

Committee on Development and Intellectual Property (CDIP)

Twenty-Second Session
Geneva, November 19 to 23, 2018

REVISED PROPOSAL FOR A PILOT PROJECT ON COPYRIGHT AND THE DISTRIBUTION OF CONTENT IN THE DIGITAL ENVIRONMENT SUBMITTED BY BRAZIL

prepared by the Secretariat

1. In a communication dated October 16, 2018, received by the Secretariat, the Permanent Mission of Brazil to the World Trade Organization (WTO) has proposed a project entitled “Pilot Project on Copyright and the Distribution of Content in the Digital Environment” for its consideration by the twenty-second session of the Committee on Development and Intellectual Property (CDIP).
2. Following an initial round of discussions at CDIP/22, the Secretariat, in consultation with the Delegation of Brazil, was requested to revise document CDIP/22/15. Accordingly, the Annex to this document contains a revised project proposal.
3. *The CDIP is invited to consider the Annex to the present document.*

[Annex follows]

PROPOSAL FOR A PILOT PROJECT ON COPYRIGHT AND THE DISTRIBUTION OF CONTENT IN THE DIGITAL ENVIRONMENT

1. SUMMARY	
<i>Project Code</i>	DA_1_3_4_10_11_16_25_35_01
<i>Title of Activity/Initiative</i>	Pilot Project on Copyright and the Distribution of Content in the Digital Environment
<i>Development Agenda Recommendations</i>	Recommendations 1, 3, 4, 10, 11, 16, 25 and 35.
<i>Brief description of the Activity/Initiative</i>	<p>The proposed pilot project aims at providing clear information about the copyright and related rights national regimes applicable to the audiovisual content that is licensed and distributed in the digital environment.</p> <p>In particular, the project will raise awareness to creators and stakeholders on existing national rules and assess current issues related to copyright and related rights in digital audiovisual market of the participating countries: Argentina, Brazil, Costa Rica, Ecuador, Peru and Uruguay.</p>
<i>Implementing Program</i>	Program 3
<i>Links to other related Programs / DA Project</i>	DA_16_20_01; DA_19_24_27_01; DA_1_2_4_10_11
<i>Links to Expected Results in the Program and Budget</i>	<p>Program 3</p> <p>Strategic Goal I.2: Tailored and balanced IP legislative, regulatory and policy framework.</p> <p>Strategic Goal III.4: Strengthened cooperation arrangements with institutions in developing countries, LDCs and countries in transition tailored to their needs.</p> <p>Strategic Goal IV.2: Enhanced access to, and use of, IP information by IP institutions and the public to promote innovation and creativity.</p>

<i>Project Duration</i>	30 months
2. PROJECT DESCRIPTION	
<u>2.1. Background</u>	
<p>The complex audiovisual market has been the object of several initiatives by governments aiming to promote local production of audiovisual content. These initiatives have traditionally focused on the initial phase of the creation of the audiovisual product, namely the financing of production¹. It is important to point out, however, that financing and distribution are usually linked in the audiovisual industry, and securing distribution of the content is often critical to enable its production. For example, financing can be secured through the pre-sale of exclusive intellectual property rights of the content to a buyer who is responsible for distribution².</p> <p>The growth of digital platforms that offer audiovisual services presents alternatives for distribution (and thus financing) of local content that previously was not able to reach the public through cinema or TV. In several regions, consumption of audiovisual content through digital means (such as streaming and catch-up services) has been exponentially increasing. At the same time, local broadcasters are also making their content available through digital channels, resulting in a higher number of audiovisual content available to the general public through digital means, including locally produced content.</p> <p>As it is the case in the traditional value chain, the new distribution channels of audiovisual content also rely on copyright and related rights to secure remuneration to creators and right owners. Protection of copyrights becomes even more crucial since content is easily made available in a large number of territories through its digital distribution. In spite of the changing landscape, it could be the case that some longstanding models for financing the audiovisual content³, such as the pre-sale of exclusive licenses, will still play an important role⁴.</p> <p>In Latin America, digital distribution of audiovisual content has been growing significantly⁵ in the past years. It is estimated that the revenues from digital platforms in the regions will reach US\$ 4.6 billion by 2022 in comparison to US\$ 1.87 billion in 2016 and zero in 2010⁶. It is possible that while digital platforms might be filling a gap left by traditional distribution channels⁷ it might also bring additional opportunities to both local content creators and public. Some of these new possibilities are already taking place, with over 50 Latin-American audiovisual</p>	

¹ See for example the MERCOSUR audiovisual programme. Available at: <http://www.recam.org/pma/>

² For different financing models please see WIPO, From script to Screen, available at: <http://www.wipo.int/publications/en/details.jsp?id=261&plang=EN>

