Canadian Artists’ Representation Copyright Collective (CARCC)
  - Society for Reproduction Rights of Authors, Composers and Publishers in Canada (SODAC)


\(^{19}\) Gervais, 2001.

Interest Representation

Page 9 of 24
Gervais opines that the number of CCs “is probably too high and it seems unlikely to survive in a limited market”\(^{20}\), but he declines to recommend less voluntary CC regime though he does admit extending it would benefit both rightsholders and users; he recommends compulsory regime only “where individual exercise of rights is impossible”\(^{21}\).

The hardest part is acquiring the licences from rightsholders

- Rights acquisition can come in a number of forms and these are not mutually exclusive:
  - Rightsholders can make full assignment of rights to a CC or a partial licence allowing the CC to do a limited number of tasks e.g. re-licence reproduction rights only; they sometimes act as agents for rightsholders; some CCs collect royalties for non-members for an approved tariff

Examples of main CCs in Canadian music:

- **SOCAN (Society of Composers, Authors and Music Publishers of Canada)**
  - Formed in 1990 as merger of 2 previous orgs
  - Administers *performing* rights (as opposed to copying and reproduction rights) of 80,000 members + 100s of 1000s of members of sister orgs worldwide
  - Members are
    - composers of music or lyrics or both
    - music publishers
      - could be person or organization to whom the creator has assigned (sold or partnered) ownership and control of the work
      - publishers earn a percentage of the income derived from commercial exploitation of the music
  - Nonprofit org, governed by board elected from members
  - Explains its service to users this way:
    - “Without SOCAN you, the music user, would have to get permission from every composer, songwriter, lyricist and music publisher for every musical work you use. Think how time-consuming and expensive that would be”\(^{22}\).
  - Collect royalties (licence fees) for communication & public performance of music and distribute these to the members
    - Telecommunications (radio, television, cinema, internet)
    - Hospitality (bars, restaurants, dance clubs, private clubs, hotels, karaoke clubs)
    - Retail (stores, shopping malls)
    - Recreation (game halls, fitness facilities, private clubs, sports arenas, bowling alleys, sports clubs)
    - Concert (live bands or recorded music)
    - Workplace (in offices, service establishments, on hold on the telephone\(^{23}\))
  - Financial stats as of 2004:
    - Total licence fees $213.3 million of which about ¾ from domestic licence fees & 20% from international affiliated orgs.
    - Distributed to music writers and publishers $99.2 million

- **CMRRA (Canadian Musical Reproduction Rights Agency Ltd.)**
  - Formed 1975 representing the copyright interests of music publishers doing business in Canada
  - Like SOCAN, also acts as agent for foreign music publishers for rights due in Canada
  - Handles “mechanical” licensing (reproduction of music in CDs and other media and “synchronization licensing” in films, television programs and other audio-visual media
  - Has non-exclusive reproduction rights

---

\(^{20}\) Gervais 2001
\(^{21}\) Gervais 2001
• Is an offshoot of the Canadian Music Publishers Association (an music publisher’s lobby group) to collect royalties for mechanical and synchronization rights
• To 1989 the 1924 Copyright Act specified a rate for mechanical royalties of 2¢ per song
• Now rates set by negotiation between CMRRA and the Canadian Recording Industry Association (CRIA) which reps the large record companies (as opposed to going to the Canadian Copyright Board and asking for a tariff to be set)
  • Per copy rate for each composition is now $0.077 where running time of the recording is five minutes or less. For each additional minute of running time, add $0.0155 to the rate. This is still lower than in the US and considerably lower than in Europe
• Problem is that music publishing industry is dominated by the major record labels; many of these labels which have affiliated publishing companies and buy rights internally rather than making payments to CMRRA; “concern expressed is that ownership by the labels limits publishers’ ability to pursue their own separate business interests and hurts songwriters, composers and independent music publishers.”
  • This shows the conflict of interest present in the organization by the presence of stakeholders of different degrees of power
  o SODRAC (Society for Reproduction Rights of Authors, Composers and Publishers in Canada)
    • Founded 1985 at request of music creators
    • To administer reproduction rights mostly of music publishers
    • But also represents rights of some visual artists, especially doing work in musical fields
    • In some ways competitive with MCRRRA
    • Mostly for Quebec artists (95% of Quebec Songwriters
    • Membership agreement sets out exclusive representation rights
    • In some cases does not apply to Copyright Canada for tariff but negotiates tariffs directly with users
    • Has signed some collective agreements with ADISQ (a conglomerate of Quebec broadcasters).
  o CPCC (Canadian Private Copying Collective)
    • Since 1999 the Canadian Copyright Board has set a levy on blank audio media (tapes, CD-Rs, DVDs)
    • This levy is collected by the CPCC
    • CPCC represents several other collectives
    • The levy is to reimburse music rightsholders for the fact that people make (legal) copies of commercial music CDs for their own use
    • Distribution is 66 % to eligible authors and publishers; 18.9% to eligible performers; 15.1% to eligible record companies.
  • Distribution is based on representative samples of radio airplay and album sales

