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Spain's audiovisual sector: fair remuneration and economic growth

How the recognition of remuneration rights for audiovisual authors has helped support industry growth:

Introduction

Spain is considered to have one of the most protective legal regimes in the world for the rights of audiovisual creators. Audiovisual works such as films, TV series, documentaries etc., are protected by long-established unwaivable remuneration rights for audiovisual authors for many types of exploitation. These are recognized in the Spanish Copyright Law (Royal Legislative Decree 1/1996 of April 12, 1996 Revised Law on Intellectual Property, hereafter "TRLPI").

These statutory rights have proven to be effective in ensuring fair remuneration for audiovisual creators. Royalties are collected and distributed by Spanish authors' societies (SGAE and DAMA).

The legal regime has helped achieved a fairness for generations of audiovisual creators in Spain, while at the same time helping support consistent long term revenue growth across the audiovisual and cinematographic industry in Spain.

This paper provides a case study of the legislative framework in Spain and highlights key industry data showing the growth of the audiovisual sector over recent years. It illustrates that the successful evolution of Spain's audiovisual sector has been built on – and been supported by - the foundation of a strong and longstanding legal regime based on unwaivable remuneration rights for audiovisual authors.

Legal Analysis

Spanish law provides exemplary legal protection for audiovisual creators, both in terms of the scope of authorship and ownership, the wide range of types of exploitation covered and the clarity of the role and obligations of CMOS in collections and distributions.

A) AUTHORSHIP AND OWNERSHIP OF AUDIOVISUAL WORKS

Article 87 of the TRLPI considers directors, scriptwriters (authors of the literary part, including the argument, dialogues, plots etc.) and composers of the original music score, as co-authors of audiovisual works. This provision also establishes a rebuttable presumption of assignment of the authors' exclusive exploitation rights to the audiovisual producer, whereby the producer becomes the owner of the authors' exploitation rights.

In consideration of such legal presumption of assignment, the Spanish TRLPI grants all audiovisual authors **remuneration rights** for various types of exploitation, including for video on-demand uses, subject to mandatory collective administration. These remuneration rights are unwaivable and benefit not only all co-authors of the audiovisual work, but also the authors of the pre-existing works used in the audiovisual work (i.e., authors of literary works adapted for films and pre-existing synchronized music).

B) AUDIOVISUAL REMUNERATION RIGHTS RECOGNIZED IN SPAIN

Article 90 of the Spanish TRLPI establishes remuneration rights for the following types of exploitation:

(1) Theatrical exhibition (Art. 90.3)

The remuneration right for cinema exhibition was introduced in 1966, decades before the EU Directive 92/100 introduced a similar right for rental and public lending in Europe. The right to obtain a percentage in box office was further maintained in the Copyright Law of 1987 as an equitable proportional remuneration right. This laid down the right for authors to receive a share in box office revenues generated by the public performance of the audiovisual work in exchange for entrance fees. This right further survived in the current TRLPI as a percentage of the box office paid by exhibitors, that they can deduct from the license fees owed to licensors (distributors or producers).

(2) Broadcasting (art. 90.4)

The Spanish Copyright Law of 1987 introduced a remuneration right for the public communication of audiovisual works "without an entrance fee". This equitable remuneration right is recognized in the current TRLPI in exchange for the transfer, to the producer, of the exclusive right of communication to the public.

(3) Rental (art. 90.2)

In 1994, the EU Directive 2006/115 on rental and lending rights was implemented in Spain, providing for authors and performers an unwaivable right to equitable remuneration in exchange for the transfer of the exclusive right of rental to audiovisual producers.

(4) Online/VOD (art. 90.4)

Art. 90.4 of the TRLPI was further amended in 2006 by Spanish Act 23/2006, implementing the EU 2001/29 Directive, to include an unwaivable online making available right. The statutory remuneration right currently in force covers all types of online exploitation (both on demand/interactive and linear streaming).

C) A CLEAR ROLE AND OBLIGATIONS FOR CMOS

The statutory remuneration rights outlined above are subject to **mandatory collective administration,** and therefore exclusively collected and distributed by the audiovisual collective management organisations (CMOs) authorised to operate in Spain - initially only SGAE (Sociedad General de Autores y Editores) and then withDAMA (Derechos de Autor de Medios Audiovisuales) from 1999. These CMOs establish the tariffs and collect and distribute the remuneration rights to the authors they represent, either through direct affiliation or though representation agreements with foreign CMOs.

