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OVERVIEW OF THE OUTPUTS DELIVERED IN THE CONTEXT OF THE DEVELOPMENT AGENDA PROJECT ON COPYRIGHT AND THE DISTRIBUTION OF CONTENT IN THE DIGITAL ENVIRONMENT

prepared by the Secretariat

1. The Annex to this document contains an Overview of the Outputs Delivered in the Context of the Development Agenda Project on Copyright and the Distribution of Content in the Digital Environment (document CDIP/22/15 Rev.), prepared by the Project Manager.

2. *The CDIP is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

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1. INTRODUCTION

This document contains the summary of the two studies and six case studies commissioned under the Pilot Project on Copyright and the Distribution of Content in the Digital Environment (document [CDIP/22/15 Rev.](#)). The Project, *inter alia*, intends to increase awareness of the existing legal framework among creators and stakeholders, provide examples of the current features of the marketplace for audiovisual content online and to provide a background for questions currently raised about copyright and related rights in the digital audiovisual market in the participating countries, namely: Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay

The full text of the respective studies and case studies are available in the *Catalogue of DA Projects and Outputs*, accessible at:

https://dacatalogue.wipo.int/projects/DA_1_3_4_10_11_16_25_35_01)

2. SUMMARIES

I. STUDY ON THE AUDIOVISUAL LEGAL FRAMEWORK IN LATIN AMERICA

Part 1: Audiovisual Over-The-Top (OTT) Business Models in Latin America: Recent Trends and Future Evolution

Author: Mr. Raul Katz

Languages: [English](#) and [Spanish](#)

Summary

This study analyzes the recent evolution and the forecasts for the near future of the different business models of audiovisual services Over-The-Top (OTT). Recent trends worldwide and in Latin America illustrate an important development of these platforms, with regional penetration at around 84% of households with fixed broadband. OTT audiovisual services are not based on a single business model. Although all are oriented to satisfy the same need-entertainment, there are differences around their value proposition, the resources they have to carry it out, their profitability formula, and their operational processes. The composition of market shares suggests a clear long-tail structure, accounting for a fragmented market beyond the leaders in each segment. The contents are the essential part of the value offer, appreciating a greater offer of titles in the case of platforms of the payment-per-transaction model. The offer of national productions is identified as a competitive advantage for local platforms, which is why the large global OTTs are increasing efforts to incorporate this type of content into their programming. For the next few years, OTT services are expected to continue expanding in Latin America. In all the countries analyzed, penetration is expected to exceed 90% of households with fixed broadband in

2023. Although the expansion in the penetration of subscription or transaction payment models is expected to be moderate, growth will be somewhat more pronounced for free advertising-based models.

Part 2: The Legal Framework of the Audiovisual Sector in the Digital Environment

Author: Ms. Marta Garcia Leon

Language: [English](#) and [Spanish](#)

Summary

The aim and scope of this study is to provide information on the current state of the market and on the national and supranational legal framework applicable to the online exploitation of audiovisual content in Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay.

As will be shown, these countries have different market realities and heterogeneous markets for audiovisual exploitation and production, audiovisual productions frequently encountering problems in gaining access to digital distribution channels on equal footing with content produced elsewhere, in particular large foreign productions.

This analysis seeks to determine the legal treatment of copyright and related rights in the digital environment and the licensing systems applied, as well as the ambiguities, challenges and opportunities for the multi-territorial dissemination of content in Latin America, by considering the legal situation in Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay.

Audiovisual production in Latin America has increased significantly in recent years and is generating a growing interest in other territories. At the same time, demand for audiovisual content in all formats has risen substantially. However, although the online exploitation of audiovisual content, through digital platforms, mobile devices, the Internet, social networks and other means, clearly seems to be the primary mode of dissemination, it still poses major challenges for the dissemination of content produced in the region and elsewhere. Moreover, the expansion of this form of dissemination is changing how the production and financing of this content is organized, both in relation to the creation of new dynamics and processes and in relation to its very structure and, of course, to the consumer.

