

AUDIOVISUAL AUTHORS' RIGHT TO EQUITABLE REMUNERATION FOR THE EXPLOITATION OF THEIR WORKS

International legal study by
Prof. Raquel Xalabarder

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SERVING AUTHORS WORLDWIDE
AU SERVICE DES AUTEURS DANS LE MONDE
AL SERVICIO DE LOS AUTORES EN EL MUNDO



Society of Audiovisual Authors
Société des Auteurs Audiovisuels





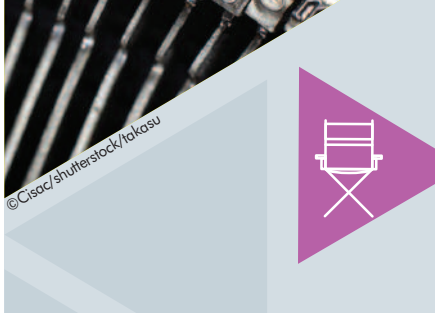
Authors of audiovisual works, such as **screenwriters** and **directors**, are granted exclusive rights to exploit their works. However, they rarely obtain equitable remuneration, especially for online exploitations.



This is an injustice to creators who are at the very heart of the making of an audiovisual work. It runs counter to core principles of authors' rights. **It jeopardizes professions** and livelihoods in many countries. And it undermines the economic development of a leading creative industry.



To bring more insight to this issue, **CISAC** and **Writers and Directors Worldwide** commissioned **Prof. Raquel Xalabarder**, Intellectual Property Chair at the Universitat Oberta de Catalunya, in Spain, to do an international legal study.



The **study maps** and **scopes the laws** that address this problem by granting remuneration rights to audiovisual authors. It reviews the laws and designs an effective and future-proof proposal to guide policy makers.

KEY FINDINGS OF THE STUDY

CONTRACTS FAIL TO SECURE EQUITABLE REMUNERATION FOR THE DIFFERENT EXPLOITATIONS

The study demonstrates that audiovisual authors largely depend for their remuneration on the contracts they sign with audiovisual producers.

In practice, this prevents them from securing a fair and equitable remuneration, for various reasons:

- A weak bargaining position in the negotiation process with producers.
- A legal presumption of transfer of rights to the producer.
- The unpredictability of the success of the work when the production contract is signed.
- The practice of "buy-out contracts" which involve a lump-sum payment.
- The long contractual chain, with several intermediaries between the author and the final users of the work.
- The lack of harmonisation of international and European legislation.

A FEW COUNTRIES ENSURE REMUNERATION THROUGH VOLUNTARY COLLECTIVE NEGOTIATION

In a few countries, authors receive remuneration thanks to collective bargaining agreements between creators' organisations and producers or voluntary collective management. However, it succeeds only in a handful of countries, as it requires the existence of strong trade unions, CMOs or guilds.

- ▶ Canada and the US have set up collective agreements through the guilds/unions that guarantee some remuneration for the exploitation of works.
- ▶ In the EU, Belgium and France secure TV broadcasting revenues on the basis of voluntary collective agreements through CMOs.
- ▶ In Argentina, audiovisual authors are remunerated based on voluntary collective management consolidated over time.

LEGAL MECHANISMS ARE KEY TO SECURING EQUITABLE REMUNERATION FOR CREATORS

The study shows that the most effective way to ensure that audiovisual authors receive equitable remuneration is by including remuneration rights in the law and entrusting them to CMOs.

- ▶ 19 out of the 28 EU Member States have implemented remuneration systems for audiovisual authors, mostly for cable retransmission (mandatory collective management by Directive 93/83/EEC) and private copying.

► For other types of exploitation, remuneration of audiovisual authors depends on:

- The specific remuneration rights granted by national copyright law - Poland lists a number of exploitations, including broadcasting and theatrical exhibition.
- The implementation of mandatory statutory remuneration schemes managed exclusively by CMOs (Spain and Italy).
- Chile and Colombia have recently introduced into their national laws remuneration through collective management for several types of exploitation, including online uses.