These statutory remuneration rights are paid by the end users (i.e., cinema exhibitor, broadcaster, VOD platform, etc.). However, audiovisual producers nonetheless retain the exclusive rights to license the exploitation of the works based on the presumption of assignment by the authors.

D) THE SPANISH AUDIOVISUAL SECTOR – KEY ECONOMIC TRENDS

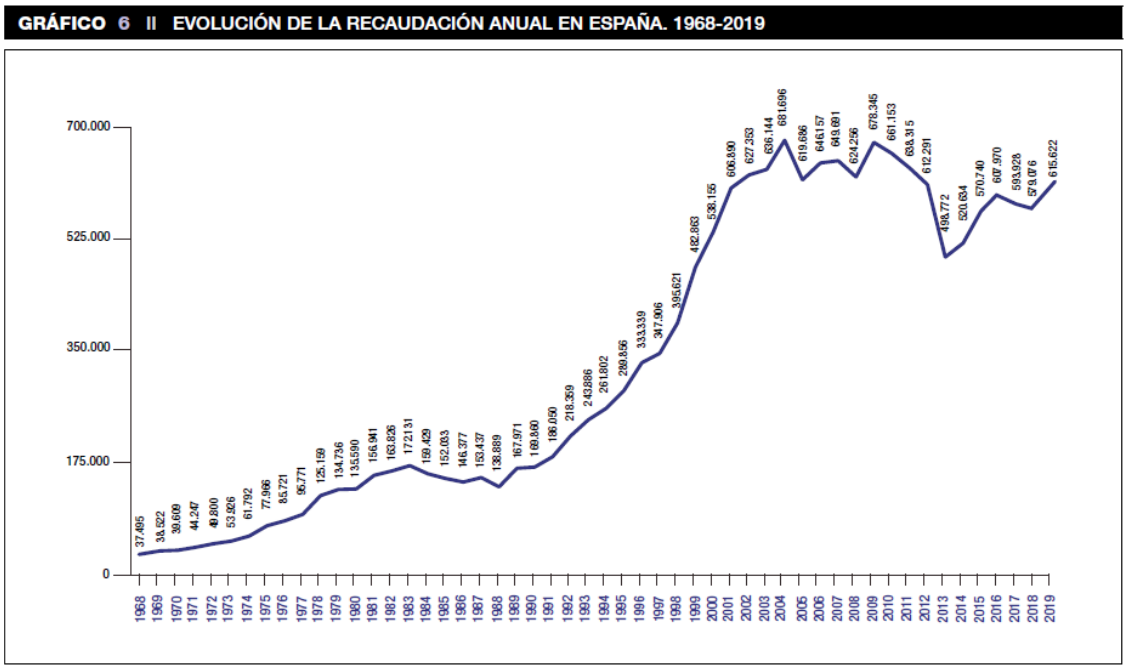
Spain's audiovisual sector has been a notable growth story over the many years, with income expanding across all format and revenues streams. This growth has been sustained with no interference or hinderance from the audiovisual rights remuneration regime. On the contrary, the system of mandatory collective management has played its own important part in the sector's success. While this may stop short of proving that a fair remuneration scheme is a driver of growth, it strongly suggests no detrimental impact on the economic health of the audiovisual sector.

(1) Theatrical exhibition

Revenues

Box office figures show a strong increase in revenues over more than half a century. Revenues grew exponentially, from 37.5 million euros in 1968 to 616 million euros in 2019. Current revenues are recovering after a steep slump from 2008 to 2013 caused by the financial crisis which affected the entire cultural sector in Spain. (*Table 1*).

