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Italian's audiovisual sector: fair remuneration and economic growth

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

1 Introduction

Italy is one of the countries to have implemented legislation granting unwaivable remuneration rights to audiovisual creators. As a result, these authors - screenwriters and directors who play an indispensable role in audiovisual productions - benefit from **one of the world's strongest legislative regimes**, ensuring fair remuneration for a wide range of exploitations of their works.

Unwaivable remuneration rights were first introduced in Italy for both authors and performers in 1997. With this Legislative Decree no. 154/1997, Italy implemented the European Directive 93/98/EEC on the harmonization of the term of protection of copyright and related rights.

These statutory remuneration rights have proven to be effective in securing equitable remuneration for audiovisual authors. The fact that these rights are unwaivable, and that they are subject to collective management, has provided a strong and fair environment for audiovisual authors to negotiate for the use of their works.

The Italian regime has helped sustain jobs and a professional livelihood for many audiovisual creators, while at the same time nurturing a positive evolution of the national audiovisual production and its export abroad.

This paper analyses the legislative framework in Italy and highlights key industry data illustrating the related growth of the audiovisual sector over recent years.

2 Legal analysis

A. Authorship and ownership of audiovisual works

The Italian Copyright Law of 1941 (Law for the Protection of Copyright and Neighbouring Rights, No. 633 of April 22, 1941) regulates the cinematographic and audiovisual works in articles 44 to 50, within Chapter IV of Title I, devoted to the Special Provisions on Exploitation Rights in Certain Categories of Works.

Art. 44 considers co-authors of a cinematographic work the following:

- the director,
- the author of the subject-matter,
- the author of the scenario (scriptwriter) and
- the music composer.

However, according to arts. 45 and 46, the producer of the cinematographic work (the person who has organized the production of the work) obtains the exercise of the exploitation rights for the cinematographic exploitation, and no contrary agreement is possible[1] (*cessio legis*).

B. Audiovisual remuneration rights recognised by law in Italy

Article 46bis, which introduces equitable remuneration rights for broadcasting, making audiovisual available online and translation of the dialogues, was included in 1997 by the Legislative Decree no. 154/1997. This change was achieved thanks to the pressure from audiovisual creators themselves, who, until then, were not benefiting from the exploitation of audiovisual works. As a result, the Italian Law establishes **unwaivable remuneration rights** for the following types of exploitation:

1. Any communication to the public via air, cable or satellite (art. 46bis-1). When the broadcasting rights are assigned to the producer, authors of cinematographic and assimilated works (such as TV films, TV series and mini-series, telenovelas and soap operas, sitcoms, film inquiries in one or more episodes, TV documentary films and animation series) are entitled to separate, equitable remuneration for any act of communication to the public via air, cable and satellite. This remuneration has to be paid by the broadcasting organisations.

2. Any other use (art. 46bis-2). Authors of cinematographic and assimilated works are granted a general unwaivable right to obtain equitable remuneration for each separate act of exploitation of their works to be paid by those who exploit the rights. This includes the acts of communication to the public in public places (hotels, restaurants, cafés, transportation, etc.) as well as all types of **online exploitations** (both on demand/interactive and linear streaming).

3. Translation & adaptation to Italian of the dialogues (art. 46bis-3). For every use of AV works whose original language is not Italian, the authors of the derivative works (translators of the/ adaptors into Italian language) are entitled to equitable remuneration.

4. (Only for music composers) - Theatrical exploitation (art. 46.3). Music composers are entitled to a separate remuneration due by the user who publicly shows the work[2]. Theoretically, screenwriters and directors are entitled to this remuneration but only if they are not remunerated on the basis of a percentage share in revenues from theatrical exploitation and nothing has been otherwise agreed upon with producers (art.46.4). However, article 46.4 has never been applied in practice and screenwriters and directors have been unable to receive such additional remuneration.

5. Rental: (art. 18bis-5). As an effect of the implementation of the EU Directive 2006/115 on rental and lending rights, audiovisual authors are granted an unwaivable right to equitable remuneration in exchange for the transfer of the exclusive right of rental to audiovisual producers.

C. The role of collective rights management

One of the key strengths of the Italian legal regime for audiovisual authors' remuneration is its association with a robust and effective collective management system.