It is a fact that the barriers to the distribution and exhibition of national productions, especially films, extend to the absence of a regional Latin American market with the advantage of Spanish as the common language of all the countries, except for Brazil. Moreover, while there are organizations that contribute to the regional coordination of content distribution, they are likewise inadequate.

In addition to the lack of a regional Latin American market, intellectual property rules and various regulations applicable to audiovisual content distribution are inconsistent, which similarly affects content from other countries.

The development and implementation of online dissemination platforms (or like systems) in these markets allows (or should allow) access to content that would otherwise be more

difficult to locate, in particular for the audience seeking Latin American audiovisual content, which would otherwise have to (or does) resort to unlawful published content.

Annex to Part 2:

Summary of national copyright and related rights applicable for the licensing of audiovisual content online.

Author: Ms. Marta Garcia Leon

Language: [Spanish](#)

Summary

This annex contains a series of charts offering information on national copyright and related rights of the Participating Countries applicable for the licensing of audiovisual content online for the participating countries.

Part 3: The Legal Treatment of Foreign Authors of Audiovisual Works

Author: Mr. Aurelio Lopez-Tarruela

Language: [English](#) and [Spanish](#)

Summary

There is global consensus, reflected in the relevant international conventions, that authors of audiovisual works deserve to be adequately protected. Nevertheless, this consensus is not as broad when it comes to how these authors should be remunerated for the exploitation of their work. On occasion, this prompts authors of audiovisual works to argue that they do not receive equitable remuneration. This problem, commonly reported, can also be seen in Latin America and, with some exceptions, may also appear in the jurisdictions covered in this study: Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay.

The problem is even more acute when works are exploited in markets other than that of their State of origin, simultaneously or successively. By no means is this situation exceptional. In recent years, the audiovisual market has seen a rapid transformation with the advent of digital technologies and online services. While traditional windows of exploitation and national opening schedules remain in force, the immediate availability of audiovisual content worldwide through the internet continues to grow. On-demand video platforms (Netflix, Amazon, HBO etc.) are becoming widespread, and generally offer their services internationally. At present, all types of content can be accessed free of charge, in exchange for advertising, under subscription or pay-per-view systems, which has raised the question of how much longer traditional models of exploitation can last.

While it is true that the production of audiovisual works requires major investments and entails high risks, the exploitation of content without geographic limits brings an exponential increase in revenue that these platforms can obtain by exploiting these productions. It has been alleged that this is not necessarily reflected in an increase in the authors' remuneration proportionate to the increase in the exploitation of their works. The problem is not exclusively limited to the exploitation of digital media. Authors are also not adequately

remunerated for the representation of their works in cinemas, on cable television or broadcasting channels, or for the rental of their works. Generally, authors receive a single payment for the transfer of all their rights and in most cases, do not share in the income generated by the subsequent exploitation of the work.

The purpose of this study is to examine the reasons that hinder the protection of authors of audiovisual works when they are exploited internationally, and to determine the efficiency of the measures implemented by national copyright systems to enhance this protection.

As will be discussed in the following section, the representatives of authors identify two main reasons: the differences between national intellectual property laws and the ease with which platforms can circumvent the rules protecting authors in contracts when the relationship takes on an international nature.

The measures implemented in the legal systems under analysis to protect authors of audiovisual works, are addressed in section III. Collective management organizations or entities (hereafter CMOs) play an important role in this respect. Nevertheless, they are not present in all States examined in this study. A second element of protection introduced in some legislations involves the adoption of a mere right to remuneration for the reproduction and public communication of audiovisual works, that is non-waivable and subject to mandatory collective management.

Before providing explanations, it should be noted that this paper focuses on authors of audiovisual works, although many of the conclusions could be analogically applied to other right holders, such as performers.

Part 4: Contractual Practices in the Latin American Audiovisual Sector in the Digital Environment

Author: Mr. Bertrand Moullier and Ms. Alexandra Galvis

Language: [English](#)

Summary

Part 4 of the Study is designed, in particular, to complement parallel studies on the copyright legislative and regulatory framework and on the market for online digital filmed entertainment and video services in those countries and the region at large.

