

CREATOR'S REMUNERATION IN THE CONTEXT OF MUSICAL AND AUDIOVISUAL STREAMING:

THE SPANISH SYSTEM

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BELGIAN PRESIDENCY OF THE EU COUNCIL

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1. CONTEXT:

the value gap in the music streaming market

1.1. The music streaming market

- Changes in the forms of consumption.
- Changes in the business model.
- 2 types of intermediaries:
 - ✓ Digital distributors.
 - ✓ Record labels.
- Revenue sharing model based on the transfer of revenues from the streaming platform to the record companies or distributors under **licenses granted to the platform.**

1.2. The complaints of authors and performers

- **Value gap:** mismatch between the income that some digital platforms (with user-uploaded content) obtain from the exploitation of protected content and the revenues perceived by right holders.

2. REGULATORY FRAMEWORK (I): the Digital Single Market Directive

Article 18 of the Digital Single Market Directive (Directive EU 2019/790):

- Sets out the remuneration of authors and artists - when they transfer their exclusive rights - as a principle to be established by Member States through their national laws.
- **Rationale:** it is necessary to protect artists and interpreters by establishing remuneration mechanisms aimed at correcting the **imbalance** between them and other assignees or users of their exclusive rights.
- **Recital (5) of Directive 2006/115** on rental and lending rights and other related rights confirmed this need:

*(5) The creative and artistic work of authors and performers necessitates an **adequate income** as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky. The possibility of securing that income and recouping that investment can be effectively guaranteed only through adequate legal protection of the right holders concerned.*

3. REGULATORY FRAMEWORK (II): the principle of adequate and proportionate remuneration in Spain

3.1. The principle of appropriate and proportionate remuneration in the SCA

- Already present in Spain before the approval of the DSM Directive.
- **Article 46 of the Spanish Copyright Act (SCA/TRLPI)**. 2 different types of remuneration:
 - ✓ A proportional remuneration
 - ✓ Flat-rate remuneration
- **Remuneration of audiovisual authors**
 - ✓ **Article 90.4 SCA** contemplates a proportional participation of audiovisual authors in the revenues from exploitation.
- **Remuneration of artists and performers**
 - ✓ **Law 23/2006**, of July 7th, introduced a remuneration right for performers, unwaivable and of mandatory collective management, for the making available of phonograms or audiovisual recordings (through a modification of article 108 SCA)
 - ✓ **Article 108(3) SCA**, in relation to paragraphs 1 and 2 of the same article, already provided, prior to the transposition of the Directive, the right of adequate and proportionate remuneration to artists, performers or executants.

3. REGULATORY FRAMEWORK (II): the principle of adequate and proportionate remuneration in Spain

3.2. The transposition of the DSM

- **Royal Decree-Law 24/2021**, which transposed the DSM, **did not modify the Spanish Copyright Act** in relation to the principle of equitable and adequate remuneration provided in general by **article 46 SCA**, and specifically recognized for artists and performers in **article 108.3 SCA**.
- But established a **new specific article** in the Royal Decree-Law itself (**article 74**).
 - ✓ The purpose of this article was to detail a series of principles to be respected in the negotiation between the author and the assignee on remuneration.

3. REGULATORY FRAMEWORK (II): the principle of adequate and proportionate remuneration in Spain

3.3. The transparency obligation

- **Article 19** of the **DSM** establishes an obligation of transparency, obliging Member States to ensure that authors and performers receive regularly updated, relevant and exhaustive information on the exploitation of their works and performances by the parties to whom they have licensed or assigned their rights.
- This article was transposed in **Article 75** of Royal Decree-Law 24/2021

3.5. The contract adjustment mechanism

- The provision contained in **article 20 of the DSM**, which establishes a safeguard to guarantee fair remuneration to artists and authors, was transposed by **amendment of article 47 of our Copyright Act** (in accordance with the provisions of article 80 of Royal Decree-Law 20/2021).

3. REGULATORY FRAMEWORK (II): the principle of adequate and proportionate remuneration in Spain

3.6. The alternative dispute resolution procedure

- ▶ The provisions of **Article 21 of the DSM** on the need for Member States to provide for the possibility for disputes relating to the transparency obligation in Article 19 and the contract adjustment mechanism in Article 20 to be subject to a voluntary alternative dispute resolution procedure were transposed by **amending Article 194.5(b) of our Copyright Act** (in accordance with the provisions of Article 80 of Royal Decree-Law 20/2021).

3.7. The right of revocation

- ▶ Royal Decree-Law 24/2021 also introduced the right of revocation provided for in **Article 22 of the DSM**.
 - ✓ right in favour of authors and artists to revoke the transfer of copyright previously made for lack of exploitation of the protected performance.

4. FUTURE PROSPECTS: what possible scenarios are emerging?

4.1. The European Parliament Resolution of January 17th, 2024, on cultural diversity and the conditions for authors in the European music streaming market

- On January 17th, 2024, the European Parliament adopted a resolution on cultural diversity and the conditions for authors in the European music streaming market.
- The resolution recognizes that **authors and performers do not receive recognition and remuneration that reflects the true extent of their contribution** and therefore advocates fairer models for the allocation of streaming revenues to authors and performers.

4. FUTURE PROSPECTS: what possible scenarios are emerging?

4.2. European Commission study on contractual practices affecting the transfer of copyright and related rights and the creators and producers' ability to exploit their rights.

- Results expected by summer 2024.

4.3. The issue at WIPO: the GRULAC proposal

- At the 43rd session of the Standing Committee on Copyright and Related Rights (SCCR), the regional group of Latin American countries at WIPO (GRULAC) put forward a proposal for discussion on the issue of remuneration of artists and performers in the digital music environment.
- At the next meeting of the Committee (45th session of the SCCR, to be held April 15-19), GRULAC will present a work plan on copyright in the digital environment. The item will be dealt with under item 7 (other business) of the agenda.



Thanks for your attention!

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