



QUESTIONNAIRE I MEXICO GROUP 2022

ALAI CONGRESS 2022 – ESTORIL, Portugal CENTRO DE CONGRESSOS DO ESTORIL

15-16 SEPTEMBER

QUESTIONNAIRE

ALAI MEXICO

MAIN THEME: COPYRIGHT, NEIGHBOURING AND SPECIAL RIGHTS - STATE OF AFFAIRS AND FURTHER OUTLOOK

PANEL I – PERFORMER’S RIGHTS – A COMPARATIVE OVERLOOK

- 1- What types of performers are there according to your legal framework? **Actors, Singers, Dancers, Narrator, Musicians, or to any other person who interprets or performs a literary work or artistic or an expression of folklore or that performs an activity similar to the above, even if there is no previous text that regulates its development. Art.- 116 of Ley Federal del Derecho de Autor. (LFDA).**¹
- 2- Do all types of performers enjoy Neighbouring Rights protection? **Yes.**
- 3- Does the law distinguish between featured/non-featured performers? **No.** How?
- 4- Which rights are awarded to each type of performer? **The rights are awarded to all performers. Such as:**
 - a) **The performer enjoys the right to recognition of his name in respect of their performances as well as to oppose any deformation, mutilation or any other attack on their performance that damages their prestige or reputation;**
 - b) **The performer has the inalienable right to receive remuneration for the use or exploitation of their performances for the purposes of their performances of direct or indirect profit, by any means, public communication or making available.**
 - c) **Performers have the right to authorize or prohibit:**
 - i. **Communication to the public, including broadcasting, of their performances fixed, except where such action constitutes in itself an activity transmitted by broadcasting;**
 - ii. **The determination of their performances on a material basis;**
 - iii. **The direct and indirect reproduction of the fixation of their performances, by any procedure or in any form;**

¹New Law published in the Official Gazette of the Federation on December 24, 1996.
Last reform published DOF 01-07-2020.



iv.- The public distribution of their fixed performances and copies thereof, by sale or other form of transfer of ownership of the material supports that the contain;

v.- The communication to the public of their fixed performances, through signals or broadcasts, as well as making available to the public, whether by wire or wirelessly, so that members of the public can access them from the place and at the time that each of them chooses; except in the case of broadcasting or communication to the public, whether by wired or wireless means, of fixed sounds or representations of sounds in a phonogram that is incorporated into an audiovisual work, and

vi. The commercial lease of their fixed performances, as well as their copies, even after the sale or any other type of transfer of ownership of the material supports containing them.

III- Are moral rights attributed to performers? **Yes**. Which prerogatives does it comprehend? **right to recognition of his name, and to oppose any deformation, mutilation or any other attack on their performance that damages their prestige or reputation, remuneration right.**

5-What is the nature of those rights? – Statutory? **Yes**. Contractual? **No**

6- Which of them are exclusive rights/remuneration rights? **Yes**.

7- Which exceptions/limitations generate remuneration rights for performers? **Related to authorizing or prohibiting, these rights are considered exhausted once the performer has authorized the incorporation of its performance or interpretation in a visual, sound or audiovisual fixation, provided and when users who use these material media for profit, make the payment corresponding.**

8- Which rights are transferred to music/audiovisual producers? For how long? **Unless otherwise agreed, the conclusion of a contract between a performer or performer and a producer of audiovisual works for the production of an audiovisual work entails the right to fix, reproduce and communicate to the public the artist's performances. The above does not include the right to use separately the sound and images fixed in the audiovisual work, unless that is expressly agreed. No time disposition.**

9- Are there any legal presumptions of transfer or is it voluntary/contractual? **The above does not include the right to use separately the sound and images fixed in the audiovisual work, unless that is expressly agreed. The contracts of interpretation or execution must specify the times, periods, consideration and other terms and modalities under which it may be fixed, reproduced and communicated to the public such performance.**

10- Are there any unwaivable and inalienable remuneration rights? **Yes. The inalienable right to receive remuneration for the use or exploitation of their performances for the purposes of their performances of direct or indirect profit, by any means, public communication or making available Remuneration right.**



