

Committee on Development and Intellectual Property (CDIP)

Thirty-First Session

Geneva, November 27 to December 1, 2023

COMPLETION REPORT OF THE PROJECT ON COPYRIGHT AND THE DISTRIBUTION OF CONTENT IN THE DIGITAL ENVIRONMENT

prepared by the Secretariat

1. The Annexes to the present document contain the Completion Report of the Development Agenda (DA) Project on Copyright and the Distribution of Content in the Digital Environment. The report covers the entire period of the project implementation, from January 2019 to July 2023.

2. *The Committee is invited to take note of the information contained in the Annexes to this document.*

[Annexes follow]

FORM 7 – COMPLETION REPORT

PROJECT SUMMARY	
<u>Project Code</u>	DA_1_3_4_10_11_16_25_35_01
<u>Title</u>	Copyright and the Distribution of Content in the Digital Environment
<u>Development Agenda Recommendation</u>	Recommendations 1; 3; 4; 10; 11; 16; 25; and 35.
<u>Project Budget</u>	Total project budget: 556,000 Swiss francs, of which: 385,000 Swiss francs allocated for non-personnel resources, and 171,000 Swiss francs for personnel resources.
<u>Project Duration</u>	48 months
<u>Key WIPO Sectors/Areas Involved in the Project Implementation</u>	Implementing Sector: Copyright and Creative Industries Other Sectors involved: Intellectual Property (IP) and Innovation Ecosystems Sector
<u>Brief Description of Project</u>	<p>The project aimed at providing clear information about the copyright and related rights national regimes applicable to the audiovisual content that is licensed and distributed in the digital environment. In particular, the project raised the awareness of creators and stakeholders on existing national rules and assessed current issues related to copyright and related rights in digital audiovisual markets of the participating countries: Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay.</p> <p>The project also aimed at identifying, according to each national legal framework, copyright and related rights in the distribution of audiovisual content in the digital environment, with a view to providing a better understanding of the industry for local creators, right owners and stakeholders. Enhancing access to relevant information on copyright and related rights for local stakeholders, including creators, producers, digital platforms and policy makers, could assist in the development of the local digital market and in the exploitation of local audiovisual content.</p>
<u>Project Manager</u>	Mr. Rafael Ferraz Vazquez, Legal Officer, Copyright Law Division, Copyright and Creative Industries Sector
<u>Links to Expected Results in the Program and Budget</u>	<p><u>Program and Budget 2018/19 and 2020/21:</u></p> <p>Expected Result I.2: Tailored and balanced IP legislative, regulatory and policy framework.</p> <p>Expected Result III.4: Strengthened cooperation arrangements with institutions in developing countries, LDCs and countries in transition tailored to their needs.</p> <p>Expected Result IV.2: Enhanced access to, and use of, IP information by IP institutions and the public to promote innovation and creativity.</p>

	<p><u>Program and Budget 2022/23:</u></p> <p>Expected Result 1.1: More effective communication and engagement worldwide to raise awareness of and increase knowledge about the potential of IP to improve the lives of everyone, everywhere.</p> <p>Expected Result 4.1: More effective use of IP to support growth and development of all Member States and their relevant regions and sub-regions, including through the mainstreaming of the Development Agenda recommendations.</p> <p>Expected Result 4.3: Increased IP knowledge and skills in all Member States.</p>
<p><u>Overview of the Project Implementation</u></p>	<p>The following two studies, seven case studies and a creative economy note were developed in the framework of the project and all can be found in the Catalogue of DA Projects and Outputs at: dacatalogue.wipo.int/projects/DA_1_3_4_10_11_16_25_35_01.</p> <p>I. STUDY I: THE COPYRIGHT LEGAL FRAMEWORK AND LICENSING PRACTICES OF AUDIOVISUAL CONTENT IN THE DIGITAL ENVIRONMENT</p> <p>The aim of this study is to provide information on the current state of the market and on the national and supranational legal framework applicable to the online exploitation of audiovisual content in Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay. The study is divided into 6 parts, namely:</p> <p>Part 1: Audiovisual OTT Business Models in Latin America: Recent Trends and Future Evolution, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Study_Part_1/EN/LATAM%20AV%20study_part_1_EN%20REV.pdf</p> <p>This part analyzes the recent changes and future evolution of different business models of audiovisual Over-The-Top (OTT) platforms on a worldwide and regional scale. It underlines that content is a critical portion of the value proposition of an audiovisual OTT, which has led to an increase in the product range. In that context, the production of “localized” content was being singled out as a competitive advantage for all platforms. This led global players to increase their efforts to incorporate (and produce) local content.</p> <p>Part 2: The Legal Framework of the Audiovisual Sector in the Digital Environment, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Part_2/EN/LATAM%20AV%20study_part_2_EN.pdf</p> <p>Annex: Summary of National Legal Frameworks, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Part_2/EN/LATAM%20AV%20Annex%20to%20study_part_2_ES.pdf</p> <p>This part and its annex provide information on the current state of national and supranational legal frameworks applicable to the online</p>