The remunerations introduced by article 46bis are due directly from the **end users/operators** (not by the producers). They have been managed by the collective management organisation **SIAE** on the basis of

[1] A similar mechanism applies to performers on the basis of Article 84 of the Copyright Law.
[2] Although it is not specified in the law, this paragraph has been pacifically interpreted as applicable to broadcasting and subsequently to online.

voluntary mandates from authors, since the Italian law does not formally require mandatory collective management for such remunerations[3].

The legislation helps create a fair and balanced negotiation by allowing the involvement of the authors' society to support creators. SIAE is entitled by law to negotiate the tariffs and, in case the parties fail to reach an agreement, SIAE can start a specific arbitration procedure. SIAE establishes the tariffs, collects and distributes the remuneration to the authors they represent, either through direct affiliation or though representation agreements with foreign CMOs. In exchange, producers retain the exercise of the exploitation rights of the cinematographic works and assimilated works on the basis of the *cessio legis* in the production agreement, and no contrary agreement is possible.

3 Key economic trends – Industry figures and evolution

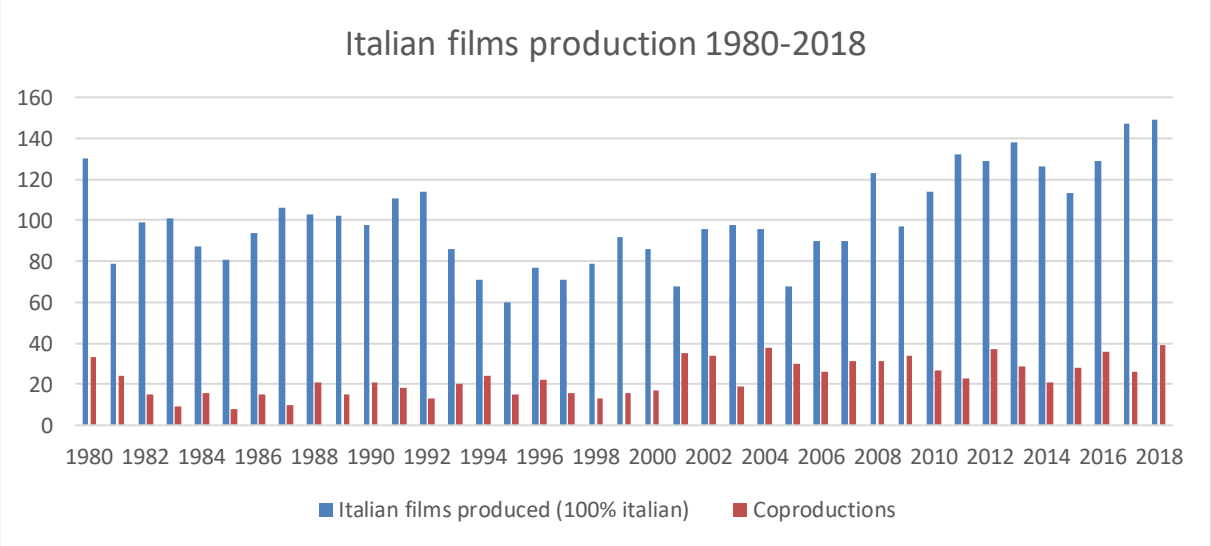
Italy's protective rights regime has helped support the wider development of the country's successful audiovisual sector.

The **equitable remuneration rights** introduced in 1997 for both authors and performers **have helped nurture a large community of audiovisual authors, without having any negative effects on** the development of the Italian audiovisual market. On the contrary, as the data and growth trends indicate, the strong legal regime has encouraged the evolution of a thriving national audiovisual sector, and its export abroad.

A. Film production

The **number of Italian films** produced has **progressively increased in the last 40 years**, as shown in Table 1. It is notable that this positive trend has intensified since the introduction of the equitable remuneration in 1997, with a 109% increase during the past 21 years, rising from 71 Italian films produced in 1997 to a total 149 in 2018 (*Table 1*).