Artists/artisans unions/guilds and associated copyright collectives

**Unions/guilds**
- Directors’ Guild of Canada
- ACTRA (Alliance of Canadian Cinema, Television and Radio Artists)
- CARFAC (Canadian Artists Representation/La front des artistes canadiens)
- WGC (Writers Guild of Canada)
- American Federation of Musicians
- PGC (Playwrights Guild of Canada)
- Canadian Actors Equity
- PWAC (Professional Writers Association of Canada)

**Copyright Collective**
- Directors Rights Collective of Canada
- ACTRA Performers Rights Society
- Canadian Artists Representation Copyright Collective Inc
- Canadian Screenwriters Collection Society (CSCS)
- Society of Composers, Authors and Music Publishers of Canada (SOCAN)
- Canadian Musical Reproduction Rights Agency (CMRRA)
- Playwrights Guild of Canada (PGC)

---

24 From CMRRA website "Mechanical Licensing" accessed at http://www.cmrra.ca/Mechanical_Licensing/mechanical_licensing.html on May 20, 2007
26 Much of the info from http://www.sodrac.ca/anglais/
As exemplified in Stone’s comparison of NABET and IATSE in the US

- The old industrial unionism vs the “new craft unionism”
- NABET organized crews of the major motion picture & television studios on the old industrial union model, depending on standard employment contracts, certification and standard collective bargaining, negotiating terms and conditions of employment
  - Crews would be members of NABET and entitled to their assistance only so long as they were employed
- IATSE organized crews on a craft basis; in a modern version of the early industrial “insider contractor” system where lead workers were self-employed and hired their own crews; everybody works on short term contract
- NABET ran into trouble as the industry moved from a Fordist hierarchical organization into a network organization; employers started to downsize and outsource; the structure of the industry changed to a network of contractors and contractees
- Stone dubs this the “embedded contract” approach, as in the construction industry
- IATSE acts in some ways as a guild or professional society as well as a union; its members are self-employed and the union acts not only as their agent vis a vis their engager but also as a career adviser and assistant
- No job security; union negotiates general agreement that provides framework within which the individual members can negotiate separate contracts with their engagers

This is the way that unions now operate in many of the cultural industries in Canada and the US

- Because most of their members are self-employed or employed for short-term employment contracts, the unions provide some or all of the following services for their members:
  - Framework agreement –
    - Engagers agree to contract only union labour and/or to pay at least a minimum fee or “scale”
  - Provide boilerplate contracts & advice (including legal)
  - Trust funds from industry agreements
    - In some cultural industries, the firms have established a fund, administered by the union, to nurture new talent
  - Hiring hall
  - Gig-based benefits (pension, insurance)
  - Member-paid benefits (insurance, discounts)
  - Cross-border issues
    - Help for members getting visas for crossing the US-Canada border
  - Professional development & assistance
  - Public policy advocacy

- The campaign for “Status of the Artist” legislation
  - As self-employed workers, artists are generally not eligible for the protections of collective bargaining law
  - Some labour boards have recognized collective bargaining rights of “dependent contractors” but must distinguish between this and “independent contractors.”
  - A dependent contractor is an ostensibly self-employed worker who has a dependent relationship and works primarily with a single other party; in such a case the other party can be designated as the “employer” for the purposes of collective bargaining.
  - But many self-employed workers are in a situation of working with and being dependent on many other parties. In such cases, it is difficult for labour boards to designate a single “employer.”
  - Traditional collective bargaining law, which emerged in the 1930s in the US and 1940s in Canada, protects the right to unionize of employed workers of a single employers:

---

Interest Representation Among Self-Employed Artists: The Case Of Unions And Copyright Collectives