exploitation of audiovisual content in the participating countries. The study demonstrates that countries in Latin America have different market realities for audiovisual exploitation and production. Access to online distribution channels is still a challenge for smaller local productions. The information in the document seeks to determine the legal treatment of copyright and related rights in the digital environment, the licensing systems applied, as well as the ambiguities, challenges and opportunities for the multi-territorial dissemination of content in Latin America.

Part 3: The Legal Treatment of Foreign Authors of Audiovisual Works, available at:

dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Part_3/EN/LATAM%20AV%20study_part_3_EN.pdf

This part focuses on the figure of the author of audiovisual work, although many of the conclusions reached could be analogically applicable to other rights holders, such as the interpreters. This study analyzes the functioning of the management of rights in foreign audiovisual works and examines the reasons that hinder the protection of the author of audiovisual work when it is exploited internationally.

Part 4: Contractual Practices in the Latin American Audiovisual Sector in the Digital Environment, available at:

dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Part_4/EN/LATAM%20AV%20study_part_4_EN.pdf

The particular aspects of Latin American audiovisual sector contractual practice covered in this study specifically concern transactions between parties regarding the transfer/disposal/assignment of copyright and related rights and dispositions regarding fees, remuneration, and revenue-sharing. The study takes into account the developments in digital distribution technologies, markets and business models and looks primarily at distribution and licensing contracts and contracts involving individual authors and performers as creative participants. It homes in on the changing dynamics brought on by new forms of digital uses that have made the audiovisual value chain substantially more complex in recent years. The study investigates contracts in the professional audiovisual content industry only.

Part 5: The Identification and Use of Metadata in Audiovisual Works, available at:

dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Part_5/EN/LATAM%20AV%20study_part_5_EN.pdf

This part explores the five basic problems about information and metadata related to audiovisual work: a) delay in data collection and loading; b) lack of data; c) loss of data; d) data contamination and inconsistency; and e) volume of data. In particular, it emphasizes the simplification of information management to reduce the costs associated with content distribution. The importance of metadata in streaming distribution channels relies on the fact that it is difficult for the public to access the content without adequate information for its

discoverability.

Part 6: WIPO Alternative Dispute Resolution (ADR) Methods for Audiovisual OTT Business Models, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Part_6/EN/LATAM%20AV%20study_part_6_EN.pdf

With the growing number of contracts made for a single audiovisual production, some of them not even initially in written form, disputes frequently arise in the different phases of the audiovisual sector. Given the increasing international aspect of distribution through streaming, the WIPO Arbitration and Mediation Center (the WIPO Center) saw an increasing number of mediations and arbitrations of cross-border disputes in the film and media industry. This part presents an overview of the use of alternative dispute resolution mechanisms to resolve these disputes, WIPO's experience in this field, and the global trends developing in this digital environment. It shows that more attention to Alternative Dispute Resolution in the audiovisual sector could facilitate smaller productions in Latin America.

II. STUDY II: THE AUDIOVISUAL CONTENT IN THE PUBLIC DOMAIN AND ORPHAN WORKS

Audiovisual works, although fairly recent in history, are subject to the risks of deterioration and loss due to the fragile media in which the works are fixed. This study provides an analysis of the legislations of Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay. It is designed to help researchers, inventors and entrepreneurs gain access to and use technology and business information and knowledge in the public domain for the development of new innovative products and services in their own country. The focus of the study is on information and technology disclosed in patent documents. The study is available at:

https://dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Orphan_Works/EN/LATAM%20AV%20study_Public_Domain_ES.pdf

III. CASE STUDIES:

The following seven case studies assess the process of content distribution through digital channels in selected countries. They present concrete examples of some local productions distributed online with a view to better understanding the steps made by different actors in their attempt to reach users through digital means.

Case Study I: Women in the Audiovisual Industry: A Panorama of Latin American Countries and Spain, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_I/EN/LATAM%20AV%20case%20study%201%20EN.pdf

This case study aims to discuss female participation in the audiovisual industry in some Latin American countries and Spain. For this purpose, it makes a sketch of a panorama of the current situation of gender diversity, highlighting the proportion of women in creative leadership roles, *i.e.* the credits in direction, scriptwriting and

production. Whenever possible, it presents information on other technical-artistic roles, as well as on the sector's workforce as a whole and on the cast of film narratives. This last set of data is not available for all countries and therefore is not comparable; it contributes, however, to the understanding of the different scenarios and was, thus, included in the sections pertaining to each country.

