

LABOR POLICY PAPER

• 2016 •



COALITION PRINCIPLES

Massachusetts Artists Leaders Coalition (MALC), its meetings, and connected working groups are designed to bring together artist leaders of all disciplines, and artist-run organizations, initiatives, and businesses around key issues facing Massachusetts artists working in all disciplines. Though participants may have different perspectives on how best to address the issues facing our community, we are all committed to improving the social and economic position of all Massachusetts artists. The overall goal is to empower our community, support our artists leaders, and to mentor new artists leaders. We want to ensure that artists are at the policy making table.

Membership for MALC is free, and open to Massachusetts individual artists of all disciplines, and to Massachusetts artist-run organizations/businesses/initiatives. (“Artist-run” means for those with a board structure, the majority of the governing board must be comprised of working artists; for a business/organization without a governing board structure, it must be run by at least one working artist.

For more about MALC, visit: www.artistsunderthedome.org/art_leaders.html

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INTRODUCTION

The Massachusetts Artists Leaders Coalition (MALC) is dedicated to empowering artists of all disciplines, and to promoting the arts, culture, and creative economy throughout the Commonwealth. We work to ensure artists of all disciplines have a meaningful place at policymaking tables at all levels of government.

MALC's Labor Policy paper contains our recommendations to promote and grow all artistic disciplines across all sectors. Our comprehensive policy includes recommendations for labor, education, housing, health and welfare, economic development, fiscal policy, and human rights. The reason for this broad reach is that artists – and their underpaid/unpaid labor – are the foundation that sustains and grows the arts, culture, and creative economy. Artists work in every economic sector, and in a comprehensive mix of jobs — a fact that most studies do not take into account. Addressing the policy insufficiencies artists face means looking across classifications to see their interconnections and impacts.

MALC believes artists of all disciplines should never be expected to provide work or services for free or below a living wage. Nor should artists be expected to forfeit rights of ownership over their work. ***Of paramount importance is protecting all artists' rights to their intellectual property.*** Governmental, nonprofit, and private sectors must abide by fair labor standards when engaging with artists of any discipline. Private entities contracting with or receiving money from government, at any level, must abide by fair labor standards when employing or contracting artists of any discipline.

Therefore, we strongly believe that encouraging and adopting new standards and regulations, while strengthening those that already exist, are key steps to enabling artists of all disciplines to thrive in a sustainable manner. Our community's well-being depends on the adoption of these labor policy recommendations. We look forward to working with our partners and key stakeholders to improve the working lives of all Massachusetts artists.

10 KEY ISSUES IDENTIFIED

- 1. The expectation that artists of all disciplines will work for free or well below a living wage**
- 2. The very real problem of student and/or volunteer labor undercutting a fair wage floor for working artists**
- 3. The issue of exploitation of adjunct professors and graduate students in both the Commonwealth's and private sector's college and university systems**
- 4. The Independent Contractor issue and how it directly impacts the artists community**
- 5. The issue of "Work for Hire" contract language used by non-profits when hiring creative talent**
- 6. The need to protect the intellectual property rights of artists of all disciplines**
- 7. The need to better support existing revenue streams and opportunities, and create and support new revenue streams and opportunities for artists working in the Commonwealth**
- 8. The need to better recognize and understand that artists of all disciplines are a unique labor force who are key economic stakeholders**
- 9. The issues of institutional racism, ageism, sexual identity, and gender discrimination that many artists of all disciplines face**
- 10. The need for improved occupational health standards and wellness awareness for working artists**

KEY ISSUES EXPLAINED

1. The expectation that artists of all disciplines will work for free or for well below the living wage

Artists of all disciplines are a significant section of the labor market and should be recognized as such. Even though artists of all disciplines are the creative energy supporting every aspect of our culture industry, artists are, in general, poorly paid and must supplement their incomes by working several jobs.

The 2009 “Stand Up and Be Counted” report of Massachusetts artists of all disciplines provides the quantitative data: “More than a quarter (26%) of the 3,145 respondents who answered the question characterized themselves as full-time artists. The majority of the respondents (74%), however, classified themselves as part-time artists and of not being able to make their living entirely from the artistic practice and thus had to earn income from other sources. The majority of respondents are also longtime artists, with 71.4% being practicing artists for more than 10 years.”¹

And, “of the 1,700 respondents who provided financial data about their business losses and/or gains from 2006, 86.7% reported that they invested earnings to support their work as artists, and 48.6% reported a loss after expenses were calculated.”²

Artists are not part-time artists by choice, but by necessity. In essence, there is a dual labor market structure in the art world that profits from poorly paid artists of all disciplines. The “high wage” sector of the art world is dominated by the non-artist “executives,” while the “low wage” sector is reserved for the artist “workers.” The cultural industry of the United States depends on these poorly paid artists.

“In fact, the largest subsidy to the cultural life of this country does not come from corporate donors, the government, or from the patrons, but from artists – through their unpaid or underpaid labor.”³

Artists are a significant section of the labor market and need to be fairly compensated for their work. Any and all attempts to further undercut the artist labor market with unfair labor practices must be opposed.

