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**QUESTIONNAIRE**

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**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?**

In article 80.1 of the Italian Copyright Law, the following types of performers (artisti interpreti o esecutori) are granted neighbouring rights, as detailed in the dedicated Section:

*Actors, singers, musicians, dancers and other persons, including voice actors, who play, sing, act, recite or perform in any manner intellectual works, whether protected or in the public domain.*

The specification “voice actors” was inserted by the legislative Decree 177/2021, implementing the CDSM Directive.

**2- Do all types of performers enjoy Neighbouring Rights protection?**

All the categories listed under 1 above are granted neighbouring right protection. There may be differences between music performers and audiovisual performers concerning the rights to remuneration after certain exclusive rights are assigned.

**3- Does the law distinguish between featured/non-featured performers? How?**

Article 83 specifies that the rights are granted to the persons who play a significant artistic part, even if in a supporting role, in the performance, such as the conductors of an orchestra or choir. The orchestras or choirs are granted neighboring rights provided that the orchestral or choral part of the performance has artistic value in itself.

Further rules are specified in ministerial decrees issued by the Ministry of Culture after the liberalization of collective neighbouring rights management.

**4- Which rights are awarded to each type of performer?**

All performers listed under 1 are granted the following rights:

**I- Live performances:**

- a) **Fixation**
- b) **Broadcasting**



Performers are granted exclusive rights on their live performances both for their fixation and their broadcasting, regardless of the remuneration they are entitled to when they carry out the performance.

**II- Fixed performances:**

**c) Reproduction;**

**d) Distribution;**

Performers are granted exclusive rights.

**e) Rental and lending**

Performers are granted an exclusive right. In case of transfer of the rental right, they keep an inalienable right to an equitable remuneration.

**f) Making Available to the public**

Performers are granted an exclusive right.

**g) Communication to the Public;**

**h) Public performance;**

**i) Broadcasting**

Performers are granted a right to remuneration for their recorded performances.

**j) Retransmission;**

**k) Direct Injection;**

The simultaneous unaltered retransmission of broadcasts by cable or by any other technology as well as direct injection are subject to mandatory collective management. The amendments recently introduced in the Copyright law do not specify that said acts are regulated under the regime of broadcasting right (right to remuneration), but this should be assumed for logical reasons.

**III- Are moral rights attributed to performers? Which prerogatives does it comprehend?**

The performers who play the leading parts in a dramatic, literary or musical work are entitled to have their names mentioned when their recorded or live performances are exploited in any manner. This right includes (but is not limited to) the printing of their name on any carrier incorporating the performance (article 83).

Performers are entitled to oppose any communication to the public or any reproduction of their performances which might be prejudicial to their honor or reputation (art.81). The exercise of this right is regulated by specific articles of the Law, in parallel to the protection of the economic interests of the producers.

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

Performers moral rights are statutory.

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

See 4. above.

**7- Which exceptions/limitations generate remuneration rights for performers?**

Exceptions and limitations are regulated jointly for authors' rights and for related rights.

Performers participate in the revenues deriving from private copy of videograms (audiovisual performers) and phonograms/recordings (music performers).



**8- Which rights are transferred to music/audiovisual producers? For how long?**

The transfer of performers' rights to the audiovisual producer is regulated by the copyright law, that assigns the exercise of all exclusive rights to the producer.

Actors having a main or supporting role in an audiovisual work are entitled to receive from users (such as broadcasters and VOD service providers) an inalienable equitable remuneration for all exploitation.

Music performers assign their rights to the record producer and the transfer agreement determines the duration of the assignment as well as the rights and prerogatives that the producer can exercise.

After the recent implementation of EU directive 790/2019, music performers' rights to equitable remuneration are subject to extended collective licensing regime and are administered by the performers' CMOs. Where more than one CMO are active, the three most representative CMOs are allowed to issue ECLs.

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

There are basic differences between audiovisual and music performers as to the transfer of their rights. For music performer, the transfer to the record producer is contractual; for audiovisual performers, the transfer is contractual but it is necessitated in order to comply with the exclusivity in the exercise of the copyright granted to the audiovisual producer.

**10- Are there any unwaivable and inalienable remuneration rights?**

Again, there are differences between audiovisual and music performers. After the assignment of their rights, audiovisual performers retain a right to remuneration for any type of exploitation.

