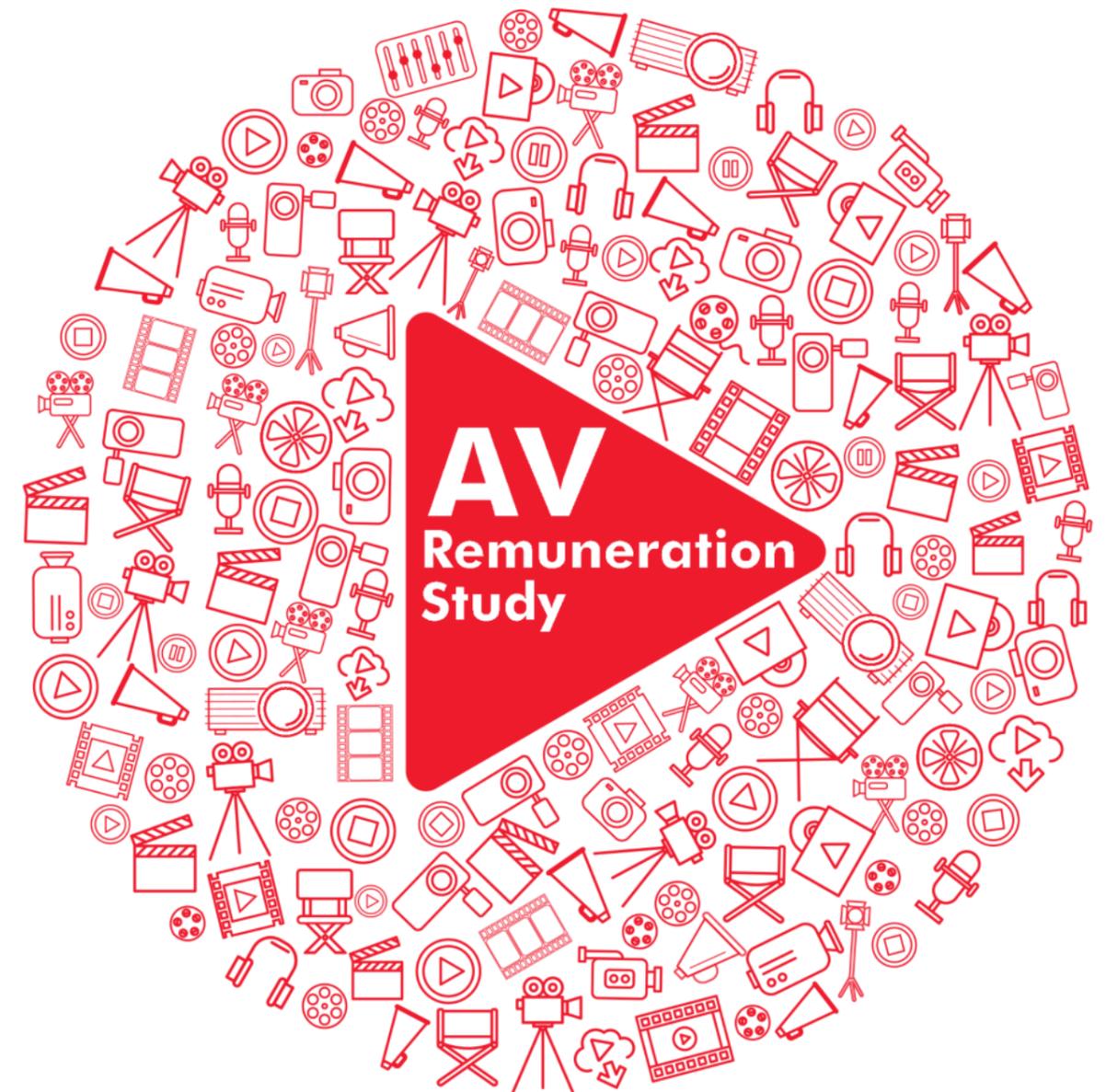


"As a director and screenwriter, I know first-hand how difficult it is to carve out a place in the film world. Every day, I am a witness to all the talent that is lost in many regions of the world simply because audiovisual creators are not fairly remunerated. A country that enacts laws to protect its creators and enable 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. Chile and Colombia have provided us with an excellent example recently. Granting audiovisual creators a right to remuneration for the use of their works is fundamental for the development of the creative and cultural industries, which, in the digital environment, is quite simply vital."

Marcelo Piñeyro (Vice President CISAC and film director)

"It is a true pleasure as a director to see my films being shown around the world. However, in order to make a living of 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)



AV Remuneration Study - April 2018 - All rights reserved - 04/2018



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

International legal study by Prof. Raquel Xalabarder

According to copyright law, authors of audiovisual works, such as screenwriters and directors, are granted exclusive rights to exploit their works. However, they rarely obtain equitable remuneration for this exploitation, especially online.

