

CASE STUDY IV: THE CLEARANCE OF RIGHTS FROM THE PERSPECTIVE OF A BRAZILIAN INDEPENDENT PRODUCER

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I. INTRODUCTION

This case study describes the clearance practices commonly adopted in Brazilian audiovisual production.

Clearance is a process by which producers revise creative and production materials in order to detect legal issues that can potentially bring liabilities or prevent the film's release. These legal issues typically refer to the use of pre-existing materials protected by copyright and related rights law, industrial property law, or are related to personality rights. The clearance within an audiovisual production anticipates legal issues affecting the film as a final product including the development materials and the chain-of-title.. After the characterization and description of procedures involving rights clearance, the intent is to discuss whether, and to what extent, this practice has distinct features related to audiovisual productions intended primarily for distribution on digital platforms.

Due to the obligations of secrecy and confidentiality contained in the numerous contracts for an audiovisual production, this case study focuses on the experience of independent producers such as the Brazilian O2 Filmes².

¹ Studies available at: https://dacatalogue.wipo.int/projects/DA_1_3_4_10_11_16_25_35_01

² O2 has produced more than 30 audiovisual works comprising long feature films, tv and vod series. The company produced award winning movies such as City of God and Blindness, both directed by Fernando

This case study will discuss the importance of clearance of rights, which pre-existing rights are commonly assessed, the execution of clearance in the different stages of production, and whether clearance has been impacted by increased digital distribution. In each of these topics, reference is made to the Brazilian environment where local independent producers work. It is within this context that interviews made with O2 Filmes and data collected will be reflected.

II. THE IMPORTANCE OF CLEARANCE IN AUDIOVISUAL PRODUCTIONS

Pre-existing artistic works may appear during the scenes of the film, incidentally or intentionally as they may be related to the very concept of the audiovisual work. Three main options exist for the legal status of the materials used in audiovisual productions: First, materials might not be protected or no longer protected as they are in the public domain; second, they might be protected but their use in the audiovisual production might be allowed in accordance to a limitation or an exception; lastly, the materials might be indeed protected and a license ought to be obtained for its use.

There are situations where licensing is the easiest way to use such pre-existing work, and others in which licensing is simply not an option because the rights holder is unknown, or they cannot be found and contacted, or eventually, the licensing is possible but the price is unaffordable for that specific production.

Therefore, copyright *clearance* represents a fundamental activity not only to identify those situations but also to eventually determine if a given project of audiovisual work production is viable or not. This because the infringement of third party copyright could result in liabilities for producers and investors leading to significant financial losses. Indeed, in some cases, it might even lead to the prohibition to exploit the film.

Aware of the importance of *clearance* in audiovisual works, many production companies have in its organizational structure a specific department dedicated to the clearing of rights in all stages of productions. The professionals working in this department have constant and close contact with the creative and production teams for each project carried out. In addition to in-house clearance professionals, producers also rely on the advice of external legal counsels specialized in the subject such as copyright, trademark, constitutional law, and personality rights. These lawyers are present at all stages of production and advice the producer deciding on the feasibility of a given project regarding the rights clearance. They are also involved in the process of negotiating authorizations and rights licensing, identifying scenes that could present a high risk, and to prepare analyzes and legal opinions for the errors and omissions insurers.

III. PRE-EXISTING RIGHTS IN THE AUDIOVISUAL CONTENT

At the onset, the *clearance* procedure aims to identify legal assets owned by third parties that need to be authorized for their use in the audiovisual production. In this sense, it is necessary to understand what rights fall on these identified legal assets. Intellectual Property Rights (IPR) usually are one of the most important areas considered in the process of clearance. Another set of rights that is frequently assessed by the clearance teams is personality rights. Both set of rights are discussed below.

Meirelles, one of the company's partners, the Netflix original *Irmandade*, and co-produced with Working Title the picture *Trash*, directed by Stephen Daldry.

A) PERSONALITY RIGHTS

One of the most delicate situations with regard to personality rights is the production of audiovisual content that is based on a true story where it is expected that real people be portrayed in the audiovisual work. In addition, an audiovisual work could also be based on the life and work of a certain person, living or dead, as is the case with films about singers and artists, political or historical leaders, etc.