Case Study II: The experience of a Brazilian Independent Producer with Online Distribution of Audiovisual Content, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_II/EN/LATAM%20AV%20case%20study%202%20EN.pdf

This case study investigates the main shifts in the legal structuring of audiovisual production in Brazil as a result of digital distribution, following the perspective of the rights required to ensure the efficient distribution of audiovisual work. It also aims to point out the main challenges and trends of Brazilian audiovisual producers in this context. In order to understand the practical implications, this case study builds on the experience of the Brazilian producer O2 Filmes.

Case Study III: The Development of a Local OTT, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_III/EN/LATAM%20AV%20case%20study%203%20EN.pdf

This case study makes a comparison between Netflix and Claro Video as OTT platforms considering some key elements, such as price, accessibility, user interface, and international and Latin American content.

Case Study IV: The Clearance of Rights from the Perspective of a Brazilian Independent Producer, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_IV/EN/LATAM%20AV%20case%20study%204%20EN.pdf

This case study describes the clearance practices commonly adopted in Brazilian audiovisual production through the experience of independent producers, such as the Brazilian O2 Filmes. The case study discusses the importance of clearance of rights, which pre-existing rights are commonly assessed, the execution of clearance in the different stages of production, and whether clearance has been impacted by increased digital distribution.

Case Study V: The Role of an Aggregator in VOD Distribution in Brazil and Latin America: The Experience of Sofá Digital, available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_V/EN/LATAM%20AV%20case%20study%205%20EN.pdf

This case study investigates the role of a Brazilian-based aggregator, Sofá Digital, in the evolving Video-on-Demand ("VoD") distribution market in Latin America. The methodology for this work was a semi-structured interview, held by teleconference with Fabio Lima, Executive Partner of Sofá Digital. Aggregators surfaced as intermediaries in the distribution of audiovisual works, providing technical, business and marketing expertise and acting as gatekeepers between individual producers and local distributors, on

one side, and digital platforms on the other side.

Case Study VI: Data in the Audiovisual Business: Trends and Opportunities, available at:

dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_VI/EN/LATAM%20AV%20case%20study%206%20EN.pdf

The technologies involved in the Fourth Industrial Revolution are directly related to collecting, processing and analyzing data. The creative industry is also a big part of this revolution. Because OTT platforms provide services directly to consumers, they can collect, manage and measure data related to their catalogs and specific users. This case study analyzes some of the most important trends and opportunities involving data in OTT business models.

Case Study VII: The CINE.AR and CINE.AR Play Streaming Platforms, available at:

dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Case_Study_VII/EN/LATAM%20AV%20case%20study%207%20ES.pdf

This case study showcases two initiatives to make local content available through local platforms.

IV. CREATIVE ECONOMY NOTE

Media streaming platforms are increasingly trying to attract new subscribers. This is the case in large markets and has been a feature of the global lockdown where consumers are inevitably focused on digitally distributed media. The competition is extremely tight for online platforms. To differentiate themselves in the market, online platforms adopt various strategies, including offering of exclusive content, some of which they are producing themselves. This research sheds light on the potential drawbacks of this landscape and can be found at:

www.wipo.int/edocs/infogdocs/creative_industries/en/streaming-wars/#streaming-wars

V. SEMINARS

In the course of the project, the following seminars were organized:

The First Sub-regional Seminar was held on September 20, 2022, in Lima, Peru. The Seminar was attended by governmental representatives from Peru, Costa Rica and Ecuador and stakeholders from Peru, who discussed the reality of smaller audiovisual markets in the post-COVID-19 context in the digital environment.

The Second Sub-regional Seminar was held from 28 November to 2 December 2022 in Buenos Aires, Argentina. The meeting was attended by governmental representatives from Argentina, Brazil and Uruguay. It also combined a stand-alone event and presentations during one of the most relevant audiovisual events in Latin America, the Ventana Sur. This allowed to reach out to professionals from the audiovisual industry and to provide useful information for their daily activities.

