



UNITED STATES MISSION
TO THE UNITED NATIONS AND OTHER INTERNATIONAL ORGANIZATIONS
IN GENEVA

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OHCHR REGISTRY

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Ms. Farida Shaheed
Special Rapporteur in the Field of Cultural Rights
c/o UNOG OHCHR
8-14 Avenue de la Paix
Geneva, Switzerland

In response to your letter of October 24, 2012, the United States hereby provides the following information:

The United States views artistic freedom as grounded in the right to freedom of expression, which is protected under Article 19 of the International Covenant on Civil and Political Rights and, in our domestic system, under the First Amendment of the U.S. Constitution. Protecting freedom of expression is essential to the enjoyment of many other rights, including cultural rights. We provide the same legal protection for expression, including artistic expression, for all individuals, on a non-discriminatory basis, regardless of cultural identity or background.

U.S. Legal Framework Regarding Freedom of Expression

The United States Supreme Court has made clear that the First Amendment protects artistic as well as political expression, including painting, music, poetry, motion pictures and other types of artistic expression as detailed in the following cases. Legal precedents have been set in the following judicial cases: Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557, 569 (1995) (painting, music, and poetry are “unquestionably shielded” by the First Amendment), Ward v. Rock Against Racism, 491 U.S. 781, 790 (1989) (“Music, as a form of expression and communication, is protected under the First Amendment”); Schad v. Mount Ephraim, 452 U.S. 61, 65 (1981) (“Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within the First Amendment guarantee”); Kaplan v. California, 413 U.S. 115, 119-120 (1973) (“[P]ictures, films, paintings, drawings, and engravings ... have First Amendment protection”).

The Supreme Court also recently noted that constitutional protection of artistic works depends not on the political significance that may be attributable to such productions, though they may indeed comment on the political, but simply on their expressive character, which falls within a spectrum of protected “speech” extending outward from the core of overtly political declarations.

Put differently, art is entitled to full protection because our “cultural life,” just like our native politics, “rest[s] upon [the] ideal” of governmental viewpoint neutrality. Turner Broadcasting System, Inc. v. FCC, 512 U.S. 622, 641 (1994).

Constitutionally acceptable limitations on expression fall into at least two categories. First are limitations that do not regulate the content of speech, but only incidentally burden expression to promote non-speech interests. For example, a law regulating the timing at which loudspeakers may be used to communicate in a public place may be aimed at reducing noise, rather than suppressing expression. Such regulations are permitted if they are content-neutral and promote a substantial governmental interest by the least intrusive means. Similarly, laws may regulate the time, place, or manner of speech if they are not attempts to censor content or unduly burdensome to expression.

A second category of permissible limitations describes types of speech that are afforded less protection under the First Amendment. One such type, speech posing a “clear and present danger” to public order, may be restricted, but only if the government can establish that such speech was intended to incite or produce imminent lawless action and is likely to achieve that end (Brandenburg v. Ohio, 395 U.S. 444 (1969)). A second type of speech in this category, commercial speech, is entitled to somewhat lesser protection than non-commercial speech, and may for example be regulated to avoid misleading or coercing consumers (City of Cincinnati v. Discovery Network, Inc., 507 U.S. 410 (1993)). Third, obscenity is entirely excluded from First Amendment protection. U.S. courts define obscenity as patently offensive representations of sexual conduct without serious literary, artistic, political, or scientific value (Miller v. California, 413 U.S. 15 (1973)). Thus, the exception could apply only in the rare case if a work is found not to have serious literary, artistic, political, or scientific value.

In response to questions about protection for street artists, they have broad freedom to use public spaces in the United States and often do so. Like all individuals in the United States, street artists enjoy the rights of freedom of peaceful assembly and freedom of expression under the First Amendment to the U.S. Constitution. While governments can regulate public assemblies, the First Amendment requires that those regulations must be content-neutral, occur at a reasonable time, place and have manner restrictions, and that they must be narrowly tailored to meet a specific government interest. In 2009, a federal circuit court found that a city’s set of ordinances which, inter alia, required street performers to get permits before performing at a public park and entertainment complex, and not to communicate with citizens waiting in line for other attractions at the complex, was inconsistent with the First Amendment. See Berger v. City of Seattle, 569 F. 3d 1029 (9th Cir 2009).

Federal v. Private Role in Funding: U.S. has no Ministry of Arts, Culture or Censorship

The United States has no specific ministry responsible for arts and culture on the federal level. Similarly, with respect to funding, the U.S. arts system has no single benefactor, no overarching arbiter or agency, and no dedicated body for support to artists. Instead, a variety of government subsidies compose roughly 7 percent of the nation’s total investment in not-for-profit arts groups.

The National Endowment for the Arts (NEA) is the largest single funder of the arts across the United States, but the majority of direct public funding flows from a combination of other federal, state, regional and local agencies. Further details are available in [How the United States Funds the Arts](http://www.arts.gov/pub/how.pdf) (<http://www.arts.gov/pub/how.pdf>), published by the NEA.

The United States has no national artists' council, nor any government-affiliated association for artists. State and local governments have arts councils for artists in their jurisdictions, which are voluntary in nature and assist in the support of artists. The United States also has unions for different types of artists, which are privately run and represent professional artists with regard to their labor rights, as well as other voluntary associations that represent artistic interests.

The United States Government does not permit censorship of artworks. We have no federal or state-level censorship organization such as identified in the questionnaire. Private voluntary rating associations exist to review the content and age-appropriateness of some products, including [motion pictures](http://www.mpa.org/ratings) (<http://www.mpa.org/ratings>) and [video games](http://www.esrb.org/) (<http://www.esrb.org/>). The United States Government does not run any organization which redistributes income or royalties to artists. However, several performing rights organizations (PROs) have been established privately to ensure that artists are compensated for their work. The websites of the three major PROs in the United States – websites of [the American Society of Composers, Artists and Performers](http://www.ascap.com/) (<http://www.ascap.com/>), [Broadcast Music, Inc.](http://www.bmi.com/) (<http://www.bmi.com/>) and [the Society of European Stage Authors and Composers](http://www.sesac.com/) (<http://www.sesac.com/>) provide further information about the type of royalties they collect, their amount and distribution.

Government support for the arts in the United States has also been a subject of public debate, including controversy over organizations supported by the NEA. Since 1965, the NEA has distributed over \$4 billion in grants to individuals and organizations funding that have served as a catalyst for increased state, corporate, and foundation support for the arts. Throughout the NEA's history, only a handful of its roughly 140,000 awards have generated formal complaints. In 1989, for instance, controversy was sparked over NEA-supported agencies that displayed two provocative works: a retrospective of photographer Robert Mapplethorpe's work, which was viewed as homoerotic, and "Piss Christ", a photograph of a crucifix immersed in urine by Andres Serrano. These resulted in debates, including some that entered legal and Congressional realms. But no matter how offensive some found these works of art, the debate focused on whether public funding was appropriate for such endeavors and not on whether the government should or could ban offensive works of art. The core protections for artistic expression in the United States are well-established under our legal framework and, as set forth in our First Amendment, are not subject to government restriction. Should you have additional questions, please do not hesitate to contact us.

Sincerely,



Peter F. Mulrean
Deputy Permanent Representative