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- 11- What type of compensation is paid in exchange? [Depends of agreements](#). How is it set? [Contractual](#). For how long?
- 12- How is “streaming” qualified in your Country for rights awarding purposes? [It refers to any media content, whether live or recorded, that can be enjoyed on computers and mobile devices over the Internet and in real time. Podcasts, webcasts, movies, TV shows, and music videos are common types of streaming content.](#)
- 13- Whose authorization is it required for the “streaming” of music/audiovisual content? [The same authorization as for any other copyright or performer, with the limitations established by law.](#)
- 14- What is the estimated level of copyright infringement in your Country? [Copyright infringement in Mexico has a very high percentage. The United States Trade Representative \(USTR\) refers to examples of both physical and online marketplaces that have reports of participating, omitting, or substantially benefiting from copyright infringement through trademark piracy and counterfeiting. It classifies, based on intellectual property reports from each country, into two lists: the Priority Watch and the Watch List. Mexico belongs for a few years to the Watch List to be considered one of the countries with more online sites for downloading pirated content, as well as the second with the highest number of downloads of pirated movies worldwide. Over-The-Top \(OTT\) piracy or Internet television \(IPTV\) piracy stems from the evolution of viewers' habits and their migration to on-demand platforms.](#)
 - [According to AMPROFON statistics:](#)
 - [It is estimated that 41.9 million Mexicans consumed some type of piracy last year.](#)
 - [It is estimated that 37.5 million Mexicans consumed pirated music last year.](#)
 - [It is estimated that 34.8 million Mexicans watched pirated movies last year](#)
 - [It is estimated that 9 million Mexicans consumed pirated books last year](#)
 - [It is estimated that 4.8 million Mexicans consumed pirated software last year](#)
 - [It is estimated that 3.4 million Mexicans consumed pirated photographs last year](#)
 - [It is estimated that 1.4 million Mexicans consumed pirate paints last year](#)
 - [It is estimated that 1 million Mexicans consumed pirate sculptures last year](#)
- 15- What is the current level of disclosure on economic returns from digital platforms?
 - a. [General Entertainment - 2.5% of total income discounting VAT - Minimum according to the project](#)
 - b. [Advertising Video On Demand \(AVOD\) - 15% of total advertising revenue minus VAT - Minimum according to the project](#)
 - c. [Rental and sale of Audiovisual Works \(TVOD\) - 2.5% of total income discounting VAT-Minimum according to the project](#)
 - d. [Simulcasting - 12% of total income discounting VAT- Minimum according to the project](#)
 - e. [Streaming “Ad Funded” - 15% of total advertising revenue minus VAT - Minimum according to the project](#)
 - f. [Subscription Streaming - 15% on subscription income discounting VAT - Minimum according to the project](#)
 - g. [Subscription Video On Demand \(SVOD\) - 2.5% of total subscription revenue minus VAT - Minimum according to the project](#)

- 16- How is performer's compensation determined for each business model? [This compensation always depends on the business model, but according to the Law \(LFDA\), it is an inalienable right of the performer, in addition to the fact that he will have the right to a royalty for public execution.](#)
- 17- Are there minimum amounts due? Any other economic benefits? [No.](#)
- 18- Do UGC platforms contribute to such compensation schemes? How? [No.](#)
- 19- Has the Beijing Treaty been implemented in your Country, at least, in part? [On March 31, 2022, our country \(Mexico\) through the DECREE approving the Beijing Treaty on Audiovisual Performances, adopted by the Diplomatic Conference on the Protection of Audiovisual Performances, in Beijing, China, on the twenty-fourth of June of two thousand and twelve, with the Declaration of the United Mexican States, adhered to the treaty of reference.](#)
- 20- Which rights are collected by Collective Management Organisations (CMOs)? [Manage and collect the rights of reproduction, distribution, rental, making available \(internet\).](#)
- 21- Which CMOs represent performers in your Country? [Asociación Nacional de Interpretes, S.G.C. de I.P. \(ANDI\) and Sociedad Mexicana de Ejecutantes de Música, S.G.C. de I.P. \(SOMEM\).](#)
- 22- Do these CMOs comply with transparency principles? [Yes.](#)
- 23- Is it possible to find out how much income is provided by each type of rights? [Yes. But this is confidential, and its information that every CMOs keep in safe.](#)
- 24- What is the current litigation level for performers' rights in your Country? [They have litigation rights like everybody person in our country. This means the can litigate to the top level \(Supreme Court\).](#)
- 25- Are there any relevant Court Decisions concerning performer's rights? [Not recently. But in 2005, we have a Court Decision related to authorizing or prohibiting, these rights are considered exhausted once the performer has authorized the incorporation of its performance or interpretation in a visual, sound or audiovisual fixation, provided and when users who use these material media for profit, make the payment corresponding.](#)
- 26- Does the Principle of National Treatment apply to all foreign performers? [Yes](#)
- 27- Are there "appropriate and proportionate remuneration" provisions? [No.](#)
- 28- Are CMO's mandates always exclusive and encompassing all rights? [Yes. But is not a mandatory situation.](#)