In this context, the legal question that arises is whether the inclusion of the history and image of these people in the film characterizes a violation of their rights to image, honor, or privacy. Eventual violations of personality rights could lead to indemnity payments, moral and material damages, as well as, a possible withdrawn of the audiovisual work itself from circulation. The role of *clearance* is to assess the risk and avoid these highly negative consequences.

The Brazilian legal framework

According with Brazilian law, personality rights are considered to be innate rights, that is, they aim to protect the human person in order to safeguard their dignity³. For the Brazilian Civil Code of 2002, the category of personality rights includes, among others, honor (protection against defamation), image, privacy and the name of a person. The Civil Code also stipulates that such rights are “non-transferable and cannot be renounced, and their exercise cannot be voluntarily limited”, and the legal doctrine usually qualifies these rights as absolute, i.e., opposable *erga omnes*⁴.

The Brazilian Federal Constitution guarantees the integrity of people's honor, image and privacy, and the right to compensation in the event of their violation.⁵ The Brazilian Civil Code states that personality rights are inalienable and cannot be renounced⁶, and brings general rules about the protection of honor, image and privacy.⁷

Legal doctrine considers that the image, honor, and privacy of a person constitutes amongst other attributes, emanations of the personality of each individual and innate characteristics which the individual cannot renounce or compromise; being characterized as absolute rights, opposable *erga omnes*, and forming part of the personality rights category.⁸

Notwithstanding the characteristics and general regime of personality rights outlined by legislation and legal doctrine, the case-law gathered by Brazilian courts⁹ has evolved and contributed to provide greater security to some situations, which facilitates an accurate analysis of legal risks in

³ BITTAR, Carlos Alberto. *Direitos da Personalidade*. 2nd ed. Rio de Janeiro: Forense Universitária, 1995, p. 11.

⁴ “Personality rights are absolute, unmaterial, non-transferable, non-renounceable (AR), which are imprescriptible, untenable, lifelong and necessary, (AR) and their exercise cannot be voluntarily limited (AR) by their very nature, they oppose *erga omnes*, implying the general duty of abstention.” (GOMES, Orlando. *Introdução ao Direito Civil*. 21 ed. Revista e atualizada por Edvaldo Brito and Reginalda Paranhos de Brito. Rio de Janeiro: Forense, 2016, p. 115);

⁵ Art. 5º, items V and X of the Brazilian Federal Constitution.

⁶ Art. 11 of the Brazilian Civil Code.

⁷ Arts. 11 to 21 of the Brazilian Civil Code.

⁸ In this sense, see for all, , CAPELO DE SOUSA, Rabindranath, *O Direito Geral de Personalidade*, Coimbra, Coimbra, 1995 and COSTA GARCIA, Enéas, *Direitos Geral da Personalidade no Sistema Jurídico Brasileiro*, São Paulo, Juarez de Oliveira, 2007.

⁹ At this point, the Federal Supreme Court (STF) has been steadily establishing a more favorable understanding of freedom of expression and art, always reserving the right to compensation for the verification of possible abuses and violations of the rights of the personality. For example, the leading case ADIN 4815 regarding the impossibility of prior censorship of publication of unauthorized biographies.

the *clearance* processes¹⁰. In such cases, legal analysis requires weighing two constitutional rights in conflict. The freedom of expression on one side, and the individual right to protect their image, honor, or privacy on the other, and to decide which of the two rights will prevail over the other. More recently, decisions by the Brazilian Constitutional Court showed that the Court tends to protect the freedom of expression, but at the same time preserving the victim's right to be eventually compensated in the case of moral or material damages.

B) INTELLECTUAL PROPERTY RIGHTS

Within intellectual property rights, a clearance analysis focuses on two main areas, namely industrial property rights or copyright and related rights.

i) Industrial Property

In the field of industrial property, clearance of audiovisual productions focus on trademark. Registered trademarks core function is to identify the origin of products and services. Brands might also transmit additional images such as luxury, popularity, territories, time, etc. Therefore is only logic that trademarks are usually portrayed in audiovisual productions.

In this way, the activities of the characters, the filming locations, the costumes, the eating habits, in short, the whole story narrated by the audiovisual work can be better contextualized by the use of confronted existing brands.

ii) The Brazilian legal framework

Under Brazilian law, legal protection for trademarks is recognized by the Brazilian Industrial Property Law¹¹. The consequences of the improper use of a trademark in an audiovisual work includes the payment of compensation for losses, material and moral damages, and even an injunction preventing film's exploitation; even though the latter possibility is remote.

