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LATIN AMERICA AND THE CARIBBEAN

NEWSLETTER

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PRIVATE COPYING LAW IN MEXICO AND THE DOMINICAN REPUBLIC

DRAFT BILL ON DROIT DE SUITE IN ARGENTINA

GLOBAL COLLECTIONS INCREASED 5.8% IN 2021

CISAC TO PROMOTE BUYOUT CAMPAIGN

CALLING FOR IMPLEMENTATION OF PRIVATE COPYING LAW IN MEXICO AND DOMINICAN REPUBLIC

Although Peru and Paraguay have implemented the right to remuneration for private copying since 2010 and 2011 respectively, countries such as the Dominican Republic and Mexico are still working towards it.

Text: Marcy Rangel

Private copying provides compensatory remuneration for the indiscriminate use of content through different devices. These include mobile phones, computers, audio players and memory sticks.

Any reproduction must be authorised by the creator. The legislation limits authorisation through exceptions for reproducing or copying music for personal use. Compensation must be established for the devices or hardware through which such reproductions of works and other services, such as those mentioned above, are carried out. This law, which has already been implemented in Latin American countries such as Peru and Paraguay, is under discussion for approval in Mexico and the Dominican Republic, where efforts have been underway to advance its implementation.

Roberto Cantoral, Director General of the Society of Authors and Composers of Mexico, says that compensatory remuneration for private copying has been approved since 1997 in article 40 of the Federal Copyright Law. Cantoral explains, "What happens is that, unfortunately, due to a legal technical question, it has not been possible to implement it. The law recognises the right to private copying and that those who have the right to compensatory remuneration are creators. What is not established is who is obliged to pay this amount".

In his analysis, this compensation should be paid by manufacturers and importers of devices that allow reproduction of works protected by authors' rights. They should be paid either to authors' societies or through a one-stop shop where payments are distributed among all rights holders in order to facilitate users and provide legal certainty. "It's not only about music, but also about film, visual or other artists such as choreographers, set designers and writers. In short, it is about all organisations from all cultural disciplines in order to establish a balance between what the exploitation of the devices generates and the benefits that the authors of works receive," says Cantoral..

In the case of the Dominican Republic, a law exists, but a further a regulation is needed to enforce the law. . Valerio De León, President of the General Society of Dominican Authors, Composers, and Music Publishers, says:"Decree No. 458 has been applied since 2004. It has many ambiguities that have prevented it from being put into practice. Our approach has been based on the idea that compensation should be collected before the product is released from customs. This would be done through a one-stop shop made up of all Dominican authors' societies and with the support of the National Authors' Rights Office.

Cantoral underlines that the main difficulty preventing reform of the law is the strong influence and power held by technology device manufacturers and importers. This prevents authors' societies from educating legislators about the need to compensate creators.

However, "these are the same large companies that pay this compensatory remuneration for private copying in other countries.

"This compensation should be paid by device manufacturers and importers, which enable the reproduction of works protected by author's rights, to authors' societies or through a one-stop shop, where the payment would be distributed among all rights holders".

Roberto Cantoral

Why don't they include Mexico? Devices in the country cost as much or more than in countries where compensatory remuneration is done," he says. In the case of the Dominican Republic, Valerio De León says, "In meetings we have held with state and government officials, we have managed to raise awareness about this right for creators. In this sense, progress has been made in defining the reforms that the decree must have in order to be viable in the coming months".

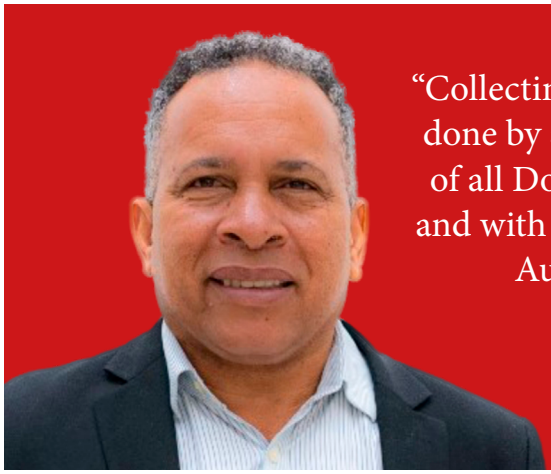
One of the most important benefits for authors and performers is the possibility of considerably increasing royalties and allocating a percentage of these resources for training authors, financing career development projects and strengthening authors' societies so that they can continue to work on behalf of creators. For authors, it will be a improvement for authors, both financially and emotionally. It is an insurance for authors who may not have the same creative capacity as they do in their best years.