Because artists are the working poor of the art world, MALC urges the Commonwealth to expand its current definition on “wage theft” In the following ways:

1 2009 Stand Up and Be Counted survey, pages 7 - 8; http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

2 2009 Stand Up and Be Counted survey, page 5; http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

3 Woodcock, George, *Strange Bedfellows: The State and The Arts in Canada*. Vancouver: Douglas & McIntyre 1985, p.126

- a. Many governmental, non-profit, and for-profit entities (who have sufficient economic means) do not fairly compensate the artists they engage with. The general attitude that artists can be “bargained down to peanuts” should be classified as moral “wage theft.”⁴
- b. Payment in a timely manner is not the norm for individual artists of any discipline. Many artists cannot wait more than 30 days for payment, and if the client happens to ignore payment, the hardship becomes extreme due to the time involved in court filings and attorney fees. Freelancers (the self-employed) are particularly vulnerable.
- c. The obvious dangers of spec work need to be examined and reformed. “Spec work is any kind of creative work, either partial or completed, submitted by designers (or artists of other disciplines) to prospective clients before designers secure both their work and equitable fees. Under these conditions, designers will often be asked to submit work in the guise of a contest or an entry exam on existing jobs as a ‘test’ of their skill. In addition, designers normally lose all rights to their creative work because they failed to protect themselves with a contract or agreement. The clients often use this freely-gained work as they see fit without fear of legal repercussion.”⁵

An example of this unethical practice is a company, nonprofit, or governmental agency conducting a contest for a “logo” or “brand identity.” (Appropriations via contests are also covered. See *item 6c.*)

- d. All grant entities and funders (governmental, nonprofit, commercial, private sector, etc.) should be required to allow applicants to include artist fees in their budgets. No artist fees should equal no funding. Likewise, all funders must make a commitment to fully fund artist fees.
- e. Artist grants and/or contracts should not be structured as a reimbursement process, where artists must front their expenses (usually on their credit card), then submit itemized receipts/expenses/fees, only to wait months for payment. This is not the usual business practice in other sectors. Artists should not be asked to endure these additional burdens.
- f. A profit-sharing model with artists should be promoted as the norm throughout the creative sector.

4 Note: Often grassroots organizations with little to no budget and cannot pay artists usually barter with and/or make commitments to support artists in their careers in other needed ways – i.e., not taking any commission for work sold, donating materials, etc. Sadly, this is not usually the case with non-grassroots arts organizations. This is especially true of many small theater companies where no one is paid, and all monies from ticket sales and/or grants usually go to cover the costs of production (rent for the performance space, lighting equipment, insurance, printing, set/costume costs, etc).

5 NO!SPEC campaign website; <http://www.nospec.com>

- i. The profit-sharing model embraced by the highly successful musical, “Hamilton,” should be replicated throughout the performing arts sector.⁶
 - ii. Similar profit-sharing models should be explored when museums and other non-profits make “products” from the copyrighted work of artists (e.g., note cards, magnets, calendars, etc.).
 - iii. Digital revenue rights need to be supported for all artists whose intellectual property is utilized. Those rights must extend throughout the published life of the work no matter how the media platforms change or change owners or merge over time. For example, the proposed federal legislation, the “Fair Play Fair Pay Act of 2015” (H.R. 1733), would provide royalties to all performers whose music is played on American terrestrial radio. Currently, no royalties are paid, though in most developed countries, they are. It is critical, therefore, that the Massachusetts executive and legislative branches support and encourage our U.S. Representatives and Senators to support this vital piece of legislation.
- g.** “Pay-to-Play” should be considered “wage theft.” The state licensing process for entertainment establishments should be updated in a way that ensures performing artists (musicians, comedians, etc.) are compensated, whether the venues they play for are for-profit or non-profit. While our state’s current “wage theft” campaign does take a long, hard look at restaurants to ensure they are fairly and legally paying their service employees (waitstaff, cooks, etc.), many establishments often charge performers to play or require them to attract a threshold audience in order to receive any payment. This is “Pay-to-Play.” Regulating how performers are paid in the various state “permitted” establishments should be the norm, just as waiters’ or waitresses’ wages are.

One model to consider for performer “fair pay” guidance is the Boston Musicians Association’s “Steady Engagements” policy. This policy provides an idea of the minimum the BMA likes to see their musicians be paid when they perform at the same venue over a set period of time.

“Pay-to-Play” is also present in the visual and literary arts. Often, artists must pay a submission fee to have their work judged for review in a publication, exhibition, or contest. Rarely are the artists paid to have their work published in these outlets.

- h.** Promote resale royalty rights. Artists in 70 countries enjoy resale royalty rights (they are compensated for their intellectual property when their artwork is resold) but not in the United States. Such rights should be secured for artists within the U.S., and Massachusetts should support federal legislation to establish these rights for U.S. artists.⁷

6 <http://www.nytimes.com/2016/04/16/theater/hamilton-producers-and-actors-reach-deal-on-sharing-profits.html>

7 See the Resale Royalty Act: <http://www.arsny.com/resale-royalty-act/>

- i. Promote state tax deduction credits for artists when they donate their work.⁸ Artists are always in demand to donate work to various causes and institutions. Charity art auctions are one way for organizations to raise money to fund and build awareness of their important work, and to connect the greater community to that work through the medium of art.

The Commonwealth needs to commit to updating state tax deductions for artists when they donate work. Not only would it promote artists' rights, but would demonstrate that the state recognizes the value of artists, art, and charity art auctions, as well as the great social and community work performed by non-profits and charity organizations (Of course, if an artist doesn't earn enough in annual income, a tax deduction may not be helpful.)

- j. Craft better standards for the regulation of "charity auctions" to ensure that artists are fairly compensated and in a timely manner, and ensure these auctions do not undercut the success of the commercial gallery sector in the Commonwealth.

