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LATIN AMERICA AND THE CARIBBEAN

NEWSLETTER

Photo: SACM

CISAC General Assembly debates Digital Challenges for Management Societies

Improved Communication and Information to Authors in Response to the Buyout Agreements

Four Priorities for CISAC Latin American and the Caribbean Committee

Societies in Action / Activities of the CISAC Regional Office

Legal Issues of Interest

AI WILL RADICALLY CHANGE THE LIVES OF CREATORS

"Ladies and gentlemen, the future is upon us. AI will radically change the lives of creators", said CISAC President Björn Ulvaeus at the opening of the General Assembly held in Mexico and organized by SACM. The first face-to-face meeting since the Covid-19 pandemic brought together representatives of 72 author's rights societies worldwide to discuss the challenges creators face in using their works in the digital environment, focusing on streaming, artificial intelligence, and metadata.

Other issues discussed at the General Assembly were the "Creators for Ukraine" campaign, State intervention in collective management, and campaigns regarding the resale right of visual artists and the remuneration right of audiovisual authors.

As part of the General Assembly activities, CISAC President and Vice Presidents, accompanied by SACM creators and executives, also met at the Government Palace with Mexican President Andrés López Obrador, who expressed his commitment to support culture and protecting authors' rights.

Photo: SACM

Gadi Oron, CISAC General Director: "If we want to survive and remain relevant — as societies, as a community, and as the guardians of creators' interests — we must tackle the challenges that this transformation brings. We must stay ahead of the curve. We cannot let forces outside our network dictate our future".

Björn Ulvaeus, President of CISAC: "We need to make sure that creators are getting the credit that they deserve in the streaming world and start understanding that AI will radically change the lives of creators. It has huge implications for the business of creativity and we are just starting to understand that".

Photos: SACM

Marcelo Castello Branco, Chair of the CISAC Board: "part of the power of CISAC is having a presence in all corners of the world... this strength is unmatched in the creative industries and provides legitimacy throughout the network. Clearly, the future will see the coexistence of multiple technological tools and possibilities and, simultaneously, complex legal challenges".

Roberto Cantoral Zucchi, General Manager of SACM and host, said: : "It is crucial for us to work together with the least developed authors' societies, in order to promote the growth of powerful collective management organizations".

CREATORS AND PERFORMERS JOIN THEIR VOICES TO FACE AI'S IMPACT

The widespread use of Artificial Intelligence (AI) models is making copyright increasingly vulnerable in a society that seems to be succumbing to this new technological trend that is advancing rapidly and with no apparent control by governments.

AI's positive impact on various social sectors is well-known. However, the need to protect human creativity and ensure that AI systems are transparent, ethical, fair and legal in respect of performers' and creators' rights is something that they are warning about.

Over 6 million creators, performers and publishers from around the world have raised their voices calling for urgent action to improve current regulatory systems and include rules to ensure creators' interests are respected in the face of AI influence.

Faced with this disturbing reality, CISAC and other international copyright and related rights organizations published an Open Letter issued on July 20, 2023, demanding creative rights for authors and performers, summarized in the following seven principles:

- Defending and protecting authors and performers' rights against AI exploitation.
- Enabling licensing and licensing compatibility for all potential AI exploits of copyrighted works, performances, and data.
- Avoiding exceptions for text and data mining that do not provide effective opting out by rights owners.
- Acknowledging credits is mandatory.
- Enforcing transparency obligations to ensure more equitable AI practices.
- Establishing legal liability for AI operators.
- AI is merely a tool serving human creativity. Therefore, international legal approaches should strengthen this.

As a result of this publication, a global campaign has been launched to distribute this Open Letter to governments and political decision-makers around the world, in order to commit them to the development and adoption of policies in line with these seven principles.

IA:

OPEN LETTER

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ADDRESSING BUYOUT THROUGH COMMUNICATION AND INFORMATION

Interview: Dubraska Aguilar

Streaming services are an easily accessible entertainment alternative for the majority of the population. However, they've become a double-edged sword for music and audiovisual works.

The cause? The implementation of buy-out contracts, commonly used by companies with over-the-top (OTT) platforms, under which authors cede their economic rights to the work in exchange for a fixed and one-time payment.

Diego Drexler, Uruguayan singer-songwriter with more than 25 years of experience in the world of music and member of the Board of AGADU, emphasizes: "You are always waiting for the almost heavenly call from the record or audiovisual production company, or from the programmer of a festival where you want to play. Who doesn't get excited when you're contacted by Amazon, Netflix or Disney? And the first thing you say is, where do I sign?".

