

Refereed Paper

## The Impact of New Technologies on the Effectiveness of the Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists in Québec, Canada

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### Abstract

The Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists was enacted more than 30 years ago to promote collective autonomy of artists in Québec. New technologies have influenced the way work is organised in the production of fiction for any type of screen. This article considers the question of how new technologies impact the application of this piece of legislation, in the context of the restrictive interpretation adopted by Québec tribunals of the definition of “producers. The author concludes that the combination of the narrow definition with new technologies risks to erode the effectiveness of the Act by reducing its scope of application.

### Keywords

Screen-production artists, scope of labour relations legislation, collective autonomy

### Biography

Maude Choko is an Associate Professor in the Civil Law Section of the Faculty of Law, at University of Ottawa, Canada. Her research focuses on self-employed workers, in particular of artists, and the legal framework regulating their work. She is interested with understanding mechanisms favouring their access to decent work, and specifically those facilitating their collective representation.

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## Introduction

New technologies have facilitated greater access to the means of production of artistic works dedicated to screen, including cinema, TV, web. An artist who wants to produce a film can do so without needing to rely on intermediaries. As a consequence, there is an increasing number of artists who are self-producing their own work. This raises the question of how new technologies impact the application of the *Act Respecting the Professional Status and Conditions of Engagement of Performing, Recording and Film Artists* (L.R.Q., S-32.1, referred to herein as the *Status of Artists Act* or 'the Act') in Québec. This article considers this question and is part of a larger study pertaining to the functioning of the artists' regime (Choko, 2015).

Utilising a socio-legal methodology, the study raises the question of the Act's impact on artists by bringing to light the mechanisms of the regime that favour access to decent work, and the conditions under which these mechanisms can function. To conduct such a study, it was necessary to adopt a methodology that allow for the capturing of the experience of artists targeted by the regime. As such, the legal analysis of the Act was deepened with qualitative research, consisting of semi-structured interviews with artists, exploring their experience of the Act's impact. An analysis of documentary sources has permitted the triangulation of data collected during such interviews (Gagnon, 2005). The analysis of the data proceeds in dialogue with the small number of existing legal studies of the regime (Dionne & Lesage, 2010; L'Allier, Boutin and Sasseville, 2010; Leduc, 2009). It is essential to underline that for reasons of constraints related to available resources in conducting the research, the artistic field to which it pertains was circumscribed. Screen-based productions of works of fiction for any type of screen—including cinema, TV, web—were selected for the study. The artists referred to in the study are actors, and their associations (the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA) on the English-speaking side, and Union des artistes (UDA) on the French-speaking side), or directors and their association (Association des réalisateurs et réalisatrices du Québec (ARRQ)).

This article allows the consideration of the impact of new technologies on the capacity of the model developed in the regime to protect artists. In part one, the article analyses the aim and the functioning of the regime as designed in the legislation; part two examines the way that the definition of "producer" has been interpreted by tribunals and, drawing on this analysis, part three examines the regime's capacity to provide balanced bargaining power to artists in the light of new technologies.

### **The aim and the functioning of the *Status of Artists Act***

More than 25 years ago, the *Status of Artists Act* was enacted in order to protect artists in Québec (Canada), by establishing a specific labour relations regime for a particular category of self-employed workers, namely, professional artists working in the performing, recording and film industry, including multimedia and commercials in Québec. The legislative regime was a response to an on-going debate in relation to the legal status of artists. Because of the organization and characteristics of artistic work, involving multiple and often simultaneous engagements, of short and fixed duration, with different work providers in several different production teams, many identified

artists as being self-employed. However, if legally considered as self-employed, artists were excluded in large part from protective labour laws. In particular, they would not be entitled to legally recognised collective representation under the *Québec Labour Code* (L.R.Q., c.C-27), which establishes the general labour relations regime in the province. Indeed, self-employed workers are assimilated to the legal category of “independent contractor” under the *Québec Civil Code* (L.Q. 1991, ch.64). Independent contractors are not covered by the protection established in labour laws, as this is granted only to workers who can qualify as “employee”. Conversely, if considered as employees, the existing artists’ associations at the time were put in danger as a large number of their members would then risk being included in bargaining units of other unions representing employees in specific companies. Since these associations represented artists working for several work providers at the same time, this was seen as problematic. In addition, the artists themselves wanted to stay within their existing associations and considered themselves as self-employed (Côté, 1986; Leduc, 2009). As a result, the *Status of the Artists Act* was designed to apply to the labour relations of artists as self-employed workers, to strengthen existing artists association’s bargaining power with their work providers, and to allow the emergence of new associations in sectors where artists were not already organised. The aim was to enhance artists’ bargaining power and to encourage collective bargaining. By promoting their collective autonomy, the ultimate goal of the Act was to facilitate artists’ capacity to associate in order to influence their working conditions.