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29- Are there any partial/global revocation of transfer of rights agreements provisions?

- a. [Unauthorized use, if the payment is not made for the corresponding consideration](#)

30- Are there any provisions on contractual remuneration adjustments? [No](#).

PANEL II – PHONOGRAM PRODUCERS' RIGHTS

1- Which rights are awarded to phonogram producers?

[Rights to authorize or prohibit:](#)

- a. [Reproduction;](#)
[Broadcasting;](#)
[Communication to the public; Distribution;](#)
[Rental;](#)
[Making available to the public; Cable Retransmission;](#)
[Direct Injection;](#)
- b. [Any other rights?](#)
 - i. [Opposition rights](#)

2- What is the nature of those rights? – Statutory? Contractual?

- b. [They are Statutory rights.](#)

3- Which of them are exclusive/remuneration rights?

- c. [The remuneration rights are given against the exploitation that is made for direct or indirect profit of their phonograms, by any means or public communication or made available. Once a phonogram has been legally introduced into any commercial circuit, neither the performers nor the phonogram producers may oppose its direct communication to the public, as long as the users who use it for profit make the payment corresponding to those. In the absence of agreement between the parties, the payment of their rights will be made in equal parts.](#)

4- Which exceptions/limitations generate remuneration rights for phonogram producers?

- d. [The exceptions or limitations of the phonogram producer's rights -articles 148 and 151 of the Federal Copyright Law- do not give an option for remuneration as a consequence. The existing right to equitable remuneration limits the right of public communication, because the owner cannot prohibit it from being done and is only able to charge the respective remuneration, but in any case, that limit is apart from 148 and 151.](#)

5- Are there any legal presumptions of transfer or is it voluntary/contractual?

- e. [The legal presumption of transfer is when celebrating a commissioned phonogram production or remunerated collaboration contract, establishing that the right holder of the phonogram will be the one commissioning the production.](#)