Many creators are under the mistaken impression that this compensation is the great solution, when in fact it is just the opposite. Geraldo Vianna, Brazilian composer and member of the Board of UBC, emphasizes that it is natural that contracts are primarily aimed at protecting the interests of the creators: "We know that the final word is the creators', but it must be made clear that one thing is a decision based on reality and knowledge, and another is a decision based on the need of the moment".

The voices that warn the creators are growing louder. In this vein, the portal yourmusicyourfuture.com highlights the concerns of some authors and composers about how to compensate music creators for their significant contribution to shows and movies made by streaming services. Emmy-winning composer Geoff Zanelli urged songwriters to be aware of their options when it comes to compensation in these projects and to believe in the potential of their work so as not to jeopardize its success for the sake of a buyout clause.

Photo: Diego Drexler

Then, he explains, the problem comes because "contracts are not read; you just sign them and then you cry over spilled milk".

Organization is a Priority

Drexler says that he learned his craft as a singer-songwriter by stumbling along the way. "Without being prepared, my band started getting played on the radio and gradually the tours came. With the record contracts came hard clauses. Basically, they wanted 50% of all my creations. While all my colleagues signed, I decided to enter the world of copyright and asked my society, AGADU, for advice so I could understand what I was signing". Vianna stresses that in Latin America "we have to speak with a single voice. This is a battle of many interests, and if we fail to cooperate, we may end up with negative results, so it is important to dive into the legal aspects of each country to know the legislation and to be able to inform authors authoritatively that the future depends on good practices".

Vianna and Drexler agree that training and information must include a clear, comprehensible message that defines the issue and the severe consequences of signing these agreements. They both recommend that no document be signed without having consulted the professional teams of the management societies. "Go to the societies and ask, the doors are open; I did it as a musician in 2006, and now that I am on the other side, as a member of AGADU, I am doing it for creators who find themselves in a complex position", Drexler said.

Faced with the impact of OTT platforms, authors of audiovisual works - scriptwriters and directors - have launched campaigns for a remuneration right to cope with the brunt of this type of contract. Chile, Colombia, Argentina and Uruguay enacted specific laws or reforms to that effect, and the management societies are responsible for collecting the rights. Other countries such as Panama and Brazil are moving in this direction.

In 2020, CISAC presented a study on the extent of the buyout in Latin America, which is a legal analysis of the copyright laws of the countries in the region, in order to provide guidance to creators in relation to the buyout clauses and to inform judges and public policy makers about the negative effects of these contracts and the need for measures to protect creators' rights.

Creating is an author's right and should not mean giving up one's work. Geraldo Vianna believes that young and new authors should be better informed. "We could have a big problem, so we have to think about the future".

Photo: Geraldo Vianna

CISAC'S LATIN AMERICAN AND THE CARIBBEAN COMMITTEE FOCUSES ITS ACTIVITIES ON DIGITAL MANAGEMENT, BUYOUT, RESALE RIGHTS AND REMUNERATION OF AUDIOVISUAL AUTHORS

Photo: Cadu Andrade y Thereza Babe

In April, the CISAC Regional Committee for Latin America and the Caribbean (CLC) held a gathering in Rio de Janeiro. The event drew over 100 participants, including representatives from authors' societies and observers from the United States and Europe.

More than 100 representatives of Latin American and the Caribbean societies, CISAC's Latin American and the Caribbean Committee (CLC) members, and observers from the United States and Europe gathered in Rio de Janeiro for the region's annual meeting.

CISAC's Director General, Gadi Oron, presented CISAC's projects and priorities. He emphasized the need to strengthen the role of management societies in the face of the challenges posed by new models such as music streaming and the impact of artificial intelligence. For his part, Rafael Fariñas, Regional Director, referred to the growth of digital rights, which now account for 38% of total revenues in the region and more than 60% in countries such as Mexico.

During the Assembly, the Regional Buyout Campaign was presented through a panel discussion with specialists from Brazil, Peru, and Uruguay and testimonies from authors, including Geraldo Vianna (Brazil), Carlos Lara (Mexico), and Magdalena Matthey (Chile). The campaign will continue in 2023 with more testimonials from Latin American authors on buyouts. Meetings and informative forums will be held in different countries throughout the region.

Likewise, the CLC Assembly adopted resolutions in support of the bills on the resale right of authors of visual works in Argentina and Chile, promoted by the SAVA and CREAIMAGEN societies, and in support of the remuneration right of audiovisual authors in Brazil, promoted by the Brazilian societies DBCA and GEDAR. In the context of these initiatives, the Brazilian Parliament is considering a bill containing provisions on the remuneration right of audiovisual authors and other rights holders.