Although the present study makes passing references to the legislative and regulatory undergirding and to general digital market trends in the region, its primary focus is on the actualities of contractual custom and practice and its recent evolutions in the light of game-changing developments in digital distribution technologies, markets and business models.

The particular aspects of Latin American audiovisual sector contractual practice covered in this study specifically concern transactions between parties regarding the transfer/license/assignment of copyright and related rights and dispositions regarding fees, remuneration and revenue-sharing. It looks primarily at distribution and licensing contracts and contracts

between professional audiovisual content producers and the entities – such as local, regional or worldwide distributors, international sales agents, broadcast and Video-on-Demand (“VoD”) platforms – that bring the content to the consumer marketplace. It homes in on the changing dynamics brought on by new forms of digital uses that have made the audiovisual value chain substantially more complex in recent years, from a producers’ perspective. The study investigates contracts in the professional, commercial audiovisual content industry only.

Material for the present study was generated chiefly through one-to-one in-depth interviews with a range of currently active players in the audiovisual creative and economic ecosystems in the six Latin American countries selected. Whilst the majority of interviewees were individual creative or business people, there were also executives and contract managers in trade associations, and individual contract lawyers. These interviews were augmented by material already held by the authors, as well as new desk research. Abbreviated material from the second edition of Bertrand Moullier’s WIPO publication *Rights, Camera, Action* was also inserted and adapted where expedient, as part of Section 2 of the Study, which summarizes general key features of audiovisual distribution and sales contracts as extant throughout the world.

Where relevant, the authors also interviewed professionals in Latin American countries other than the six selected for this study. This was a logical choice, dictated by the reality of a fluid marketplace, in which cooperation between producers and creators across national boundaries is frequent. In particular, there is an established practice of multi-party co-productions between producers and platforms in different Latin American countries, as a means of attaining larger budgets and ensuring broader intra-Latin circulation of the resulting films or TV/streamer programming. It seems the advent of VOD has introduced greater flexibility in this respect and increased the market for content imported from other Latin American countries by local distributors and/or platforms buying licenses for several territories at once.

Generating original facts and data on the study’s topic was inevitably challenging, owing to the understandable commercial business custom and practice of keeping strictly confidential the nature of individual negotiations and the use of contracts that often contain enforceable non-disclosure or confidentiality provisions. As deontology demanded, the results have been laid out in broad categories of observations, a pattern designed to protect anonymity and avoid facilitating the identification of specific contractual practices by specific platforms, broadcasters, producers and other participants in the audiovisual creation, production and distribution chain. Where specific individuals and corporations gave express consent to disclose certain information regarding particular contracts, or portions of the contracts, these are referred to directly, at a level of detail pre-agreed.

Part 5: The Identification and Use of Metadata in Audiovisual Works

Author: Mr. Gustavo Schötz

Language: [English](#) and [Spanish](#)

Summary

The Part 5 focuses on the digital distribution of audiovisual content through online platforms. Once the audiovisual work has been produced and it begins to be exploited, in any format and through any distribution channel, it is important to be able to identify it at different times and for various purposes; for example, so that holders can exercise their rights. In a global digital environment that enables audiovisual works to be used simultaneously on different platforms by distributors and users in any country, it is essential that such uses are monitored accurately.

This report aims to understand and explore possible means of resolving the five basic problems relating to information and metadata: a) delays in compiling and uploading data; b) lack of data; c) loss of data; d) contamination and inconsistency of data; and e) volume of data. In particular, we will focus on simplifying the management of information on audiovisual works in order to reduce the costs related to content distribution. Audience growth and an increase in quality products require the expansion of distribution channels, which can entail a loss of control and income. Moreover, distribution through multiple platforms requires information and databases to be interoperable.