Artists are always asked to donate work to "Charity Auctions" for various causes. Examples of useful standards for charity auctions seeking donated art are:

- i. If the art work is to be auctioned, the artist should be able to set the lowest allowable bid for their work. If the work is to be made specifically for the auction event (i.e., all artists are invited to make chairs, plates), then a standard minimum bid should be set before the event.
- ii. The artist needs to be offered a fair percentage of the proceeds from the sale of their art work – recommended is 50%, but no less than 30%. That leaves the artist with the option to donate their work or proceeds outright to the auctioning entity.
- iii. If the auction/event is a fundraiser via ticket sales, the artists should be allowed to attend the event free of charge, or at a greatly reduced price (1/3 of the ticket price or more).
- iv. Artists should be given the contact information of the party who purchased their artwork at the auction/event. In addition, the event organizer needs to clearly inform the winning bidder that the artist retains the copyright and moral rights to the work. Information explaining what that means to the new owner should be provided.⁹
- v. Artists should be paid their percentage of the sale as soon as possible after the

⁸ Artists are not allowed to deduct the fair market value of their donated work on state or federal tax returns. Artists can only deduct the cost of materials they used in producing the work.

⁹ Under current copyright law, If someone purchases a work of art, they own the physical work, but not the rights to reproduce it in any way.

auction proceeds are collected. Payout of the artist's percentage should not take longer than 90 days; the same as legislated by the state's Consignment of Fine Art law.

- vi. A written, signed agreement between the artist and the entity conducting the auction that spells out all the above terms should always exist, along with other standard practices involved in the transfer of art – drop off or pick up times of unsold work, insurance policies specifying liabilities, etc.)

Furthermore, MALC feels that any organization that profits from charity auctions or solicits artist donations should be helping to sponsor and underwrite legislation to change state and federal laws that prohibit artists from deducting the fair market value of artwork they are being asked to donate.

2. The very real problem of student and/or volunteer labor undercutting a fair wage floor for working artists

It is critical to ensure that student artists' labor and/or volunteer labor is not used to undercut the artist labor market, including the practice of securing student artwork/performances/services for free or via unpaid and/or unaccredited internships. This is the primary way in which institutions and other groups undercut the artists' labor market.

Stronger enforcement of the Commonwealth's existing laws overseeing internships is a vital need for our sector. Also needed is a statewide public education program to inform all organizations relying on internships that the law limits what types of work interns can do and that its provisions must be followed. For example, unpaid internships in the for-profit sector are illegal in Massachusetts.¹⁰

3. The issue of exploitation of adjunct professors/graduate students in both the Commonwealth's and private sector's college and university systems

Adjunct professors and graduate students represent a highly skilled sector of the workforce, with all of them having at least a master's degree and many having a Ph.D. Yet their work is not appropriately valued nor compensated within our higher education institutions. Adjunct professors make up more than half of all college faculty in the country.¹¹ They are treated as disposable commodities by both state and private colleges and universities. Graduate students are treated even worse, approaching indentured servitude.

10 <http://masswagelaw.com/blog/index.php/massachusetts-wages-unpaid-internships/>

11 Huffington Post, 11/11/13; http://www.huffingtonpost.com/2013/11/11/adjunct-faculty_n_4255139.html

Adjunct professors are paid per class (and at low rates). They are not afforded any benefits (as if they were independent contractors), yet at the same time are denied their intellectual property rights (because they are classified as employees). Every effort must be made to stop this injustice. State universities and colleges must be directed to create a just system for hiring and employing adjunct professors. Private colleges and universities, many of which receive state money and don't pay city property taxes, must be encouraged to do the same. The unionization of adjunct professors and graduate students¹² needs to be fully supported and encouraged.

4. The Independent Contractor Issue and how it directly impacts the artists community

The Independent Contractor Law (ICL) protects workers from being misclassified as independent contractors and thus denied attendant benefits by their employers. This is commendable. However, following a 2004 amendment, the language of the ICL has made it difficult for many Massachusetts-based artists of ALL disciplines to secure work as independent contractors. Clients have become fearful of violating the letter of the ICL if they hire artists as independent contractors to create intellectual property. Any person hired as an employee, as the 2004 ICL makes nearly mandatory, lose all rights to the intellectual property they create. This is why intellectual property is at the heart of the ICL issue. Artists (and many others) need to maintain control of their intellectual property, and the way to do that is to work as an independent contractor.

To its credit, the state legislature has never intended to criminalize hiring artists as independent contractors, and the Office of the Attorney General has never brought such charges. Yet the wording of the current ICL provides for such prosecution and employers do not want the associated risk hanging over them. Therefore, the ICL needs reform that carves out an exemption for all those who: 1) create intellectual property; 2) wish to be classified as employees; 3) protects those whose respective unions require certain contractual conditions; and, 4) a mandated effort for the state to educate the general public, especially artists, businesses, and nonprofits, about what is and isn't allowed under the ICL.

5. The "Work for Hire" issue

More and more non-profits (and some governmental entities) are adopting unfair, corporate-based practices when "hiring" artists of any discipline to create work for them. For example, a theater artist is hired to develop a youth-based play or a visual artist is hired to create a mural.

¹² <https://www.insidehighered.com/news/2016/08/24/nlrb-says-graduate-students-private-universities-may-unionize>
"Graduate student unions at public institutions are common, as students' collective bargaining status on public campuses is governed by state law. But the NLRB oversees graduate student unions on private campuses. Tuesday's decision in favor of a graduate student union bid at Columbia University effectively reverses an earlier NLRB ruling against a graduate student union at Brown University, which had been the law of the land since 2004."

The non-profits use “work for hire” contracts in which the artists lose all of their intellectual property rights, copyright, and moral rights. No cultural non-profit or governmental entity should engage in this practice.