- 6- What type of compensation is paid in exchange? How is it set? For how long?
 - f. [The remuneration must be contractually agreed between the parties. It can be monetary or in species. In the absence of an agreement between the parties, the payment of their rights will be made in equal parts.](#)
- 7- How is producer's compensation determined for each business model?
 - g. [Contractual between parties](#)
- 8- Are there minimum amounts due? Any other economic benefits?
 - h. [No](#)
- 9- Is digital piracy/streamripping still a major concern for phonogram producers?
 - i. [yes, due to the high rate of illicit content and music piracy, although due to the safe harbors \(DMCA\) and the DRM the problem has been reduced.](#)
- 10- Which rights are currently being collected via CMOs?
 - j. [Collective management societies intervene in the enforcement of the moral and patrimonial rights of their users, collect royalties, negotiate license terms, supervise and protect the rights of their users.](#)
 - b.
- 11- Which CMOs represent phonogram producers in your Country?
 - k. [Mexican Society of Producers of Phonograms, Videograms and Multimedia. \(SOMEXFON\).](#)
- 12- Do these CMOs comply with transparency principles?
 - l. [Yes, it must Render to its associates, annually, a detailed report of the amounts each of its partners has received and a copy of the settlements, the amounts that have been sent abroad through it, and the amounts that are in its possession, pending be delivered to Mexican authors or to be sent to foreign authors, explaining the reasons why they are pending to be sent. Said reports must include the list of the members of the company and the votes that correspond to them;](#)
 - b.
- 13- Is it possible to find out how much income is provided by each type of rights?
 - m. [No, an approximate can be known through the statistics and reports of the CMS](#)
- 14- What is the current litigation level for phonogram producers in your Country?
 - n. [Low](#)
- 15- Are there any relevant Court Decisions concerning phonogram producer's rights?
 - o. [In 2013 there was a constitutional reform in the field of telecommunications, which led to secondary legislation, in the field of telecommunications, being extremely important in relation to the present topic, since they were created with the objective of promoting economic competition in the sector. , promote effectiveness through regulation, seek the digital inclusion of society, promote transparency and accountability. It mainly had an impact on the must offer and must carry figures.](#)
 - p. [The singer Manuel Mijares lost before the Supreme Court of Justice part of the trial he holds with the EMI Music label, to whom he demands the payment of royalties for copyright in an ordinary commercial trial that began in 2017.](#)

The matter was discussed in the Second Chamber of the Supreme Court under the presentation of Minister José Luís Alcantara Carrancá, who said that Mijares can claim royalties from the record company as an interpreter, but not as an author. Under this premise, the trial will continue in court.

The case came to court after a judge ordered the record company "quarterly payments of royalties to Manuel Mijares Morán for the sale of phonograms in which the actor's musical performances had been recorded."

In December 2017, the label did not agree with the ruling and the case reached the Sixth Civil Chamber of the Superior Court of Justice of Mexico City.

Subsequently, the record company went to the First Collegiate Court in Civil Matters of the First Circuit, which in August 2018, granted protection to EMI Music.

16- Are there any revocation of transfer of rights' agreements provisions?

- q. Unauthorized use, if the payment is not made for the corresponding consideration.
- b.

17- What is considered a "phonogram published for commercial purposes"?

- r. When it is done for direct or indirect profit. It is understood to be carried out for direct profit, the activity whose purpose is to obtain an economic benefit as an immediate consequence of the use or exploitation of copyright, related rights or reservations of rights. Its use is understood to be carried out for indirect profit when it results in an additional advantage or attraction to the preponderant activity carried out by the agent in the industrial, commercial or service establishment in question.
- s. For the purposes of the provisions of article 133 of the Law, direct communication to the public of phonograms is considered:
 - I. The public execution carried out in such a way that a plurality of people can have access to them, either through phonomechanical or digital reproduction, reception of transmission or emission, or any other way;
 - II. Public communication by broadcasting, or
 - III. The transmission or retransmission by wire, cable, fiber optics or other analogous procedure.
- t. The payment referred to in article 133 of the Law must be made independently to each of the categories of owners of copyright and related rights that concur in the ownership of the rights over the form of exploitation in question.
- u. The issue in the mexican law is that the instead commercial purposes, the term used is profit or nonprofit, going further the international treaties.

18- Is there any type of phonograms that is published for non-commercial purposes?

- v. The ones that may be published for non-commercial purposes can be the ones for disabled persons (Beijing Treaty)

19- Which rights are involved in audiovisual synchronization ("production music")?

- w. Unless otherwise agreed, the conclusion of a contract between a performer and a producer of audiovisual works for the production of an audiovisual work entails the right to fix, reproduce and communicate to the public the artist's performances. The foregoing does not include the right to separately use the sound and images fixed in the audiovisual work, unless expressly agreed. This right is transferred for the commercial life of the audiovisual work.



- 20- Which rights are involved in mood music/sound branding licensing?
x. [Copyrights and related rights, as well as the rights over the phonogram.](#)

PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS

1.- Which rights are awarded to broadcasters in your Country?