The regime promotes artists’ collective autonomy in a manner based on the general labour relations regime of the Labour Code. It establishes rules granting producers and artists’ associations’ legal recognition (sections 12 to 19). It facilitates the creation of such associations by first securing a representational monopoly for the association representing the majority of artists in a specific production field (sections 9 and 18), and second by imposing on the corresponding bargaining entity the obligation to recognise the association benefiting from the legal recognition granted by public authority as the only representative of such artists (section 26). The regime also imposes an obligation to bargain on both parties (as soon as one of them has given a notice of its intention to bargain) (sections 28 and 30). It establishes the possibility to undergo concerted actions (section 34) as well as alternative measures to lead to the conclusion of a group agreement, that is, mediation (section 31) and arbitration of dispute (section 33). It provides for binding group agreements concluded by the parties and establishes the requirement that a grievance arbitration procedure be included in said agreements in order to preserve the industrial peace during the life of the agreement (section 35.1).

Along with elements derived from the general labour relations regime, the artists’ regime presents several innovative features designed to adapt to artists specific work organization and professional characteristics. To begin with, the representational monopoly is granted for a certain industry sector. As such, it establishes sector-based collective bargaining. The obligation to bargain is imposed on artists’ direct work providers designated as ‘producers’. Furthermore, the recognition of the binding nature of any collective agreement resulting from negotiations between the industrial parties applies to all artists, even non-members, working in the industry sector covered by the agreement in question (section 40). Significantly, such agreements are deemed to establish minimum working conditions for these artists (sections 8 and 27), leaving individual artists the capacity to negotiate conditions in excess of these minimum standards.

To summarize, the functioning of the regime facilitates collectively negotiated conditions of work that protect individual artists who do not have sufficient individual bargaining power to obtain more. To achieve this, the *vis-à-vis* for the negotiation is identified as the producer, defined as “a person or partnership who or which retains the services of artists in view of producing or presenting to the public an artistic work in a field of endeavour contemplated in [the fields of artistic production covered by the Act]” (section 2, “producer”).

In the production of an artistic work, several intermediaries can be involved between the artist (or group of artists) creating the work and the consumer or public. Firstly, at the production phase per se, artists' services can be retained by a producer to produce the work in question, and the Act clearly anticipates this with its focus on producers as the negotiating party. Secondly, once the artistic work is produced, the distribution phase also often involves an intermediary, that is, an entity who will bring the artistic work to the public. In the screen-based production industry, this intermediary will either be the broadcaster (TV) or the distributor (cinema). In the performing industry (on stage), it will be the promoter, usefully defined by Dionne and Lesage as the entity that "gives itself the mandate to distribute stage productions and is responsible for the programming of professional shows generating ticketing revenues. It can be a profit or non-profit organization or a public entity. It can also be the manager of a theatre or the tenant of one or many theatres" (2011, p.73). For the purpose of the present analysis, I refer to the notion of distributor. The *Status of Artists Act* does not define the concept of distributor. Thus reliance has been placed on the interpretation of the notion of producer by tribunals so as to test the scope of application of the Act to other intermediaries.

### **The narrow definition of "producer" adopted by tribunals**

At the time of the enactment of the *Status of Artists Act*, representatives of the UDA expressed their concerns about the scope of the regime, specifically in stage-related productions. They were worried the Act might not apply to companies self-identifying as "theatre operators" or self-identifying as "festival", in other words to distributors. At the beginning of the parliamentary work, the Act defined the producer as "a person or partnership responsible for producing an artistic work in a field of endeavour contemplated in [the Act]" (*UDA c. Le Festival International de Jazz de Montréal*, 2010 QCCRT 0523, paragraph 257). The representatives of the UDA explained the problem they perceived with this early definition:

This example is far from unique; it is widespread. *The Festival d'été de Québec* tells us: We are not producers, we deal with many producers and, as such, we cannot associate ourselves with the *Union des artistes* and guarantee that your members will have proper contracts and that social security, insurance, etc. will be paid. So we say: There is a list of producers – which is unfortunately never up to date – and we have to run after 50, 60 or 75 so-called producers to discover that sometimes our members are forced, individually in certain cases, to declare themselves producers and it is the condition required for their professional services to be retained (Turgeon, National Assembly, 1987, CC-1663).<sup>1</sup>

The companies hence sought to be exempted from the application of the Act by positioning themselves as "show distributors" instead of "producers". The artists emphasized that in reality, during negotiations it could become easy for such companies to impose a method of production in which the artists "self-produce" and the company only distributes the already produced show, thereby removing the transaction from the application of the Act. Ultimately, the definition of producer was modified with the addition of the terms "or presenting to the public."