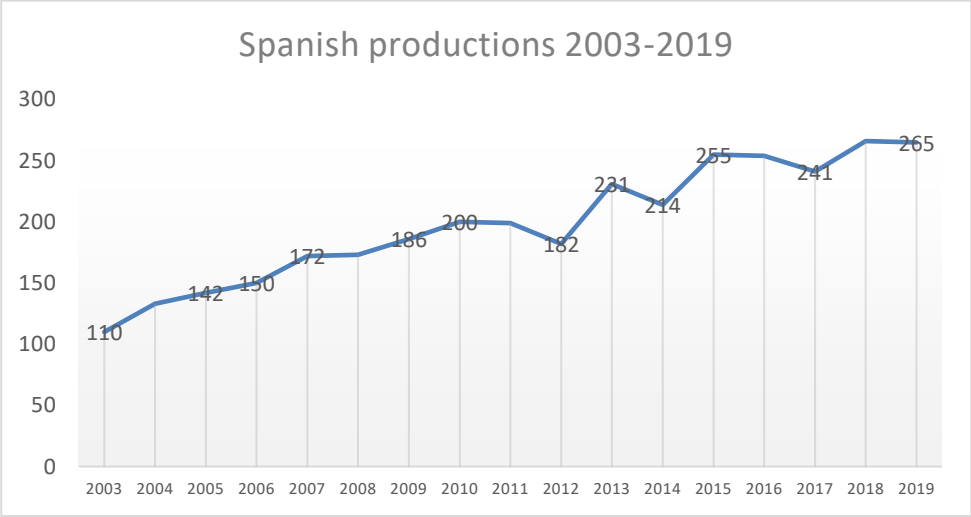
Table 1
Source: *Anuario SGAE de las Artes Escénicas, Musicales y Audiovisuales 2020*)



Productions

A similar upward trend can be seen in the number of **Spanish productions during the past two decades.** The number of Spanish films produced has steadily increased since 2003 with a 141% increase during the past 15 years, growing from 110 Spanish films produced in 2003 to a total 265 in 2019 (*Table 2*).

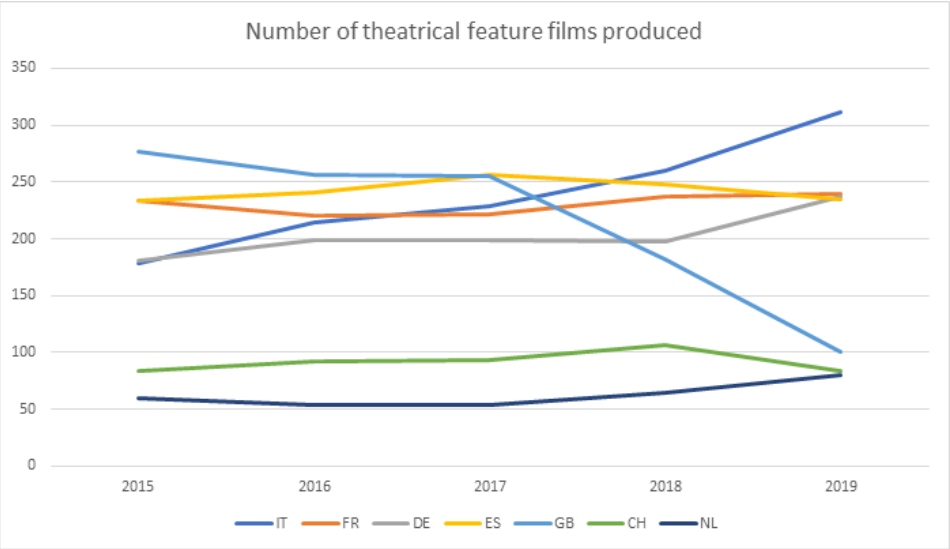
Table 2
Sources: *Anuario SGAE 2020: Cifras 1999 a 2019; ICAA, Anuario de Cine, Ministerio de Cultura*



These figures show consistent growth in the Spanish cinematographic industry coinciding with the period the remuneration right for cinema exhibition was first recognized in Spain in 1966. The figures indicate that the recognition of such a remuneration right has not impacted the Spanish cinematographic industry in any way. On the contrary, the Spanish cinematographic industry has grown substantially during the past decades.

In 2019, Spain ranked 4th in Europe in terms of film production, as can be seen in Table 3. Of the top seven countries listed, five have a remuneration right scheme in place (namely, Italy, Spain, France, the Netherlands, and Switzerland).