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

The compensation for performers' right transfer and the duration of the transfer are regulated by agreement between the parties and mainly depend on their respective bargaining power, taking into account the importance of the role in the film and the substitutability of the performance.

The compensation rights managed collectively by the performer's CMO are negotiated by the CMO with the user and the deriving revenues are distributed, net of administration costs, to the concerned performers according to the internal distribution rules of the CMO each performer belongs to. Due to the plurality of CMOs active in the field, the Ministry of Culture has issued ministerial decrees on the matter.

As to private copy compensation, the relevant rules as to collection and distribution are contained in articles from 71-sexies to 71-octies of the Law. The compensation is based on the capacity of the blank carriers and digital memories and on the functions of the recording devices and is determined by the Ministry of Culture for a period of three years.

**12- How is "streaming" qualified in your Country for rights awarding purposes?**

Streaming is qualified as a communication to the public, more precisely in the case of on demand services it is qualified as an act of making available to the public and, therefore covered by an exclusive right. In case of non-linear streaming, only a right to remuneration subsists.

**13- Whose authorization is it required for the "streaming" of music/audiovisual content?**

Two distinct neighbouring rights subsist for streaming of recorded musical works, the record producer's right and the performer's right. The widespread practice in this field is the transfer of the performer's right to the producer. Normally, main artists are entitled to receive a share of the revenues



from the assignee record producer on the basis of specific contractual clauses. This possibility is specified in art. 80.2.d) as amended by decree 177/2019.

Session artists are paid a lump sum when their performance is recorded and in principle they are not entitled contractually to further revenues.

The situation is different for audiovisual performers in leading and supporting roles, who are entitled to an equitable remuneration for any exploitation of their performances managed through their CMOs.

**14- What is the estimated level of copyright infringement in your Country?**

According to the 2021 EUIPO report on the subject of digital copyright infringements, the level of piracy in Italy is slightly below the European average.

**15- What is the current level of disclosure on economic returns from digital platforms?**

The level of disclosure depend on the licensing agreement and the tariff provisions that vary depending on the category of licensing right owner.

**16- How is performer's compensation determined for each business model?**

**17- Are there minimum amounts due? Any other economic benefits?**

Exclusive rights are normally managed by the record producers and royalties are accounted for according to the assignment contract, normally as a revenue share.

Rights to remuneration are managed by CMOs.

**18- Do UGC platforms contribute to such compensation schemes? How?**

UGC platforms are licensed by the assignee record producers depending on the actual exploitation and, in the case of audiovisual performers, the payment depends on the applicable provisions on equitable remuneration and the collection is carried out by audiovisual performers' CMOs.

**19- Has the Beijing Treaty been implemented in your Country, at least, in part?**

Audiovisual performers' rights have existed well before the Beijing Treaty. Italy will proceed to the implementation (if any amendment is required) in line with future ratification of the Treaty by the EU.

**20- Which rights are collected by Collective Management Organisations (CMOs)?**

Performers' CMOs are active in Italy for performers' rights to remuneration, managing at least private copy remuneration (both audio and video), communication to the public and public performance.

**21- Which CMOs represent performers in your Country?**

According to the list published by AGCOM, the authority supervising collective rights management, the following CMOs are currently active:

Artisti 7607 Società Cooperativa	<a href="http://www.artisti7607.com">www.artisti7607.com</a>
Nuovo Imaie	<a href="http://www.nuovoimaie.it">www.nuovoimaie.it</a>
RASI Rete Artisti Spettacolo per l'Innovazione	<a href="http://www.reteartistispettacolo.it">www.reteartistispettacolo.it</a>
Itsright srl	<a href="http://www.itsright.it">www.itsright.it</a>
Audiocoop	<a href="http://www.meiweb.it/audiocoop">www.meiweb.it/audiocoop</a>
Evolution srl	<a href="http://www.evolutioncollecting.it">www.evolutioncollecting.it</a>
Federintermedia	<a href="http://www.federintermedia.com">www.federintermedia.com</a>
Getsound srl	<a href="http://www.getsound.it">www.getsound.it</a>



Artisti 7607 manages only audiovisual performers' rights to remuneration.