The artists' concerns were validated by judicial interpretations of this definition. In the case of *Café Sarajevo (2623-3494 Québec inc. (Café Sarajevo) c. Commission de reconnaissance des associations d'artistes et des associations de producteurs*, D.T.E.2004T-265), the *Commission de reconnaissance des associations d'artistes et des associations de producteurs* (CRAAAP) described the Act as foreseeing "the implementation of means to protect persons who often work freelance or in an isolated way so that they may benefit from collective means of protection [...] it grants the possibility for artists to group together and impose the negotiation of collective agreements to govern the conditions in which they will practice their art" (para. 23-24).

Furthermore, the Commission recognized that it may be difficult to draw the line between producer and distributor, depending on circumstances. The criterion applied in order to qualify the contractual partner of an artist as being a “producer” is the retention of services (para 56-57). In the case of the International Jazz Festival, when the definition of producer and the extent of the application of the Act was again subject to dispute, the criterion of the retention of services was reiterated. In determining whether a person acted as producer, it is necessary that the person retain the services of an artist to produce or perform an artistic work in public. In this regard, the *Commission des relations du travail* (CRT) refused the interpretation put forth by the UDA suggesting that engagement for a single performance could lead to the application of the Act:

This agreement must relate to the retention of services. That an artist or a group presents a show in a venue does not mean that the owner of the venue has concluded an agreement of retention of services with the artist or the group. Furthermore, the professional services of artists that participate in the public performance of a stage show are not limited to the single moment of the performance per se. (...) Evidence from the industry, such as that relative to certain shows under review, moreover, clearly establishes that the professional services of certain artists begin long before the performance, that is, right from the conception of the show, in fact. In addition to the conceptual stage, professional services are also required to prepare and perform the show. We must therefore examine the question of the retention of services of artists for this entire period and not only for the period of a single performance. (...)

Nonetheless, the addition of the terms “or presenting to the public” to this definition do not appear sufficient to request that the legislator extend the notion of producer to persons who purchase existing shows, as the Festivals have done, for the single reason that these shows are presented in public (para.236-238 and 259).

In qualifying the status of the contractual partner, the question of control and the directorial power this person exercises with respect to a show was considered by the CRT to be a determining factor:

[T]he Commission concludes that the person who genuinely retains the professional services of the artist is the one who, globally, exerts the greatest control over the delivery of artistic services of the artist, from the creation to the performance, as well as over the working conditions and the material and organisational aspects of the performance. The appropriate elements for the consideration of this control are the following: selection, hiring, task distribution, determining the duration of services, remuneration, circulation and distribution of the show, the supervision of the performances as well as the artistic aspects of the artists’ performance. All of these aspects must be considered globally, case by case (para 249 and 251).

In review, in *UDA c. Commission des relations du travail* (2012 QCCS 1733), the Superior Court confirmed the interpretation of the CRT by considering the objectives of the Act.

The interpretation of the Commission is also in accordance with the spirit and the objective of the LSA, which is to restore the balance of power during negotiations over the working conditions of the artists. The decision that the “producer” is the person “who, globally, exerts the greatest control over the delivery of the artist’s artistic services” is coherent with the objective of the LSA which is to counteract for the perverse effects of this control (para 59).

By focusing only on the direct control over artists’ services, the tribunals do not take into account the control that a distributor may exercise on the conditions of work of an artist by way of the control is that exercised on the conditions under which the performance

takes place. And yet, the CRT recognises the existence of control exercised on the conditions of distribution of the work by the distributor:

On the other hand, one must avoid confusing the control over the provision of artistic services with that exercised by a show distributor when he is purchasing a show. Indeed, the party that purchases the performance of a show necessarily exercises a certain degree of control over the object of his purchase, that is, the performance in question. For illustrative purposes, the distributor's control can fall on the choice of venue or the moment of the performance (date and time), the ticket price, the terms governing access to the venue (site or building) or the use of the venue (para 247).