The aforementioned legal statute establishes an express limitation allowing the quoting of trademarks in artistic works, provided that it does not have a commercial connotation and does not prejudice the distinctive character of the trademark.¹² Notwithstanding this legal provision, the problem of legal uncertainty and lack of jurisprudence defining what characterizes the loss of the distinctive character of a trademark when used in the context of an artistic work, as well as what would characterize a commercial use in the same context, end up making risk analysis difficult.

Additionally, producers tend to use the placement of a trademark within a movie as an opportunity to raise financing for the production. For this purpose, producers negotiate with the owners of a trademark how to use it in the movie, the content of specific scenes in which it will appear, and which talent will interact with the trademark. All this requires permissions in the agreements signed with writers and performers.

¹⁰ There is a line of decisions of the STF in cases of conflicts between freedom of expression and individual rights to protect honor, image or privacy, which demonstrates the prevalence of freedom of expression in the court's view. For example STF – Rcl 22328, Rel: Min. ROBERTO BARROSO, Primeira Turma, DJE 10-05-2018 . In his opinion, Justice Barroso proposes the application of eight criteria to be considered in the weighting between freedom of expression and personality rights: (i) truthfulness of the fact; (ii) the lawfulness of the method of obtaining the information; (iii) if it's a public or private person being portrayed; (iv) location of the event; (v) nature of the fact; (vi) existence of public interest in the dissemination of the information; (vii) existence of public interest in the disclosure of facts related to the performance of public agencies; and (viii) preference for a posteriori sanctions that do not involve an injunction, i.e., a prior order prohibiting disclosure.

¹¹ See, especially, arts. 122 et seq. of the Brazilian Industrial Property Law.

¹² According to art. 132, IV of the Brazilian Industrial Property Law.

In this context, producers might tend to avoid using real brands in their audiovisual productions. Alternatively, producers might develop fictional brands artistically in order to avoid any risk of future challenging.

iii) Copyright and Related Rights

Lastly and most importantly in the risk analysis is the use of other protected artistic works within the audiovisual work. As mentioned before, a first step is to identify if the works are in public domain or if the use within the film complies with the legal requirements of a limitation or an exception. In some situations this first analysis might be complex, for example where the author of the work is unknown and therefore it is not possible to determine when the work would enter the public domain. In this case and with works that are still protected, the clearance will identify and assess the risks and options for the producer to decide.

The Brazilian legal framework

According to article 41 of the Brazilian Copyright Law “the author's patrimonial rights last for seventy years from the 1st of January of the year following that of his death, obeying the succession order of civil law”. In other words, the use of any of the intellectual works protected in audiovisual production, without the proper authorization of their holders, represents a risk to the circulation and commercialization of the audiovisual work. This stage of clearance deals with the use of pictures, paintings, music, graffiti, and photographs, amongst others pre-existing works within an audiovisual work.

Brazilian copyright law does provide for a specific limitation and exception authorizing the use of small portions of a pre-existing work within a new work, or the use of the whole pre-existing work if it is of a visual art. However, this exception is conditional to the “*reproduction itself is not the main objective of the new work and does not prejudice exploitation reproduction nor cause unjustified prejudice to the legitimate interests of the authors*”¹³.

Additionally, Brazilian Copyright Law also provides for a specific limitation to the quotation of small portions of pre-existing works made for purposes of “*study, criticism or controversy*”¹⁴. The application of the above mentioned exceptions and limitations has to be carefully assessed by legal counsel during the clearance process and on a case-by-case basis.

Brazil does not have an extensive case law on this matter, nor a court decision controlling, or used-as-law for other cases, since Brazil is not a stare decisis legal system. Additionally there are very few cases ruled by superior courts on limitations and exceptions, up to the point of achieving the status of a clear and stable case-law by Brazilian courts on this subject.

¹³ Art. 46. It shall not constitute copyright infringement:

(...)

VIII - the reproduction, in any works, of small excerpts of pre-existing works, of any nature, or of integral works, in the case of plastic arts, where reproduction itself is not the main objective of the new work and does not prejudice exploitation reproduction nor cause unjustified prejudice to the legitimate interests of the authors.

¹⁴ Art. 46. It shall not constitute copyright infringement:

(...)