At the meeting in Rio de Janeiro, the new Board of the CLC was elected, headed by Alexis Buenseñor (AGADU) and with the following members: Roberto Mello (ABRAMUS), Geraldo Vianna (UBC), Rodrigo Osorio (SCD), Rafael Manjarres (SAYCO), Víctor Yunes (SADAIC), Elizabeth Ambriz (SOMAAP), Miguel Angel Diani (ARGENTORES), Juan Fernando Velasco (SAYCE), Jorge Estrada (AEI-Guatemala), and Armando Massé (APDAYC).

Author-oriented Work

Buenseñor highlighted common issues to support societies and, therefore, creators as part of his management. "My flagship is going to be information and communication so that immediate action can be taken in the face of some inconvenience. If one society communicates a problem, another will be able to anticipate and prepare for it", he says.

He also says that he trusts his working team to promote the education necessary in this digital world, especially if we want to avoid the collection of a work's rights continuing to benefit the author's environment rather than the author. "We need to raise awareness of the tools available to authors themselves, for example, through CISAC, the Committee or the International Council of Music Authors", he points out.

Buenseñor, a symphonic musician with about 100 works to his name, refers to the importance of societies having the most substantial and solid collective management possible, as it is the best tool authors have for collecting their rights and their protection.

"Each country's situation, culture, good relations with government copyright authorities, and recognition of creators determine each Latin American society's level of development", he says.

Issues related to buyouts, private copying, artificial intelligence and the recognition of authors' rights, mechanical licenses in the non-analog environment, and an author's guide in the digital world will be the focus of the new President of the Committee. "I am aware of the responsibility I have been given, and I am going to work to repay it".

Alexis Buenseñor, President of the CLC

Photo: Cadu Andrade y Thereza Babe

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ACTIVITIES OF THE CISAC REGIONAL OFFICE

CISAC published and distributed the third edition of the Regional Newsletter in February 2023, covering topics of interest to Latin American and the Caribbean societies.

In March 2023, the Regional Office coordinated a meeting with Latin American and the Caribbean visual arts societies in Montevideo, Uruguay. Participants in this regional meeting included AGADU (Uruguay), AUTVIS (Brazil), CREAIMAGEN (Chile), ARTEGESTION (Ecuador), APSAV (Peru), SAVA (Argentina), SOMAAP (Mexico), COSCAP (Barbados) and VEGAP (Spain), who discussed, among other issues, the implementation of a one-stop system for the management of digital rights of visual creators in the region as part of the work plan.

Photo: AGADU

In April, the Universidad de Azuay, jointly with the CISAC's Regional Office, the Ecuadorian Society SAYCE, and the TJCA, co-organized the First International Congress on Intellectual Property in Cuenca, Ecuador.

That same month, CISAC's Regional Director met with Ecuador's SENADI Copyright Director to discuss that office's administrative sanction against the visual arts entity ARTEGESTION.

The CISAC Committee for Latin America and the Caribbean, together with the Regional Office and the Brazilian societies UBC and ABRAMUS, organized the annual face-to-face meeting of this regional committee. From 26 to April 27, 2023, more than 100 representatives of societies from the region and observers from Europe and the United States met in Rio de Janeiro.

On May 4, 2023, the Regional Director took part in a panel on the digital rights market in Ibero-America at the BIME meeting in Bogota, Colombia.

Photo: Univ. Externado de Colombia

CISAC participated in a panel at the International Congress on Commercial Law and Digital Markets, organized by the Universidad Externado de Colombia on June 8-9, 2023, on the challenges of collective management in the digital use of works and related performances.

As part of the agreement between the Andean Court of Justice (TJCA for its Spanish acronym), the CISAC, and the Universidad de las Américas, with the support of the Ecuadorian Society SAYCE, the Book of Preliminary Interpretations and Judgments on Collective Management of the TJCA was presented. Copyright specialists from Latin America and Spain duly commented on it.

LEGAL ISSUES OF INTEREST

BRAZIL: Parliament is discussing a bill on freedom, responsibility, and transparency on the Internet, establishing a right to remuneration for audiovisual authors and other rights holders.

CHILE: The Senate's Culture Committee is discussing a bill on the resale right for visual artists.

COLOMBIA: A bill was submitted to create the Mixed Fund to promote the music industry, whose resources include the revenues not distributed by the management societies.

COSTA RICA: Users presented a request for an amendment to the Copyright and Related Rights Law, proposing an exception to the right of public communication in commercial establishments.

CUBA: A new Law on Copyright and Artists' Rights was approved, providing for collective management to be carried out by state-owned, non-profit organizations with their legal personality and assets, whose activities will be regulated by the Ministry of Culture.

GUATEMALA: The Constitutional Court declared inadmissible an action for partial unconstitutionality brought against articles 127, 128, and 128 bis of the Law on Copyright and Related Rights. These articles relate to exercising criminal action against those liable for crimes and misdemeanors concerning Copyright and Related rights.