The decision was appealed by the UDA. Raymond Legault, President of the UDA at the time the research was conducted, explained in his interview the necessity of appealing the interpretation of the definition of producer:

I believe that the Act is biased towards the artist, but producers must take this into account at some point, which is not always the case. You know, the example of the festivals is particularly important to us because in the Act, as of the moment you retain the services of an artist, you must agree with him [*sic*] on the conditions of engagement. Yet, the festivals and affiliated distributors have started to say: "If you say no, me, I am not hiring." "I only hire a company that hires." And inevitably the company that hires says: "Sure, but no company hires me." "Then, he says, create one." *So the artist ends up hiring himself and applies the Status of Artists Act to himself* (Raymond Legault's interview, May 2013, my emphasis).

In June 2014, in *Union des artistes c. Festival international de jazz de Montréal*, (2014 QCCA 1268), the Court of Appeal dismissed the appeal. It restated that the notion of retention of services was at the heart of the definition of producer and was linked to the control dimension exercised directly by the producer over the work of the artist. The Court of Appeal concluded:

Finally, I am of the opinion that the CRT's interpretation does not negate the necessity to protect the rights of every artist, in particular those in an economic vulnerable situation towards festivals. The CRT has taken into account words meaning, the history of the provision, the [*Status of the Artists Act*] in its entirety, its objectives and the evidence presented by both parties in relation to the different shows in litigation. One cannot blame the CRT for not having considered everything and it is not in its power to protect artists' rights over and above what is established by the [*Status of the Artists Act*] (para 55).

Disappointing as it may have been for the artists' associations, the decision was taken not to appeal to the Supreme Court of Canada, the final appeal jurisdiction. Instead, UDA declared its intention to move on to the political arena with its demand (Cloutier, 2014).

In light of this jurisprudence, it is necessary to conclude that the scope of application of the Act is currently limited to relations between artists and producers, perceived as those having a direct impact over the working conditions of artists by virtue of retaining their services. Even though the subject matter of the Montreal Jazz Festival case related to performing artists, namely musicians, the narrow definition of producer applies to the screen industry as well. The Act applies to both stage and screen-based productions and makes no distinction between the two sectors. There is only one definition of "producer" and it is applicable to all industries targeted by the Act. In this context, it is interesting to evaluate the effectiveness of the Act today in light of changes brought to the organization of work in screen-based production due to new technologies.

### **The regime's ongoing capacity to provide balanced bargaining power to artists**

Two factors combine to undermine the bargaining power of screen industry artists under the *Status of the Artists Act*. The first factor is the influence of new technologies on the organization of work of film production. The Act was devised at the end of the 80's, when self-producing (individually or collectively) of artistic work intended for public distribution was less common due to the high cost of film production, which in turn required the presence of producers with financial resources. For this reason, the Act was directed at evening the balancing power between these producers and artists. Screen-based production has also involved the presence of an additional intermediary between artists and consumers at the distribution stage. However, as noted in part 1, at the time of the enactment of the Act, the choice was made to include only producers in the regime. And as exposed in part 2, tribunals have decided not to include distributor in the scope of the definition of producer.

The industry and the technical means have evolved since that time. Today, technology makes it easier to create films, all manners of tools, from the camera to the editing table, to sound recording, make producing easier and more accessible to a larger number of people. This ease of production makes room for new types of collaboration. As L'Allier, Boutin and Sasseville (2010) note in their report: "it is foreseeable (...) that the lines between the functions of artists, producers and distributors fade and even disappear. Certain artists, as we have already seen, are directly involved in the production or the distribution of their work" (p.26).

So from labour relations involving first a relation between the distributor and the producer, and second a relation between the producer and the artist, the second relationship being the focus of protection offered under the *Status of the Artists Act*, the new models of production remove the intermediary-producer from the chain. This leaves the self-producing artist (or group of artists) to dealing directly with the distributor.

The second factor is the consequence of the increasing number of self-productions by artists in the context of the limited scope of application of the regime, that is, the exclusion of distributor, while the distribution phase remains important. Indeed, the objective of the Act is to promote collective bargaining of self-employed workers in their relations with work providers. The promotion of collective autonomy aims to change the balance of bargaining power between workers and their work provider (Zachert, 2002). Workers are permitted to band together in order to offset the other's power. In the context of an analysis related to the promotion of the collective autonomy of self-employed workers, what is important is the "right (for self-employed workers) to bargain collectively to face *bodies vested with power* over their work" (My emphasis) (D'Amours, 2010, p.258).