Table 1 – Italian films production 1980-2018

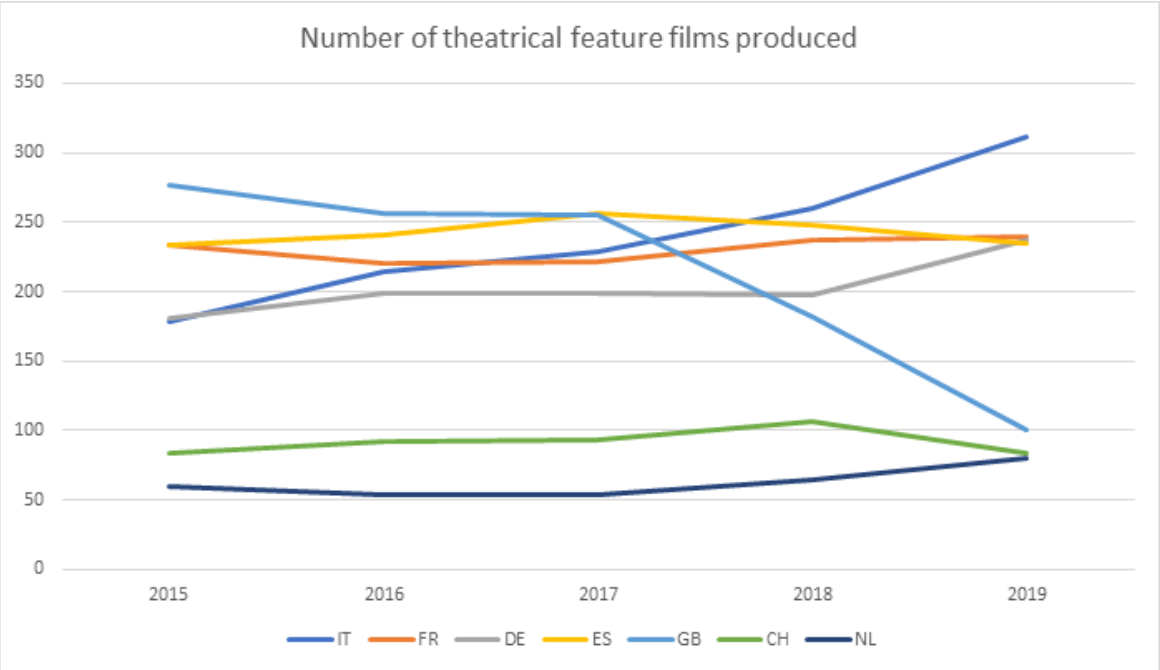


Source: "*Il cinema in sala*". Reports from 1980 to 2018. Associazione Nazionale Industrie Cinematografiche Audiovisive e Multimediali.

In terms of feature film production in Europe in 2019, Italy ranks 1st, as shown in Table 2. Of the top seven countries listed, five have a remuneration right scheme in place (namely, Italy, Spain, France, the Netherlands, and Switzerland).

[3] Although the Italian law does not require mandatory collective management for such remunerations, in practice these rights are being managed on a collective basis by local society SIAE, since the remuneration is unwaivable and secured by statute.

Table 2- Number of theatrical feature films produced (2015-2019)