Table 3: EU- Number of Theatrical feature films produced
Source: *European Audiovisual Observatory*



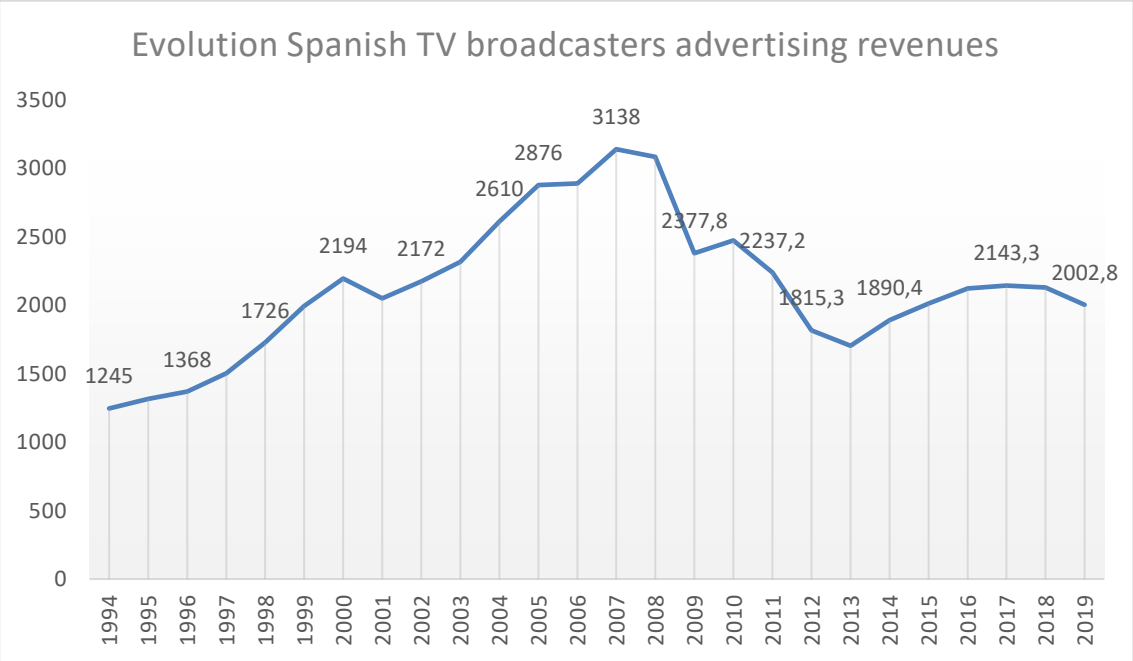
(2) TV Broadcasting

Revenues

Spain has had a commercial competitive broadcast sector since only 1990. Commercial private broadcasters started to operate in that year, when competition for advertising revenues was introduced. Prior to that, there was only one broadcaster (RTVE, the public national broadcaster), with two channels (TV1 and TV2).

The Spanish TRLPI introduced a statutory remuneration right for public communication (by broadcasting, among other types of exploitation) in 1987. Revenue data going back to 1995 shows a long-term growth trend despite steep periodic falls, notably between 2008 and 2013 due to financial crisis. (see Table 4).

Table 4: Evolution of Advertising Revenues (1995 to 2019)
Source: *Anuario SGAE 1999, Anuario SGAE 2007-2009, Anuario SGAE 2019*



Figures in millions of Euro

TV broadcasters' advertising revenues increased steadily during the first decade from 1.2 billion euros in 1994 to reach a maximum 3.1 billion euros in 2007. This trend shifted during the next five years, starting from 2008 to 2013 due to the financial crisis in Spain, triggering a reduction in advertising investments by advertisers, and an increased number of TV broadcasters, mainly Pay TV and digital platforms, which reduced the broadcasters' share of the overall publicity.

Advertising turnover has started to increase again since 2014, exceeding 2 billion euros in revenues in 2019.

