

The Audiovisual Campaign
The Ricardo Larrain Law in Chile



1 Executive Summary

Audiovisual creators are responsible for directing, writing, various pieces of every audiovisual work that is created. However, these authors are often at a disadvantage when it comes to ongoing equitable remuneration. In most countries, there is no legal framework that provides an enduring right to compensation. Legal and industry customs dictate that the works are “joint works” or “works for hire”. Aggregate power is in the hands of the producer, who then singlehandedly controls the work and its exploitation.

Certain countries are beginning to recognize the need to fairly compensate audiovisual authors for their contributions, particularly when a work becomes successful. Spain, France, Argentina and now Chile are a few of the countries providing these rights to authors, with a bill also under consideration (the “Pepe Sanchez” Law) in Colombia.

An important development took place in Chile where a new law was passed for audiovisual creator rights. CISAC was instrumental in the passage of this new law through its regional office headed by Santiago Schuster, audiovisual creators’ council Writers & Directors Worldwide (W&DW) with its Chairman Yves Nilly and local Chilean audiovisual society ATN. This brief provides the background and summary of this new legal regime in Chile, CISAC’s and W&DW efforts to enact it as well as the meaning for audiovisual creators in Chile and beyond.

2 Background



Equitable remuneration has long been an issue for audiovisual creators. In the majority of countries around the world, screenwriters and directors in the audiovisual sector do not have a right to receive payment for the broadcast and dissemination of their work. While operators, broadcasters and distributors generate significant profits from TV programs and film usage, creators at the very heart of the creative process rarely receive any payment due to the common business practices of producers taking all rights from creators, making it impossible to receive any percentage royalties from the success of the work.

Furthermore, laws around the world are not harmonized, meaning that the recognized authors of a work in some jurisdictions may not be the authors under the law of another country.

CISAC has been working with its audiovisual creators’ council W&DW to create a campaign on audiovisual creator rights (see www.theaudiovisualcampaign.org). Together, CISAC and W&DW have been active in various countries around the world in championing new legislation that would provide an inalienable right of remuneration for AV creators.

In addition, CISAC and W&DW are currently in the process of developing an academic study on AV rights with Professor Raquel Xalabarder Plantada, film copyright specialist and Intellectual Property Chair at the Universitat Oberta de Catalunya in Barcelona, Spain (where this right of remuneration exists).

In 2014, an effort was launched to pass a law for equitable remuneration for audiovisual works in Chile in conjunction with the local authors’ rights society ATN. The goal was a campaign

that would mobilize writers and directors as well as catch the attention of political authorities, underlining the economic injustice affected by current systems. The campaign highlighted the ongoing right of remuneration for actors, musicians and songwriters in addition to the glaring lack of coverage for audiovisual creators.

One of the first steps was a gathering on 14 October 2014 at the Auditorio de la Cineteca Nacional, del Centro Cultural Palacio La Moneda, which included creator representatives such as famous Argentinian film director and CISAC Vice President Marcelo Piñeyro, Jose Luis Acosta from SGAE and Ricardo Talesnik of Argentina. Chilean directors also organized a protest outside the home of the Chilean President Michelle Bachelet. Empty director chairs were to be placed to indicate what a film would look like with no directors. However, President Bachelet held a meeting with the directors before this protest would have taken place. A draft bill was introduced in Parliament three months later, which corresponded with the launch of the major campaign titled “ACTION!” by audiovisual creators to support enacting the bill.

Following two years of extensive lobbying, the new Ricardo Larrain Law (n°20.959) was passed unanimously by the Senate in August 2016. President Bachelet signed the law, which recognises new legal rights for directors and screenwriters, during the Valdivia International Film Festival opening ceremony in October.

For the first time ever, the law grants audiovisual creators rights of remuneration, allowing them to obtain royalties when their works are broadcasted. ▶

► Speaking in October 2016 in front of over 300 national and international writers, filmmakers, authorities and distinguished guests, President Bachelet announced:

"We will have a proper legal body to the times, which protects and guarantees the rights of directors and screenwriters. As I stated when we send the bill to the Congress, what we are doing is an act of justice. We are correcting asymmetry and being extended to a large group of creators of audiovisual works".

3 Description of key points of the law

Article 1.

Directors and screenwriters of audiovisual works will enjoy an unwaivable and non-transferable right to receive the remuneration provided in Article 3, Law N°20.243, (this is the performers law) including the same limitations and exceptions lay down in Title III of Law N°13.336, where applicable. For the purposes of this law, and by application of the previously mentioned provision, this right shall be interpreted as unwaivable and non-transferable under any act or contract signed by the director or the screenwriter, either for the use of their works or for the transfer of their economic rights. Likewise, any contractual provision that prevents rightholders from exercising this right or from being a member of a collective management society in order to exercise it, shall be void for all legal purposes.

Accompanied by the Minister of Culture Ernesto Ottone, President Bachelet shined the spotlight on Ricardo Larrain, the award-winning Chilean film director who passed away in 2016 at the age of 59. The former ATN Vice-President had given President Bachelet the original draft bill on 14 October 2014. Ricardo Larrain was a driving force in promoting the law.

The collection of the remuneration may be made through the collective management organization that represents rightholders. Its amount shall be set according to Article 100, Law N°17.336.

Article 2.

Concerning the public communication of foreign cinematographic works in movie theatres, referred to in Letter A), Article 3, Law N°20.243, the payment of the corresponding remuneration that directors, screenwriters and performers must receive shall be made according to the second paragraph of Article 29, Law 17.336 when cinema exhibitors act as retainers.

4 Conclusions



Creators coalition in support of the Ricardo Larrain Law in Chile with Senator Ignacio Walker, Senate Education Committee Chairman, a key senator who understood the justice of an inalienable right for screenwriters and directors.

As leaders of the initiative, CISAC and W&DW warmly welcome the passage of the law. It symbolizes success in the campaign for similar rights in other countries and throughout the world. The law is significant in providing authors the right to remuneration through collective management systems, which cannot be waived and even goes so far as to protect authors from restrictions against joining a CMO.

The law can be upheld as the standard for other countries to match. CISAC will continue with its campaign for the right to fair remuneration for audiovisual creators worldwide in conjunction with the W&DW with the release of the Xalabarder study.



The signing of the Ricardo Larrain Law with Chilean President Michelle Bachelet, 10 October 2016 in the presence of Ricardo Larrain's daughters. ©Press Department, President of the Republic of Chile.



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