The absence of information on the movement of works is a more pressing problem for small producers in the countries in this project. While the digital market can enable a work to be enjoyed worldwide, via dubbing or subtitling, in reality it is very difficult for the public to access it without adequate information. Where applicable, if the work was enjoyed in numerous jurisdictions, a lack of information would prevent the rights holders receiving due compensation for that use.

This report will be focused on the data and metadata of audiovisual works that are professionally produced and distributed. This excludes user-generated content (UGC), even though such content can be considered audiovisual work, as it does not constitute a production in the technical commercial sense.

Part 6: WIPO Alternative Dispute Resolution (ADR) Methods for Audiovisual OTT Business Models

Authors: Mr. Leandro Toscano and Mr. Oscar Suarez

Language: [English](#) and [Spanish](#)

Summary

With the growing number of contracts made for a single audiovisual production, some of them not even initially in written form, disputes frequently arise in the different phases of the audiovisual sector. Given the growth of international productions and global distribution in the OTT environment, there is an increasing need to find ways to protect the interests of the owners and users of copyright and content in the digital environment. This is a reality on a

global level, which also carries over to the Latin American context. In particular, make efficient means available to the parties in terms of time and cost to resolve disputes that may arise from their contractual relationships, especially those that have cross-border elements. In this regard, the WIPO Arbitration and Mediation Center (the WIPO Center) has seen an increasing number of mediation and arbitration of cross-border disputes in the film and media industry.

II. STUDY ON THE AUDIOVISUAL CONTENT IN THE PUBLIC DOMAIN AND ORPHAN WORKS

Author: Mr. Marcos Wachowicz
Language: Spanish

Summary

The public domain of copyright, although it has been heavily investigated by doctrine and the subject of multiple initiatives in recent decades, is rarely defined and even less detailed in national and international rules. The audiovisual sector particularly suffers from the risks of deterioration of old works, due to the fragile media in which the works are taxed, requiring special protection conditions in a context of emerging countries where there are few institutions and an absence of environments intended for this function. Simply placing the work in the public domain does not necessarily mean cultural or access benefits. There will continue to be a need for public policies, technical innovations and legal reforms, even outside of copyright, to ensure a broad benefit of access to works in the public domain for society as a whole.

III. CASE STUDIES

Case Study I: Women in the Audiovisual Industry: A panorama of Latin American Countries and Spain

Languages: [English](#), [Spanish](#) and Portuguese

Authors: Ms. Debora Ivanov, Ms. Luciana Vieira, Ms. Aleteia Selonk and Ms. Marcia Candido

Summary

This case study aims to discuss female participation in the audiovisual industry in some Latin American countries and Spain. For this purpose, we have sketched a panorama of the current situation of gender diversity, highlighting the proportion of women in creative leadership roles, *i.e.* the credits in direction, scriptwriting and production. Whenever possible, we have included information on other technical-artistic roles, as well as on the sector's workforce as a whole and on the cast of film narratives. This last set of data is not available for all countries and therefore is not comparable; it contributes, however, to the understanding of the different scenarios and was, thus, included in the sections pertaining to each country.

This work gathers the data available for Argentina, Brazil, and Mexico – three of the largest content producers in Latin America – as well as Uruguay and Spain. The inclusion of Spain

is justified due to the country's importance in the circulation of works in the Spanish language. The text is divided in three parts. The first presents a conceptual discussion on the issue of gender diversity in the audiovisual sector and its importance from a social and economic point of view. The second part discusses the specific data pertaining to each national context. Finally, the conclusion systematizes the study's findings, compares each reality, and provides reflections on the causes of the imbalances found and the possible paths towards overcoming them.

Case Study II: The Experience of a Brazilian Independent Producer with Online Distribution of Audiovisual Content

Language: [English](#)

Author: Mr. Rodrigo Salinas

Summary

This case study investigates the main shifts in the legal structuring of audiovisual production in Brazil as a result of digital distribution, following the perspective of the rights required to ensure an efficient distribution of the audiovisual work. This document also aims to point out what are the main challenges and trends of Brazilian audiovisual producers in this context.