6. The need to protect the intellectual property rights of artists of all disciplines

Artists of all disciplines depend on the protection of their intellectual property. This includes copyright, trademark, patents, and trade secrets. Copyright protection is key for artists in protecting the financial and moral rights to their creative work. Important to note, also, is that registration of creative work with the Copyright Office is expensive for certain artistic disciplines. Registered work is a great aid in collecting compensation and damages for infringement, however, the level of a potential award must reach a certain threshold to be reasonably considered for moving to trial. This is a problem.

- a. The rise of internet “sharing” has been a substantial blow to intellectual property protection. IP rights have suffered from inadequate safeguards and ineffective enforcement mechanisms to protect artists’ online work. Social media “terms and conditions” compromise rights holders’ control of who can share and where their work is published, and allows select third-party partners to legally publish and profit from the value of the creative work. Furthermore, the burden of enforcement, and the proof-of-ownership is left entirely to the individual artist. Legislation to assist removal of infringed work is “hit or miss”; deleting multiple instances of identical infringements on a single online platform is nearly impossible. Lawmakers and policymakers should be working with our community to better address these problems.
- b. Institutions and organizations often utilize business models whose purpose is to infringe or negate the intellectual property rights of artists they seek to hire. Artists should never be asked to automatically forfeit the right to their intellectual property, either by contract, commission, in a residency, or as a visiting/teaching artist. It should be standard practice that artists be classified as “independent contractors,” thus retaining IP rights they can rightfully negotiate the further use of, if they so choose.
- c. The problem of “contests” used as methodology for acquiring creative work for free or low cost is an exploitative issue of great concern. Most often, the fine print of those “contests” require artists to sign over IP and moral rights or give the organizer and third-party sponsor of the “contest” the right to monetize their work for profit.
- d. If a government or non-profit would like to use an image/sample of an artist’s work for publicity or educational purposes, the usage agreement must make it clear that no profit or brand enhancement will result from the use. If it does, a fee should be negotiated. In any event, the artist, and the one who documented the work, should be credited.

- e. “Right to Publicity” legislation needs broader awareness and legislative support. Artists of every discipline need control of their likeness, brand, public image and namesake. That control needs to pass on to their estate as well. Appropriation, in all cases, needs to be negotiated with the artist or the artist’s estate. Therefore, Massachusetts should pass “Right to Publicity” legislation to protect its artists from needless exploitation.
- f. Any “Percent for Public Art” program, whether on the state or local level, must guarantee that commissioned artists/creators retain full copyright of their work.
- g. As mentioned earlier, passage of a resale royalty rights statute, if not on the federal level, then on the state level, needs to happen. Artists in 70 countries, excluding the U.S., enjoy resale royalty rights. Artists should be compensated for their intellectual property when their artwork is resold. Those rights should be secured for artists within the U.S. and the Commonwealth.¹³
- h. A statewide effort to educate the general public about copyright law and IP rights will work to everyone’s benefit. Artists, in particular, need a comprehensive education about how to protect their IP rights, and it is the state’s responsibility, in our view, to provide this education.

7. The need to better support existing revenue streams and opportunities, and create and support new revenue streams and opportunities for artists working in the Commonwealth

- a. Restoring and stabilizing funding for the Massachusetts Cultural Council (MCC) to sustainable levels must be a top priority for the legislature. The MCC is the main governmental funder for the cultural sector and a key component in the support of working artists in our state.
- b. To foster growth of our cultural and economic lives, the Commonwealth needs to commit to robustly funding all the arts in our K-12 public school systems, and in the state college and university system. All students need access to culturally inclusive and comprehensive arts education beginning at an early age, and progressing through high school. At the college level, students must have access to arts as viable degree paths.

Following the need to improve arts education in K-12 and community teaching settings, there must be an equal commitment to provide teachers a professional living wage, ensure they are paid in a timely manner, and allow them retain IP rights to courses and materials they create.

13 Read more about the Resale Royalty Act: <http://www.arsny.com/resale-royalty-act/>

- c. Filmmaking is a lucrative, international industry. Because of our competitive film tax incentive program, Massachusetts has established itself as a prime location for both the production of major motion pictures and smaller, locally-created independent films. There is so much activity that even large studio production facilities are built here, offering the possibility for a complete turn-key operation. It makes sense, therefore, to maintain and enhance our state's film tax credit program to ensure the growth of this expanding, revenue-generating sector.

Not only does this success represent a significant boost for our state's coffers, but it greatly benefits local businesses where productions are filmed. Productions hire local writers, actors, and crafts people, and use local post-production facilities that are the equal of Hollywood. It seems likely that Massachusetts is poised to become the Hollywood and Sundance of the East, and the professional talent base this attracts gives local filmmakers involved in serious independent film work the ability to hire entirely in their home state.

Film production companies that qualify are eligible for a sales & use tax exemption, a transferable 25% payroll credit, and a transferable 25% production expense. Not only do film productions bring money into our state, they also serve as free publicity for the municipalities and neighborhoods in which they film.¹⁴ This program also benefits eligible small independent filmmakers¹⁵:

- Production companies that spend at least \$50,000 in total production costs in Massachusetts during a consecutive 12-month period
- Accredited film school students

We urge elected officials to commit to preserving our competitive film tax incentive program, and explore any and all ways to enhance our edge over the competition's offerings.