- Right of unions to apply and receive (upon proof of support) exclusive bargaining rights for a group of workers employed by a particular employer
- Obligation of the employer to “bargain in good faith” toward a collective agreement
- Right to withdraw labour in furtherance of collective bargaining without transgressing contract of employment
- Set of “unfair labour practices” which employer cannot engage in e.g. refusal to recognize or negotiate with union, bargaining in bad faith, punishment for legitimate union activity etc.
- Power of Labour Relations Board to enforce the provisions of the Act (ultimately to have Board order enforceable in the courts)
  - But self-employed workers fall outside the auspices of traditional collective bargaining law
  - So while there is nothing stopping unions of self-employed workers from forming, approaching engagers, negotiating collective agreements, there is nothing legally compelling engagers to recognize and bargain with the union; there is no protection for workers withdrawing their labour; and any voluntary agreement reached between engager(s) and the union is enforceable only as ordinary contract (not as strong as under collective bargaining law)
  - Also, attempts by artists to induce engagers to enter into a collective agreement have been cited by engagers as falling afoul of the Competition Act, seen as in restraint of trade
  - Canadian artists have negotiated collective agreements with engagers/producers for many years, but these were never as secure as they might have been under a legislative regime.
  - Several issues emerged in the 1980s that lent urgency to artist collective bargaining and the demand for special legislation:
    - ACTRA and the Musicians’ Federation were investigated by the Canadian Competition Bureau for their collective bargaining activities which, some engagers alleged, were not exempt, like agreements under traditional collective bargaining law, from competition laws
    - The federal tax authorities launched a number of initiatives meant to classify artists as employed and thus ineligible to deduct self-employed expenses
    - Labour relations boards in several provinces were expanding the scope of their jurisdiction to include not only employees but also “dependent contractors” (see above) i.e. the ostensibly self-employed who were in a condition of dependency for their earnings upon a single organization
    - Canadian film and television industry was changing from the almost total domination of several large employers of talent (e.g. the CBC and the National Film Board) to a multiplicity of independent producers. The independents adopted the network model (mentioned above) in earnest. Thus true self-employment became more common among film and TV artists. As well, the legal regime for contract and industrial relations (formerly under federal jurisdiction for the CBC and NFB) moved to the provincial realm. Work that was formerly fixed at a single location could move and did move to several different centres across the country.
    - The move to recognize artists’ right was abetted by the approval of the 1980 UNESCO “Recommendation concerning the Status of the Artist,”
      - “Member States should ensure, through appropriate legislative means when necessary, that artists have the freedom and the right to establish trade unions and professional organizations of their choosing and to become members of such organizations, if they so wish, and should make it possible for organizations representing artists to participate in the formulation of cultural policies and employment policies, including the professional training of artists, and in the determination of artists conditions of work.”
    - Since then there have been attempts in Canada to bring in legislation improving the working conditions of professional artists.
    - Generally called “Status of the Artist” which can be said to consist of two parts
      - Part of this public policy initiative are provisions involving income tax, health and safety, copyright, insurance, pensions and social benefits

---

Another important part of this initiative has been for legislation *emulating* traditional collective bargaining law\textsuperscript{29} for self-employed professional artists

- The first Canadian jurisdiction to introduce this collective bargaining aspect was Quebec, which enacted two acts in 1987 and 1988, the first covering performing, recording and film artists, the second covering visual arts and crafts and literature
  - A tribunal, the Commission de reconnaissance des associations d’artistes et des associations de producteurs administers the two laws
  - Both laws give artists the right to combine together under a union or association and name an engager or group of engagers as the “producer” and enter into negotiations for a collective agreement
  - The first law also provides for arbitration of a first collective agreement should the parties not be able to reach one on their own
  - In addition to the collective bargaining rights, Quebec introduced several important fiscal measures designed to improve artists’ working lives including tax exemptions, income averaging, public lending rights

- The second jurisdiction was Federal in 1992
  - Formation of the Canadian Artists and Producers Professional Relations Tribunal (CAPPRT) to administer the Act
  - Similar to, but not quite as powerful in artists’ interests as the Quebec legal regime.
  - A ten-year review in 2002\textsuperscript{30} revealed that the CAPPRT had certified 24 unions/associations
  - But: “…with very few exceptions, artists' associations reported that the Act has so far had little effect on the socio-economic circumstances and working conditions of their members. Artists' associations offered three main explanations for the Act's limited impact in this area. First, many of the larger, more established associations already had voluntary scale agreements in place with federal producers; second, most of the smaller and more recently established associations have not yet negotiated any scale agreements under the Act; and third, the majority of artistic and cultural production falls under provincial jurisdiction.” (emphasis added)

- In addition, the following provincial governments have made moves to consider Status of the Artist collective bargaining provisions:
  - Saskatchewan (passed law in 2002 that did not include collective bargaining rights but has now introduced such legislation)
  - British Columbia
  - Ontario
  - Newfoundland and Labrador

- The following diagram illustrates an approach to collective bargaining taken by the government of Saskatchewan in their proposed Status of the Artist legislation\textsuperscript{31}