³ WIPO, From Script to Screen: The Importance of Copyright in the Distribution of Films. Available at: <http://www.wipo.int/publications/en/details.jsp?id=261&plang=EN>

⁴ European Audiovisual Observatory, Territoriality and its impact on the financing of audiovisual works. Strasbourg, 2015. Available at: <https://rm.coe.int/168078347f>

⁵ There were three new subscriptions to Netflix and other OTT services for every new traditional pay TV subscription in 2017 according to HIS Markit, available at: <https://technology.ihs.com/601159/global-digital-pay-tv-subscriptions-exceeded-one-billion-in-2017-ihs-markit-says>

⁶ Information available at: <https://www.broadbandtvnews.com/2015/06/21/latin-america-ott-tv-and-video-ready-for-take-off/>

⁷ MTM, Prospects for premium OTT in Latin America. 2016. Available at: <https://www.vindicia.com/resources/analyst-reports-reviews/prospects-premium-ott-latin-america-mtm>

productions being financed by a major streaming service⁸. At the same time, traditional audiovisual services have started to offer content through digital means, increasing the overall availability of content online.

This pilot project takes into consideration previous studies approved in the CDIP on the subject of copyright in the audiovisual sector, in particular the Collective Negotiation of Rights and Collective Management of Rights in the Audiovisual Sector (document CDIP/14/INF/2), which provides recommendations⁹ for possible future projects adopted in the committee related to the topic of copyrights in the digital environment.

2.2. Objectives

The proposed project aims at identifying, according to each national legal framework, copyright and related rights in the distribution of audiovisual content in the digital environment, with a view to providing a better understanding of the industry for local creators, right owners and stakeholders. Enhancing the access to relevant information on copyright and related rights for local stakeholders, including creators, producers, digital platforms and policy makers could assist in the development of the local digital market and in the exploitation of local audiovisual content.

2.3. Delivery Strategy

Output 1: Increased awareness of the role of copyright and related rights in the distribution of audiovisual content online

- Activity 1: Commission a study on the copyright legal framework and licensing of audiovisual works in the digital environment

Description: A study on the licensing of online distribution of audiovisual works in selected countries. The study shall take into consideration the national legal framework of each participating country in order to understand the legal requirements and contractual practices related to online distribution of audiovisual works.

- Activity 2: Create a summary of national copyright and related rights applicable for the licensing of audiovisual content online

Description: The information researched in the Activity 1 will be presented in the format of a country summary that can be used to disseminate information and raise awareness on relevant copyright and related rights rules.

⁸ <https://media.netflix.com/en/press-releases/netflix-expands-its-latin-america-investments-announcing-new-original-series-diablero-filmed-entirely-in-mexico>

⁹ The Study on Collective Negotiation of Rights and Collective Management of Rights in the Audiovisual Sector (document CDIP/14/INF/2) mentions the following recommendations related to the "Licensing practices for the online environment": Recommendation 1: Discussions among all stakeholders are recommended to get full clarity in the management of exclusive rights to tap the emerging market possibilities of new media and online platforms. – This recommendation is in line with the proposal in Module 5 of the Scoping Study (CDIP/12/INF/3). Recommendation 11: Effective licensing of online on-demand platforms, both national and Pan-African, is important to tap the potential income at the outset. The providers of online services may demand multiterritorial licenses that cover several countries. - WIPO could partner with the national competent authorities and organize workshops on online licensing practices for audiovisual works, eventually for Francophone and Anglophone countries in a group.

- Activity 3: Commission a study on audiovisual works in public domain in the participating countries

Description: This study would expand a previous work commissioned by the CDIP on the subject of public domain¹⁰ focusing, this time, on the issue of audiovisual works in public domain taking into consideration the national legal framework of each participating country. The research aims at understanding the current rules applicable to the use and distribution of public domain audiovisual content, including the permissible uses of those materials.

Output 2: Better understanding the current status of licensing in the digital environment

- Activity 1: Assess the process of content distribution through digital channels in selected countries

Description: The objective is to present concrete examples of some local productions distributed online with a view to better understand the steps made by different actors in their attempt to reach users through digital means.

- *Activity 2:* Economic assessment on the digital audiovisual market

Description: The objective is to elaborate a study assessing the online availability of contents in selected countries.

- Activity 3: Two Workshops: The licensing of audiovisual content in selected countries

Description: Two workshops with representatives and stakeholders from a smaller number of participating countries in order to discuss the legal environment, production and licensing of audiovisual content in the digital environment relating to the selected countries. These workshops will allow the exchange of national experiences and facilitate the gathering of information for the remaining activities in the project.