MEXICO: The Copyright Institute (INDAUTOR for its Spanish acronym) adopted a resolution authorizing the resale right rates for visual artists.

PARAGUAY: Congress suspended the discussion on the amendment to the Law of Copyright and Related Rights, which seeks to establish a right of remuneration in favor of artists and performers by virtue of making available to the public their interpretations or performances recorded in phonograms and/or videograms.

SOCIETIES IN ACTION

IN MEXICO, WE ARE CELEBRATING A NEW TARIFF SYSTEM ON THE RESALE RIGHTS OF VISUAL ARTISTS

Since January of this year, a new definitive tariff system for the payment of resale right for the reselling of original works of art has been in effect, benefiting Mexican visual creators and defining a remarkable achievement in the field of protection.

The agreement, promoted by SOMAAP with the support of the National Copyright Institute of Mexico, will also favor the heirs of the payment of "resale rights, about the resale of all original works of art, as well as reproductions signed and numerated by the author, such as lithographs, engravings, prints, photographs, manuscripts of literary and artistic works, or any other kind of plastic or visual reproduction".

The percentages for resale rights range from 4% if the work is valued between MXN 1,000 and MXN 50,000; and 1.5% if the work is valued over MXN 500,001. Likewise, to "strengthen the relationship between the basic rights protected by the Intellectual Property System", the agreement includes 15% of the resale price for the benefit of the management society representing the work.

Photo: APDAYC

THE PERUVIAN MINISTRY OF CULTURE AND THE APDAYC JOIN EFFORTS TO HELP CREATORS

Great fruits come from the societies' continuous and dedicated work favoring authors and composers. An example is a meeting held between APDAYC and Peruvian Minister of Culture, Leslie Urteaga.

Among the topics discussed, the authorities of APDAYC, led by its President Estanis Mogollón, Armando Massé and Rubén Ugarteche, agreed to actively participate in the talks that the Ministry will offer to the members of the society to inform them about the RENTOCA (National Registry of Workers and Organizations of Culture and the Arts), the bonds and the economic stimulus program for the performing arts, visual arts and music that Minister Urteaga will soon announce.

During the meeting, it was decided to organize a concert of solidarity to help those affected by the natural disasters in Peru, and there was an enthusiastic discussion about the bill that establishes the broadcasting of the 30% quota of national music approved by the Cultural Commission of the Congress of the Republic, and the undeniable benefits for Peruvian musical creators.

Photo: Cadu Andrade y Thereza Babe

BRAZILIAN AUDIOVISUAL SOCIETIES MOBILIZE IN SUPPORT OF THE LAW ON THE RIGHT TO REMUNERATION FOR DIRECTORS AND SCRIPTWRITERSY

The Brazilian Societies of Audiovisual Authors, DBCA (Directors), and GEDAR (Scriptwriters) have conducted different actions, such as forums, meetings, and encounters with government authorities and legislators, to promote a right of remuneration in favor of directors and scriptwriters.

During May, attention was focused on discussing the draft Law on Freedom, Responsibility, and Transparency on the Internet, better known as the Fake News Law, which proposes to stablish a remuneration righ for these creators.

CISAC backed this effort by Brazilian audiovisual societies with a resolution from the Latin American and the Caribbean Committee and a panel discussion on these rights in the region with members of the audiovisual societies DBCA (Brazil), ATN (Chile) and ARGENTORES (Argentina).

VISUAL ARTS SOCIETY OF CHILE PROMOTES BILL ON RESALE RIGHT

The President of CREAIMAGEN, Arturo Duclós, and other authors met with the President of the Senate Committee on Culture, Heritage, and Sports, Alfonso de Urresti, to raise the need for the approval of the bill on the resale right for visual artists in Chile.

In the context of this meeting, CREAIMAGEN and other interested sectors were invited to share their points of view on the bill. The CISAC Latin American and the Caribbean Committee met in Rio de Janeiro on April 26, 2023, and approved a resolution supporting this initiative in Chile. The resolution was presented to the President of the Commission and other senators.

ABOUT THIS NEWSLETTER

The management societies of Latin America and the Caribbean support this quarterly newsletter.

Regular collaborators:

Rafael Fariñas and Macarena Silva (CISAC);
Milenys López and Diana Soto (SAYCO);
Patricia Pineda (SACM);
Sebastián Cerda (SCD);
Agustín Pérez (APDAYC);
Andrea Franco (AGADU);
Peter Strauss (UBC);
Roseany Fagundes (ABRAMUS);
Fabiana Nascimento (AUTVIS);
Erica Smith (COSCAP);
Marcy Rangel (Cultural Journalist);
Dubraska Aguilar (Journalist);
Tamara Gómez (Diagramming and Design);
Ana Patricia Passos (Translator).