In the Dominican Republic, there is a "one-stop shop" to collect levies. This comprises several organisations: the Dominican Society of Performing Artists the General Society of Dominican Authors, Composers, and Music Publishers, the Dominican Society of Phonographic Producers, the Society of Audiovisual Producers and the Dominican Society of Plastic Artists. "There are other societies being set up. This law foresees that a percentage will be reserved for them when they are formalised," clarifies De León.

In Mexico, once it is decided who is required to pay compensation for private copying, there will be 180 days, in accordance with Mexican legislation, to define the amounts for each device. In addition, " We have raised political awareness so that creators can be part of this digital ecosystem. We have worked for recognition of the need for justice and promoted a fair balance for creators' rights. The manufacturers and importers are the ones who have to assume responsibility for this payment and not the end user," Cantoral explains.

Meanwhile, in the Dominican Republic, meetings have been held with the country's press and journalists "to make the media aware of what is happening in regard to private copying and the benefit that this will generate for creators and other rights holders," says De León.

In 2020, CISAC in collaboration with BIEM and Dutch society Stichting de Thuiskopie, produced the Private Copying Global Study. The report revealed that private copying levies in Latin America generated approximately €3.9 million in 2018. This was more than regions such as Canada and the United States, which collected €1 million, or Asia-Pacific, which collected €0.3 million.



"Collecting private copying would be done by a one-stop shop comprised of all Dominican authors' societies and with the support of the National Authors' Rights Office".

Valerio De León

The report states that, copyright protection in the Latin America region has been strengthened, helped by the boom of the creative economy. This is particular the case for private copying. This compensatory remuneration is an essential source of income for authors and rights holders around the world. But it is much more likely to succeed if it is accompanied by properly enforced laws together with effective collection mechanisms.

GLOBAL CREATORS' COLLECTIONS UP 5.8% IN 2021 BUT STILL BELOW PRE-COVID LEVELS

Global royalty collections for creators of all repertoires returned to growth in 2021, rising 5.8% to EUR9.6 billion but remaining well below pre-pandemic levels.

Despite a 27.9% rise in digital royalties helped by the growth of subscription streaming, total worldwide collections in 2021 were still 5.3% lower than in 2019.

The result illuminates the disastrous impact of the two-year lockdown on live and public performance income, the potential for further digital growth and the urgent need for actions to unlock more value for creators in the streaming market.

These are among the key highlights of the 2022 Global Collections Report published by CISAC (International Confederation of Societies of Authors and Composers). The report provides comprehensive data and analysis of collections across all repertoires including music, audiovisual, visual arts, literature, and drama.

Key numbers:

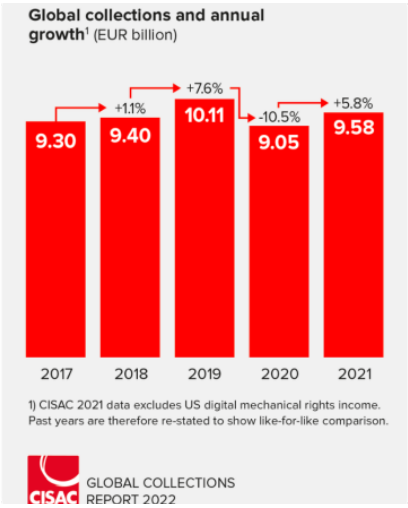
New and extended digital licensing deals by CISAC member societies, coupled with streaming and subscription growth, helped digital collections to increase by 27.9%. However, despite the shift to streaming, which accelerated under COVID, digital still makes up only 32.6% of all royalty collections – less than half the share accounted for by digital in the recording industry.