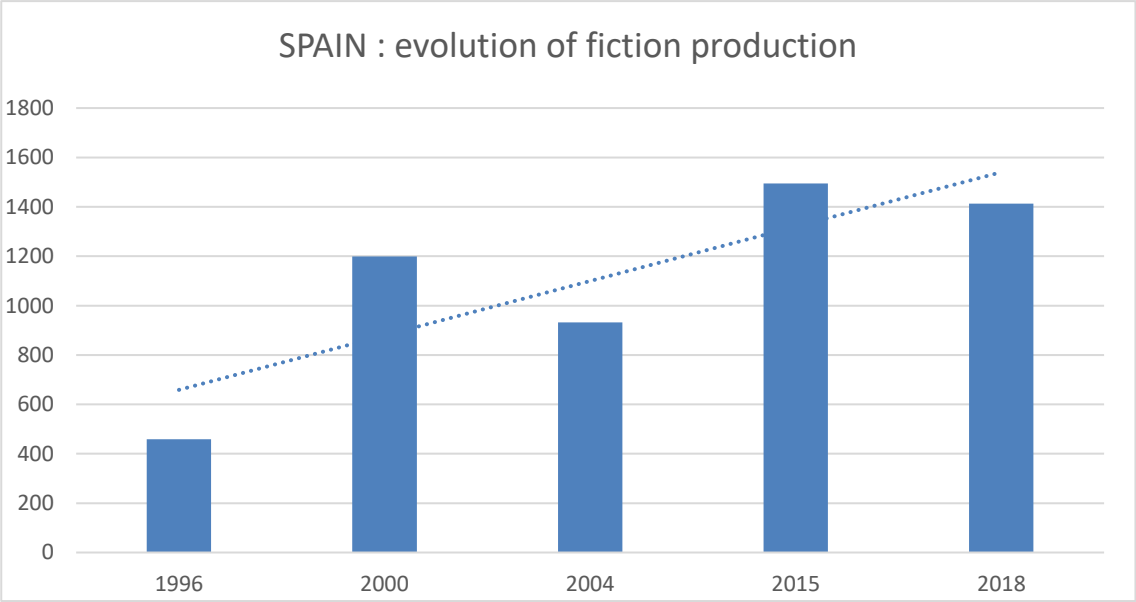
Productions

Spanish TV production has also shown a marked increase over the past two decades - from 459 hours of fiction in 1996 to 1413 hours in 2018 (Table 4) There has been a **consistent growth trend, driven by the development of Spanish series**. In 2018, 58 series were produced in Spain, adding €655M to Spain's GDP. These series are not only popular in Spain, but are also exported all-over the world, with recent examples such as "The Money Heist" ("La Casa de Papel"), "Merlí", "Vis a vis", "El Secreto de Puente Viejo" or "Élite".

These productions have helped make Spain's audiovisual sector an exceptional success story. According to figures published by the Spanish Institute of Foreign Trade (ICEX), Spain ranks 6th in the world in terms of volume of exportation of audiovisual products, with a potential TV fiction series market that will generate between 2020 and 2021, €4,3Bn and more than 18,000 jobs and €264M in tax collections. (Sector audiovisual en España (investinspain.org)

With a mature local industry, low production costs and the existence of creative artistic talent, Spain is also becoming attractive for global platforms such as Netflix, Amazon, or Viacom International Studios, that are investing in local production and creating jobs locally.

Table 5
Source: *European Audiovisual Observatory*



As in the case of theatrical exhibition, it seems clear that the evolution of the broadcasting market has not suffered from the existence of a statutory remuneration right paid by TV broadcasters for the past three decades and did not prevent the evolution of the production market towards international series. The statutory remuneration right of audiovisual authors did not discourage US platforms from choosing Spain as a major production hub in Europe.