	<p>The Regional Seminar on the Latin American Audiovisual Industry in the Era of Streaming was held in Brasilia, Brazil from June 12 to 13, 2023. The participants of the Seminar included representatives from the governments of 19 Latin American countries, as well as experts from the audiovisual sector. The seminar offered an opportunity to evaluate and discuss possible approaches on how to foster the local and regional audiovisual market in the face of common problems that exist in many of the countries in Latin America. One of the key conclusions of the seminar was the lack of opportunities to have precise information and explore solutions as a region.</p>
<p><u>Key Results and Impact of the Project</u></p>	<ul style="list-style-type: none"> - Mapping of different legislations applicable to the distribution of audiovisual works through OTTs in Latin America. - Identification of current issues that impact the Latin American digital market. - Identification of examples and experiences within the current digital market in Latin America. - Data-based analysis of the impact of the COVID-19 pandemic on the audiovisual OTT market in Latin America. - Insight information to Latin American governments about the current status of the audiovisual sector in the region. - Initial approximation between participating countries on how to search for joint initiatives in the audiovisual area. - Identification of the needs of both the industry and governmental representatives in understanding the use of IP as a key element in the development of local audiovisual industry and, in particular, for micro, small and medium-sized enterprises (SMEs). - Milestone recompilation of initiatives to measure the participation of women in key roles in the audiovisual industry. - Provision of information to audiovisual professionals, in particular, Latin American small and medium-sized audiovisual producers, regarding the challenges in navigating the copyright and related rights framework in the audiovisual sector.
<p><u>Experience gained and lessons learned</u></p>	<ul style="list-style-type: none"> - Identification of cross-cutting IP issues that are also applicable to the digital audiovisual sector. - Challenges to engage with the industry in a horizontal manner about IP due to compartmentalized parts of the industry (information technology (IT), telecommunications, audiovisual, legal, etc.) rendering it cumbersome to reach out to the professionals on the ground.

- Scarce information available about the digital Latin American market and the role of copyright and related rights for the market and creators.
- Little interaction between IP experts and audiovisual professionals in spite of the great interest of professionals to learn more about current copyright issues that are relevant to their business.
- Positive experience in engaging with the audiovisual industry through international events where a wide array of relevant topics is discussed but where IP is normally not addressed.
- Whenever possible and within available resources, it is important to include more beneficiary countries in the pilot project. This was demonstrated by the involvement of several Latin American countries, beyond the initial six participants, who had the opportunity to benefit from the project's deliverables.
- Virtual activities cannot always replace in-person meetings effectively, but when combined, they provide a highly valuable approach to engage a wider audience and feature speakers from diverse backgrounds. It is important to note that in-person events remain a more efficient strategy for reaching stakeholders who may not be well-versed in IP, while online meetings are typically preferred by the specialized audience.
- Engaging with professionals on the ground and, in particular, with SMEs in the audiovisual sector is crucial. The experience in organizing activities at Ventana Sur, the most important Latin American audiovisual market, has proven to be an extremely efficient way to directly reach out to the industry and present valuable information about IP. The occasion generated high demand and featured very interesting discussions with professionals from different countries of Latin America, who attended the event for business opportunities. Other similar events exist in the region and should provide future opportunities.
- The organization of events with the participation of both governmental and audiovisual authorities from Latin America provided an innovative forum to discuss copyright and related rights not only from a legal perspective but also from a practical point of view. The combination of different profiles also enabled south-south cooperation between countries with more developed expertise in this field and those looking to develop their audiovisual industry.
- The topic of gender balance in the audiovisual industry generated a lot of interest from many governments. This was mainly due to the recompilation of concrete statistical data that exist in Latin America. A continuation of the recompilation of this category of data and the work towards data tracking from national audiovisual productions could finally provide a precise identification of the participation of women in this creative

	<p>industry.</p> <ul style="list-style-type: none"> - Facilitating the knowledge and experience from leading audiovisual markets (for example United States, South Korea and Spain) not only has provided information that was not previously available in a detailed manner, but also offered a number of strategies that were unknown by countries in the Latin American region. This led to the indication that international cooperation could provide an even richer dialogue between governments. - The combination between the private and the public sector is fundamental when discussing the creative industries. The mutual presence not only has provided moments of questions and answers from both sides, but also an enriching learning process about the challenges and objectives from different perspectives but still in the same area.
<p><u>Risks and Mitigation</u></p>	<p><u>Risks:</u></p> <p>The COVID-19 pandemic made impossible the timely organization of events included in the approved project (output 2, activities 3 and 4). The possibility of organizing online webinars was explored but initial discussions with stakeholders indicated that there would be little engagement with the industry, in particular, because a significant part of the relevant professionals and companies were under the negative market effects of the pandemic. The organization of the activities remotely during the early years of the COVID-19 pandemic would not have achieved the objectives of the project.</p> <p>Considering the economic circumstances of the audiovisual market, the outputs of the pilot project could serve as a valuable basis for engaging with stakeholders towards the objectives of the project. In this sense, the new timeframe took into account major events taking place in Latin America where the outputs of the project could be made available to wider audiences.</p> <p><u>Mitigation:</u></p> <p>The mitigation strategy adopted included:</p> <ul style="list-style-type: none"> - postponement of the planned activities until the audiovisual industry was back into activity and transformation of in-person events into hybrid meetings. - updating of information about the Latin America OTT market in order to reflect the impact of the COVID-19 pandemic. - strengthening contact with key stakeholders aiming at including the topic of IP in the post-pandemic reactivation