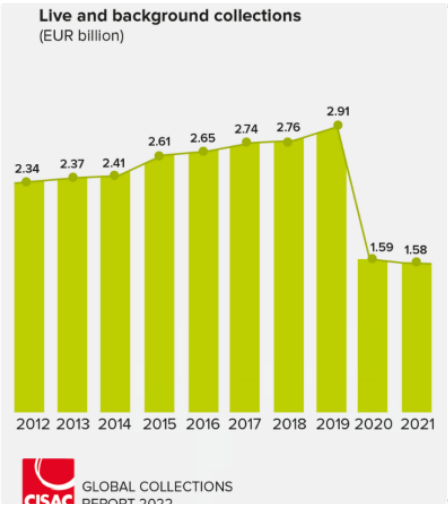
Revenues from live and background uses stayed flat in 2021 at EUR1.6 billion but were still 45.8% below their pre-pandemic total of EUR2.9 billion in 2019.

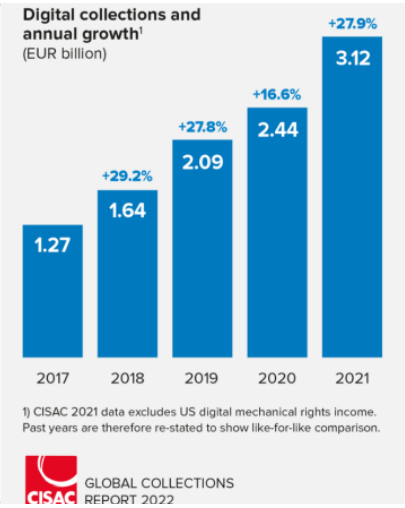
Income from TV and Radio, creators' largest royalty stream, remained relatively robust through the pandemic but saw a slight decline of 1.8% in 2021.

Music was the only repertoire reporting increased royalties in 2021, with growth of 7.2%. The drama sector, most vulnerable to lockdowns, saw royalties down 13.8%. Audiovisual collections declined by 2.8%, literature by 3.9% and visual arts by 1.2%.

Europe and Africa saw the largest collections growth, up 7.5% and 17.1% respectively. Latin America was the only region to decline in 2021, with a 44% fall in live and public performance collections.







CISAC Director General Gadi Oron: "After the 10% fall experienced in 2020, our societies' return to growth last year is an impressive achievement. Bearing in mind that income from live concerts and public venues was largely non-existent, the acceleration of digital licensing by many of our members to offset the decline in other areas is a real success story. The recovery is only half done, though. There is, without a doubt, much more room for growth, and to achieve that, we need to bring more value to creative works in the digital market and promote a fairer ecosystem for creators."

CISAC President Björn Ulvaeus: "Digital royalties collected by CISAC societies are growing impressively, but the streaming world is still unfinished business when it comes to ensuring a fair environment to earn a living. Too much of the data needed to identify and remunerate creators is incomplete or missing when works are ingested on streaming services. The result is a lot of money that is left on the table when it should be going into creators' pockets."

CISAC Board Chair, Marcelo Castello Branco: "We need to see this year not just as a return to normality, but as a bridge to the next phase. In the near term, we face the prospect of economic slowdown ahead and the risks that come with the unusual combination of inflation and recession. Subscription prices are already undervalued and need to be raised, with prices having barely changed since the early days of the streaming model. Fair value and fair terms are essential so as not to compromise the remuneration of rightsholders."

More information https://www.cisac.org/

CISAC TO PROMOTE ITS BUYOUT CAMPAIGN IN LATIN AMERICA

©FOTO: APDAYC

The board of the Latin American and Caribbean Committee agreed to collaborate on a campaign to support creators who face increasing demands for the assignment of their rights when negotiating the use of their works by streaming services and broadcasters.

This regional campaign, to be launched in 2023, will focus on the effects of buyout contracts on creators' rights. The initiative was agreed at a meeting in Lima on 12 November attended by CLC President Armando Masé and other representatives, including CISAC Regional Director Rafael Fariñas.

CISAC has the legal expertise and global reach to assist creators and societies facing the growing challenge of buyout contracts. In 2020, CISAC published a study examining buyout practices in Latin America, which includes an analysis of national laws and findings that serve as a framework to help guide the collective management sector, as well as legislators, judges and policymakers.