CISAC commissioned Prof. Raquel Xalabarder, Intellectual Property Chair at the Universitat Oberta de Catalunya, in Spain, a study that maps and scopes copyright laws that address this problem and grant remuneration rights to audiovisual authors. The study reviews these laws, assesses their strengths and weaknesses, and designs an effective and future-proof proposal to inspire policy makers.

KEY FINDINGS



• Contracts fail to secure equitable remuneration for the different exploitations of audiovisual authors' works

The study demonstrates that audiovisual authors' remuneration depends largely on the contracts signed with audiovisual producers. In practice, many factors prevent audiovisual authors from securing a fair and equitable remuneration:

- o Audiovisual authors individually are in a weak bargaining position in the negotiation process with producers.
- o In many countries, there is a legal presumption of transfer of rights to the producer.
- o The success of the work cannot be foreseen when the production contract is signed.
- o The practice of buy-out contracts results in a lump-sum payment to authors.
- o The long contractual chain, with several intermediaries between the author and final users, cuts authors off from possible revenues.
- o International and European legislation are not harmonised.

• A few countries ensure remuneration to authors through voluntary collective negotiations and agreements

The study shows that remuneration mechanisms have been secured in a few countries through collective bargaining agreements between creators' organisations and producers or voluntary collective management. However, collective bargaining succeeds only in a handful of countries, as it requires the existence of strong trade unions or guilds.

Example of remuneration schemes through voluntary collective agreements:

- 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 when remuneration rights consist in statutory provisions or are entrusted exclusively to CMOs by law, they are the most effective to ensure audiovisual authors receive equitable remuneration.

Certain acts of audiovisual exploitation, such as broadcasting, rental, theatrical exhibition and communication to the public in bars and restaurants, are covered by remuneration rights. It varies from country to country and according to the act of exploitation. Worldwide, online exploitation is rarely covered.

Examples of existing statutory remuneration schemes:

- 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, the implementation 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 law remuneration systems through collective management for several types of exploitation including online uses.

RECOMMENDATION: AN UNWAIVABLE AND INALIENABLE RIGHT TO REMUNERATION

Based on the assessment of existing laws and best practices around the world, the study proposes introducing 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 insists on the importance of the following elements:

- A provision stated in the law
- "Equitable" remuneration
 - Usually proportional remuneration based on the revenues of the service. Fees are negotiated in each country and for each type of exploitation, thus adapting to national cultural and economic circumstances.
- Unwaivable and inalienable right
 - Unless unwaivable and inalienable, the remuneration right tends to be waived under the producer's pressure.
- In exchange for the transfer of the exploitation rights to the producer
 - The remuneration right derives from the transfer of exploitation rights to producers. In the absence of audiovisual authors' capacity to negotiate their exploitation rights, the remuneration right secures remuneration for the exploitation.
- Paid by the licensees/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.

Examples of national solutions



Art 90 of the Copyright Law grants audiovisual authors remuneration for each form of exploitation of their work and subject to mandatory collective management - theatrical exhibition, broadcast transmission or other type of transmission, including over the Internet, rental and communication to the public in open spaces.



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.



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. It has not been implemented yet.

At EU level, the Society of Audiovisual Authors (SAA) proposes the following legal solution:

1. Member States shall ensure that when an audiovisual author has transferred or assigned his making available right to a producer, that author shall retain the right to obtain an equitable remuneration.
2. This right is inalienable and cannot be waived.
3. The administration of this right shall be entrusted to CMOs representing audiovisual authors, unless other collective agreements, including voluntary collective management agreements, guarantee such remuneration.
4. Authors' CMOs shall collect the remuneration from media services that make works available to the public.



WHY IS IT AN APPROPRIATE SOLUTION WORLDWIDE?

1. The proposal is in full compliance with obligations acquired under international instruments for protecting copyright, notably the Berne Convention, the WIPO Copyright Treaty and the WTO-TRIPs Agreement as well as with the EU acquis.
2. It would benefit all parties involved in audiovisual production and exploitation - authors, producers and licensed operators as well as consumers and society at large. It ensures a constant flow of remuneration to audiovisual authors directly from users, as licensed by the producer, based on revenues generated by the exploitation of their works.
3. The proposal would not disturb the commercial exploitation of the works by the audiovisual producer who will retain full control over the exploitation.
4. The audiovisual market is a global market. Any legal mechanism to secure equitable remuneration for audiovisual authors will be most effective if implemented globally. A global implementation would ensure that all audiovisual authors benefit equally, regardless of their country of origin or of audiovisual production, in all countries where their works are exploited.

At an international level, CISAC aims to:

- provide audiovisual authors with legal arguments to improve current remuneration schemes for audiovisual authors.
- encourage a proper international legal solution that can finally bring fairness and sustainability to the global audiovisual sector while protecting cultural diversity.