	<p>of the audiovisual market.</p> <ul style="list-style-type: none"> - liaising with local stakeholders in order to combine existing major activities with the outputs of the project. For example, combining WIPO events with international audiovisual markets in order to attract the attention of audiovisual professionals from the region.
<p><u>Project Implementation Rate</u></p>	<p>The budget implementation rate at the end of July 2023, proportional to the project's total allocated budget is: 54%. Further details are available in Annex II to this document.</p>
<p><u>Previous Reports</u></p>	<ol style="list-style-type: none"> 1. The first progress report was contained in Annex V to document CDIP/24/2; 2. The second progress report was contained in Annex VI to document CDIP/26/2; 3. The third progress report was contained in Annex I to document CDIP/29/2.
<p><u>Follow-up and dissemination</u></p>	<p><u>Follow-up:</u></p> <p>Member States are encouraged to utilize the knowledge and resources generated through this project in order to initiate practical initiatives that could benefit local governments and stakeholders. Possible actions could involve expanding the range of reference materials to encompass additional territories, organizing practical workshops, creating instructional materials to assist micro and small-sized enterprises in navigating the intricate licensing processes of the audiovisual market, providing online courses, and fostering collaboration among governments to evaluate the audiovisual market.</p> <p><u>Dissemination:</u></p> <p>WIPO could enhance and expand the benefits of the project through different initiatives, including:</p> <ul style="list-style-type: none"> - Exploring engaging with stakeholders during audiovisual markets and other events that are relevant to the audiovisual industry in order to provide customized information about IP commercialization. - Organizing tailored workshops offering the opportunity to SMEs to learn in detail about licensing within the audiovisual environment and learn from experienced professionals in this area. - Facilitating forums for governmental officials to exchange experiences and practices on copyright and related rights in the audiovisual sector. - Exploring the area of co-productions and the role of copyright and related rights in conditions imposed by international financing tools. - Conducting an economic analysis of private and public financing of the audiovisual sector and the role of copyright and related rights in this field.

PROJECT SELF-EVALUATION

Key to Traffic Light System (TLS)

****	***	**	NP	NA
Fully achieved	Strong progress	Some progress	No progress	Not yet assessed/discontinued

<u>Project Outputs</u> (Expected result)	<u>Indicators of Successful Completion</u> (Output Indicators)	<u>Performance Data</u>	<u>TLS</u>
Output 1: Increased awareness of the role of copyright and related rights in the distribution of audiovisual content online	Activity 1. Delivery of a study on the copyright legal framework and licensing of audiovisual works in the digital environment.	Completed under Study I of the project.	****
	Activity 2. Delivery of a summary of national copyright and related rights applicable for the licensing of audiovisual content online.	Completed under Study I, Part 2, Annex of the project.	****
	Activity 3. Delivery of a study on audiovisual works in the public domain and orphan works in the participating countries.	Completed under Study II of the project.	****
Output 2: Better understanding the current status of licensing in the digital environment	Activity 1. Delivery of an assessment regarding the process of content distribution through digital channels in selected countries.	Completed in the form of seven case studies . dacatalogue.wipo.int/projects/DA_1_3_4_10_11_16_25_35_01	****
	Activity 2. Delivery of economic study on the digital audiovisual market.	Completed and available at: dacatalogue.wipo.int/projectfiles/DA_1_3_4_10_11_16_25_35_01/Orphan_Works/EN/LATAM%20AV%20study_Public_Domain_ES.pdf	****
	Activity 3. Holding two workshops (two days each) to exchange information and assess the implementation of output one and two.	Completed in December 2022.	****

	Activity 4. Holding a seminar on copyright and the distribution of content in the Digital Environment.	Completed in June 2023.	****
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[Annex II follows]

DA Project on Copyright and the Distribution of Content in the Digital Environment

Resource Utilization as at end July 2023

(in Swiss francs)

Cost Category	Project Budget	Expenditure ¹	Budget Utilization
Personnel Resources	171,000	-	0%
Non-personnel Resources	385,000	299,382	78%
Total	556,000	299,382	54%

¹ Excludes expenditure for project evaluation and the CDIP side event.

[End of Annex II and of document]