The initiative, which will include educational materials, interviews with creators and policy recommendations for legislators, IP professionals and government offices, will be linked to CISAC's global educational campaign on buyouts, Your Music Your Future International.

DIGITAL MANAGEMENT TRAINING AMONG PRIORITIES

SUPPORT TO SOCIETIES IN CENTRAL AMERICA AND THE CARIBBEAN

Panama hosted a meeting between Central American and Caribbean authors' rights societies and CISAC Regional Director Rafael Fariñas to update issues in the region and define priorities for 2023.

Representatives from SPAC (Panama) ACAM (Costa Rica) ACDAM (Cuba) AEI- GUATEMALA (Guatemala) ACIM (El Salvador) SGACEDOM (Dominican Republic) AACINHM (Honduras) COSCAP (Barbados) and JACAP (Jamaica) took stock of the current state of collection, documentation and distribution processes in their respective countries as well as collective management legal issues.

©FOTO: SPAC

At the meeting, societies agreed to increase CISAC's support for intellectual property offices and other organisations lobbying activities, as well as to implement a special training programme for societies on digital authors' rights management models, focussed on licensing processes and tools for documentation of works and rights distribution.

he meeting was attended by the Director General of Authors' Rights, Eric Velasco. He gave the opening remarks that highlighted the importance of these meetings and the need to strengthen the collective management system in the region.

Activities
of the regional office Second semester 2022

During the second half of 2022, CISAC's regional office participated in organising and sponsoring authors' rights and collective management events, provided comments in regional discussions and coordinated support for organisations that requested it.

In August 2022, the regional office gave a lecture on buyouts at the International Seminar on Authors' Rights in Panama in the framework of the International Book Fair. The event included meetings with visual creators, who expressed interest in setting up a visual creation organisation. The meetings were attended and supported by Fabiana Nascimento (AUTVIS) and María José de Fuente (AGADU).

In September, steps were taken with audiovisual authors requesting CISAC support to create a new audiovisual entity in Venezuela . The regional office had previously organised an online training workshop on remuneration rights for these audiovisual creators.

Also in September, the Regional Director gave presentations on authors' rights at the International Congress on Intellectual Property. The congress was organised by the Austral University and ELAPI. The Regional Director also spoke at the II Regional Seminar on Cultural Industries and Intellectual Property, coordinated by the Instituto Autor and the Spanish Embassy in Guatemala, as well as at the online training course organised by WIPO and the Judiciary School for Judges of the Dominican Republic.

On 12-13 October, a meeting of the Quito Pact, a multi-sectoral alliance created by CERLALC and supported by CISAC and other organisations, took place in Chile to promote greater presence, visibility and economic participation of creators to the benefits of the creative economy. In addition to the Regional Director, the meeting was attended by Rodrigo Osorio, President of the Chilean society SCD and other SCD representatives.

In November, the Regional Office coordinated the CLC meeting in Lima and the meeting of Central America and the Caribbean societies in Panama. The office supported SAVA in meeting Senate officials in Argentina.

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Legally speaking

Brazil: A reform bill was presented that incorporates new limitations and exceptions to authors' rights. It also proposes economic and criminal sanctions for the non-compliance of administrators' with their duties.

Chile: ATN and the National Television Association sig ned an agreement for the payment of authors' rights to directors and scriptwriters. This will make it possible to enforce remuneration rights recognised by the Ricardo Larraín Law (No. 20.959) for authors of audiovisual works in Chile.

Colombia: A bill is under discussion to create the Mixed Fund for strengthening the music ecosystem. Its resources include undistributed revenues of collective management organisations of authors' rights and related rights.

Mexico: The agreement establishing the definitive tariff structure for payment of resale right for the resale of original works of art, in accordance with articles 92 bis and 212 of the Federal Copyright Law, 31 ter of the Regulations of the Federal Copyright Law, which is carried out at a public auction, in a commercial establishment, or with the intervention of a merchant or commercial agent, was published in the Official Journal of the Federation.