III – of citation in books, newspapers, magazines or any other means of communication, of passages from any work, for purposes of study, criticism or controversy, to the extent justified for the purpose to be achieved, when mentioning the name of the author and the origin of the work;

In deciding whether such exceptions and limitations are applicable in a concrete case of an advertising film, there is jurisprudence that analyze whether the use of the pre-existing work is an addition [accessory to the new one]. The case-law also clarifies when there is no loss for the rights holders¹⁵. On the contrary, one can find case law for which the use of a pre-existing work was not an addition¹⁶.

Following the reasoning employed by court decisions in advertising environment, the clearance legal counsel may work out some criteria of risk assessment that may be useful for the clearance process in the concrete case. The criteria could follow the following basis: (i) pre-existing works shall not be the main element in the scenes, (ii) characters shall not interact with such pre-existing materials, (iii) the pre-existing works shall not be used for the purposes of advertising the audiovisual work and others deemed appropriate by the legal counsel, (iv) always give credit to the pre-existing work's author. All of these criteria are recommendations that can help avoid copyright infringement, but they are not absolute, i.e., it is possible for a Court to decide against such criteria.

For example, when there is a location with paintings on the wall, but these are not in a public space and the artist is unknown and unable to be located. In this case the reproduction of such pre-existing paintings are essential for the movie, then the risk analysis will probably recommend crediting the works and to reduce their exposure – although this may be very subjective. Thus in any case the producer will have to take some degree of risk.

On the contrary, if the pre-existing works are placed permanently in public places, then there is a clear limitation and exception in the Brazilian copyright law providing that works in public places can be represented without previous authorization of the authors or rights holders¹⁷. However, even in this case, there are court decisions finding that this limitation is not applicable whenever the use of the pre-existing work is of commercial nature, such as in advertising¹⁸.

IV. CLEARANCE IN THE DIFFERENT STAGES OF PRODUCTION

For the purposes of rights clearance, the production of an audiovisual work can be divided into two major stages. The first one is the development stage, in which an argument, script versions, and other materials are created. The second one is the actual production of the work, in which the planning elaborated in the previous stage is carried out: the technical and artistic talents, service providers, necessary filming locations, as well as shooting and post-production.

A clearance analysis shall be made during both stages. In the development, the goal of clearance must be to confirm the legal and economic possibility of carrying out the audiovisual work as it was conceived. In the production stage, the analysis must take place in regard to the permissions required for the use of any pre-existing content in the production, either in regard to the locations, objects and all the scenes decoupled, and to confirm the possibility of using all the pre-existing intellectual works in the scenes to be filmed.

¹⁵ REsp 1.343.961-RJ, Rel. Min. Luis Felipe Salomão, STJ.

¹⁶ REsp 1.217.567-RJ, Rel. Min. Luis Felipe Salomão, STJ. .

¹⁷ Sec. 48 of Brazilian Copyright Law: "The Works permanently located in public places can be freely represented by means of paintings, drawings, photographs and audiovisual procedures". This limitation and exception has been affirmed by local Courts, such as in TJSP; *Apelação Cível 1034084-79.2015.8.26.0100*; Relator (a): Ênio Zuliani; Órgão Julgador: 30ª Câmara Extraordinária de Direito Privado.

¹⁸, Ref. *Apelação cível n. 1085160-40.2018.8.26.0100*, Rel. Des. Coelho Mendes.

For example, the audiovisual work might be based on the work of a certain artist, as an important musician and composer. Therefore, the film will need to contain his or her songs and eventually, the artist himself or herself as a character, as it would make no sense to make the film about the artist without the presence of his or her music as a track and/or in the context of the scenes.

This fact should be identified in the clearance to be carried out in the development phase. When analyzing the script, the possibility of licensing these songs should be assessed, i.e., if the rights to the musical works and the respective sound recordings are available and can be licensed under standard market prices, and eventually the rights to the artist's image, if he is portrayed in the film.

The viability of this licensing of rights must therefore be assessed in the development phase, and not in the production phase, because if the copyright on the songs, or the related rights on the phonograms, interpretations and musical performances are not available or not can be licensed, the viability of producing the film will be compromised. With the film in the production phase, the costs of an eventual impossibility of licensing such rights become very high, as they would lead to contractual breaks, fines, waste of planned locations, among others tasks that could have been avoided if the clearance had been carried out in a previous stage.