- a) Fixation; [Yes](#).
b) Reproduction; [Yes](#). c) Communication to the public (with /without admission fees); [Yes](#).
d) Distribution; [Yes](#). e) Simultaneous retransmission by wire or wireless means; [Yes](#). f) Deferred retransmission by wire or wireless means; [Yes](#). g) Making available to the public by wire or wireless means; [Yes](#). h) Pre-broadcast program carrying signal protection; [Yes](#). i) Any other rights? [Any other right that can be attributed to an original work. Since according to article 95 of the LFDA, without prejudice to the rights of the works included in the cinematographic or audio-visual work, it will be protected as a original work.](#)

2- What is the nature of those rights? – Statutory? Contractual? [Statutory](#).

3- Which of them are exclusive/remuneration rights? [No](#).

4- Which exceptions/limitations generate remuneration rights for broadcasters?

5- Are there any legal presumptions of transfer or is it voluntary/contractual? [Voluntary](#).

6- What is the relevance of copyright infringement in relation to broadcasters' rights? [It's a high relevance](#).

7- Is digital piracy/streamripping still a major concern for broadcasters? [Yes](#).

8- Do UGC platforms contribute to broadcasters' rights? How? [No](#).

9- What is the current litigation level for broadcasters' rights in your Country? [Broadcaster's has the level litigation of every person in Mexico](#).

10- Are there any relevant Court Decisions concerning broadcasters' rights in your Country? [No](#).

11- Are broadcasters acting as One-Stop Shop in relation to retransmission operators? [No](#).

12- Which rights are awarded to audiovisual producers in your Country?

- a) Reproduction; [Yes](#).
b) Broadcasting; [Yes](#).
c) Communication to the public; [Yes](#). d) Distribution; [Yes](#).



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e) Rental; **Yes.**

f) Making available to the public; **Yes.** g) Retransmission; **Yes.**

h) Direct Injection; **Yes.**

i) Any other rights?

13.- What is the nature of those rights? – Statutory? Contractual? **Statutory.**

14.- Which of them are exclusive rights? **Reproduction, Distribution and Rental.** Which of them are remuneration rights? **Communication and making available to the public.**

15.- Which exceptions/limitations generate remuneration rights for audiovisual producers? **The existing limitations in the LFDA are those related to contractual aspects, and always respecting the rights of the other works involved.**

16.- Which rights are transferred to audiovisual producers? **Reproduction, distribution, public performance and performance, cable transmission, broadcasting, communication to public, subtitling and dubbing of the texts of this work.** For how long? **50 years.**

17.- Are there any legal presumptions of transfer towards audiovisual producers? **Without prejudice to the rights of the authors of the works adapted or included therein, the audiovisual work, will be protected as a primitive work.**

18.- What type of compensation is paid in exchange? **Contractual.** How is it set? For how long?

19.- How is audiovisual producer's compensation determined for each business model? **Contractual.**

20.- Are there minimum amounts due? **No.** Any other economic benefits? **No.**

21.- Do UGC platforms contribute to such compensation schemes? **No.** How?

22.- Is digital piracy/streamripping still a major concern for audiovisual producers? **Yes.**

23- What is the most recent estimation of rights' loss on account of digital piracy in your Country? **Enforcement efforts of copyright issues by the Mexican government are improving; however, levels of piracy are still high. The American Chamber of Commerce estimates that counter fitting costs Mexico £1.5 billion every year, and from the period 2016 to 2020 Mexican authorities destroyed 13 million counterfeited goods.**

24- What is the current rule in terms of audiovisual exploitation windows in your Country? **LFDA.**

25- Which CMOs represent audiovisual producers in your Country? **The Sociedad Mexicana de Directores Realizadores de Obras Audiovisuales, S.G.C. de I.P.**

26- Do these CMOs comply with transparency principles? **Yes.**



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27- Is it possible to find out how much income is provided by each type of rights? **No for the moment.**

28- What is the current litigation level for audiovisual producers' rights in your Country? **Until Supreme Court.**

