

ALAI Congress 2019 in Prague Managing Copyright

Answers to the Questionnaire

Country (National Group): ARGENTINA

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Translation by Pablo Wegbraut

When drafting the national report, please: quote to the most relevant literature; refer to court decisions, wherever they exist; add a list of the quoted literature and of the abbreviations used; use the consistent terminology within your report; explain a special terms that might not be known outside your jurisdiction when you first use them; add the text of the relevant statutory provisions (translated into English or French) in the footnotes.

1. General Overview of the Collective Management

1.1 *Can collective management organizations be described as monopolies (natural monopolies or monopolies set by the law) in your jurisdictions?*

All entities recognized by law to act as collective management societies in Argentina are monopolistic and they represent national and foreign right holders throughout all the national territory.

1.2 *Does your system make difference between the voluntary, extended (if any) and mandatory collective management? Which rights are managed under which regime?*

The system contemplates, in most cases, mandatory collective management (legal recognition). Entities vested with such powers are:

- Argentine General Society of Authors – Reciprocal Protection (*Sociedad General de Autores de la Argentina (ARGENTORES) de Protección Recíproca*). Recognized by law 20,115 (published in the Official Gazette on January 31, 1973) and executive order 461/73 regulating the law (published in the Official Gazette on January 31, 1973).

- Argentine Society of Musical Authors and Composers (*Sociedad Argentina de Autores y Compositores de Música*, (SADAIC)). Recognized by law 17,648 (Official Gazette, March 7, 1968) and executive order 5146/69 regulating the law (November 21, 1969).
- Argentine Film Directors (*Directores Argentinos Cinematográficos* (DAC)). Executive order 124/09 (Official Gazette, February 24, 2009). Schedule of fees 61/10 of the Chief of Staff's Communications Media Secretary (Official Gazette, March 11, 2010).
- Argentine Association of Performers (*Asociación Argentina de Intérpretes* (AADI)). Executive order 1671/74 (Official Gazette, December 12, 1974).
- Argentine Chamber of Producers and Manufacturers of Phonograms and Videograms (*Cámara Argentina de Productores e Industriales de Fonogramas y Videogramas* (CAPIF)). Executive order 1671/74 (Official Gazette, December 12, 1974).
- AADI CAPIF ACR, Collecting Civil Association (AADI CAPIF ACR, Asociación Civil Recaudadora) of amounts to be paid for the right of public communication of performing and executing artists and phonogram producers. Executive order 1671/74 (Official Gazette, December 12, 1974). Schedule of Fees 390/05 of the Chief of Staff's Communications Media Secretary (Official Gazette, December 9, 2005).
- Argentine Collective Management Society of Performing Actors (*Sociedad Argentina de Gestión de Actores Intérpretes* (SAGAI)). Executive order 1914/06 (Official Gazette, December 27, 2006) with the amendments introduced by Executive order 677/12 (Official Gazette, May 8, 2012). Schedule of fees 181/08 of the Chief of Staff's Communications Media Secretary (Official Gazette, April 21, 2008).

The following societies are voluntary:

- Society of Argentine Visual Artists (*Sociedad de Artistas Visuales de Argentina* (SAVA)).
- Management Center for Reprographic Rights (*Centro de Administración de Derechos Reprográficos* (CADRA)).

These societies basically manage the reproduction and public communication rights. Some entities also participate with right holders in the grant of use licenses and in the management of other rights, such as synchronization rights (musical authors and composers), adaptation and/or translation rights (dramatic writers) and other licenses.

1.3 *Is the competition between collective management organizations permitted in your jurisdiction? If so, under which circumstances, how often and in which fields (e.g. tariffs, service for users, available repertoire, service for rightholders, amount of deductions) the competition may occur.*

Competition among collective management societies is not allowed.

1.4 *How is extended (if any) and mandatory collective management regulated and applied where, for the management of a given right, there are more than one organization?*

Mandatory collective management is exclusive. There is only one entity for each category of rights managed (musical authors and composers, dramatic writers, etc.).

1.5 Is the collective licensing of rights conducted by non-profit CMOs or a different type of agency or entity (profitable entities such as business corporations), or by the state agency (such as the IP Office)?

Argentine CMOs are in all cases not-for-profit entities.

1.6 Are the collective management organizations obliged to contribute to cultural development of the society? If so, in which areas and how is the cultural support implemented (e.g. management of social or cultural funds)? Is the creation of such funds and their allocation limited by law?

Contribution with social / cultural aims by the societies is voluntary and the scope thereof is established in each society's by-laws. Social support adopts different forms (medical and pharmaceutical assistance, grant of pensions, legal assistance, etc.) and it may also translate into cultural activities (courses, publications, etc.).

2. Collective Management Organizations and Authors (Right-holders)

2.1 Do the authors/rightholders have a legal right to become represented? To become members? If they are rejected, what kind of remedy do they have at their disposal?

Without prejudice to the monopolistic character of collective management contemplated in Argentine laws, authors / right holders have the legal right to be represented by collective management organizations and these have the obligation to represent them. Therefore, CMOs are obliged to represent them. Consequently, it is necessary to distinguish between members (a voluntary capacity) and represented parties (mandatory). For example, a theatrical author may or may not request to be admitted as a member and could even be sanctioned and expelled, but he is represented whether or not he / she is a member.