MALC also recommends the state work closely with the Massachusetts Production Coalition, New England's Local SAG-AFTRA, and the Boston Musicians' Association to grow our film sector as much as possible. The Commonwealth can help in many other ways including fully funding and supporting the MA Film Office, and working with our state's education system to prepare and grow this industry's skilled workforce to meet future demand.

- d. Massachusetts has a strong digital game industry presence whose growth can be supported by legislative efforts. The industry employs more than 2,000 residents directly, providing high paying jobs (\$90,000 per year, on average) that represent a

14 Data from the MA Film Office

15 <http://www.mafilm.org/mass-film-tax-credit-law-in-a-nutshell/>

yearly payroll of over \$200 million.¹⁶ Vibrant digital video game design programs are on offer at top colleges and universities here as well.

MALC would like to see the Commonwealth commit to incentivizing the digital game industry in a way similar to what it has done for the film industry. This would include promoting the development of digital game design programs within the state college and university programs, and facilitating cooperation between the industry and academia.

- e. State-owned buildings and properties need to be utilized more easily by our sector. We encourage the Commonwealth to make it much easier for artists of all disciplines, as well as the broader arts community, to open state-owned buildings and properties to cultural programming and events. This might include, for example, Department of Conservation and Recreation (DCR), MBTA, and/or Massport properties.

To expedite easing of access for building use and securing the necessary forms and permissions, MALC suggests offering these services online so that all aspects of the process can be handled in one stop: all forms, permits, contacts, cross-departmental requirements, fees, et. al. Free public events should be staged for as low a cost as possible, if not free. We suggest the state secure a blanket insurance policy to cover use for free public events.

- f. Continuing funding for arts education communities, community centers, libraries, and elder centers is another way to support our Labor Policy initiative. We are blessed to have tremendous centers of community throughout our municipalities. Our elder centers, libraries, youth centers, athletic centers, community centers, and colleges and universities constantly provide space and programming for many residents. These are the perfect places to fund and implement arts education programs. These gathering places do the work of sustaining diverse communities. It follows that adding dedicated arts education programming to the mix will serve to enhance the lives of millions of residents, and do so in a fiscally efficient manner.
- g. Support our teaching artists. The Commonwealth's teaching artists deserve support and expanded opportunities. MALC recommends streamlining some of the requirements for teaching artists to allow them to go into schools as visiting artists and teach short-term courses without the need for a full teaching certificate. The Commonwealth should create opportunities for these artists to teach in other settings: in our state parks, the health care system, elder programs, public housing, public safety programs, DYS programs, recovery programs, and prison programs. Expanded funding for the MCC STARS residency program needs to be part of this effort.

16 Boston Globe, 9/17/12

- h. Restoring the “Percent for Public Art” program would help fund art projects in public spaces in commercial developments, the MBTA, and more. Such a program establishes a minimum fee on mid- to large-scale developments to fund public art. With the enormous building boom we are experiencing, our state is losing a valuable opportunity to enhance our cultural lives. In the meantime, Massachusetts should support any municipality that wishes to initiate a “Percent for Art” program on their own.
- i. A fully developed “Created in Massachusetts” campaign offers many rewards across the board. MALC would like the Commonwealth to embrace and promote the purchase and patronage of Massachusetts-based arts and culture on the state, national and international levels, as well as promote every event, program and product of our vibrant creative economy. Massachusetts residents need to favor work produced by our state’s creative sector, not only because the work is worthy, but because it improves working conditions in existing jobs, creates new jobs, and gives our sector a competitive edge in attracting patronage from around the country and the world.

The “Created In Massachusetts” campaign would support and promote open studios, artist-run spaces, alternative art spaces, non-profit art spaces, and co-op galleries. Visibility should also be given to any business that sells work by our artists and craftspeople, including craft/art fairs and farmer’s markets featuring the work of Massachusetts artists and craftspeople.

Often overlooked, Massachusetts’ commercial, contemporary art galleries deserve special attention. Our commercial gallery sector is filled with micro and small businesses. Many act as key income streams for our state’s artists. The Commonwealth should explore ways to better support these small businesses. Similarly, our art collectors, businesses, and collecting institutions should be encouraged to support a “Created in Massachusetts” campaign in every way possible, in addition to supporting our contemporary commercial galleries with their patronage to the fullest extent possible.

- j. MALC supports the creation of a cultural diplomacy program for the Commonwealth. We rank highly around the world in the fields of education, healthcare, science, law, and culture. Our state deserves to stand tall on the national and international stage. MALC would like the current administration, and by extension, the Commonwealth, to build relationships with our artists, our arts organizations, and our growing film and game sector with other cities and states throughout country, then ultimately with cities and nations around the world.

For example, artists could represent and promote the Commonwealth in many cities, states and countries. These promotional efforts could be created jointly with agencies like Massachusetts Office of Travel and Tourism (MOTT) and the MCC. By leveraging their national and international contacts, Massachusetts could lead the way in show-

casing the work of our artists beyond our state. In the long term, the state could create a Touring Artists & Travel Grant Program that would help fund this initiative.

- k. An exemption to the Commonwealth's Procurement Law (Massachusetts General Laws, Chapter 30B)¹⁷ for the procurement of artwork and artistic services needs to be created. This would allow for the state and municipalities (cities and towns) to be able to use current "best practices" to purchase/commission artwork and public art, and create artist-in-residence programs. The current law doesn't allow, for example, the practice of selecting a group of finalists for a "call-to-art" or "call-for-service". Those selected finalists should, in keeping with best practices, receive monies to develop their proposals further. It would be from that pool that a select number would then be chosen to receive the full commission to create the artwork or, if appropriate, to be contracted for their artistic services (i.e., a paid residency, etc.).
- l. MALC recommends increased support for low- to no-interest loans, micro-funding, grants, and other funding opportunities for the self-employed, and small to micro businesses. Many current programs fostering small business development often don't successfully support the self-employed or our micro/small business category. It is key that both the Commonwealth and its municipalities create programs specifically targeted to these populations and, by extension, the creative sector.