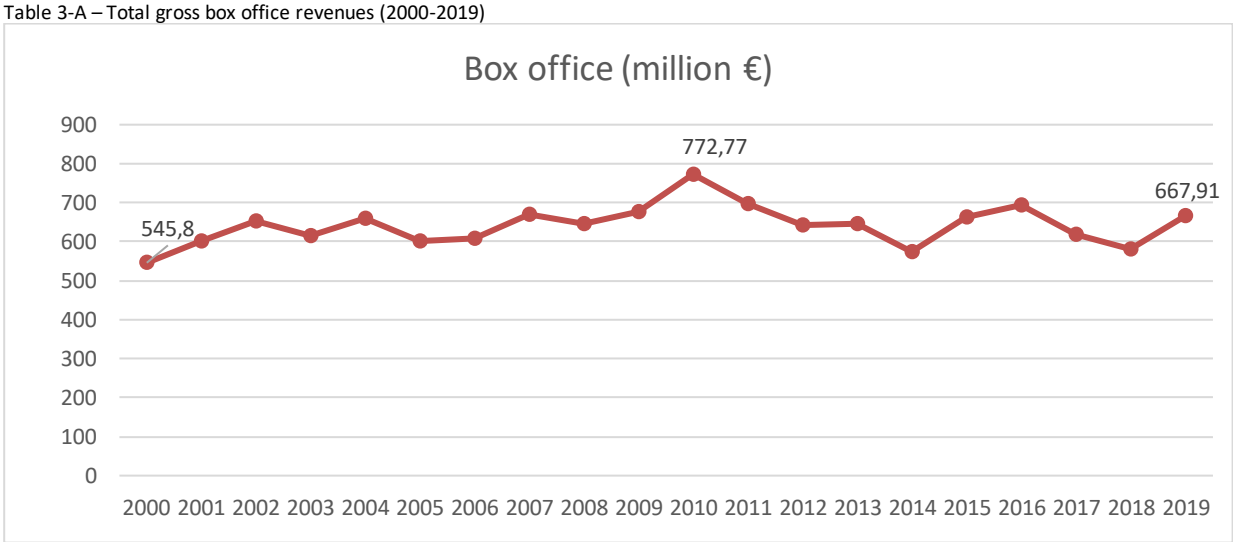


Source: European Audiovisual Observatory

B. Theatrical exhibition

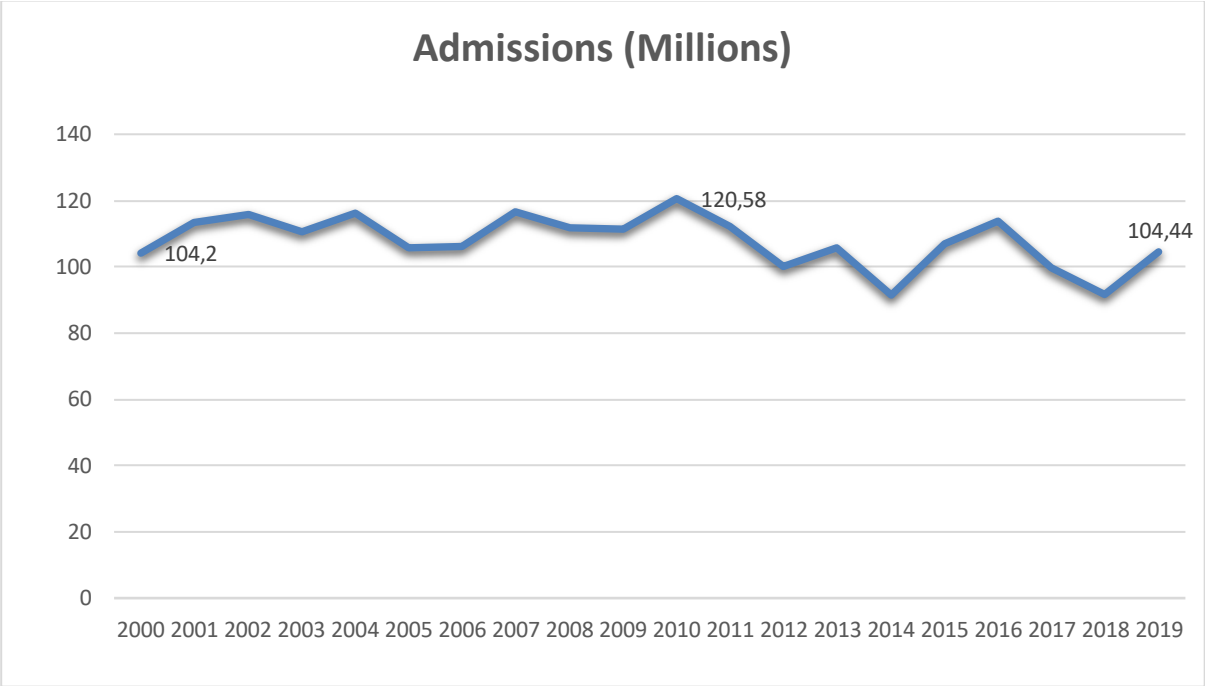
The total gross box office revenues over the past 20 years increased by more than 20%, from €545,8 M in 2000 to €667,91 M in 2019, with a peak of €772,77 M reached in 2010, showing that the existence of a right to remuneration does not affect the wealth of the exhibition sector (Table 3-A). This trend is confirmed in terms of evolution of the total admissions over the period (Table 3-B).

Table 3-A – Total gross box office revenues (2000-2019)



Source: European audiovisual observatory, CNC

Table 3-B – Total admissions (2000-2019)



Source: European audiovisual observatory, CNC

According to ANICA (the National Association of Audiovisual Cinematographic Industry), Italian production (including co-productions) in 2019 recorded earnings of **€134,8 million** at the box office (+5.39% increase compared to 2018), representing a total market share of 21.22% in Italy[4]. During the same year, 193 Italian productions or co-productions were first released in cinemas, with €611,858 average revenue per film.

C. TV Broadcasting and online exploitation

The broadcasting market has been stable in the last years and the introduction of the equitable remuneration right in 1997 had no negative impact on its development. The *Entertainment and Media Outlook 2020-2024*, published by PWC, provides an interesting picture of the trend in 2015-2019. This overview is especially relevant since it depicts the steady performance of the audiovisual industry before the financial crisis which affected the whole cultural sector in Italy.