\footnotesize{
31 Saskatchewan. 2006. Final Report of the Minister’s Advisory Committee on Status of the Artist. (Regina, Saskatchewan Culture, Youth and Recreation) p. 107
}
• ACTRA and the self-employment model
  o Why focus on ACTRA?
    ▪ It’s a union/guild that represents self-employed workers
    ▪ It is arguably the strongest and most cohesive of the artists’ unions/guilds in Canada
    ▪ Its collective agreement is a national voluntary recognition agreement with little connection to the usual or traditional collective bargaining law (but has some key intersections with this “old law”)
    ▪ It runs one of the major copyright collectives.
    ▪ It recently engaged in a strike over a small but key issue in intellectual property rights – proceeds from its members’ work used on “new digital media”
  o ACTRA is the Alliance of Canadian Cinema, Television and Radio Artists and consists of 21,000 members across Canada.
  o The name “alliance” emerges from the former presence in the organization of three “guilds,” the “Performers Guild,” the “Writers Guild” and the “Media Guild.” These last two are no longer part of the organization.
  o Members currently include performers such as actors, comedians, dancers, background performers, voice over specialists, singers, puppeteers and stunt performers.
  o While many ACTRA members make their living through acting and several of the most famous Canadian actors are high-profile members, most ACTRA members pursue the occupation as “an enjoyable and lucrative sideline.”
  o ACTRA members may belong to other unions depending on where they work (e.g. singers performing with instruments who will be covered by the Musicians Association or live on stage who will be covered by Canadian Actors Equity)
  o At the film and video worksites where its members work, there are some jurisdictional disputes with the other unions involved (e.g. Director’s Guild, IATSE, Teamsters)
  o ACTRA shares many members with Equity
  o ACTRA represents or claims jurisdiction over these performers when they work in English-language recorded media e.g. feature films, television, radio, corporate videos and commercials, and increasingly, digital media such as the world-wide web, cellphones, video games etc.

32 Interview with Gary Vermeir, Halifax Branch Representative February 21, 2007.
Following a craft union model, ACTRA operates a closed shop (with some exceptions) and membership is open only to those who have fulfilled the membership requirements:

- a performer who has enrolled in the apprentice membership program and had six professional engagements (three in the case of disabled and visible minorities)
- membership in a sister organization with whom ACTRA has a reciprocal arrangement e.g. Equity, Union des Artistes (UdA), the Screen Actors Guild and AFTRA (the last two being US counterparts)
- performers with a “professional reputation” based on a “recognized body of work”

In addition to full members, ACTRA has as temporary members apprentices and extras, ensuring payment and conditions but not eligibility for the benefits or retirement or the right to vote or run for office; those are exclusive to full members.

Despite its differences from traditional unions, ACTRA is affiliated to the Canadian Labour Congress which recognizes its jurisdiction.

- It has formed alliances with traditional trade unions at various times; in the past with the Canadian Autoworkers Union and more recently with the United Steelworkers Union.

ACTRA is arguably the strongest artist union in Canada:

- There are few film and video engagers of any scale that operate without ACTRA members.
- Even very small and experimental productions can operate under the ACTRA “Indie” collective agreement (not to be confused with the Independent Production Agreement IPA, which involves larger, more established production companies.)
- Engagers must engage ACTRA members or ask for permission to hire non-members.
- ACTRA will declare any engager refusing to engage its members or breaking the collective agreement an “unfair”
  - List of unfair engagers is on ACTRA website.
  - Strong compliance with boycotting the unfair list among professional actors.

Generally ACTRA has been very successful in having its members not work for unfair engagers.

ACTRA is not active in pursuing private radio so this remains an area of possible future organizing.

Among its counterparts around the world, ACTRA is known for its aggressiveness in seeking to represent performers in emerging realms of technology e.g. digital media and obtaining rights for them. It is one of the only performers’ unions in the world devoting full-time staff to organizing these workers.

Because of its strength, because of historical relations with US-based unions (SAG and AFTRA), and because of the high frequency of US production firms shooting film and television shows in Canada, there is much collaboration among the unions on both sides of the border:

- SAG and ACTRA attend as observers at each others’ negotiations with film and video producers.
- This was especially evident during the ACTRA’s recent (2006-7) negotiations and strike with the Canadian Film and Television Producers Association for the Independent Production Agreement.
- The US independent producers also observe at the negotiations because they contract Canadian performers and because many of the issues arise between them and the American performers’ unions.

So weak and fractious were (and are) the entrepreneurs on the producer side that ACTRA and other film and video unions almost had to force them to unite to form the Canadian Film and Television Production Association (CFTPA).

And in many cases, it is the cohesion of the unions and their entrepreneurial spirit on behalf of the industry that has kept a critical mass of workers together in various film and video-making cities through the ups and downs of the industry.

In fact, it can be said that the union organized the producers and the industry.

The following describes why the producers have found it so difficult to organize themselves:

---

“You have got that really wide, disparate [group] whose agendas are very very different and... goes back to that same entrepreneurial spirit for someone to be a film producer, a television producer in this country. You have got to have a bit of a screw loose to begin with because it is a very difficult business. So you have these kind of real individualistic, maverick business people who are out there trying to make a go of it and that doesn’t necessarily jibe with ‘let’s link arms and work together.’ In the same way ACTRA members compete against each other for every job so you have these producers very much for a piece of an ever shrinking pie... There is a sense of wanting to keep their cards pretty close to their chest but it does make it difficult for the industry to... work together. So what you end up with is the unions very much being the spokespeople for the industry, and the unions lobbying government and being much more high profile in that kind of work than perhaps the producers are. Producers tend to be very suspicious of organizations like the CFTPA.”

