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

**Answers to the Questionnaire**

**Country (National Group): ARGENTINA**

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**PANEL I – PERFORMER’S RIGHTS – A COMPARATIVE OVERLOOK**

**1- What types of performers are there according to your legal framework?**

Argentinian Copyright Law 11,723 of 1933 recognizes performing artists (musicians and actors) as rightholders.

Pursuant to Article 1 of Dec. 746/73, which regulates Law 11,723, the following are considered performers: “... a) *the orchestra director, the singer and the performing musicians, individually.* b) *The director and actors of cinematographic works and recordings with image and sound on magnetic tape for television.* c) *The singer, the*

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<sup>1</sup> Panel I and III

<sup>2</sup> Panel III and IV



*dancer and any other person who plays a role, sings, recites, interprets or performs in any way that is a literary, cinematographic or musical work.”* <sup>3</sup>

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

Yes, it is.

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

No.

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

I- Live performances:

- a) Fixation;
- b) Broadcasting;

II- Fixed performances:

- c) Reproduction;
- d) Distribution;
- e) Rental;
- f) Making Available to the public;
- g) Communication to the Public;
- h) Public performance;
- i) Broadcasting;
- j) Retransmission;
- k) Direct Injection;

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<sup>3</sup> After the modification introduced by Law 25.847, the director is considered co-author of the cinematographic work.



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

The rights of performing artists are recognized in art. 56, Copyright Law 11,723 of 1933: *“The performer of a literary or musical work has the right to require compensation for the retransmission of his performance, made by radio, television, recorded or printed on a disc, film, tape, thread or any other substance or body suitable for sound or visual reproduction. If an agreement is not reached, the amount of the compensation will be established in a summary proceeding by the competent judicial authority. The performer of a literary or musical work is empowered to oppose the disclosure of the performance, when the reproduction of the same is done in such a way that it may cause serious and unfair damage to its artistic interests. If the performance has been made by a choir or an orchestra, this right of opposition corresponds to the director of the choir or the orchestra. Without prejudice to the property right belonging to the author, a work performed or represented in a theater or in a public room may be broadcast or retransmitted by radio or television, with the sole consent of the entrepreneur organizing the show.”*

Consequently, performers have exclusive rights with respect to their direct performances (fixation and reproduction), and a right of remuneration for the public communication of said performances fixed in phonograms; as well as the recognition of a moral right of integrity.

There are also moral rights recognized for performing artists, related to respect for the right of paternity, in article 4 of Dec. 1670/74: *“The main performer of a musical and/or literary work has the right to claim the mention of his name or pseudonym when the performance is broadcast or retransmitted and to indicate his name or pseudonym on the label, envelope or other similar package of the phonogram supports.”*

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

Those neighbouring rights, connected or related to the rights of the authors, are established in Law 11,723, its regulatory decrees (Decrees 41,233/34, 1670/74 and 1671/74) and other concordant regulations.

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

All recognized rights are exclusive, with the exception of the right of public communication, since this is a remuneration right.



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

The only limitation regarding the performers' rights is the establishment of a remuneration right related to public communication.

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

The transfer of rights is by contractual means, without a time limit established by Law, with the exception of the right of public communication.

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

The transfer of rights is voluntary or contractual, with the exception of the remuneration rights related to public communication.

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

Yes, those corresponding to public communication.

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

Tariff regimes are established by regulations issued by the National Executive Power. For performers, Res. 390/05 of the Ministry of Communications Media is applicable. On the other hand, for actors, Res. 181/08 of the Ministry of Communication Media is applicable

The legal limit of the performing rights is the one established in general in article 5 bis, Law 11,723, which establishes : *"The intellectual property over their performances or executions fixed in phonograms, corresponds to the performers for a period of seventy (70) years counted from January 1 of the year following its publication "*

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

Streaming is not qualified in Argentina for rights awarding purposes.



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

Authorization to stream performances set in phonograms or audiovisual works must be provided by the owners. These rights are frequently contractually acquired by phonographic and audiovisual producers.

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

Argentina does not have specific studies on this matter. However, it is clear that in recent years piracy of physical copies (phonograms) and through platforms has decreased, based on business models that allow legal access to works and services protected by Law.

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

There is no clear and accessible information on the economic returns of the platforms.

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

In relation to exclusive rights, negotiation between parties is free. Many of the exploitation windows are usually established in the phonographic production or audiovisual production contract, and the producers are ultimately the ones who negotiate the exploitation in different business models. Regarding simple remuneration rights, they are set by regulations issued by the National Executive Power.

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

Minimum amounts are only applicable to remuneration rights (public communication).

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

We have not information in this regard.

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



This treaty has not yet been ratified by Argentina.

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

Remuneration rights (public communication).

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

The Argentine Association of Performers (AADI) is the entity recognized by Law (Dec. 1671/74) on behalf of all performers in Argentina.

The right of public communication recognized for performers is collected through an entity called AADI CAPIF -Civil Collector Association- (Dec. 1671/74), who also acts on behalf of phonographic producers as a joint body of collection.

The Argentine Society for the Management of Performing Actors (SAGAI) is the entity that represents the actors in Argentina (Dec. 1914/06).