Traditional revenues such as advertising from traditional TV channels remain key although they have only slightly increased (0,7%) from 2015 to 2019, due to the slow but progressive shift to digital uses. The income from the RAI broadcasting annual fee (*canone radiotelevisivo*) has grown despite a reduction of the fee to be paid by each TV owner, thanks to a new anti-piracy collection practice. Most notable of all, there has been a huge growth in revenues from OTT services (356,4% from 2015 to 2019) , and a strategy of public grants in support of national productions.

Table 4 - Audiovisual Industry – Economic value 2015-2019 (million €)

	2015	2016	2017	2018	2019	Trend
RAI license fee	1.637	1.909	1.776	1.759	1.798	9,8%
TV subscription	3.016	3.102	3.151	3.270	3.089	2,4%
TV Advertising	3.012	3.155	3.124	3.163	3.034	0,7%
Total TV	**7.665**	**8.166**	**8.051**	**8.192**	**7.921**	**3,3%**

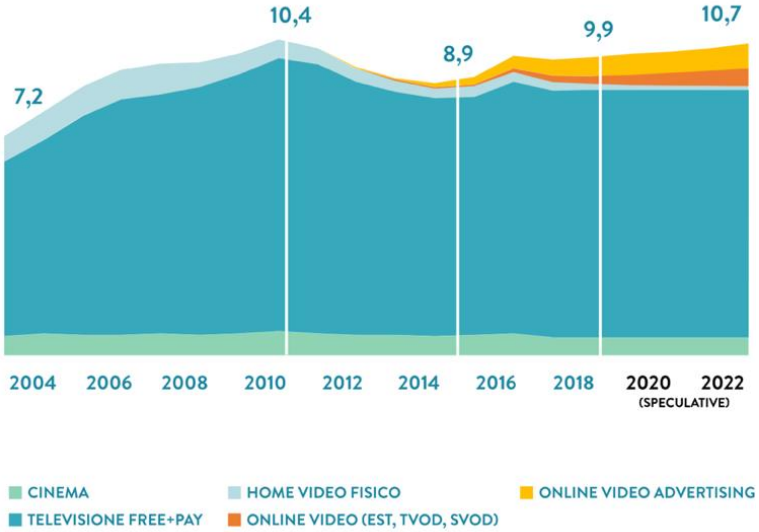
[4] ANICA, *Il cinema in sala nel 2019: i dati del box office,* available here: http://www.anica.it/allegati/DATI/Box%20Office%202019_conferenza_1501_relazione.pdf

Box Office	664	695	619	579	668	0,6%
Cinema Advertising	23	24	25	27	30	30,4%
Total Cinema	**687**	**719**	**644**	**606**	**698**	**1,6%**
Subscription VOD	60	143	246	317	427	611,7%
Transactional VOD	57	73	85	96	107	87,7%
Total OTT Video	**117**	**216**	**331**	**413**	**534**	**356,4%**
Home Video rental	36	28	25	19	16	-55,6%
Home Video sell-through	296	271	230	174	144	-51,4%
Total Home Video	**332**	**299**	**255**	**193**	**160**	**-51,8%**
Total Audiovisual Market	**8.801**	**9.400**	**9.281**	**9.404**	**9.313**	**5,8%**

Source: PriceWaterhouseCoopers "Global Entertainment and Media Outlook 2020-2024"

Despite the rise of the online environment, **TV (free and pay) remains the central medium in the audiovisual ecosystem in Italy**. This reality is illustrated in table 5 (below), which represents the structure and revenues of the audiovisual production in Italy by type of use from 2003 to 2018 with an estimation for 2020-2022. The global revenues of the audiovisual market amounted to **9.9 billion euros in 2018**. Revenues from OTT Internet services have grown considerably over the last years, and particularly in 2020 because of the Covid-19 pandemic.