- ACTRA was formed in the 1940s when radio performers, primarily at the CBC in Toronto, banded together. This soon spread to other major Canadian cities. They were joined by writers and producers. When TV first went on air in 1952, the union followed it, becoming the Canadian Council of Authors and Artists (CCAA) which finally morphed into ACTRA in 1963 with the CBC as the major employer and the National Film Board and a few independent production companies.

- In 1965, ACTRA took on Paul Siren as General Secretary. Siren, with a background in radical politics and the labour movement, later took what might at the time have seemed an unusual decision for a committed trade unionist. Seeing the decline of the Fordist model in the US film and television industry and the growing phenomenon of outsourcing and the decline of dominance of the CBC as an engages of talent, Siren, rather than pursuing the traditional collective bargaining model for his members, encouraged ACTRA’s emergence as an organization of the self-employed, following the “new craft union” model described by Stone, above.

- Siren felt that there were more long-term benefits for his members from being self-employed than being employed, even if this meant more uncertainty. As the film and video industry became more balkanized and employment became more tenuous, ACTRA would continue to represent its members more as a guild and less as a traditional union.

- In 1983, ACTRA formed the ACTRA Performers Rights Society, an arms-length offshoot meant to monitor, collect and distribute royalties on the re-playing of members’ performances.

- Siren was appointed to the UNESCO committee that produced the first Status of the Artist Report. In 1986, Siren was co-commissioner of Canada’s Siren-Sauvageau Task Force on the Status of the Artist, which recommended governmental action “on taxation, copyright, collective bargaining rights, payment of professional rates by governments and their agencies, social benefits, health and safety provisions, education, training and freedom of expression.” He was working from the model that ACTRA was pioneering under his leadership.

- As it progressed through the 1960s and 70s, ACTRA became more concerned with the furtherance of Canadian talent. In 1970 it first published a catalogue of 1100 Canadian performers called Face to Face. In 1972, it launched the ACTRA Awards to highlight its members’ achievements. After several high-profile decisions by the CBC to use non-Canadian talent in its productions, ACTRA members engaged in industrial action in 1977, refusing to issue permits for foreign performers and boycotting a production. While pursuing fraternal relations with its foreign counterparts, ACTRA follows their lead in limiting the permits it will give to foreign performers.

- ACTRA’s concern with foreign domination grew in the 1980s with the growing number of US productions shot in Canada, using US actors for the major roles. ACTRA combined with other cultural unions/guilds in lobbying hard for Canadian content and the use of Canadian workers.

- Tensions between the various occupations with ACTRA led to the formation of a separate Writers Guild and the eventual split of writers into this organization in 1995. The ACTRA Media Guild, consisting of freelance broadcasters at the CBC, was lost when the Federal government forced runoff votes among the

---

35 Parts of this history of ACTRA was taken from an article in the 60th Anniversary edition of the union’s magazine InterACTRA.
many unions at the CBC and another union won jurisdiction. Today, ACTRA is strictly a performers’ union.

- As mentioned above, ACTRA performs several services for its members including:
  - Collective bargaining:
    - ACTRA has several collective agreements which set minimum fees for performances and standard working conditions
    - Members then sign their own individual personal service contracts with engagers (producers) and they can and are encouraged to negotiate terms in excess of the collective agreement
    - ACTRA’s collective agreements are voluntary i.e. they are not negotiated under the auspices of any labour legislation. ACTRA organizes its members, approaches the engager and they enter into negotiations and reach a collective agreement.
    - New independent production companies agree to join the CFTPA and be governed by the collective agreement
    - The major agreements are national in scope i.e. they cover performers across Canada and not in any particular province (the Union of British Columbia Performers [UBCP], affiliated with ACTRA negotiates separate agreements in that province)

  - ACTRA has eleven collective agreements of which the major ones include
    - Independent Production Agreement (with the Canadian Film and Video Producers Association and l’ Association des Producteurs de Films et de Télévision du Québec representing the independent production companies)
    - Commercial agreement (with the Institute Of Communications And Advertising And The Association Of Canadian Advertisers covering performers in radio and television commercials
    - Agreements with larger and medium-sized Canadian television networks e.g. CBC, CTV, TV Ontario, TV Ontario, CityTV, Vision TV
    - National Film Board agreement

  - The union also has agreements with very small producers, which allow members flexibility to work for less than scale on small scale and experimental productions e.g. “Training Film Agreement” in the Maritimes. There’s also the “Indie” agreement and the MIP (or member-initiated production.) It is a trade off of up front money in return for more control in how the film is used and a large percentage of revenue should the production obtain a broadcast licence.