Another common situation is films based on a true story. This story can be related to certain individuals and it is necessary to know if the way of telling these facts in the film characterizes a violation of these people's personality rights such as privacy, honor, or image. This is yet another example in which *clearance* must necessarily be done in the development stage as the project may not be viable if the risk of violating these rights is very high. In addition, in the development stage it is still possible to correct the narrative line of the film to eliminate or reduce possible risks of violation of these rights.

The procedures for carrying out *clearance* can be organized as follows:

- (a) identification of existing copyrights in the material or decoupage,
- (b) legal risk analysis relating what needs to be licensed and what can be used without licensing, but with a legal risk analysis;
- (c) decision on the size of the risk to be assumed, and finally
- (d) licensing of rights.

V. THE EXPERIENCE OF A BRAZILIAN PRODUCER

Following the rationale mentioned above, O2 Filmes carries out clearance of rights in the two moments: development and production. In fact, for O2 Filmes, clearance in the development stage is much more important than in the production stage, as the first will indicate whether the making of the film will be viable or not, being almost a "*joint work co-creation process*".

Thus, *clearance* in the development phase is carried out by the O2 production team and by the production legal counsels, which includes reading and annotating the development materials. This process identifies the presence of pre-existing works or other rights already mentioned that belong to third parties, whether in the final script or in any of the script versions, in the locations, or in the scene materials.

This procedure of internal and external readings is also performed over the description of each scene with all the objects that will be used, whether the objects are created by the art team or are objects acquired for the filming, names, trademarks and any other pre-existing material.

At the end of this procedure, all the works of third parties that appear in the scripts or in the scenes, such as paintings, pictures, sets and costumes, etc., are identified. Based on this analysis, legal production consultants assess the need for licensing or not taking into account the possibility of works that are in the public domain, the existence of compatible limitations and exceptions or detailing the possible risks of using the work without the authorization of the owners according to interpretation of the law and jurisprudence.

The risks are then discussed between the producers, O2, and legal production counsels. Once the risks are defined and analyzed, the licensing procedure begins. Since this is done during the development stage, it is still possible amend the creative materials if a specific work cannot be licensed or if the licensing is too expensive for the production.

With the licensing conditions and risk assessment in hand, it is the producer of the work that will make the final decision on what to license and what risks will be assumed..

It is important to highlight that, since clearance involves a legal risk analysis, decisions on whether or not to license the copyright over pre-existing works constitute decisions on what size of risk each producer is willing and able to take, which goes through a subjective and also objective analysis regarding the economic conditions of each agent. Based on the experience of each producer and each work, it is possible to determine the legal risk policy to be adopted in the clearance process, which will have to be adapted to the level of legal risk that this producer is willing to take.

A work of fiction that uses the likenesses of real people, such as people who are portrayed in scenes that are entirely or partially fictional, will pose a greater risk from the point of view of personality rights than a factual documentary. This does not mean that the use of the likeness of people in a factual documentary can occur without the authorization of the people portrayed, but perhaps they are public figures and/or exercising public function, or there are other elements that may restrict their personality rights.

For the licensing phase, O2 has an internal clearance department, which takes care of all procedures for licensing copyrights on third party works for all of the company's productions. This department works in collaboration with the production's legal counsel to make sure that the licensing documents and agreements meets O2's needs for that particular production.

In O2's experience, while there are no creative works that are more difficult to license than others, there are rights that are more expensive than others. The greatest difficulty, therefore, lies in the price to be paid for the license.

There are many rights whose licensing presents clear and well-defined parameters by the market, as is the case of copyright on musical works and phonograms. On the other hand, there are other rights, such as the right to adapt literary works to audiovisual works, or the licensing of football team logos, for which there are no price parameters on the market yet, and which makes their licensing harder.

VI. CLEARANCE FOCUSED IN DIGITAL DISTRIBUTION

As in other countries, the Brazilian audiovisual market has undergone radical growth and change with the emergence and growth of digital distribution services for audiovisual works. The high demand for Brazilian audiovisual productions aimed specifically at this niche market is already a reality of the main independent producers in Brazil.