The Creative Economy Network (CEN), under the Creative Economy Council,¹⁸ is one such mechanism to achieve this goal, but it needs to be fully funded. The Council has been a strong voice for the arts and culture sector. MALC would like the CEC to not only remain in place well past its 2016 sunset, but also to receive proper funding to continue its important work. And it is key that the Commonwealth support the newly formed Creative Economy Network (a part of the CEC), and the work of the Creative Economy Industry Director.

8. The need to better recognize and understand that artists of all disciplines are a unique labor force and are key stakeholders

Artists of all disciplines and their creativity are the main labor source behind the arts and culture sector as well as the creative economy. We are a unique labor force and need to be treated as key stakeholders on any policy discussions pertaining to labor and workforce policy. We need to be at the policy table at the beginning of all labor and workforce policy

¹⁷ <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleIII/Chapter30B>
<http://www.mass.gov/ig/publications/manuals/30bmanl.pdf>

¹⁸ The Creative Economy Council (CEC) was created by Governor Deval Patrick in 2008. It is an advisory council to the state legislature and the Executive Office of Housing and Economic Development. "Its legislated purpose is to develop a state-wide strategy for the enhancement, encouragement, and growth of the creative economy in Massachusetts, and to promoting through public and private means responsive public policies and innovative private sector practices."

discussions and implementations. Too often, we become “unintended consequences” of new or amended legislation. One key example is the 2006 MA Independent Contractor Law change and how it severely impacted our community, as outlined in Section 4.

It is critical to understand that our labor force is comprised of those who are W-2 employees and those who are self-employed for their creative work. Artists often work in every sector available to them: commercial, non-profit, and government. Legislators and policymakers who better understand how artists fit into the overall labor force will be better able to create and oversee enforcement of labor compliance related to our sector, and thus support our artist labor workforce.

- a. Appoint artists of all disciplines to governmental boards, advisory boards, and working groups in all sectors, not just in the arts. Appointing artists of all disciplines to state boards, advisory boards and working groups in every sector will help ensure our labor force is better served and supported. Having artists directly involved with public safety, housing, and elder issues (as well as other areas of policy) will ensure the artists’ community and, by extension, the arts, culture and the creative sector, is represented throughout all policy discussions.

However, participation needs to be made easy for artists. Meetings should be set at convenient times for those who work regular hours. Technology could be leveraged to allow for remote participation (i.e., audio/video conferencing). Meeting laws and regulations should be adjusted to allow for remote attendance as needed.

- b. Recognize that many artists have fluctuating and hard-to-determine income in addition to what is called “combination income”: earnings from both W-2 and self-employment income. Often, benefit programs penalize people in this category.

During Hurricane Katrina recovery efforts, the National Coalition for Artists’ Preparedness and Emergency Response discovered that artists who had “combination income” sources often times did not qualify for Federal Emergency Management Agency or the Small Business Administration relief programs. And, in order to qualify for help from the SBA, an individual had to be 100% self-employed. Some programs, like housing programs, often require a base annual salary, which artists can’t always predict, causing issues when applying for these programs.

This “combination income” and fluctuating category issue, which also impacts farmers, fisherman, entrepreneurs, and small business owners, is beginning to gain recognition as worthy of attention in policy discussions.¹⁹

19 2009 Stand Up and Be Counted survey, pages 5 - 6; http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

- c. MALC urges the Commonwealth to use Modified Adjusted Gross Income (MAGI) where legally possible for all need-based, income-determined programs. This is the measure used by the Affordable Care Act (ACA), and is the best way to assess income for those who have hard to determine income and/or combination income.

The Massachusetts Artists Foundation's 2009 Stand Up and Be Counted report gathered information about artists' "work lives, socioeconomic status, access to healthcare, and medical and non-medical debt" and provided "data about a newly-identified population that surfaced during the implementation of the Massachusetts health care reform law: those with combination income. When individuals are assessed for income- and need-based programs, they are typically asked if they are an employee (and if they have W-2 income) or if they are self employed (usually defined as having non W-2 income)."²⁰

"Nearly half (49.4%) of the 3,125 artists who answered the question reported that they had combination income; one-quarter (23.8%) reported that they were fully self-employed, and just over one-fifth (19.7%) reported that were salaried employees/had W-2 income only."²¹

The report further stated: "Individuals who have hard-to-determine income, such as artists, do not always fit into either category. In fact, nearly half (49%) of the 3,125 respondents who answered the question about their source of income reported that they derive income as employees and as the self-employed. It is important to note that those who derive their income from combination sources face unique obstacles when applying for income- and need-based programs such as subsidized health care, leading, in practice, to discrimination against them in provision of service."²²

- d. MALC urges the Commonwealth's workforce and small business policies and programs to include artists and artist-run businesses, organizations, and projects. Artists and their creativity are the main labor source behind the arts and culture sector. Many artists earn self-employment income, are completely self-employed, or run their own businesses, organizations, or projects. They could greatly benefit from workforce and professional development programs such as learning how to negotiate contracts or navigate state requirements and regulations, etc.

Important state agency collaborators to promote this effort are the Massachusetts Cultural Council, the Creative Economy Council, the Executive Office of Housing and Economic Development, the Executive Office of Labor and Workforce Development, and the Massachusetts Office of Business Development (to name a few).