Audiovisual production for digital distribution in Brazil comes at a time of transition from a financing model focused on independent production that was mainly based on tax incentives and public subsidies. This market scenario (running from 1993 until at least 2016) shifted to a model of heterogeneous financing, in which there are independent productions that are still financed with public resources but more productions that are fully financed with private resources. This private financing model is led by streaming platforms, cable television programmers, and other agents in the sector that contract with Brazilian producers to produce films or series created and produced locally, destined for the first exhibition on their platforms. In order to understand the practical implications, this case study builds on the experience of the Brazilian producer O2 Filmes.

Case Study III: The Development of a Local OTT Platform

Languages: [English](#) and [Spanish](#)

Author: Mr. Raul Katz

Summary

The case study makes a comparison between Netflix and Claro Video as OTT platforms considering some key elements as price, accessibility, user interface, international and Latin American content, among others.

Case Study IV: The Clearance of Rights from the Perspective of a Brazilian Independent Producer

Language: [English](#)

Author: Mr. Rodrigo Salinas

Summary

This case study describes the clearance practices commonly adopted in Brazilian audiovisual production.

Clearance is a process by which producers revise creative and production materials in order to detect legal issues that can potentially bring liabilities or prevent the film's release. These legal issues typically refer to the use of pre-existing materials protected by copyright and related rights law, industrial property law, or are related to personality rights. The clearance within an audiovisual production anticipates legal issues affecting the film as a final product, including the development materials and the chain-of-title. After the characterization and description of procedures involving rights clearance, the intent is to discuss whether, and to what extent, this practice has distinct features related to audiovisual productions intended primarily for distribution on digital platforms.

Due to the obligations of secrecy and confidentiality contained in the numerous contracts for an audiovisual production, this case study focuses on the experience of independent producers such as the Brazilian O2 Filmes.

This case study discusses the importance of clearance of rights, which pre-existing rights are commonly assessed, the execution of clearance in the different stages of production, and whether clearance has been impacted by increased digital distribution. In each of these topics, reference is made to the Brazilian environment where local independent producers work. It is within this context that interviews made with O2 Filmes and data collected will be reflected.

Case Study V: The Role of an Aggregator in VOD Distribution in Brazil and Latin America: The Experience of Sofa Digital

Language: [English](#)

Authors: Ms. Bruna Trevelin and Mr. Rodrigo Salinas

Summary

This case study investigates the role of a Brazilian-based aggregator, Sofá Digital, in the evolving Video-on-Demand ("VoD") distribution market in Latin America.

Over the last years, VoD has established itself as an important outlet for the distribution of audiovisual works. VoD has a hybrid nature that encompasses different services, such as the case of Transactional VoD (TVoD), that appears to be the successor of DVD or Subscription VoD (SVoD), that may compete more directly with pay-TV channels, for example, as analyzed in this Project's Study about Over-the-top media services (OTTs).

Due to this hybrid nature, there is still no consensus as to the placement of VoD within the traditional release windows chronology of audiovisual works (cinema - VHS/DVD - pay-TV - free-to-air TV). Nevertheless, demand for VoD services (in its various modalities) has been increasing, and notably within the conditions surrounding the Covid-19 pandemic.

In the context of this growing VoD market, aggregators surfaced as intermediaries in the distribution of audiovisual works, providing technical, business and marketing expertise, and acting as gatekeepers between individual producers and local distributors, on one side, and digital platforms on the other. They work to widen the distribution of audiovisual works, maximizing revenues from VoD, beyond the traditional country-per-country, theatrical-driven release and providing technical solutions that are specific to this type of medium.

Thus, aggregators can provide different services, such as:

- (a) technology services: content digitization, encoding, delivery, metadata management, text localization and master quality control;
- (b) administration services: streamline the administrative pipeline; diminishing administrative burden by platforms and allowing rights holders to make content available across multiple VoD platforms without negotiating with each individually; consulting and managing rights;
- (c) content curation services: providing digital distribution strategy across different platforms and countries, providing advice on editorial and curatorial aspects, helping clients integrate regulatory constraints into catalogues;
- (d) marketing services: digital marketing and public relations servicing (e.g. buying Google ads); advising on digital marketing campaigns (social media); or
- (e) other services: developing VoD platforms for various devices; creating subtitles, close captions, synopses, artworks; assembling and packaging together short clips so that the contents fit the YouTube model or other.