- Activity 4: Regional seminar on copyright and the distribution of content in the digital environment

Description: A seminar will build on the results of the above-mentioned studies and workshops to discuss how the copyright and related rights applies to the commercialization of audiovisual content for the digital market in the local markets. The objective of the activity is to facilitate understanding and awareness on how to foster a dynamic licensing environment in the region and, at the same time, provide for a forum of discussion about core issues in the digital audiovisual market from a copyright perspective.

Risks and Mitigation Strategy

Risk 1: Lack of adequate information about the licensing of audiovisual content online.

Mitigation 1: Seek the collaboration of local governments, agencies and key stakeholders in order to retrieve relevant information.

¹⁰ Please see document CDIP/7/INF/2 available at:
http://www.wipo.int/edocs/mdocs/mdocs/en/cdip_7/cdip_7_inf_2.pdf

	<p>Risk 2: Conditions in a selected country may impede the project implementation due to the size of the market or the lack of available data and sources regarding content on digital platforms.</p> <p>Mitigation 2: Undertaking of extensive consultations and close collaboration with local stakeholders in the audiovisual industry. Moreover, activities may be suspended or postponed in case there is no information available or data quality is insufficient with respect to one or more countries.</p>
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3. REVIEW AND EVALUATION	
<u>3.1. Project Review Schedule</u>	
<p>A yearly progress report will be presented for the consideration of the CDIP.</p> <p>A final self-evaluation will be carried out upon project completion and will be submitted to the CDIP.</p> <p>A final independent evaluation report will be prepared by an external consultant upon project completion and will be submitted to the CDIP.</p>	
<u>2. Project Self-Evaluation</u>	
<i>Project outputs</i>	<i>Indicators of Successful Completion (Output Indicators)</i>
<i>Output 1: Increased awareness of the role of copyright and related rights in the distribution of audiovisual content online</i>	<ol style="list-style-type: none"> 1. Delivery of a study on the copyright legal framework and licensing of audiovisual works in the digital environment. 2. Delivery of a summary of national copyright and related rights applicable for the licensing of audiovisual content online 3. Delivery of a study on audiovisual works in public domain in the participating countries
<i>Output 2: Better understanding the current status of licensing in the digital environment</i>	<ol style="list-style-type: none"> 1. Delivery of an assessment regarding the process of content distribution through digital channels in selected countries 2. Delivery of economic study on the digital audiovisual market

	<p>3. Holding two workshops (two days each) to exchange information and assess the implementation of output one and two</p> <p>4. Holding a seminar on copyright and the distribution of content in the Digital Environment.</p>
<i>Project Objective</i>	<i>Indicators of Success in Achieving Project Objective (Outcome Indicators)</i>
(a) Increased awareness of the role of copyright and related rights in the distribution of audiovisual content online	Publication of the materials in WIPO's webpage in order to facilitate dissemination of such studies and materials.
(b) Better understanding the current status of licensing in the digital environment	Analysis of evaluation questionnaire to be distributed at the regional workshop indicating that at least 60 percent of participants found the information disseminated in such an event useful.

5. TOTAL RESOURCES BY OUTPUT

(a) Year 2019

Project outputs	2019		Total		Total
	Personnel	Non-personnel	Personnel	Non-personnel	
2 studies, 1 summary and 1 recompilation of case stories		100,000		100,000	100,000
1 economic study		40,000		40,000	40,000
Personnel	57,000		57,000		57,000
Total	57,000	140,000	57,000	140,000	197,000

(b) Biennium 2020-2021

Project outputs	2020		2021		Total		Total
	Personnel	Non-personnel	Personnel	Non-personnel	Personnel	Non-personnel	
Two sub-regional seminars and one regional seminar		235,000				235,000	235,000
Project self-evaluation				10,000		10,000	10,000
Personnel	57,000		57,000		114,000		114,000
Total	57,000	235,000	57,000	10,000	114,000	245,000	359,000

6. NON-PERSONNEL RESOURCES BY COST CATEGORY

(a) Year 2019

Activities	<i>(Swiss francs)</i>							Total
	Travel, Training and Grants			Contractual Services				
	Staff Missions	Third-party Travel	Training and related travel grants	Conferences	Publishing	Individual Contractual Services	Other Contractual Services	
Two studies, one summary and one recompilation of case stories						100,000		100,000
1 economic study						40,000		40,000
Total						140000		140,000

(b) Biennium 2020-2021

Activities	<i>(Swiss francs)</i>							Total
	Travel, Training and Grants			Contractual Services				
	Staff Missions	Third-party Travel	Training and related travel grants	Conferences	Publishing	Individual Contractual Services	Other Contractual Services	
Two sub-regional seminars and one regional seminar	35,000	155,000		30,000	5,000		10,000	235,000
Project self-evaluation						10,000		10,000
Total	35,000	155,000		30,000	5,000	10,000	10,000	245,000

[End of Annex and of document]