

## **Standing Committee on Copyright and Related Rights**

**Forty-Third Session**  
**Geneva, March 13 to 17, 2023**

**PROPOSAL FOR ANALYSIS OF COPYRIGHT RELATED TO THE DIGITAL  
ENVIRONMENT**

*submitted by* the Group of Latin American and Caribbean Countries (*GRULAC*)

## **Declaration for the permanent discussion at WIPO in favour of authors, performers, and artists, for the exploitation of music in the digital environment.**

It is important to advance and strengthen the content of copyright and related human rights, including musical artists, featured and non-featured performers, in the digital agenda.

With the characteristic vocation of protecting art and creative expressions, GRULAC shares the love for bolero music, salsa, bossa nova, reggae, son, bachata, merengue, calypso, huaracha, mariachi, cumbia, tango, mambo, samba, rumba, regueton, vallenato and pasillo.

Latin America and the Caribbean speaks as a region that gave birth to great exponents, singers, and musicians, who undoubtedly contribute every day to the wellbeing of humanity. Moreover, being one of the regions with the greatest and most diverse traditional cultural expressions, the identity of the peoples, nationalities and communities are today part of the collective rights recognised by Intellectual Property and Human Rights.

1. The WIPO Internet Treaties, adopted in 1996, are a 20th century achievement. At the time, they improved the protection of rights holders, paving the way for the development of a digital economy. However, **after twenty-seven (27) years** of adoption of these treaties and not having been possible for their drafters to foresee the technological maelstrom of recent years, the challenges related to the Pandemic and the use of new technologies in the access to works and performances protected by copyright and related rights, have had undesirable consequences in the marketplace.
2. One of the challenges is that on-demand services, and in particular streaming, are now ubiquitous, taking over, slowly but solidly, larger and larger segments of the broadcasting market causing the making available right combined under the "umbrella solution", to become more akin to the right of communication to the public than to the right of distribution.
3. The emergence of large social media platforms and "user-generated content" could not have been foreseen either, at the time of the design of the WIPO Treaties. This created a painful "value gap", the result of which implies that the wealth generated by the consumption of copyrighted content, which is protected by copyright, is diverted and accumulated in favour of technology companies, who claim, that they only "shared their users' content", and allegedly did not make that content available to the public.
4. The studies provided for in the mandate of the WIPO Standing Committee on Copyright and Related Rights show three (3) situations of delicate consideration:
  - a) The relevance of Latin music on digital platforms.
  - b) The reduced remuneration received by authors; and
  - c) The lack of remuneration of performers.
5. The report entitled *The Latin American Music Market* (SCCR/41/4), prepared by Leila Cobo, Vice President, Latin Industry Director, Billboard, confirms the influence of Latin music on the global charts with specific examples of artists from countries of our region. However, the report highlighted that in Latin America (...) *a region of high streaming volume and low remuneration, performance rights and synchronization revenues – which, in percentage terms, increased more in Latin America than in other regions - have been negatively affected by market conditions* ".

These are conditions that definitely do not affect Europe, Canada or the USA, and that the WIPO Standing Committee on Copyright and Related Rights must consider as one of the issues that call for solutions, especially since, as the DESC Committee's Comment No. 17 states, the meaning of "creator" of artistic productions, whether man, woman, individual or

group, implies that all of them can benefit from the protection offered by the human rights regime.

6. In the *Study on the Artists in the Digital Music Marketplace: Economic and Legal Considerations*, prepared by the professors Christian L. Castle and Claudio Feijóo, it is very clearly verified that (...) *market forces have revealed a marked imbalance between the large commercial benefit that streaming platforms obtain with respect to performers around the world, compared to the relatively small financial benefit that performers receive.*
7. From the point of view of authors and performers, as shown in the Proposal for Analysis of Copyright Related to the Digital Environment (SCCR/31/4), and subsequent market studies, these rights holders, with very few exceptions, cannot negotiate directly with global digital service providers ("DSPs"), because their rights are systematically transferred to producers.

Without any institutional support mechanism, authors, performers featured and/or non-featured find it impossible to obtain adequate, fair and equitable remuneration, or to sign agreements that would allow them a sustainable collection of their rights. In this respect, there have been many complaints, since, faced with the risk of being left without remuneration, they have had to accept the producers' offer, signing real *contracts of adhesion*, which, in many cases, exacerbate relations, benefiting content aggregators or other intermediaries, but not the rights holders.

Consequently, the exclusive making available right has no defined additional value for authors and performers featured and/or non-featured.

8. To negotiate with transnational companies and other users of this order, who deliver many millions of individual performances to an audience of millions of people at a time, our authors, featured and non-featured performers, want a legal framework with tools or mechanisms that guarantee their rights, without any discrimination whatsoever, and that allow States to harmonise their own legislation towards progressiveness, which is a characteristic of human intellectual rights.

It is essential to place artists, musicians and singers, rights holders in the musical arts, including traditional arts, on an equal footing and enable in such a way that the rules allow them to negotiate directly even with global DSPs or, where appropriate, to achieve fair remuneration for the use or exploitation of musical performances, remuneration that cannot be abrogated by contracts, considering that there are always, in accordance with the international regime governing the countries of this Worldwide Organisation, minimum standards that private contracts must not fail to observe.

Exclusive rights in the digital environment are still an illusion. The right to fair and equitable remuneration will always be effective to defend the interests of authors and performers on digital platforms when it is fully and effectively recognised in international law.

Recent WIPO activities, such as publications on management mechanisms for copyright and related rights, often carried out with the participation of several interested Member States, have also shown that such mechanisms, properly implemented and in accordance with the contents of the rights, can be an efficient and flexible tool to protect the rights of creators, including performers.

In accordance with the Information Session held yesterday afternoon, we had the opportunity to learn about various models applied to streaming music, so that, within the various tools or mechanisms presented, it is mandatory to continue with the analysis in search of solutions, under the principle of international reciprocity that facilitates the sovereign harmonisation of

national legislations, for an effective implementation of the human right to benefit from the use of the creations and performances that each artist or author has as rights holder.

There are several tools, whose form can be adapted to each national legislation, to manage the right to be remunerated of authors and performers. The latter, with the supervision of the competent national authorities and under the guiding principles such as transparency, equity, solidarity, integrity, legitimacy, the absent of discrimination and efficiency, such as, for example, the Collective Management or another mechanism which countries may consider propitious for the rights.

GRULAC Member States **are convinced** that it is possible to build a reciprocal consensus to ensure the formal and material content of authors' and performers' rights, guaranteeing their fair remuneration, in full accordance with the objectives of the Proposal for an Analysis of Copyright Related to the Digital Environment (SCCR/31/4).

This Group, therefore, proposes the inclusion of the initiative, presented to become as a separate item, on the Agenda of the Standing Committee on Copyright and Related Rights and instruct the WIPO Secretariat to make proposals, searching effective and fair solutions to secure authors and performers' rights in the digital environment.

Finally, GRULAC exhorts this Committee to consider that copyright and related rights should be addressed as part of the Annual Agenda of the WIPO General Assembly, with a permanent approach to the issue, as it is not only an intellectual right but also a human right protected in the different treaties, conventions and protocols related to the recognition of the benefits implied in the exploitation of rights, the deepening, extension and control of these rights, in order to put a stop to the erosion that has been taking place in the hard core of copyright and related rights, following the advance of communication and information technologies, a situation that is increasingly undermining the legitimate right of creators and artists to a fair remuneration.

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