QUESTIONNAIRE ON THE RIGHT TO ARTISTIC FREEDOM

Response on behalf of Arts Council of Northern Ireland (United Kingdom)

1. Artistic Freedom is not expressly protected under a written constitution in the UK as such though there are the qualified rights of Freedom of Expression contained in Article 10 of the European Convention on Human Rights.

2. There have been no judicial decisions in Northern Ireland directly relating to Artistic Freedom though, of course, in the UK there have been various challenges over the years such as the failed prosecution in 1960 of Penguin Books for publishing Lady Chatterley's Lover which had far reaching consequences.

3. The most relevant illustration of an official policy in Northern Ireland relating to Artistic Freedom is contained in the provisions of The Arts Council (Northern Ireland) Order 1995. Articles 4(1) and 4(2) relate generally to the functions of the Arts Council and include reference to developing and improving knowledge, appreciation and practice of the arts. However, Article 6 (3.1) contains express reference to artistic judgement: *The Department [the State] shall not exercise its powers under paragraph (2)(b) with the intention of interfering with the exercise of the Arts Council's artistic judgment in deciding whether to provide financial assistance to any person or body in any particular case.*

4. Unlike the Republic of Ireland where for proposes of tax exemption the Revenue Commissioners have had to make determinations on the status of artists using guidelines drawn by the Arts Council / An Chomhairle Ealaíon and Minister for Arts Sport and Tourism, in Northern Ireland there is no legal definition of an artist in force. In Northern Ireland, the Arts Council makes such determinations based on merit and publish funding criteria. For practical purposes a ‘working definition’ was applied in carrying out a recent survey of Living and Working Conditions of Artists in Ireland. The term ‘professional artists’ as used in the study referred to people who are active in pursuing a career as artists and who view arts work as their main profession or career, even if not their main source of income and regardless of their current employment status. Generally, the determination applied recognises those whose work is original and of cultural or artistic merit.

5. There is no official legal definition of ‘artisan’ or craft-maker.

6. The study on the living and working conditions of professional artists in Northern Ireland (NI) and the Republic of Ireland (ROI) referred to above, (at 4) was undertaken in the context of a range of existing supports for artists (both direct supports to artists such as bursaries, awards, residencies, commissions and indirect supports through funding of a wide range of arts organisations). The fieldwork for the study was undertaken between September and November 2009 and identified the main impediments encountered by artists. These chiefly relate to income levels and standard of living but it also identified uncertain and volatile work patterns; high levels of stress; difficulty in obtaining or maintaining a good work-life balance, and experience of periods of unemployment. Income levels are low relatively in the sector relative to other workers, especially workers with similar educational backgrounds.

7. To address particular features of the work environment of artists that generate some of the challenges outlined above, would require greater state recognition of the role of the artist and targeted interventions to assist artists, particularly under the tax regime. The arts play an important role in any society, and there is an increased emphasis on the role of artists as regards the creative industries and economic innovation. Stronger recognition of their role would serve to inform potential interventions and systems of support.

8. As outlined above (at 6), the principal financial interventions are applied through a range of existing supports of the Arts Council for artists. These take the form of direct supports to artists such as bursaries, awards, residencies, travel grants and commissions and also indirect supports through funding of a wide range of arts organisations and artist-led programmes. With regard to the main pieces of anti-discrimination legislation and other relevant law in operation in Northern Ireland, individuals are protected against discrimination on grounds of race, religious belief or political opinion, gender, sexual orientation, age or because of a disability.

9. The restrictions that apply to artists relating to artistic freedoms are those that apply more generally to the citizen. The freedom of expression protected under Article 10(2) of the European Convention on Human Rights carries with it duties and responsibilities which may be subject to formalities, conditions, restrictions or penalties as prescribed by law in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health, for the protection of the reputation or rights of others, for the prevention of disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. For example, freedom of expression can be restricted for the protection of the reputation or the rights of others. Defamation law, for instance, allows the award of compensation if a person’s reputation has been damaged.

10. There are no legal provisions which restrict certain artforms, including the use of instruments and songs, or public display or performance other than those that relate more generally, as outlined above (at 9). For example, Parades Legislation in Northern Ireland takes account of the criteria set down in its Guidelines and the provisions of the Human Rights Act. When issuing a determination, the Parades Commission lays out in some detail the basis for its decisions against these requirements primarily to encourage good order in a democratic society and to reduce the risk of human rights problems both for those who parade and for those in whose area the parade takes place.

11. Film censorship lies outside the remit of the Arts Council of Northern Ireland.

12. Generally, performances in public spaces are subject to local bye-laws. For example, artists and musicians are not exempt from the requirements of the Environmental Protection Act. Should a performance lead to complaints of noise nuisance, enforcement action may be taken against the performer to abate the nuisance caused. Similarly, street performance should not block or obstruct a public highway or footpath. Under entertainment licensing laws, some live music is exempt from the need to be licensed, as long as it is performed incidentally to another non-licensable activity. For example, a singer playing in a shopping centre will not usually need to obtain an entertainment licence. However, large-scale performances of music, events at which live music is a main attraction, or instances where music is not incidental to a non-licensable activity, will require an entertainment licence.

13. There have been no recent public debates in Northern Ireland relating to the impact of free market policies on artistic freedoms.

14. There is no independent artists’ council representing professional artists. There is a range of non-statutory associations and representative groupings covering various artforms with which the Arts Council consults.

15. Artists organisations have been established in the UK to collect income from artistic creation and performance. Royalties are the standard method of payment for songwriters and performers whose work is used on a recording. The Mechanical-Copyright Protection Society (MCPS) negotiates agreements on behalf of publishers, with record companies, broadcasters, computer game designers, and anyone else who wishes to record music. It collects and distributes mechanical royalties to publishers. Phonographic Performance Ltd (PPL) collects license money and then passes a share on to musicians. The Performing Right Society (PRS) collects and distributes royalties due for public performances of songs in clubs, pubs, concert venues and anywhere else that uses live music to attract customers. The Authors' Licensing and Collecting Society is a membership organisation for writers. It protects and promotes the rights of authors writing in all disciplines. Under European legislation the droit de suite levy requires art dealers and auctioneers in the UK to pay living artists and the heirs or estates of artists deceased within 70 years up to 4% of the sale price of each work they sell for more than €1,000 (c. £815). The levy is capped at €12,500. That income is collected at the point of sale by dealers and artist’s agents.

We do not have access to the statements of accounts of artists’ organisations that collect such income and cannot therefore supply information about the in and outflow of money to and from such organisations.

January, 2013