(3) Online /VOD market

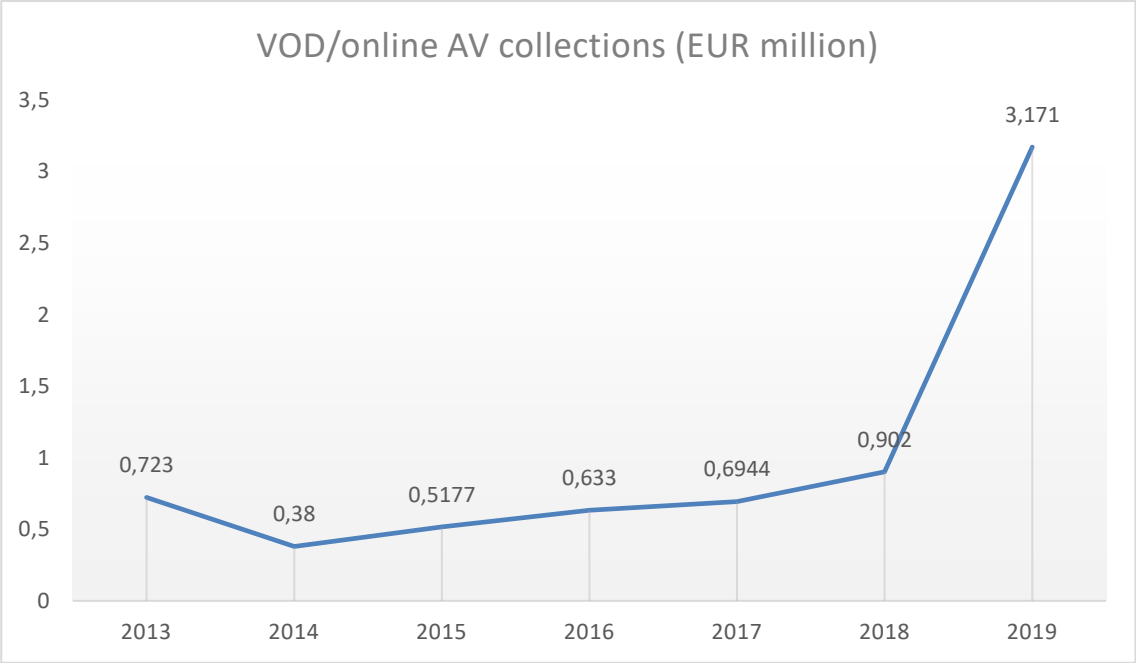
Revenues

The statutory remuneration for online/digital exploitations was introduced by the Spanish TRLPI in 2006. However, major international VOD platforms, such as Netflix or HBO did not start to operate in the Spanish market until almost ten years after. Spanish CMOs SGAE and DAMA collected relatively low amounts until 2015, as both societies were still negotiating VOD remuneration tariffs with digital platforms and Pay TVs, such as Google, Apple and Telefónica.

Audiovisual societies' collections for the online remuneration right have increased significantly in the last year, as shown in the following tables (Tables 5 and 6). SGAE's collections have soared from an average €500K during 2015 and 2016 to more than €1.52million in 2019. DAMA reports a similar explosion rising from €53K in 2017, to more than half a million in 2018 to reach a total €1.65 million euros collected in 2019; a total €3.17 million euros for both CMOs.

Tables 6 and 7
Source: *SGAE and DAMA*

	Spanish CMO AV collections
2019	**3,170,764**
2018	902,027
2017	694,409
2016	632,966
2015	517,674
2014	380,368
2013	723,035

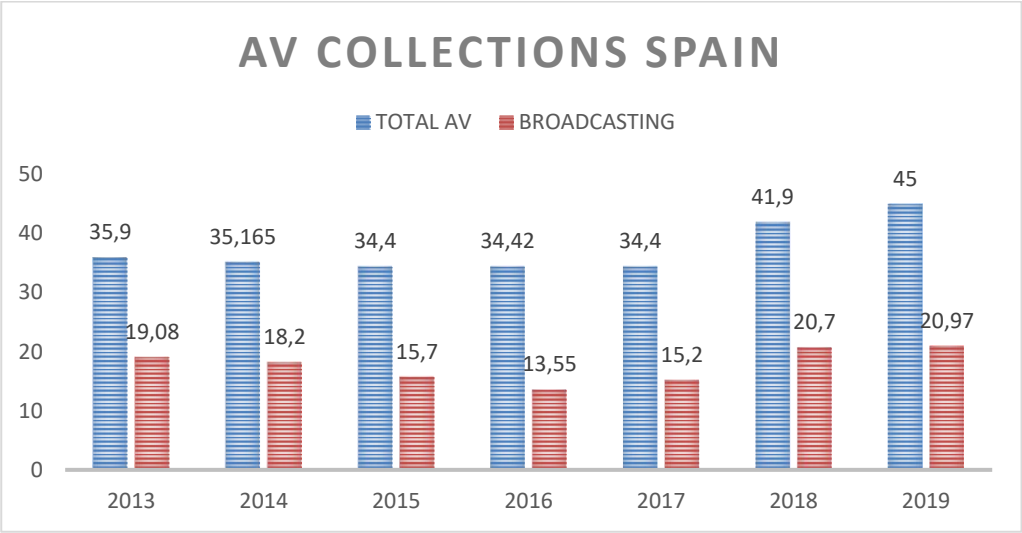


E) THE IMPACT ON SPANISH AND FOREIGN AUDIOVISUAL AUTHORS

(1) Total audiovisual collections in Spain (excluding music in audiovisual works)