In part 2 we have seen the way in which the courts have been reluctant to extend the definition of producer to festivals in the case of live performance, even though the Union des Artistes argued that this is where power was based in respect of Festival productions. In Arthurs' analysis, these bodies vested with power over the work of the workers, are identified as "super-ordinates" (2012-13). He identifies three essential elements for establishing a power of resistance for people in a position of "subordination" in society. These three elements are to offer some guarantee to their right to speak in collective voice, engage in collective bargaining and mobilize concerted pressure, to offer some means of identifying minimum terms (and improving these minimum terms) and to establish a process allowing to pursue human and political rights in order to influence social context.

According to Arthurs, these elements must allow one to resist the power of the dominant entities. In other words, they aim at resisting those who hold the balance of power. Hence, in order to meet its objectives the mechanisms provided for in the *Status of Artists Act* must target the entity that holds the balance of power to bargain. In the context of an analysis of the regime, it is therefore necessary to adequately identify

these dominant entities. As was seen, such intermediaries may intervene at two levels in the use of an artistic work. In productions self-produced by artists, except when artists are able to directly reach the public-consumer, the dominant entity will be the intermediary intervening at the distribution phase.

While production may be more accessible, distribution remains critical. The following remarks, even though they were held within the context of the French legal system, highlight this same challenge concerning the distribution of artistic works in a range of cultural industries. Even when artists have the capacity to self-produce, they remain dependent on the distribution of their work. For as Corsani (2012) notes, an artist may have the capacity to create the work according to his or her own will. However, the capacity to reach the public does not derive automatically once the work is created while it is still fundamental in the artistic process:

Yet for freelance journalists, as for casual entertainment workers, it is not simply about producing according to one's own rules — when and where one likes — because what a musician, journalist, director aspires to is not only to create music, images, media coverage, films, *but also that this music, these images, these films be distributed. Between an artist and his public, between a journalist and his public or his reader, there are the intermediaries* (My emphasis) (2012, p.498).

Despite technological developments, the presence of intermediaries between artists and clients remains in the majority of cases. As such, an artist may create the work, but the process of making it available to the public is not within their control:

One would have hoped that the advent of new telecommunications technologies would allow performing artists to reach a global market without needing to contract promoter-distributors, thereby readjusting the balance of power through “disintermediation.” However, intermediation seems to have remained necessary, even though it may enjoy a certain degree of independence due to the aforementioned catalogue effect (in this respect, see the business model of [www.vitaminic.co.uk](http://www.vitaminic.co.uk)). Furthermore, some have noted that few signs demonstrate that disintermediation has in fact occurred. The reasons cited are the difficulty for individuals, aspiring artists, to be noticed among the “noise of creative ambition,” and the reticence of many artists to engage in alternative ways of exploiting their copyrights (Français, 2007, fn 108).

For its part, the ARRQ came to the conclusion, in a report regarding the situation of cinema in Québec, that the power of the intermediaries controlling the broadcasting or webcasting of artistic work is increasing as the distribution sector becomes more concentrated and market driven. In the interest of the wellbeing of Québec cinematography, the ARRQ underlined the importance of making these intermediaries participate in financing film production:

Access providers operating on our territory and that profit from this investment must be required to invest in our national cinematography. (...) The ARRQ supports the following recommendations regarding issues of finance and production, taking into account that cable operators and public and private broadcasters operating in the province should offer greater support for the production and distribution of films in Québec, particularly Télé-Québec, as educational and cultural television. Theatre operators and Internet access providers should also contribute to the financing of films (2013, p.4).

Furthermore, other factors may explain the concentration of power granted to firms controlling the distribution of produced works, notably the rules governing the financing of film productions, which require a financial guarantee from the distributor in order to facilitate the attribution of funds (critical to the production of a very large number of works, given the limited size of the particular market).



Industry participants interviewed as part of the large scale research project (Choko 2015) also highlighted the increasing power of distributors in controlling artistic works and the role they play in programming and investment decisions and hence income, risk taking and casting:

It's they [distributors] who decide on the programming. It's quite understandable... Ultimately the people who will really decide which films will be made are the distributors who will say: "Well we're ready to invest said amount in this film, but not in that one. So there is a shift in power which simply happens (Participant no 30, interview).