Nuovo Imaie and RASI manage both audiovisual and music performers' rights. All the other CMOs listed above accept mandate to manage both music performers' and record producers' rights to remuneration.

**22- Do these CMOs comply with transparency principles?**

All CMOs are subject to the obligations established by the CRM Directive, that is fully transposed in Italy by Legislative Decree 35/2017.

**23- Is it possible to find out how much income is provided by each type of rights?**

No reliable information are easily accessible.

**24- What is the current litigation level for performers' rights in your Country?**

**25- Are there any relevant Court Decisions concerning performer's rights?**

The current litigation level for performers' rights is not exceedingly high. Most Court decisions concern publicity rights and/or the interpretation of the assignment agreement rather than substantial matters.

**26- Does the Principle of National Treatment apply to all foreign performers?**

In principle yes, subject to the reservation provisions in international conventions.

The remuneration right afforded to audiovisual performers is granted to all EU nationals as well as to national of third countries on condition of reciprocity.

**27- Are there "appropriate and proportionate remuneration" provisions?**

Yes, after the implementation of the CDSM directive the Copyright Law is amended but it is premature to consider which are the effects of the new provisions.

**28- Are CMO's mandates always exclusive and encompassing all rights?**

No. The exclusivity of the mandate varies depending on the CMO internal rules. Moreover, in all cases, due to the rules of the CRM directive, the mandate for all collectively managed rights is applicable only on the basis of the express performer's consent. The performers have the right to withdraw their neighbouring rights from their CMO upon reasonable notice.

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

**30- Are there any provisions on contractual remuneration adjustments?**

Single individual agreements vary greatly, depending mainly on the bargaining power of the parties. In general, most performers are likely to accept standard clauses that, up to the implementation of the CDSM directive, do not include provisions of this type.



## **PANEL II – PHONOGRAM PRODUCERS' RIGHTS**

### **1 - Which rights are awarded to phonogram producers?**

- a) Reproduction;
- b) Broadcasting;
- c) Communication to the public;
- d) Distribution;
- e) Rental;
- f) Making available to the public;
- g) ~~Cable~~ Retransmission;
- h) Direct Injection;

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

Italian Copyright Law grants to record producers all the rights under 1- of this Section. Please note that, when transposing UE directive 789/2019, cable retransmission was replaced by retransmission by any type of transmission technology.

### **3- Which of them are exclusive/remuneration rights?**

The following acts are covered by exclusive rights: reproduction, distribution, rental, making available to the public.

Acts of communication to the public (non-interactive), broadcasting and public performance are subject to rights to remuneration. No specification has been inserted to clarify whether the retransmission right is a right to remuneration (in analogy with broadcasting right); the retransmission right by a third party is subject to mandatory collective management, as also authors' and performers' retransmission rights.

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

The exception for private copy generates the remuneration right as dictated by art. 71-sexies of the Law.

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

The transfer of right from the record producer to a third party is contractual.

### **6- What type of compensation is paid in exchange? How is it set? For how long?**

There are no mandatory rules on the compensation for contractual transfer of the record producer's rights, the scope of the transfer and its duration.

### **7- How is producer's compensation determined for each business model?**

The record producer collects royalties relevant to the making available right from the service provider generally on the basis of a revenue share, calculated in proportion to the actual use of its recordings (number of views or number of accesses).



The remuneration for broadcasting or communication to the public or public performance of records is also normally based on revenue share or, in specific cases, on a lump sum, applying a collective license, depending also from the scale of the exploitation.

**8- Are there minimum amounts due? Any other economic benefits?**

The Major record producers' licenses for streaming and other services covered by the making available right provide for minimum guaranteed advance that is deducted from the revenue share accrued by the actual usage royalties; said license may also provide an entry fee or similar forms of remuneration that are additional to the revenue share deriving from the actual usage and possible compensation for temporary exclusivity. Minor record producers often license through aggregators and not always receive advances for the upload and making available of their records.

For the distribution of physical carriers, the record producer exercises his/her rights directly through the sale of the record to the dealer and may agree with this latter the standard price to the retailer or to the public.