2.2 How does the CMO resolve a conflict between rightholders in case of a "double claim"? Are the rightholders referred to court or is there an ADR at hand?

Some entities provide for internal dispute resolution systems, but these are optional. If the parties do not resort to the internal dispute resolution systems, they must refer the matter to the ordinary courts, which are competent to hear the controversy in all cases.

2.3 How can the authors (rightholders) participate in the activities of the collective management organization? Under which circumstances can they be elected into the management or controlling boards? Are there pre-conditions, such as a minimal amount of remuneration from CMO, to become elected?

The conditions to participate in the activities, and to act in the different governing bodies, result expressly from the societies' by-laws. The conditions for election vary among societies, but they

generally require being an active member, or in some cases even certain seniority, a minimum income during a certain number of years, etc.

2.4 *How is the remuneration distributed amongst authors? How can the authors intervene in the process of the formulation of distribution schemes? In which phases of the collecting process are the fees taxed and by whom?*

Funds are distributed pursuant to the guidelines established in each society's by-laws.

The society is in charge of collection duties.

In the case of performing and executing artists and phonogram producers, there is – as already expressed – a joint entity created by law, in charge of the right of collecting the royalties for the public communication rights to which they are entitled.

2.5 *How does the law or legal practice reflect the will of the author (“autonomy of will”) to grant licenses individually? Is it allowed for the user to obtain the license directly from the represented author? Are such direct licenses null and void or are they valid, while the user still pays remuneration to the CMO? Please elaborate for each regime of the collective management.*

The author's will is asserted with respect to those rights not subject to mandatory collective management. However, even within mandatory collective management, right holders have in some cases the right to deny authorization, or they may request higher compensation and to establish the conditions therefor. For example, ARGENTORES sets minimum fees, which authors or right holders may increase, or they may even reject the grant of the license. It is said that fees are a starting point but not a limit.

It is not possible to obtain a direct license with respect to the rights subject to mandatory collective management. If the right holder grants the license the society must also grant it.

2.6 *Do CMOs allow the rightholders to grant a non-commercial license for their work? Are so called “public licences” used in this context? Are there any examples concerning the non-commercial distribution of the protectable subject matter by the CMOs in your country?*

They are not allowed.

3. Collective Management Organizations and Users

3.1 *How does your jurisdiction prescribe private copying remuneration (“levies”)? Is the general principle of freedom of a contract respected in this area (i.e. is the remuneration a subject of the negotiations between users and collecting societies) or is the size of the private copying levy stipulated by any legislative act (such as governmental decree)?*

The Argentine legal system does not recognize compensation rights for private copy. CADRA charges fees for the licenses that it grants.

3.2 Nowadays, the major use occurs on the Internet. Has there been any attempts in your country to set a private copying levies collected by CMOs or by different entities or state for the use of protected subject matters on the Internet (e.g. in the form of a so-called “flat fee” or a special tax)?

Not for the time being.

3.3 How are the tariffs set (by decision of the CMO, by negotiation with users, consumers or others)? What are the statutory criteria for the tariffs (e.g. assessing the value of the rights by experts, proportionality etc.)? Do they require approval of a regulatory authority (such as an IP Office, Ministry of Culture etc.)? How can they be contested by the users? By general courts, by special ADR procedure or specialized tribunals?

SADAIC and ARGENTORES have the power to establish fees, even though the agreements with business associations are preferred. The executive orders regulating the laws that recognized SADAIC and ARGENTORES establish caps for the fees that the entities may establish pursuant to the different forms of use of works.

In the cases of AADI and CAPIF (the public communication fees to which they are entitled are collected by AADI CAPIF, ACR), SAGAI and DAC, the Chief of Staff's Communications Media Secretary (not the intellectual property office) establishes the fees with the participation of those entities.

As already expressed, those entities have entered into agreements with various user organizations so as to establish fees based on mutual agreement, such as, for example, with hotel associations, broadcasting organizations, etc.

There is no established procedure for users to challenge the fees.

3.4 Does the competition law in your country recognize abuse of dominant position of a CMO? Are there any examples (cases) that the CMO has been held responsible for the distortion of the competition?

There is only one case concerning this matter which was the sanction applied by the Secretary of Commerce against the entity which manages collectively the right of musical authors and composers, as a result of the proceedings instituted after a complaint by an Argentine hotel association. As of the present date, there is a court appeal pending against this sanction. The hotel association argues that SADAIC abuses of its dominant position and not that it has engaged in anticompetitive practices.

3.5 *In some jurisdictions the problem may be the non-transparency of tariffs. Are there any rules on the statutory level or as the outcome of the self-regulatory activities which concern the transparency of the tariffs? Has there been any development in this area in recent years?*

The fees are published by the societies or in the official gazette when the Chief of Staff's Communications Media Secretary establishes them.

References:

- Lipszyc, Delia & Villalba, Carlos Alberto: El derecho de autor en la Argentina (*Droit d'Auteur* in Argentina), Ed. La Ley, Buenos Aires, 2001 and 2nd edition 2009. Digital edition, 2016 (www.laley.com.ar).
- Lipszyc, Delia *et al.*, Law 11,723. The Argentine Copyright Act, a commentary, including international treaties, the Argentine Civil and Commercial Code and case law, Editorial Hammurabi, Buenos Aires, 2019.

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