This new production model focused on the online distribution the a market practice known as work-made-for-hire prevails. This is a significant change from previous production models based on direct and indirect public financing previously prevalent in Brazil¹⁹. In summary, in this new model, the producers work with a perspective and decisions pre-established by the contracting company financing the production, usually an Over-the-top (OTT) platform, , limiting their decision-making and overall management over the production of the works in general.

In this train of thought, it is relevant to understand if and how this new type of production aimed at digital distribution changed the procedure and assessment of rights *clearance* performed in Brazilian productions. It is important to assess the existence of specific peculiarities in the identification and licensing of rights in this new business structure when compared to the public financing market model for Brazilian independent productions, in which the independent producers hold a major share of the copyrights in the audiovisual works produced.

In the experience of O2 Filmes, there is no difference in the copyright clearance process in relation to the initial display window of the work. Therefore, the *clearance* procedure itself will be the same, following the same steps described above whether it is a production for a VOD platform (video on demand) or a production for a first film screening.

However, there is a crucial difference in decision-making in view of risk analysis carried out by the responsible internal department and by the legal consultants of production. This difference occurs due to the fact that when it comes to non-independent production, such as those that are carried out for audiovisual streaming platforms, that is, ordered productions, the risk policy on clearance is determined by the contracting company.

The perception of the producer is that when it comes to an independent production, from O2 itself, the company is less willing to take legal risks.

Following this vision, in the *clearance* procedure that O2 carries out for its independent productions, it seeks to identify all copyrights on the creations of third parties and to license all these rights, without normally running any risk. If applicable, the company is willing to modify scenes and respective scripts to avoid the presence of a certain artistic work that could not be licensed.

¹⁹ We consider work-made-for hire model whenever an independent production company is hired to produce an audiovisual content, and as a result of that it assigns all copyright in the audiovisual work produced to the entity who hired the services, usually a tv channel or a VOD platform. In case of the streaming platforms acting in Brazil, since most of them are headquartered in the United States, they tend to contract Brazilian production companies under contracts governed by US law, thus applying statutory work-made-for-hire provisions, which consider as original author of the audiovisual work the entity hiring its production – please see 17 USC 101 definition for a work made for hire: . “A ‘work made for hire’ is—
(...)

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.”

For example, in scenes involving the presence of book titles, newspapers, and branded packaging, such as in a shoot in a bookstore or supermarket, all of these items are licensed by the producer or are made by the art department.

On the other hand, streaming companies, which are generally global players, assume more risks than an independent producer. For a local company such as O2, Global streaming players seek to make certain scenes as realistic as possible and are not concerned, for example, with the presence of brands and logos on packaging or newspaper or book titles, as long as such appearances are appropriate and relevant to the specific scene, and in accordance with their well-defined rights clearance policy.

This different approach to clearance of IP rights is also partially explained by the lack of certainty in the limitations and exceptions to copyright in the Brazilian law, as well as an emerging case law on the matter. These aspects led O2 to adopt a strict policy of licensing any pre-existing work. In their words, the *“system of copyright limitations and exceptions does not work and it is not clear”*.

In the case of an international co-productions, clearance and legal risk analysis are generally carried out taking into consideration more than one jurisdiction, normally analyzing the laws of the of the producer and where production takes place.

However, O2 also reports hypotheses in which *clearance* is carried out in accordance with the jurisdiction of more than one country as required by the financiers. The decision on the level of risk to be assumed depends, in general, on the majority co-producer of the project, and this, in turn, performs the clearance in collaboration with a legal risk policy validated by the main financing agent.

VII. CONCLUSION

According to the perspective of a Brazilian local independent production company, clearance procedures do not vary in case of productions for digital media and productions for traditional means of exhibition. Also, the importance of clearance is seen as more relevant in the development phase of an audiovisual work than in a later stage, although clearance is seen as extremely important during all steps of audiovisual production.

Clearance of rights help to avoid copyright infringement and other legal issues that could potentially undermine or even impede the commercial exploitation of the audiovisual work. The vast experience of the Brazilian producer O2 Filmes led the company to adopt a very strict approach and creating its own clearance department. It is interesting to note that national legal framework that provide legal certainty for production companies could assist the local audiovisual sector. The experience of the Brazilian producer with its lack of reliance on the limitations and exceptions of the Brazilian copyright law led it to adopt strict approach. At the same time, OTT platforms that are global are considered to assume higher risks than local independent producers, while also paying attention to the need of clearance of rights.

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