The type of services an aggregator provides depends on its business strategy and the demands of the market where it conducts its activities. This case study explains how Sofá Digital, the leading aggregator in Latin America, responds to the current Over-the-Top (OTT) market in Brazil and Latin America as a whole. For this, section II presents a brief introduction of Sofá Digital and its main activities. Section III provides background to the intellectual property structure and main changes regarding the market for audiovisual production and VoD distribution in Latin America, in order to, in section IV, identify the issues driving the changes in the Sofá Digital's business strategy and describe the solutions and the role it is developing in the market. Conclusions are presented in section V.

Case Study VI: Data in the Audiovisual Business: Trends and Opportunities

Language: [English](#)

Author: Ms. Leticia Ange Pozza and Ms. Ana Paola Sifuentes

Summary

Everyone's relationship with data has changed in the past years. What started as bytes was quickly transformed into "the new oil" and "the sexiest jobs in the 21st century", only to -

maybe-not-so-quickly – realize that data raises issues related to power, organizational assets, privacy, and people.

Organizations of all sizes live nowadays in an ocean of data, where people are its natural source. By the time children are born, especially, but not limited to high-income countries, they become drops of water in this ocean: there will be some trace of who they are in public and private datasets. At the same time, many organizations will be already predicting who they will become in life. Although this sounds very dystopian and far away from reality, numbers show that the current reality is that of big data, data-oriented, algorithmic and artificial intelligence (AI) ocean.

Technology employing data also lead to tailored products and services but it could also mean less privacy, while possibly wrongfully judging millions of people with one misplaced intention embedded in a code. In this new world, being offline, unpredictable and untraceable is the real challenge. There are several studies linking people's personality traits to how they will behave when interacting with social platforms (likes, comments, or posts on Instagram, for example). These traits in association with algorithms that deliver content based on their social behavior are some ways in which social media has created content bubbles.

This reality is highly relevant as this is the digital environment that over-the-top services emerged and exist. Behind somewhat pervasive algorithms, there are highly skilled programmers and decision-makers that understand how they work and apply those skills to their favor, as we have seen, for example, in video streaming platforms that base their recommendations on the preferences and likes of other users that have watched similar content. Data is now, centric and strategic for large and small corporations. Algorithms have become powerful tools, accelerating and changing the way we consume, communicate, perceive and access anything, from information, to goods and services, and even to ourselves.

It is predicted that by 2025 we will have more data than we can analyze. The estimate is that by the end of that year, only 15% of the data in the global datasphere will be tagged and only one-fifth of that will actually be analyzed. Data, software and hardware are becoming valuable commodities. But how guaranteeing that the 3% of data analyzed are relevant to businesses and our society?

The technologies involved in the Fourth Industrial Revolution are all directly related to collecting, processing and analyzing data. These include major areas like mobile, the internet of things, artificial intelligence, augmented reality, advanced robotics, genomics, and blockchain.

The creative industry is also a big part of this revolution. Major production companies can now base their decisions on data. For example, tests that were once conducted for a few hundred potential audience members are now done in milliseconds for millions of people, deciding which products are produced and which are not. This technology, along with artificial intelligence and machine learning, has allowed content creators to directly cater to a specific consumer's palate and even anticipate their preferences and present them with highly desirable products.

Case Study VII: The Online Platforms Cine.ar and cine.ar.play

Language: [Spanish](#)

Author: Mr. Gustavo Schötz

Summary

This case study summarizes the experience of the creation of two online platforms that are dedicated to offer audiovisual Argentinian content. This case study reviews the reasoning behind the creation of those platforms, as well as possible lessons taken from it.

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