20 2009 Stand Up and Be Counted survey, page 5; http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

21 2009 Stand Up and Be Counted survey, page 11; http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

22 2009 Stand Up and Be Counted survey, pages 5 - 6; http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

- e. Make a concerted effort to reform programs that have the unintended consequence of punishing artists who don't earn a living exclusively from their creative endeavors or have fluctuating income. (For example, flexible residencies geared towards artists who work full time, or artists who suddenly have a one-time year of great income and face loss of their low income/subsidized housing or benefits.)
- f. Any labor commission or task force, such as the "Underground Economy" Task Force and the "Wage Theft" Task force, should have artists and members of artist unions appointed to them.
- g. Promote and adopt MIT's Artists Beyond the Desk Program model.²³ MALC feels strongly that this model needs to be adopted by as many government agencies, businesses, and non-profits as possible. The reality is that the majority of artists of all disciplines will, in their lifetime, need to hold jobs not related to their creative pursuit.²⁴
- h. All housing programs (low-income, senior, etc.) and workforce housing efforts, as well as the programs creating space for small businesses, need to support our labor force.
 - i. MALC urges the Commonwealth to work with the artists' community to create state-wide recommended standards/best practices for affordable artists' live/work spaces and work-only spaces.
 - ii. Workforce housing efforts need to include affordable artists' live/work and artist co-ops, and others who want to live/work within their vibrant communities. When artists are connected to the greater community with adequate transportation, access to retail space, cultural centers, and the agoras of our modern municipalities, it benefits the entire community and all those who live creatively within.

Workforce housing, senior housing and public housing need to include artist live/work space comprising a mix of affordable rental and affordable ownership live/work artists spaces. For example, the City of Boston has created a new, innovative program to set aside low-income housing for artists who qualify:

"Boston Housing Authority (BHA) announced it will begin to set aside low-income housing for certified artists in redevelopments. Immediately, as part of the re-development of the Bunker Hill public housing property into a new mixed-income community in Charlestown, the Boston Housing Authority and its developer partner, Corcoran-SunCal, will set aside 10 units of low-income housing, available to income-eligible artists. The BHA and developer have also pledged to set aside money for public art in the redevelopment project, with the details to be announced in

23 MIT Artists Beyond The Desk Program website: <http://web.mit.edu/abd/about.html>

24 Read about the origin of the MIT Artists Beyond The Desk program: <https://abd.mit.edu/about-artists-beyond-desk>

the coming months. Simultaneously, new guidelines will be created for the City of Boston Artist Certification Program.

“This follows the recent announcement of Boston East, a development by Trinity Financial in East Boston, a residential community that includes 174 market-rate and 26 affordable units, including six artist live-work-sell units, where artists can have small galleries as part of the unit, open to the public.

“Aligned with the plan, The Boston Foundation announced they will devote funding to develop an artist housing strategy, which will identify how the region can create sufficient supplies of affordable residential, live/work, and work studios to address the needs of artists.”²⁵

- iii. MALC encourages the state to work with municipalities to incentivize making city- and town-owned land available for the creation of work-only spaces to fully include the artists’ community and creative economy in their policy objectives. Planning should focus on initiatives that take into account the benefits brought by the greater community’s access to artists’ work. Maker spaces, shared workspace, and co-ops would be part of this plan.
- iv. Worth exploring are the possibilities of creating tax credit programs that incentivize the creation of artist space. One such tax credit program could incentivize owners of facilities who donate their properties to artists or to the arts community for the use of performance, display, work space and/or living space. The founding legislation would stipulate that awarding tax credits for space donation would be based on the full compliance with “fair trade compensation” standards and, when applicable, the state-wide standards for affordable artists’ live/work and work-only spaces. The second program could be a tax credit program for developers and/or communities who wish to create permanent, affordable artists’ live/work spaces and/or artists’ work-only spaces for rental or purchase. Tax credits will be awarded based on the entities’ full compliance with the state-wide standards for affordable artists’ live/work and work-only spaces.
- j. Establish a disaster emergency aid fund for Massachusetts artists of all disciplines. The Commonwealth should commit to establishing a fund within the State Treasurer’s office to provide disaster and emergency aid for Massachusetts artists working in all disciplines. Such a fund would help artists who are dealing with health care emergencies (such as inability to pay medical bills or medical insurance), fire, floods, theft, or other natural or man-made disasters. All monies for this fund would come from the private sector, not the state budget.

25 <http://plan.bostoncreates.org/plan-updates/support-for-artists/>

- k. Our legislature should oppose and/or amend legislation that would negatively impact our community. One example is the “Ivory Bill.”²⁶ This legislation would make transporting, possessing and/or selling ivory illegal. Many musicians would be severely impacted by this ban on ivory. They wouldn’t be able to own, travel with or sell their instruments that currently contain ivory. Obviously, musicians need to be considered and exempted.

9. The issues of institutional racism, ageism, and sexual identity and gender discrimination that many artists of all disciplines face.

The artist community is a diverse community. Much more needs to be done to ensure artists of all backgrounds and ages are included in hiring, commissioning, and exhibiting or performing. MALC sees that an extraordinary effort is needed to make our sector fully inclusive as well as fully reflective of the range of resident communities.

- a. In our opinion, the vast majority of our higher education institutions, along with our “art schools of all kinds,” do not meet an “inclusive standard,” thus becoming the art sector’s “gate keepers” at all levels. More dedicated attention is required to help those institutions look outside their traditional systems to find and support those artists currently considered, by their standards, “off-the-radar.” Partnerships with community colleges would be one key way to cultivate more artists of every discipline from every background and age group.