Table 5 - Structure and evolution of revenues of the audiovisual production by type of use in Italy (2003 – 2022) (billion €)

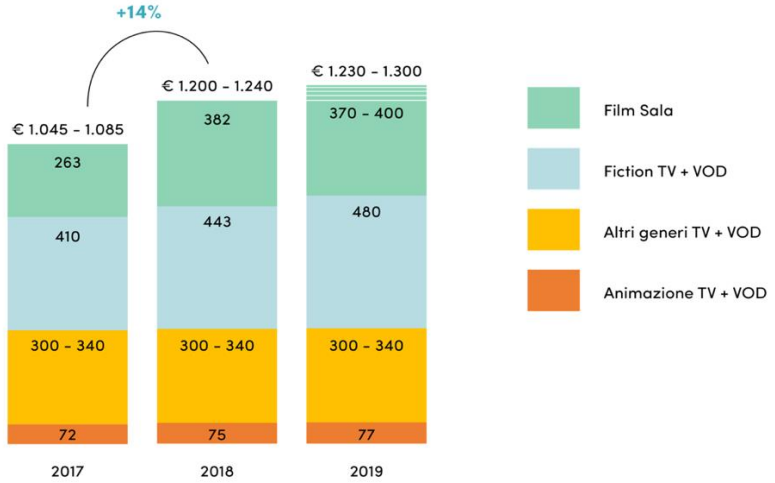


Source: *Primo rapporto sulla produzione audiovisiva nazionale, Associazione Produttori Audiovisivi, 2020.*

TV fiction (38%) and films (26%) represent the main categories of audiovisual productions, closely followed by entertainment shows, documentaries and animation (33%).

As can be seen in table 6, the **value of Italian TV and cinematographic production has increased** from 1,045 million euros in 2017 to 1,300 million euros in 2019. There is clearly a growing trend with the development of feature films and TV fiction and series for VOD services (representing 480 million euros in 2019). Most of these series and fictions are also exported all-over Europe and the world, with examples such as "Gomorra", "L'amica geniale", "The new pope", "Il Commissario Montalbano", "Suburra" or "I Medici".

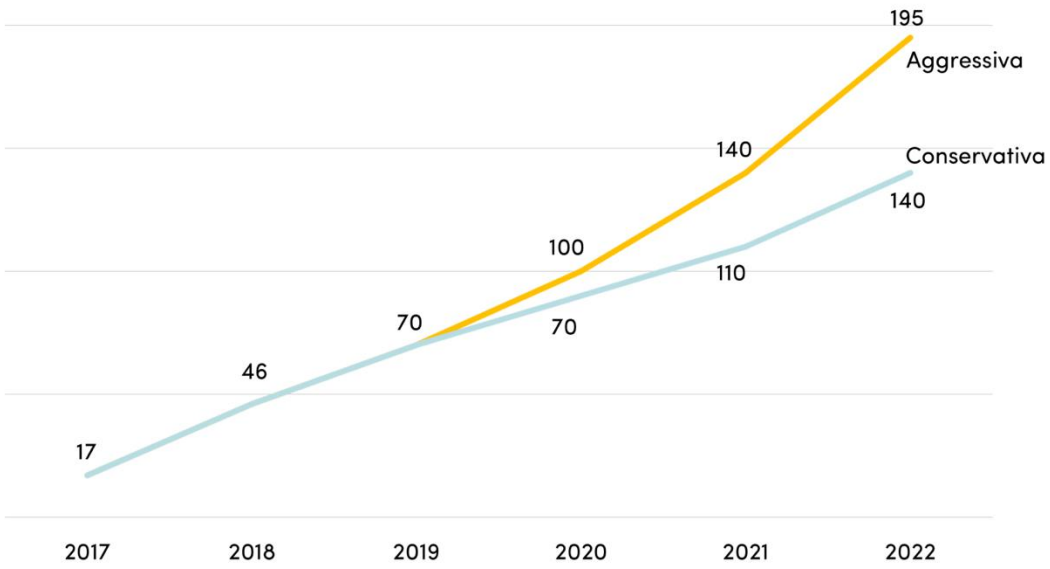
Table 6 - Value of national audiovisual production by macro-area (including co-productions) - 2017 - 2018 and first estimate 2019 (million EUR)



Source: *Primo rapporto sulla produzione audiovisiva nazionale, Associazione Produttori Audiovisivi, 2020*

Meanwhile, **investments by large video streaming companies are steadily rising**. OTT platforms in 2019 invested about 70 million euros in Italian series and film production (compared to 17 million euros in 2017), while in 2020 estimated investments are of 90-100 million, 110-140 million in 2021, and 140-195 million in 2022 (table 7).