RECOMMENDATION: AN UNWAIVABLE AND INALIENABLE RIGHT TO REMUNERATION

Based on its assessment of existing laws and best practices around the world, the study proposes the introduction of a statutory provision granting audiovisual authors an unwaivable and inalienable right to obtain equitable remuneration:

- For any acts of exploitation of their works (offline and online).
- In exchange for the transfer of their exploitation rights to the producer.
- Paid directly by licensees and administered by CMOs.

THE STUDY HIGHLIGHTS THE IMPORTANCE OF THE FOLLOWING ELEMENTS:

- A provision stated in the law.
- “Equitable” remuneration: usually proportional remuneration based on the revenues of the service.
- Unwaivable and inalienable right: unless unwaivable and inalienable, the remuneration right tends to be transferred or waived under the producer’s pressure.
- In exchange for the transfer of the exploitation rights to the producer: In the absence of audiovisual authors’ capacity to negotiate their exclusive rights, the remuneration right secures remuneration for the exploitation.
- Paid by the licensee/final distributor (not the producer): Licensees/final distributors are the media operators who make works available to the public. This clarifies who is liable for the payment to authors.
- Administered by CMOs: CMOs are stable organisations with the knowledge and scale economies in place to secure fair remuneration for authors, including across borders.

A MUCH NEEDED **LEGAL SOLUTION**

Audiovisual authors need to be treated fairly in law. CISAC, Writers and Directors Worldwide and the Society of Audiovisual Authors (SAA) are campaigning for an unwaivable and inalienable right to remuneration for audiovisual authors worldwide and in the European Union.

The Xalabarder study is the most comprehensive legal analysis conducted on this issue. It offers an effective solution that can bring fairness and sustainability to the audiovisual sector:

- 1 The proposed legislative solution complies with international and European copyright obligations.
- 2 It would benefit all parties involved in audiovisual production and exploitation, ensuring a constant flow of remuneration to authors directly from users.
- 3 It would not impinge on the commercial exploitation of the works by the audiovisual producer, who will retain full control over the exploitation.
- 4 It would ensure that all audiovisual authors benefit equally, regardless of their country of origin or of audiovisual production.

EXAMPLES OF **NATIONAL SOLUTIONS**



SPAIN

Since 1996, the law has granted audiovisual authors remuneration for each form of exploitation of their work and subject to mandatory collective management.



INDIA

In 2012, India adopted an unwaivable right to remuneration for screenwriters for the use of their works “in any form”, other than for exhibition in cinemas.



CHILE

The “Ricardo Larrain” Law, adopted in Chile in October 2016, allows local audiovisual creators to obtain remuneration from theatrical exhibition, broadcasting, making available online and public lending of their works. The remuneration right is to be managed by CMOs, paid by licensees and safeguarded from the production contract.

"As a filmmaker, I know first-hand the importance of a legislation that protects our works. I wholeheartedly support CISAC's global campaign in favour of an unwaivable and inalienable right to remuneration for audiovisual authors that would guarantee an equitable remuneration when our works are used. It is a matter of fairness: we need legal mechanisms that allow filmmakers and screenwriters to be compensated for the multiple uses of their works. This is truly necessary in the current digital ecosystem in which our works have the amazing potential to reach audiences around the world in the most direct way but for which we do not get fairly compensated."

Jia Zhang-ke

(Film director, writer and producer, CISAC Vice President)

"It is a true pleasure as a director to see my films being shown around the world. However, in order to make a living from my art, my collective management society must be able to represent my rights and negotiate remunerations with those exploiting my works, including video-on-demand platforms."

Julie Bertuccelli

(Film director, SAA Patron)

"As a director and screenwriter, I know first-hand how difficult it is to carve out a place in the film world. A country that enacts laws to protect its creators and enables them to make a living from their work by guaranteeing them fair, proportional remuneration, is a country that fosters cultural diversity and stimulates the economic fabric that develops around it."

Marcelo Piñeyro

(Film director, CISAC Vice President)

"Africa needs to share its vision, bear witness to its reality. It is imperative we stand up for authors' rights and remuneration rights, the survival of authors and the preservation of our rich and diverse identities are at stake."

Cheick Oumar Sissoko

(Film director and screenwriter, FEPACI Secretary General)

<http://cisac.org/Media/Studies-and-Reports/Publications/AV-Study/AV-Study>



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