  - Examples of items included in the Independent Production Agreement:
    - Part A deals with the first performance; Part B deals with subsequent performances and is where the ACTRA Performers Rights Society enters into the picture
    - Minimum fees for performances
      - Nobody contracted by the engager shall make less than minimum rates
    - Residual payments
    - Use fees on participation in distributor’s gross revenue
    - Right to negotiate above minimums
      - Performers can and are encouraged to negotiate above the minimum fee
    - Conditions of engagement
    - Complete records on performers kept by engager
    - Engagers must post security of no less than two weeks’ performer payrolls plus insurance and retirement pay or a cash bond to indemnify union members against default
    - Preferential engagement of ACTRA members
    - Limitations on and non-Canadian productions and engagement of non-Canadian performers
    - Right of union to declare producers not meeting payroll obligations as “unfair” (tantamount to a boycott)
Interest Representation Among Self-Employed Artists: The Case Of Unions And Copyright Collectives

Grievance and arbitration procedure for disputes over the administration, interpretation, application, operation or alleged violation of the agreement

Length of workday, work week and overtime, rest periods, meal periods,

Preparation time (for makeup, hairdressing, costume fitting); travel time

Call-in, cancellations, schedule changes

Working environment provisions (amenities, health and safety)

Doubling (where performers does more than one role)

Limitations on nude, semi-nude and love scenes

- Guarantees of privacy e.g. closed set
- Limitations on recording and dissemination
- Requirement of rider on contract specifying the details of the scene(s)

Limitations on risk and stunt performance

Limitations on engagement of and protections for minors (10% of the Maritime branch’s members are under 18)

- Obligations to parents
- Special restrictions on hours
- Obligations of parents
- Presence of parents and chaperones
- Protection in case of disturbing material
- Tutoring
- Trust accounts

Credits

Deductions and remissions for the union

- Union dues
- Other payments for administration
- Insurance and retirement plans

Background performers (extras)

Performance in animation

Negotiation protocol

ACTRA and/or its branches also provides other services for its members, including:

- Training
  - Courses on the business aspect of being an actor, audition protocols
  - National Apprenticeship Training Program
  - Workshops and forums on topics of interest
  - E.g. “Acting for the Camera”

- National Face to Face Online talent directory for producers and casting agents as well as regional directories and voice catalogue (distributed to animation, commercial, digital media and documentary producers)

- Office or studio facilities for making of recordings, audition tapes etc.

- Participation in local film festivals

- Career advice e.g. dealing with agents, list of agents

- Annual ACTRA Awards

- Insurance and retirement benefits
  - ACTRA Fraternal Benefit Society (AFBS) is a kind of independent insurance company owned and run by the union, which provides medical and dental expenses, life insurance
    - Group Life & Accident, Extended Health; Dental; Drug; Lost earnings compensation; Members Assistance Program (similar to EAP); Long Term Disability
  - Members contribute to these funds on a percentage based on fees received under ACTRA collective agreements
  - Also offers a Registered Retirement Savings Plan to which engagers send money for members whenever they are working as performers and earning

Interest Representation Among Self-Employed Artists: The Case Of Unions And Copyright Collectives …Haiven………page 19 of 24
Interesting to note that the Insurance Plan includes cosmetic procedures as this is a benefit of importance to members.

There are several levels of benefits, depending on a member’s contributions.

- Retirement home
  - Union has established long term care homes for indigent older members

- Members Advantage Program
  - Several Canadian film and video unions have formed a group to offer discounts on products and services to their members
  - E.g. production and post-production facilities, transportation and hotels, insurance outside of ACTRA Fraternal, cultural venues and organizations, stores, cellular telephone service, health and beauty

- Political and cultural lobbying
- Fraternal relations with unions in other countries facilitate members working in those countries

**ACTRA Performers Rights Society**

- Incorporated in 1983 for the purpose of collecting use fee payments for performers after initial production
- Separate organization in order to sue companies that are negligent in payments
- Enforces security agreements with producers
- Income
  - Independent Production Agreement specifies producer must pay 0.5% over and above gross fees paid to performers at time of production for costs connected with monitoring and enforcing use rights arising from the production.
  - IPA specifies 1% of gross use fees for administration of PRS
  - Non-ACTRA members charged 25% service charge at time of PRS disbursement
- Has grown from 3 to 15 staff. By 2000 disbursements reached all time high of $5.2 million.