Table 7 - Estimate of the value of investments in audiovisual production by OTT operators in the Italian market – 2017-2022 (million EUR)



Source: *Primo rapporto sulla produzione audiovisiva nazionale, Associazione Produttori Audiovisivi, 2020*

D. Export

The excellence of the Italian audiovisual productions is confirmed in the figures related to the exportation of films and series outside the national borders in the period 2007-2016. With a total of 1,965 film productions, of which 38.8% are exported within the EU, Italy ranks **fourth** among the five most developed film industries in Europe, preceded respectively by France, the United Kingdom and Germany, and ahead of Spain[5].

[5] Source: *European production and exports. Movie exports by country – Number of national film productions and their relative quota within Europe (2007-2016).* International circulation of Italian Cinema (research project funded by the Italian Ministry of Education, Universities and Research), 2019.

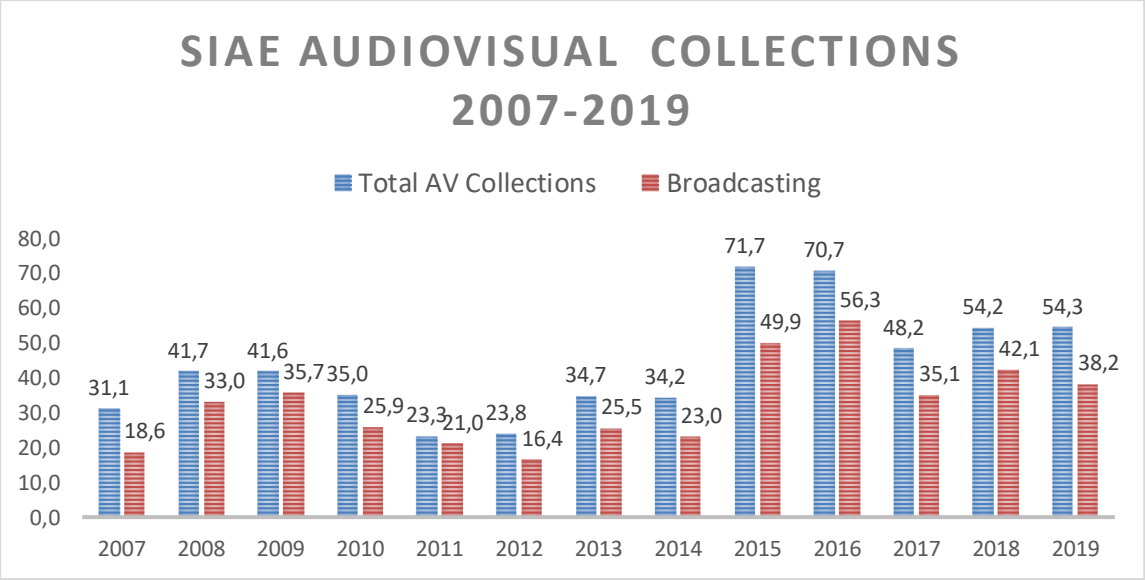
4 The impact on Italian and foreign audiovisual authors

A. Audiovisual collections by the national CMO (SIAE)

Table 8 shows the **steadily increase of audiovisual collections** by the local CMO during the past years, growing from 31,1 million euros in 2007, to reach a total 54,36 million euros in 2019, with the exception of a drop experimented in the period 2008-2012 as a result of the financial crisis which affected the whole culture sector.

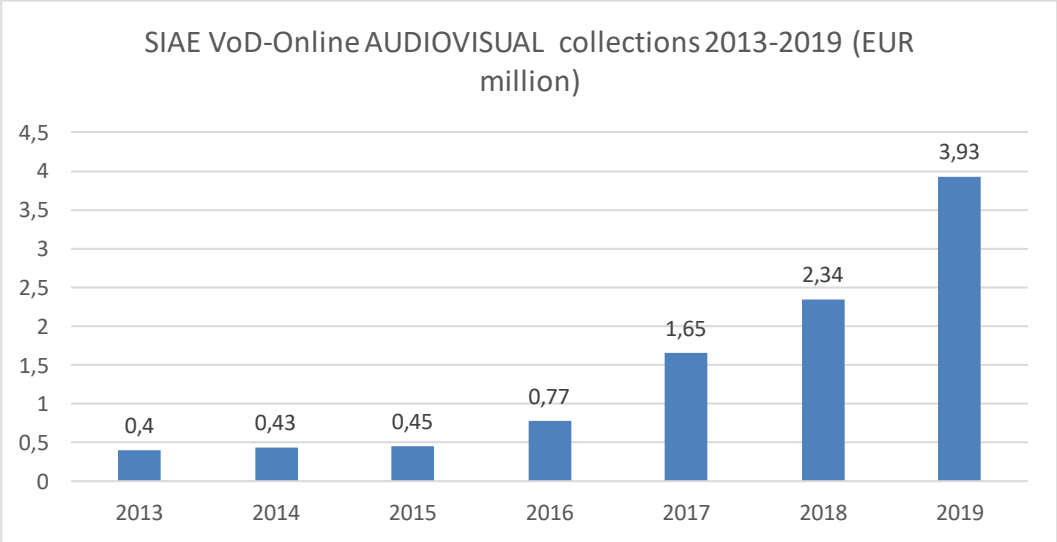
The excellent performances in 2015 and 2016 (particularly as regards broadcasting collections) are attributable to the regularisation of the agreement with Mediaset-RTI, with consequent royalty collections in current payments and arrears. On the other hand, from 2017 onwards collections have been affected by the suspension of the payments in 2017 made from the only TV satellite operator (Sky TV)[6]. In spite of this erratic trend, collections have grown about 30% in the last decade.