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

Yes, it is. The administration and operation is regulated by its statutes, which are approved by the General Justice Inspector. There are no rules that specifically regulates collective management in Argentina.

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

En el caso de los ingresos recaudados por las entidades de gestión colectiva se publican en los informes de recaudación, donde se detallan los usos que los generan (Por ejemplos: hoteles, radiodifusión, locales comerciales, etc.).

Income collected by the collective management entities, are published in the collection reports.

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

The non-compliance of users of the payment of the tariffs corresponding to the public communication of phonograms and performances fixed in them is high. This forces entities to make legal claims to that effect. However, these lawsuits are not that many compared to the number of non-paying users.



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

Yes, it is.

There are rulings that recognize the validity of the Law and its regulatory framework, as well as the obligation to pay these rights that certain establishments have.

One can mention, for example, the rulings of the Supreme Court of Justice, which recognize the right to collect the right of public communication for broadcasting that takes place in hotel rooms ("AADI CAPIF v. Hotel Belgrano" and "AADI CAPIF v. Ansele", both from 2006).

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

Yes, it is

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

Yes, those ones established in relation to public communication.

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

Mandates are always exclusive and only applicable to public communication.

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

No, there is not.

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

No, there is not.

**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;**
- i) Any other rights?**

Law recognizes all the rights listed above to phonographic producers, without prejudice to highlighting that the right of public communication is not exclusive but a remuneration right.

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

Said rights are established in Law 11,723, its regulatory decrees and other concordant regulations.

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

The rights of simple remuneration are only those of communication to the public. All the others are exclusive rights.

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

The only limitation in relation to the rights of phonographic producers is the establishment of a remuneration right with related to public communication.





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

No, the transfer of rights is voluntary or contractual, with the exception of the remuneration right related to public communication

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

The tariff regime is established by Res. 390/05, issued by the Secretary of Media of the National Executive Branch.

The legal limit of the rights of performers is generally established in article 5 bis, Law 11,723, which establishes : “... *Likewise, the intellectual property over phonograms corresponds to the producers of the phonograms or their heirs. for a period of seventy (70) years from January 1 of the year following its publication.....* ”

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

En el caso de los derechos exclusivos hay libre negociación entre partes. En el caso de derechos de simple remuneración son fijados por normativa dictada por el Poder Ejecutivo Nacional.

In relation to exclusive rights, negotiation between parties is free. Regarding simple remuneration rights, they are set by regulations issued by the National Executive Power.

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

Minimum amounts are only established in relation to the right to simple remuneration related to public communication.

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

Yes it is.

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

Remuneration rights are being collected via CMOs.



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

The Argentine Chamber of Phonographic Producers (CAPIF) is the entity that represents phonographic producers in Argentina (recognized by Dec. 1671/74).

The right of public communication that corresponds to said holders is collected by the entity called AADI CAPIF -Civil Collector Association - (Dec. 1671/74), who also acts on behalf of musical performers or performers, fulfilling its function as a joint fundraising body.<sup>4</sup>

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

Yes, it is. The administration and operation is regulated by its statutes, which are approved by the General Justice Inspector. There are no rules that specifically regulates collective management in Argentina.

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

Income collected by the collective management entities, are published in the collection reports.

**14- What is the current litigation level for phonogram producers in your Country?**

The non-compliance of users of the payment of the tariffs corresponding to the public communication of phonograms and performances fixed in them is high. This forces entities to make legal claims to that effect. However, these lawsuits are not that many compared to the number of non-paying users.

**15- Are there any relevant Court Decisions concerning phonogram producer's rights?**

Yes. There are rulings that recognize the validity of the Law and its regulatory framework, as well as the obligation to pay these rights that certain establishments have.

One can mention, for example, the rulings of the Supreme Court of Justice, which recognize the right to collect the right of public communication for broadcasting that

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<sup>4</sup> See 2.



takes place in hotel rooms (“AADI CAPIF v. Hotel Belgrano” and “AADI CAPIF v. Anside”, both from 2006).

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

No, there are not.

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

There is no definition for “**phonogram published for commercial purposes**” in Law 11,723. However, Argentina has ratified the Rome Convention on the Protection of Performing Artists, Producers of Phonograms and Broadcasting Organizations, and the WIPO Treaty on Performance and Phonograms.

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

We have no legal definition for this type of phonograms.

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

Without prejudice of the right corresponding to the authors, In the musical synchronization of an audiovisual work, the rights involved are those related to reproduction and, from this, the rights of distribution and/or public communication and/or making available to the public.

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

The rights involved in mood music/sound branding licensing are those related to public communication.



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

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

- a) Fixation;
- b) Reproduction;
- c) Communication to the public (with /without admission fees);
- d) Distribution;
- e) Simultaneous retransmission by wire or wireless means;
- f) Deferred retransmission by wire or wireless means;
- g) Making available to the public by wire or wireless means;
- h) Pre-broadcast program carrying signal protection;
- i) Any other rights?