- Minors trust
  - From IPA: “After a Minor's total lifetime remuneration reaches $5,000, 25% of the Minor's gross remuneration shall be deducted from the total payment due to the Minor by the Producer and remitted to the ACTRA PRS, which shall hold such monies in trust for the Minor upon terms and conditions consistent with the obligations of the ACTRA PRS to act as a Trustee.”
  - Several options for the setting aside of minors’ earnings

- Neighbouring Rights
  - For years music creators and publishers were entitled to royalties when their songs were recorded but performers and makers of sound recordings were not. In 1997, the Copyright Act was amended to provide for these groups.
  - Copyright Board sets tariffs to be paid by users of sound recordings in Canada (1.44% of gross advertising revenue for high-music use stations, with a lower rate of .63% for low-music use stations)
  - The Neighbouring Rights Collective of Canada is designated to administer these tariffs
  - The NRCC is a collective of collectives
  - ACTRA PRS is one of the collectives belonging to NRCC
  - Performers and recording-makers must register with one of the collectives making up NRCC and then is paid neighbouring rights royalties through ACTRA PRS if that is the collective they choose
  - ACTRA PRS also administers royalties collected from the levy attached to blank media used to copy music

ACTRA seems ambivalent on the question of Status of the Artist collective bargaining legislation

As mentioned above, the main reason for the collective bargaining part of the S of A drive is to give unions of self-employed the power to have their voluntary agreements legally enforceable
• The union has access to the Labour Relations Board or other tribunal (e.g. CAPPRT) if the employer refuses to negotiate, bargains in bad faith or committed any other “unfair labour practice”

  ▪ But this is not as helpful to ACTRA as to other artists’ unions/guilds
  ▪ ACTRA has been very successful in “wrapping up” the industry by implementing a closed shop.
    o There is no major part of the film and video industry where producers regularly defy ACTRA representation of members
  ▪ The major ACTRA collective agreements are national in scope. But Status of the Artist Collective Bargaining legislation is primarily provincial. The Federal Status of the Artist legislation would not apply to film and video production since it comes under provincial jurisdiction. Thus if ACTRA tried to enforce its national agreement through a provincial act and tribunal, the decision would cover only actors in that province.

  ▪ However, given the events of ACTRA’s first strike in the Spring of 2007, it could be that the union is reconsidering S of A Collective Bargaining Legislation (see below.)
  ▪ Also, ACTRA branches in Ontario and Saskatchewan are participating in the campaign for S of A collective bargaining legislation.

  o ACTRA IPA strike Spring 2007
    ▪ At negotiations for a new Independent Production Agreement in 2006, one of the stickiest bargaining points was the use of recordings of ACTRA members in digital media such as webisodes, cellphone films, ring-tone voiceovers and the Internet.
    ▪ A problem emerged due to the involvement of the US film and video industry, which makes many productions in Canada.
    ▪ The latter were worried about any Canadian deal on digital media as it would affect upcoming labour talks in the US between the industry and its unions where the issue was also large.
    ▪ The US studios did not want an agreement in Canada that affected them until after they were able to negotiate with their own unions.

  “It’s the U.S. studios who are really pushing for the Internet for free,’ said Jamie Bradley, ACTRA's national vice-president and the national councillor of ACTRA Maritimes. ‘It's a global issue. ACTRA is the first to come to the table with this issue head on and not back down.’

  “At last week's negotiations there were two producers and eight lawyers for U.S. studios in the room on one side of the table,’ Webb said. (This issue is looming in the U.S. with the Writers Guild of America, the Directors Guild of America and the Screen Actors Guild.)37”

  ▪ ACTRA denounced the involvement of the US heavy hitters in the negotiations, but the impact of the US studios on the Canadian film and television industry is undeniable. Indeed, the Americans threatened or actually began cancelling slated productions in Canada from the beginning of the strike.

  And much of the media coverage of the strike focused on the American angle, even though US studios were not even officially part of the negotiations.

  ▪ In fact, after the parties had made an agreement to end the strike, the American producers intervened and the parties had to go back to the bargaining table to finalize arrangements that would be acceptable to the Americans.

  ▪ ACTRA members voted 96.5% in favour of a strike

  ▪ Because the IPA is a voluntary national agreement and does not necessarily fall under any particular provincial collective bargaining legislation, the agreement (in a “negotiation protocol”) contains lengthy language governing how negotiations will be carried out and how the parties will conduct themselves in the case of a breakdown in negotiations for a new agreement and a work stoppage.

  ▪ The protocol does specify that either party can go to a relevant provincial labour relations board to enforce non-compliance with a negotiation protocol contained in the IPA

  ▪ The protocol allows for the right to strike:

• “7.4 The Parties to this Agreement, the individual members of ACTRA, and all of the Producers who have authorized the Associations to bargain on their behalf agree that ACTRA shall be authorized and permitted to call a strike in compliance with the terms of this Appendix, notwithstanding the fact that ACTRA may not have complied with the statutory provisions of any labour legislation in any of the provinces or territories of Canada, and further agree that ACTRA and its members shall be entitled to legally strike in any such province or territory so long as the provisions of this Appendix have been adhered to.”