**9- Is digital piracy/streamripping still a major concern for phonogram producers?**

Yes, it is, even though the streaming offer and the changing attitudes and tastes of the young audience have decreased greatly the attractiveness of digital piracy, as the above mentioned 2021 EUIPO report shows as far as the music digital market is concerned.

**10- Which rights are currently being collected via CMOs?**

The remuneration for public communication, public performance and broadcasting are managed through CMOs on voluntary basis; the compensation for private copy are collected via CMOs as it is also the retransmission referred to in EU directive 789/2019 by virtue of mandatory collective management.

**11- Which CMOs represent phonogram producers in your Country?**

According to the information published by the Authority for Communications (AGCOM) supervising collective rights management in Italy, the following record producers' CMOs are active:

AFI - Associazione Fonografici Italiani	<a href="http://www.afi.mi.it">www.afi.mi.it</a>
Audiocoop	<a href="http://www.meiweb.it/audiocoop">www.meiweb.it/audiocoop</a>
Evolution srl	<a href="http://www.evolutioncollecting.it">www.evolutioncollecting.it</a>
Federintermedia	<a href="http://www.federintermedia.com">www.federintermedia.com</a>
Getsound srl	<a href="http://www.getsound.it">www.getsound.it</a>
Itsright	<a href="http://www.itsright.it">www.itsright.it</a>
RASI Rete Artisti Spettacolo	<a href="http://www.reteartistispettacolo.it">www.reteartistispettacolo.it</a>
SCF srl	<a href="http://www.scfitalia.it">www.scfitalia.it</a>

**12- Do these CMOs comply with transparency principles?**

All CMOs are subject to the obligations established by the CRM Directive, that was fully transposed in Italy by Legislative Decree 35/2017.

**13- Is it possible to find out how much income is provided by each type of rights?**



No reliable data are easily accessible. Information published by the record producers' national and international associations are the only available sources.

- 14- What is the current litigation level for phonogram producers in your Country?
- 15- Are there any relevant Court Decisions concerning phonogram producer's rights?
- 16- **Are there any revocation of transfer of rights' agreements provisions?**

NA

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

There is no legal definition of in the Italian law.

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

The Law contains the following definition of record producer (article 78), from which the meaning of the term phonogram can be assumed:

"The phonogram producer is the person or the legal entity, who or which takes the initiative and has the responsibility for the *first fixation of the sounds of a performance or other sounds, or the representations of sounds*". Consequently, thanks to the neutrality of the definition in respect of the commercial purposes, any first fixation of sounds etc. (not necessarily a performance) can be granted the neighbouring rights in favor of the person initiating and financing the fixation (more commonly named master recording).

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

The Italian Copyright Law does not contain specific provisions on synchronization. The music matched to audiovisual products of any kind is subject to reproduction right and the subsequent exploitation (physical or otherwise) are subject to the applicable rights such as communication or distribution rights.

- 20 - **Which rights are involved in mood music/sound branding licensing?**

This depend on the clauses of the license that is concluded between the phonogram producer and the brand or mood music provider. It can be assumed that these types of licenses include the (exclusive or non-exclusive) assignment of the reproduction right, possibly with the communication right and/or broadcastin and/or making available right, as far as these latters are necessary for the purposes of the specific exploitation.



### **PANEL III- BROADCASTERS AND FILM/AUDIOVISUAL PRODUCERS RIGHTS**

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

- a) Fixation;
- b) Reproduction of the broadcast fixations;
- c) Communication to the public and retransmission of the broadcasts in a place which is accessible only on payment of an admission fee;
- d) Distribution of the broadcast fixations;
- e) Simultaneous retransmission by wire or wireless means of the broadcast fixations;
- f) Deferred retransmission by wire or wireless means of the broadcast fixations;
- g) Making available to the public in such a way that members of the public may access them in the time and from a place individually chosen by them;
- h) Pre-broadcast program carrying signal protection: not mentioned in the copyright law
- i) Any other rights?

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

Statutory

3- **Which of them are exclusive/remuneration rights?**

The rights granted by law to broadcasters are exclusive rights.

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

According to article 71-decies of the Law, exceptions/limitations applicable to copyright are extended also to neighbouring rights, as far as applicable.

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

No legal presumptions of transfer.