29- Are there any relevant Court Decisions concerning audiovisual producer's rights? **Article 200, first paragraph, of the Federal Copyright Law establishes that collecting societies shall be entitled to exercise and enforce the rights entrusted to their management in all kinds of judicial proceedings, by the mere authorization granted to them by the National Copyright Institute.**

"LEGITIMACIÓN EN EL JUICIO DE AMPARO. LA TIENE LA SOCIEDAD MEXICANA DE DIRECTORES-REALIZADORES DE OBRAS AUDIOVISUALES PARA PROMOVERLO EN DEFENSA DE LOS DERECHOS DE SUS MIEMBROS, CUANDO ÉSTOS RESIENTEN INDIRECTAMENTE LOS EFECTOS DE LA NORMA RECLAMADA, CUYOS DESTINATARIOS SON LOS CONCESIONARIOS QUE PRESTAN SERVICIOS DE RADIODIFUSIÓN O TELEVISIÓN RESTRINGIDA.

El artículo 200, primer párrafo, de la Ley Federal del Derecho de Autor establece que las sociedades de gestión colectiva estarán legitimadas para ejercer y hacer valer los derechos confiados a su gestión en toda clase de procedimientos judiciales, por la mera autorización que les haya sido otorgada por el Instituto Nacional del Derecho de Autor. Por su parte, los artículos 3, 4, 5 y 16 del Estatuto de la Sociedad Mexicana de Directores-Realizadores de Obras **Audiovisuales** disponen que ésta tiene por objeto intervenir en la protección de los derechos, tanto morales como patrimoniales, de los directores-realizadores de cine y obras **audiovisuales**, quienes le otorgarán un mandato para pleitos, cobranzas y actos de administración. En ese sentido, cuando se cuestiona la regularidad constitucional de una norma cuyos destinatarios son los concesionarios que prestan servicios de radiodifusión o televisión restringida, pero su aplicación incide en los derechos de autor de los directores-realizadores aludidos, éstos resienten sus efectos indirectamente, por una irradiación colateral, por lo que la sociedad de gestión colectiva de interés público mencionada tiene legitimación para promover el juicio de amparo en defensa de los derechos de sus miembros, sin necesidad de demostrar específicamente que éstos son creadores de alguna obra literaria, artística o cinematográfica, pues de conformidad con el precepto inicialmente citado, se crea una presunción iuris tantum de la titularidad del repertorio que administra para el ejercicio de los derechos colectivos. PRIMER TRIBUNAL COLEGIADO DE CIRCUITO EN MATERIA ADMINISTRATIVA ESPECIALIZADO EN COMPETENCIA ECONÓMICA, RADIODIFUSIÓN Y TELECOMUNICACIONES, CON RESIDENCIA EN EL DISTRITO FEDERAL Y JURISDICCIÓN EN TODA LA REPÚBLICA. Amparo en revisión 92/2014. Sociedad Mexicana de Directores-Realizadores de Obras Audiovisuales, S.G.C. de I.P. 14 de mayo de 2015. Unanimidad de votos. Ponente: Óscar Germán Cendejas Gleason. Secretario: Sergio Ballesteros Sánchez."

30- Are audiovisual producers acting as One-Stop Shop in relation to retransmission operators? **No.**

PANEL IV - DATABASE PRODUCERS' AND PUBLISHERS RIGHTS

1- Are Databases legally protected in your Country? **Yes.** How? **By LFDA.**

2- Is there a *Sui Generis* Database producers' right or equivalent protection in your Country? **No.**



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- 3- Is it possible to evaluate its efficiency and level of enforcement? **No.**
- 4- Is there any different form of protection for Database producers or for ownership of data? **No. Is the same protection like an owner of rights.**
- 5- How does it work? **By LFDA.** Is it effective? **Yes.**
- 6- How do the courts of your Country balance the *sui generis* right with freedom of information and freedom of competition? **By Constitutional principles. The freedom of information it's a human right.**
- 7- Is the *sui generis right* protected against circumvention of TPM designed for controlling access? **No.**
- 6- Is there a special protection against online uses of press publications in your Country? **No.**
- 7- Does it apply to scientific journals and hyperlinks? **No.** How does it work?

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