Paraguay: The Paraguayan Congress discussed an amendment in favour of performers to the Law on Authors' Rights and Related Rights that incorporates the right to make available to the public their performances fixed in phonograms and/or videograms. It also establishes a mandatory compensation system.

NEXT Activities

02/2023
Publication of compendium on collective management
03/2023
Meeting of the regional group of AGP societies
04/2023
Assembly of the Latin American & Caribbean Committee
06/2023
CISAC General Assembly
07/2023
Regional seminar on buyouts

©FOTO: SAVA

Societies in Action

ARGENTINE SENATE PASSES DROIT DE SUITE BILL

Argentina

On 7 December, a meeting was held in Buenos Aires with representatives from the office of Senator Anabel Fernández Sagasti, in connection with the submission of the Droit de Suite bill to Congress. In attendance were Rafael Fariñas, CISAC's Regional Director for Latin America and the Caribbean, and SAVA directors Roberto Rey, President; Milagro Torreblanca, Vice-President; Ana Mattioli, Member; and Executive Director Nicolás Jusidman.

During the meeting, the regional director emphasised CISAC's international campaign for the visual artists' resale right. The resale right is where visual artists receive a percentage payment of the resale value at public auctions or galleries of their works. The need for this law to be passed in Argentina was also considered.

SAVA directors called for a prompt discussion and approval of this bill, which is of great importance for visual creators and for collective management.

At the end of the meeting, representatives of Senator Sagasty's office handed to SAVA's Directors the Bill with the Senate's entry stamp. This highlights progress towards legislation of this right in Argentina. It will be one more reason to celebrate a historic year for visual artists.

ANATEL SIGNS HISTORICAL AGREEMENT WITH

Directors and Screenwriters

Chile

An unprecedented agreement was signed in Chile between ANATEL's member channels and the Society of Audiovisual Directors, Scriptwriters and Dramaturgs ATN for the payment of authors' rights to directors and scriptwriters. This agreement will make it possible to enforce the remuneration right for authors of audiovisual works, recognised by the Ricardo Larraín Law (No. 20.959).

According to ANATEL spokespersons, access to culture is a fundamental right for Chilean society. This is why the creative work and intellectual property of authors of works shown on our screens and platforms must be recognised and protected.

The signed agreement, which establishes the tariff for the next 8 years, demonstrates once again that the willingness to dialogue is the main way to reach agreements that favour everyone and that recognise the importance of every party that make up this industry and the media ecosystem.

Daniella Castagno, ATN President and scriptwriter, indicated that "we are very happy with this extraordinary achievement that will benefit directors and scriptwriters in Chile, and especially for the willingness of the ANATEL channels to recognise the right that audiovisual creators have by law".

César Cuadra, ATN General Director, expressed his pleasure because "a new era is beginning for Chilean directors and screenwriters, as this agreement marks a before and after for our audiovisual creators".

ANATEL President, Pablo Vidal, underlined that "after years of waiting, we can be proud of this agreement between television channels and directors and screenwriters. We must continue to work together for the promotion of culture, entertainment and the development of the Chilean audiovisual industry, which has a very important place in national television".

Text: Pilar Subiabre, ATN

More information https://www.atn.cl

©FOTO: ANATEL

About
Oscar Niemeyer

To speak of Oscar Niemeyer is to mention one of the leading figures in contemporary architecture, who managed to reformulate angles and straight lines with “sensual, free-flowing curves”, as he himself put it. Born in Brazil (1907-2012), Niemeyer managed to bring together almost 500 works in Europe and America over the course of his career.

The aesthetic uniqueness of his proposal, which combines his social ideals with the urban environment, made him one of the founders of modern architecture in his country, being the architect of the construction of the emblematic buildings of the new city of Brasilia (the President’s residence, the National Congress, the seat of government and the Cathedral, among others).

As a member of the International Committee of Architects, he was in charge of developing the project for the United Nations headquarters in New York, while his time in Europe includes the headquarters of the French Communist Party in Paris (1967-1972), the mosque in Algiers (1968) and the University of Constantine (1969) in Algeria.

More information:

https://www.biografiasyvidas.com/

https://www.admagazine.com/

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