• And there is a similar right to lock out
  ▪ However, because no strike or lockout had occurred before under the IPA, much of the conduct of a strike was in a sort of legal limbo.
  ▪ Although the agreement is national, ACTRA hedged its bets by approaching the labour relations boards of all provinces covered in the agreement, seeking legal sanction to have its members strike in that province. It obtained such legal sanction more quickly and easily in some provinces than in others and so the strike began on January 8 in Ontario and a few days later in Quebec, Saskatchewan and Manitoba. Nova Scotia joined on February 13 and Newfoundland and Labrador were slated to join on February 15 (after a deal had been reached.)
  ▪ One great fear was that the strike would shut down continuing productions, putting them in jeopardy. This would jeopardize the ongoing shooting of such programs as Deal or No Deal, Little Mosque on the Prairie and the upcoming season of Canadian Idol. However, the union came up with a solution, proposing to individual producers that they sign “continuation deals” in order to be exempt from the strike. Such deals would guarantee union members the 7% wage increase ACTRA was asking for at the table. Most producers of ongoing projects across the country signed these deals. By the first day of the strike, ACTRA Toronto Branch President Karl Pruner announced: """All the producers have broken from their association and signed these agreements."" This fatally undercut the solidarity of the producer side of the bargaining table and has caused a crisis in the already fractious relationship among the producers. "Essentially we're splitting the producers up," [ACTRA President] Waddell said. "They're coming over to our side, and this negotiating committee we're dealing with had better understand they'd best come to terms with us before they lose their association"

• The producers' associations i.e. the CFTPA and Association de producteurs de films et de television du Quebec, claimed that the strike and the continuation deals were illegal. CFTPA approached the Ontario courts to seek an injunction, which was denied. However, an Ontario court did appoint an arbitrator to settle the dispute about how the work stoppage would proceed. The union appealed this decision.

• As the strike continued, several productions were said to have been cancelled. There were many fears that the strike would tip the always fragile Canadian film and video industry into disaster, especially in major production centres like Toronto, already suffering from a decline in production due to the terrorist attacks of 9-11 (frightening Americans from traveling abroad), the SARS episode, the strengthening Canadian dollar.)One report had the City of Toronto losing "at least two feature movies and as much as $400 million in lost production, while film revenues so far this year over last year are significantly lower." Nova Scotia was said to have lost two $10 million feature films that would have employed 200 people.

• By February 16, the strike was over.

• The eventual settlement:
  ▪ Performers get 10% increase in compensation over the new agreement's three-year term. 3-per-cent increase in pay for any kind of work first year, plus a 1-per-cent increase in

---

future retirement payments. Wages increase another 3 per cent in the second year of the contract, and an additional 3 per cent in the third

- Performers to be compensated for the use of their work on the internet. Producers to share 3.6% of revenues received from the use of productions on the internet, tracked separately.
- Important improvements to work rules on set, including improved language governing equal opportunities for employment, harassment, rules governing child performers, and working conditions on set.
- Incentives to encourage low-budget, 100% Canadian independent production updated.
- Actors in Canada to be paid by Canadian producers for work done for new media, just as they would be for traditional media. Six months after making a new-media work, actors will receive an additional cheque for 3.6 per cent of the gross distribution revenue.
- The US producers managed to exempt themselves from the new media provisions, at least until they have a chance to negotiate such provisions with their own unions.

- Public Policy Implications
  - How to improve the working and earning lives of self-employed artists
  - Great danger in artists and their organizations pursuing copyright maximalist position
    - Feeds right into current government ideology of artists as entrepreneurs and shunning public policy
    - Arts and culture SHOULD BE A PUBLIC ISSUE, considered as a public resources, not simply private ordering
    - The more artists are considered as business people, the worse it will be for them
    - Either demand public policy changes that cost the governments money or will lose the right to them
  - Anything that helps prevent creators being forced to ally with large rightsholders is good
  - Anything that helps prevent clash between users and creators is good
  - Non-collective bargaining public policy issues
    - Funding issues
      - Better funding for Arts organizations
      - Better funding for Artists
        - Arms-length funding body
    - Copyright issues
      - A fair regime that balances rights of creators and users
      - Increases protection for creators where they wish but does not assume permission is withheld unless it is explicitly given
    - Tax issues
      - Irish situation exempts first 250,000 of copyright earnings for artists from taxation
      - Artists to be clearly considered as self-employed on earnings from creation of artistic works
      - Tax exemption (up to a point) from grant income
    - Social benefits
      - Access to employment insurance
      - Access to workers’ compensation
      - Access to Canada Pension
      - All of the above without having to pay the employer portion or a reduced employer portion
  - Collective bargaining issues
    - The Quebec model remains the most thorough to date
    - Should emulate the best, not the worst of traditional collective bargaining
      - Ease of certification including card-count rather than vote
      - First collective agreement arbitration
      - Choice of larger or smaller bargaining units at discretion of the union
    - Need to solve problem that ACTRA ran into when going on strike
      - Need to have national collective agreements handled by national, not provincial tribunals
• Would be serious constitutional problems except that the parties could agree to it voluntarily
• CAPPRT should be designated as having jurisdiction