The above data shows historical growth in audiovisual revenue and productions by sector. This is matched by the trend of authors audiovisual collections by CMOs in Spain in recent years, which demonstrates that thanks to the statutory remuneration rights, audiovisual authors have been associated to the growth of the exploitation of their works.
Table 8 shows how the collections for audiovisual authors in Spain have steadily increased during the past years, increasing from 35.9 million euros in 2013, to reach a total 45 million euros in 2019. In spite of the financial crisis suffered during the period 2008-2012, collections from the broadcasting remuneration right have also remained stable, reaching a total 20.97 million euros in 2019.

Table 8: Total audiovisual collections and for broadcasting only
Source: *SGAE and DAMA Annual reports/SAA figures*



Figures in EUR million

Global data furthermore shows how the Spanish audiovisual sector, supported by its legal regime based on the unwaivable remuneration right, has achieved exceptional success on an international scale. Spain ranks 3rd in the world for audiovisual collections, after France and Italy, with a total 45 million euros. This represents more than 7% of the total world collection of audiovisual rights, based on 2019 figures published in CISAC's 2020 Global Collections report and the annual reports published by SGAE and DAMA.

(2) Funding cultural and social activities

A further benefit of Spain's statutory remuneration scheme is to enable Spanish CMOs to contribute significantly to social, promotional and cultural activities for audiovisual creators.

The Spanish law determines that 20% of private copying remuneration must be allocated to these activities, and a minimum 15% of all undistributed amounts accrued by unidentified works after the requisite 5-year time lapse period.

Additional funding may be determined by each CMO, and all amounts and projects need to be published in the Transparency reports with full details each year. As detailed in DAMA's 2019 Transparency Report https://www.damautor.es/pdf/INFORME_TRANSPARENCIA_2019.pdf DAMA allocated in 2019, 1,123,735 euros to cultural, promotional and social/welfare activities in support to members, including 335 aids for births or adoptions (1,000€/ per child); loans for optical and hearing aids; financial support in situations of economic and social emergencies and social integration processes, including aids for maintenance and accommodation, urgent shelters, medicine and costs related to minors, etc. therapeutic treatment and free legal advice.

In 2020, DAMA has been able to assist audiovisual creators during the COVID- pandemic crisis with a financial package that included more than EUR500k of aid, the majority non-refundable, including monthly financial supplements, with additional support for families with three or more children. Collections from private copying and remuneration right for streaming VoD platforms in Spain were essential to weather the COVID crisis.

SGAE carries out its cultural and social activities through the "Fundación SGAE". According to SGAE's 2019 Transparency Report (Informe_transparencia_SGAE_2021.pdf (documentos-sgae.s3-eu-west-1.amazonaws.com), more than 8,2 Million euros were allocated to Fundación SGAE in 2019. Fundación SGAE reports having developed more than 460 activities, including 331 courses and trainings, and allocating 418,563.80 € in allowances, grants and subsidies to support almost 7,500 authors. Detailed information of all the activities developed during 2019 by Fundación SGAE is available here:
Asamblea_SGAE_30J_2020_Memoria_Actividades_Fundacion.pdf (documentos-sgae.s3-eu-west-1.amazonaws.com).

Conclusions

A close analysis of the evolution of the Spanish audiovisual industry shows the extraordinary economic and cultural success of this sector over many years. In the cinema, broadcast and digital domains, Spanish films, TV programmes and other audiovisual works have helped propel the country to a position of global leadership, both in culturally and economically. This is reflected with data showing the revenue growth, increases in productions, growing exports, increased royalty collections to authors and positive comparisons with other countries internationally.

One key factor underlying Spain's successful audiovisual sector is a legal regime based on the unwaivable remuneration right which makes Spain one of the most protective markets in the world for the rights of audiovisual authors. This strong legal regime has helped nurture a skilled and incentivised creative community, encouraged cultural creativity and, in turn, fostered employment and economic growth across the sector.