6- **What is the relevance of copyright infringement in relation to broadcasters' rights?**

7- **Is digital piracy/streamripping still a major concern for broadcasters?**

Yes. While music and movies have shown a constant decrease in the piracy levels in the last years, broadcast piracy keeps increasing especially in respect to sport events that are broadcast by payTV and/or online subscription services.

8- **Do UGC platforms contribute to broadcasters' rights? How?**

The public broadcaster RAI has its own channel. The agreements regulating the relevant offer are confidential.

9- **What is the current litigation level for broadcasters' rights in your Country?**

10- **Are there any relevant Court Decisions concerning broadcasters' rights in your Country?**

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?**

In addition to the exclusive rights of authors and performers that are transferred to the producer for their exercise, producers of audiovisual works and sequences of moving images are granted the neighbouring rights specified below:

- a) Reproduction;
- b) Broadcasting;
- c) Communication to the public;
- d) Distribution;
- e) Rental and lending;
- f) Making available to the public;
- g) ~~Retransmission~~;
- h) ~~Direct Injection~~;
- i) Any other rights?

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

Statutory

**14- Which of them are exclusive rights? Which of them are remuneration rights?**

All the neighbouring rights above, granted by law to audiovisual producers, are exclusive rights.

**15- Which exceptions/limitations generate remuneration rights for audiovisual producers?**

Audiovisual producers are entitled to a share of private copy compensation.

**16- Which rights are transferred to audiovisual producers? For how long?**

Authors and performers rights are transferred by contract to the audiovisual producer for the duration of the copyright protection of the work.

**17- Are there any legal presumptions of transfer towards audiovisual producers?**

The Italian Law does not mention a legal presumption expressly, but confers the exercise of the exploitation to the person who has organized the production of the work, i.e. the audiovisual producer. The practical and legal effects are equivalent to legal presumption.

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

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

**20 - Are there minimum amounts due? Any other economic benefits?**

**21 - Do UGC platforms contribute to such compensation schemes? How?**

Data on the level of revenues as well as contractual clauses and the fee structure per business model are confidential and depend on the individual agreement between the AV producer and the business exploiting the audiovisual works.

**20- Is digital piracy/streamripping still a major concern for audiovisual producers?**

**21- What is the most recent estimation of rights' loss on account of digital piracy in your Country?**

2021 [EUIPO report](#) on copyright infringements shows that, while the level of piracy in Italy is slightly below the EU average in general, in the audiovisual field piracy is permanently well above the average, especially for the illegal access to streaming services.



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

The current rule on theatrical windows for film distribution is 90 days from the publication; only films that receive public funds are subject to this interval before being distributed through channels other than movie theatres. This window had been reduced to 30 days during the pandemic and has come into force anew from June 2022.

**23- Which CMOs represent audiovisual producers in your Country?**

**24- Do these CMOs comply with transparency principles?**

No CMO is active in the field of audiovisual producers' rights that are managed on the basis of individual agreements directly negotiated by the producer or his subsequent rightowners.

**Is it possible to find out how much income is provided by each type of rights?**

NO, it is not.

**25- What is the current litigation level for audiovisual producers' rights in your Country?**

**26- Are there any relevant Court Decisions concerning audiovisual producer's rights?**

No court decisions specifically referred to audiovisual producers' neighbouring rights.

**27- 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? How?**

Databases are protected by copyright when, for the selection or arrangement of their contents, constitute the author's own intellectual creation.

**2- Is there a *Sui Generis* Database producers' right or equivalent protection in your Country?**

YES, according to article 102-bis, the maker of a data base has an exclusive right to prohibit extraction or re-utilisation of all or of a substantial part of the data base.

**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?**

**5- How does it work? Is it effective?**

Not under the Copyright Law.

**6- How do the courts of your Country balance the *sui generis* right with freedom of information and freedom of competition?**

NA

**7- Is the *sui generis* right protected against circumvention of TPM designed for controlling access?**

YES

**6- Is there a special protection against online uses of press publications in your Country?**

The law was recently amended through the transposition of the CDSM directive and the new short neighbouring rights for press publication has been introduced in the Copyright Law. The Regulation on the subject is not published yet.

**7- Does it apply to scientific journals and hyperlinks? How does it work?**

NO. The neighbouring rights in favor of publishers of press publications does not apply.