1) In Argentina there are no specific rules that regulate the rights of broadcasting organizations. Broadcasters' rights are regulated by the Rome Convention, 1961, ratified by Law 23,921 and by the TRIP'S Agreement, ratified by Law 24,425.

On the other hand, Article 16 Civil and Commercial Code is applicable to the protection of broadcasters since this article establishes that : *"Goods and things. The rights referred to in the first paragraph of Article 15\* may fall on assets of economic value. Material goods are called things. The provisions referring to things are applicable to energy and natural forces that can be put at the service of mankind"*.

*\*Article 15.- Ownership of rights. People are holders of individual rights over the assets that make up their assets in accordance with what is established in this Code.*

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

The nature of those rights is statutory due to the reasons mentioned above.

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

All of them are exclusive rights.

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

There are no exceptions/limitations that could generate remuneration rights for broadcasters.

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



There are no legal presumptions of transfer.

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

No information available.

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

Yes, it is.

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

No information available.

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

No information available.

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

Yes, there are. A detailed explanation of the relevant Court Decisions in this matter in Argentina can be found in: "El Derecho de Autor en la Argentina", Carlos A. Villalba-Delia Lipszyc, La ley 2009, pages 424-430.

**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;
- b) Broadcasting;
- c) Communication to the public;
- d) Distribution;
- e) Rental;



- f) Making available to the public;
- g) Retransmission;
- h) Direct Injection;
- i) Any other rights?

In Argentina film producers have a different legal regulation, in comparison with audiovisual producers.

Film producers are considered co-authors jointly with screenwriters, directors and original composers (article 20, Law 11,723).

Film producers are awarded by a legal presumption of exploitation of the film independently of the decision of the other co-authors (article 21, Law 11.723).

The legal regulation of cinematographic works is not applicable to audiovisual works in general. In this sense, audiovisuals for television are not similar to films, as established by art. 76 inc. a of the Law 17,741 of promotion and regulation of the cinematographic activity modified by the Law 24,377: *“For all purposes of this Law, a) a film shall be understood as: any recording of moving images, with or without sound, regardless of their support, intended for projection, television or exhibition by any other means. Television programs are expressly excluded from the scope of this article”*.

Audiovisual producers are awarded the following rights:

- a) Reproduction,
- b) Communication to the public;
- c) Distribution;
- d) Rental;
- e) Making available to the public.

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

The nature of those rights is statutory. Film producers' rights are established in articles 20 and 21, Law 11,723.

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

All of them are exclusive rights.

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

There are no exceptions/limitations that could generate remuneration rights for film producers.



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

In principle, the rights that can be transferred to film producers are those corresponding to: the screenwriter, the director, the composer for all the time that those rights are in the private domain.

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

Yes, the film producer has the power to project the film, even without the consent of the screenwriter, the director or the composer, without prejudice to the rights arising from the collaboration.

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

The compensation depends on contractual agreements. However, CMOs establish minimum compensations.

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

Audiovisual producer's compensation varies, depending on the different business models.

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

No information available.

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

No information available.

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

Yes, it is.



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

No information available.

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

There is no specific rule, but usually films are first released in movie theaters.

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

No information available.

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

No information available.

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

No information available.

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

It is usually low.

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

In *Imagen Satelital S.A. v. Cuevana's website operator / injunction* (National Court of First Instance # 1, handed down on November 25, 2011 (final judgment), the plaintiff filed for an injunction requesting Argentine internet service providers (ISPs) to adopt measures preventing Cuevana's website users to access content protected under intellectual property rights owned by the plaintiff.





The plaintiff was the owner of the authors' rights to the series "Bric", "Falling Skies" and "26 People to Save the World", based on the documents filed with the court and on Section 9, Law 11,723, first paragraph, pursuant to which no one is entitled to publish, without the authorization of the author or right holder, a scientific, literary, artistic or musical production written down or copied when read, performed or exhibited publicly or privately.

The court expressed that there was a risk of irreparable harm, because every time a Cueva website user accessed the series the plaintiff's rights were infringed. Moreover, the court ordered the ISPs identified by the plaintiff to block any access request by Internet users to the website in question, if they involved the reproduction or communication of the aforementioned audiovisual works, under penalty of a fine and to consider that the website would be in contempt of court in case of failure to comply.

On December 6, 2011 the court made further precisions concerning the links that the injunction covered and it also extended the injunction to Cablevisión (one of Argentina's leading cable networks). In addition, it ordered for the injunction to be published in the official websites of the National Communications Commission and in those belonging to ISPs associations and federations.

**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? How?**

Yes, databases are legally protected in Argentina under article 1, Law 11,723, in the following terms: *"For the purposes of this Law, scientific, literary and artistic works include ... writings of all kinds and extensions, including ... compilations of data or other materials; ... whatever the reproduction procedure"*.

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

No, there is not.

**3- Is it possible to evaluate its efficiency and level of enforcement?**

No, according to the previous answer.



**4- Is there any different form of protection for Database producers or for ownership of data?**

No, there is not.

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

Not applicable, according to the previous answers.

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

Not applicable, according to the previous answers.

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

As previously stated, there is no *sui generis* right over databases.

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

No, there is no special protection.

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

Not applicable, according to the previous answers.