MALC also suggests that the UMASS system create affordable, low-residency masters’ programs (for example, an MFA in Directing) that would serve to add to the range of perspectives needed to give voice and expanded image to communities that have traditionally been shut out of opinion-making writ large. Similarly, a low-residency Master of Art (MASA) in arts administration would contribute a wider range of experience and perspective in the non-profit arts arena. A low-residency MFA in visual arts would help to widen the gates, which are only slightly ajar, into the national and international museums and galleries that are reputation-generating vehicles. These low-residency masters programs would also enable master artists without deep pockets and artists of color, who don’t have MFAs, to teach and earn a living wage. MFA’s are nearly always required for teaching, at least in higher education.

- b. The Commonwealth needs to better support the Massachusetts Cultural Council’s Local Cultural Council program, created to promote diversity and inclusion. The theory is that all communities, not just wealthy ones, deserve access to affordable arts education. More funding is required, however, for the MCC to effectively implement this philosophy of inclusion on-the-ground and in our communities.

26 The Ivory Bill: MA Bill H.1275; <https://malegislature.gov/Bills/189/House/H1275>

Once again, we stress that the MCC needs additional funding on a consistent basis. The MCC has such a depth of experience with arts and culture “nuts and bolts” that our state and our administration would be wise to work with the MCC to find new ways to support and elevate the artists of the Commonwealth’s diverse and culturally rich communities by way of the LLC program.

- c. MALC recommends that the MCC and other funders replicate the Pennsylvania Arts Council’s model program, Preserving Diverse Cultures Division (PDC), and expand it to include all communities of color.

“The Preserving Diverse Cultures Division (PDC) supports the development of organizations whose mission is deeply rooted in and reflective of the African American, Asian American, Hispanic/Latino, and Native American (ALNAH) perspectives. The applicant’s programs, perspective, and staff are representative of those communities. The Division seeks to foster organizational stability and the expansion of arts and cultural programming in ALNAH communities; focuses on the development of ALNAH organizations, and supports the training of capable administrators of ALNAH organizations.”²⁷

- d. In general, we need to create a more supportive structure to fund and incubate cultural arts groups whose primary membership is drawn from a broad range of communities of color, including, but not limited to, the African American, Cape Verdean, Dominican, Ethiopian, Haitian, Jamaican, Korean, Native American, Nigerian, Puerto Rican, Senegalese, South Asian, Ugandan, and Vietnamese populations.
- e. We recommend positioning artists of all disciplines on advisory boards. This would help build and strengthen the artistic voice of those who are often not heard outside the strict confines of their set-aside communities in the Commonwealth.
- f. Master artists of all disciplines need to be better supported. The lack of support for master artists was a key issue surfacing in the 2009 Massachusetts Artists Foundation’s report on artists’ lives: “work lives, socioeconomic status, access to healthcare, and medical and non-medical debt.”²⁸

All levels of government should be working across departments to find creative ways to support “mid-to-late-career artists by addressing the age bias in our sector, promote ways to support these artists to continue creating work, support the mentorship of master artists to future artists, to assist older artists in establishing estate legacy plans for their creative work”.²⁹

27 Pennsylvania Arts Council’s Preserving Diverse Cultures Division website: <http://www.arts.pa.gov/WHAT%20WE%20DO/FUNDING/apply-for-a-grant/PDC/Pages/default.aspx#.VyOCtfrJhE>

28 2009 Stand Up and Be Counted survey: http://www.artistsunderthedome.org/MA_ArtistsReport2009.pdf

29 Quote from Martin J. Walsh’s Arts & Culture mayoral campaign platform

We need to make sure that all public elder housing supports master artists who live there.

- g. For background on how artists of color in Greater Boston see expanding their cultural position, see The Trotter Institute report on its 2014 Cultural Convening.³⁰

10. The need for occupational health standards and wellness awareness for our community

A clear need exists to ensure that artists of all ages are practicing, performing, and creating in safe environments. “Burn out” is one problem typically faced in our community often due to the hardships of being a working artist - the stress of running our own businesses, and/or having multiple jobs just to earn a living.³¹ Artists of all disciplines need to be better educated on how to stay healthy and, likewise, medical clinicians need to be trained on how to detect, prevent and treat occupational health issues specific to our community. Artist unions and many discipline-specific, artist-run service organizations need to join in this effort and learn how to best utilize their very limited resources to keep their members healthy. It will be important to research existing laws, regulations and standards currently in place elsewhere that could be adopted by the Commonwealth at the city and town level to keep our community safe and healthy. Ideas would include specifying safe decibel levels for performance venues and schools, acceptable type of floors/space for dance practice/warming up to prevent injury.

MALC encourages our state to work with the Walsh administration to expand its proposed occupational wellness program for artists of all disciplines. Potential collaborators for a successful statewide program would include the Massachusetts Cultural Council, Executive Office of Public Health and Human Services, Department of Public Health, MassHealth, the League of Community Health Centers, the Massachusetts Hospital Association, the Massachusetts Medical Society, and the Massachusetts Health Connector Authority, among others.

30 The 2014 Trotter Institute Report on Cultural Convening: <http://www.artistsunderthedome.org/TrotterStrandReport2014.pdf>

31 “Why We Are Burning Out in the Arts” by Madeleine Dore: <http://performing.artshub.com.au/news-article/career-advice/performing-arts/madeleine-dore/why-we-are-burning-out-in-the-arts-249582>