Table 8– Total audiovisual and broadcasting collections – SIAE – 2007-2019 (EUR million)



Collections from digital uses (table 9) **increased steadily from 2013**, when SIAE started collecting online audiovisual royalties (0.4 million euros), to 2019 (with 3.93 million euros).

Table 9 – Online audiovisual collections – SIAE – 2013-2019 (EUR million)



[6] Sky TV suspended payments of the audiovisual "equo compenso" in 2017. In 2018, SIAE started proceedings before the Court of Milan.

According to the 2019 figures published by the SIAE Transparency Report, Italy ranks **2nd in the world as regards audiovisual collections** after France, with 54.36 million euros, representing 8.76% of the global collection of audiovisual rights. This excellent result is in large part due to the positive effects of the unwaivable remuneration right regime for audiovisual authors established in the Italian Law.

B. Funding cultural and social activities

Italy has become a global leader in protecting culture and cultural communities because of its strong equitable remuneration rights' regime.

Article 71-octies of the Italian Copyright Law requires the authors' society SIAE to allocate 10% of the private copying remuneration to activities that support the creativity and national and international cultural promotion of young people, under the guidance of the Ministry of Culture. In 2019, private copying remuneration from the audiovisual repertoire amounted to 9.1 million euros[7].

As shown in the 2019 SIAE Annual Report, and in the 2019 SIAE Transparency Report, SIAE allocates these resources to programs such as training of artistic professionals and support for young authors in the international market. In 2019, these funds amounted to 13.5 million euros and financed 144 projects.

Further, through a **solidarity fund**, SIAE provides financial support (charitable solidarity activities and social assistance) to authors who are in a disadvantaged situation due to age and physical, economic, social or family conditions. In 2019, the fund allocated to solidarity activities amounted to **1.6 million euros**.

During the COVID pandemic financial crisis in 2020, SIAE financed an **Emergency Solidarity Fund** amounting to 500,000 euros and immediately offered 2,500 food packages to members in conditions of poverty and/or disability and/or in precarious health conditions. At the same time, an **Extraordinary Support Fund** was created in favor of all members, amounting to 60 million euros, aimed at supporting the royalty distributions over the following two years. Finally, upon proposal of SIAE, the Italian Government agreed to allocate the 10% of the private copying remuneration to authors, performers and cultural agents who have been directly affected by the pandemic crisis.

Detailed information of all the activities developed during 2020 is available here:
https://authorsocieties.eu/content/uploads/2020/04/press-release-covid-19-emergency-measures-adopted-by-siaes-management-board.pdf

All measures adopted by SIAE to weather the COVID crisis were largely leveraged by the collections from private copying and equitable remuneration rights for audiovisual authors.

5 Conclusions

Italy has developed a world-beating audiovisual industry over many years, encompassing films, dramas, TV programmes and other audiovisual works. This is reflected in the sector's economic growth, with data showing revenue growth, increases in film productions, box office revenues, growing exports, increased royalty collections to authors and positive comparisons with other countries internationally.

The consolidated legal regime based on unwaivable rights to remuneration for audiovisual authors has played a key role in this successful evolution. The right was a key factor to promote creativity, nurture a skilled and incentivized creative community, and, in turn, foster employment and economic growth across the sector.

[7] SIAE 2019 Annual Report