At the distribution level, everything is changing and what is happening is very serious. The role of distributors now, how they get involved, how they have power really affects how we tell our story... That's what film and TV are there for, we tell our experience on earth and now I find that it is really formatted by a handful of people who hold a lot of power (Participant no 14, interview).

Extremely closed off. It is very difficult to manage to get an audition. It's very difficult to work in theatre, television is closed off. It's always the same ones. And I want to mention that I only understood that later on because I spoke a lot with the casting directors and they told me: "We don't necessarily decide. No, it's the distributors. At worst, the producers" (Participant no 22, interview).

In sum, one can observe a shift in the locus of power from what was once the owner of the means of production (producer) to those who can get the attention of the public to watch and pay (distributor). Negotiations between artists and distributors are excluded from the protection of the *Status of the Artists Act* due to the narrow interpretation of the definition of producers adopted by tribunals, denying the self-producing artist (or small group of artists) the benefit of collective bargaining with distributors. In view of the stated objective of the *Status of Artists Act*, namely to redress power imbalances, this narrow interpretation is problematic.

### **Conclusion**

With the blurring of the lines between artist and producer in the case of film production, identifying the dominant entity in relation to production presents a challenge. At the same time, there are cases where it is rather the dominant entity in relation to the distribution that exercises real control over the work of the artist, by virtue of the control exerted on the distribution of the work. In these instances, this shift in the power of determination of the working conditions of artists is not captured by the Act due to the narrow definition of producer. As a result there is a risk of the erosion of the effectiveness of the Act to protect artists. It is important to recognise that the current interpretation of the *Status of Artists Act* has its limits. Regrettably, the report from the L'Allier committee was reluctant to suggest any amendment of the current legal regime in that regard:

In an era where technological changes upset artistic practices and where the cultural industry's economic models are unstable or in flux, it is not the time to impose excessive formalism on the relationships between members of the artistic community (2010, p.26).

Contrary to this position, I am of the opinion that in order to maintain the protection of artists, it is necessary to take these new realities into account. This should make it possible to target the actual intermediary vested with the balance of negotiating power for the application of the obligation to negotiate, even if this intermediary intervenes at the level of the distribution of the work. This search for a solution is made difficult by the constitutional aspect of the question brought forth in certain cases. For example, broadcasting, which includes television channels and cable operators (broadcasters) whether they provide television or Internet services, is under federal jurisdiction.<sup>ii</sup> The Act cannot apply to them.<sup>iii</sup> Another difficulty rightly brought up by the CRT in the case

of the International Jazz Festival and confirmed by the Superior Court, is the question of the possible confusion that may arise in instances where there is not only a producer in whose favour the balance of negotiating power weighs, but also an intermediary controlling the distribution of the work:

[T]he interpretation that the UDA wishes to give to the term “producer” would have the effect of designating two producers (the person who controls the artistic performance and the distributor of the show) with respect to a public performance of an artistic work. This would lead to confusion as to the application of the LSA and is not a solution to be adopted (para.60).

Under these circumstances, it would be necessary to determine which entity is prioritised by the Act in order to render efficient the mechanism of the regime that aims to counter the imbalance of the power of negotiation.

Ultimately, what should be kept in mind from artists’ experience is that the process of developing a regime which aims at promoting the collective autonomy of self-employed workers to provide them with better protection, should target the intermediary entity in whose favour the power of negotiation truly weighs. Firstly, this dominant entity must be identifiable for the mechanism to function. Then, when examining the imbalance in the power of negotiation, one must take into account the power exercised during the production phase, whether of a product or service. If the power of means of production was once a determining factor, today, it is no longer the only element at stake. When technology offers a greater accessibility to the means of production, then the stake may shift towards the means of distribution. If it does not respond to industry dynamics and technological change, the *Status of the Artists Act* risks no longer adequately protecting the workers it seeks to protect.

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### **Notes**

- i. The quotes were translated by the author from French into English for the purposes of this article.
- ii. Canada is a federation. Legislative, executive and judicial power are divided between provincial entities and the federal entity. In matters related to broadcasting, the federal entity has jurisdiction over the whole territory of Canada. On the contrary, the Status of Artists Act, enacted by Quebec only covers productions in Quebec and cannot apply to federal entities, such as broadcasters since their activities fall under the exclusive federal jurisdiction on that matter.
- iii. However, the federal entity has also enacted a legislation, not too long after Quebec and explicitly inspired by the Status of Artists Act. This legislation, the Status of the Artist Act, S.C. 1992, c.33, applies to these federally regulated entities. It would be necessary to take this into account in such an examination.

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