

The Distribution of Neighboring Rights in Audiovisual Soundtracks: The Case of Record Producers in Brazil and Beyond.

Dora Caymmi de Cantuária Farias ^a.

^a Law School, Estácio de Sá - Rio de Janeiro, Brazil. email:
doracaymmi@hotmail.com

Abstract. This article examines the legal and institutional framework regulating the allocation of neighboring rights for phonogram producers included in original audiovisual soundtracks, with a comparative analysis of Brazil and other jurisdictions. From the perspective of national laws and collective management frameworks and international treaties, the analysis demonstrates the ongoing difficulties in achieving fair remuneration in the Brazilian audiovisual landscape. The facilitation of cue sheet registration, the collective managed entities and their roles such as ECAD and APDIF, as well as technological innovations such as blockchain as a means of promoting transparency and efficiency are all examined in detail. Finally, the article recommends substantive legal and operational reforms that could align practices and facilitate fair remuneration in the digital audiovisual space.

Keywords. Brazil, Neighboring rights, Phonogram Producer, collective management, audiovisual, Copyright Law.

1. Introduction

The Audiovisual Industry stands out as one of the most dynamic and rapidly evolving sectors worldwide, producing content across multiple formats and platforms. However, audiovisual production involves a complex web of rights and responsibilities among the professionals involved - especially phonogram producers' neighboring rights in original audiovisual soundtracks, both in Brazil and internationally. Particular attention is given to collective management mechanisms, the role of Copyright Associations, and existing challenges in ensuring fair remuneration. Although Brazil boasts one of the world's highest collections of copyright and neighboring rights, deficiencies remain in the effective distribution of these royalties in the Audiovisual Sector. This study critically examines those gaps and offers perspectives for improvement through technological, legal, and institutional developments.

2. Research Methods

The article is situated in a qualitative and comparative methodology, utilizing qualitative law-conceptual analysis, and a literature review. The conceptual framework was developed by identifying important legal definitions and principles associated with neighboring rights, and collective management, especially with respect to audiovisual soundtracks. The literature review consisted of systematic searches of academic databases, such as Scopus, SciELO, and Google Scholar, focusing on articles from the last ten years on neighboring rights, the "phonogram producer," audiovisual soundtracks, and collective management of copyrighted works. In conversation with a literature review, I also drew upon key initial texts and legal doctrines, to establish the theoretical basis for the study. To supplement the legal analysis, I engaged with statistics provided by ECAD, and relevant commentary or statistics from international organizations, such as IFPI, to illustrate the patterns of royalty collection and the associated challenges. I made reference to legal systems in the USA and Europe to attract attention to structural differences and possible best practices.

3. Conceptual Background -

Neighboring Rights and Collective Management

Neighboring rights can be defined as the legal entitlement of performers, phonogram producers and broadcasting organizations in the use of their performances or recordings.

According to Ficsor, “neighboring rights” are called so because they are adjacent to authors rights and thereby one step different because they protect contributors to making works available to the public [1].

Silva and Dias more explicitly define neighboring rights stating, “they are necessary for recognizing and economic valuation of the creative and productive agents that, although not authors, are essential to the dissemination of musical works” [10].

In Brazil, Law no. 9,610/98 (Brazilian Copyright Law) distinguishes neighboring rights as separate from Author's Rights and grants Phonogram producers “the right to authorize or prohibit the reproduction, rendering public, distribution and broadcasting of their recordings”. These rights are only valuable insofar as they are exercised, primarily through collective management. Many rights holder types benefit until additional permutations of the legal and institutional framework are added. First, collective management organizations (CMOs) act on behalf of rights holders collecting and distributing royalties. In some cases, CMOs set an equitable fee for the exercise of neighboring rights and pay all rights holders similar remuneration, as if they were using their creative capacity. Second, CMOs function as an intermediary between rights holders and users of those rights that allow license schemes in a broader sense, as well as facilitate enforcement schemes that work towards fulfilling rights.

As Melo stated, “Collective Management Associations” serve not only as intermediaries between users and right holders, but also, and most importantly, as regulators of the phonographic market by balancing the interests of users and right holders while also providing large-scale licensing” [2]. For a producer to collect royalties for their audiovisual use, it’s necessary to submit a cue-sheet, a technical document in which it details all musical works used in production, to the collective management organization (CMO) in their jurisdiction, which must also contain metadata identifying works such as international standard recording codes (ISRC), authorship, performers, duration, and audiovisual credits.

This also allows the collective management organization to keep score of the works and take steps to distribute funds fairly within the context of the recording context.

International Comparison

While Brazil's legal arrangement is consistent with these agreements, there are considerable differences across national systems. For instance, in many European countries, phonogram producers are paid only when the sounds have been publicly performed outside the audiovisual world of use.

The synchronization of music into audiovisual works is usually licensed on a one-off license settlement basis, and therefore does not receive continued neighboring rights payments. In the United States of America, the neighboring rights of phonogram producers are limited to digital transmission. For example, terrestrial radio broadcasts do not trigger public performance royalties for producers, which highlights a considerable difference from Brazilian law. Brazil's centralized collection model and its investment in rights administration technologies has allowed the country to rank as one of the globes leaders in collections.

In 2023, according to ECAD (Central Collection and Distribution Office), Brazil collected an amount higher than R\$ 1.3 billion in copyright and neighboring rights, and consistently within a trend of increasing revenues within the last five years as a reflection of the overall contribution from the Adagio to the public performance, radio, television, streaming and audiovisual uses categories, only a small percentage of which is redistributed effectively to phonogram producers operating within the audiovisual sector. To underline this propositional analysis, a graph of ECAD's total collections will be inserted below, for the years 2020 to 2024, which highlights the audiovisual-related categories and the fraction allocated to phonogram producers, provides a necessary image which will illustrate the quantum of total collections and the structure of distributional gap in the sector.

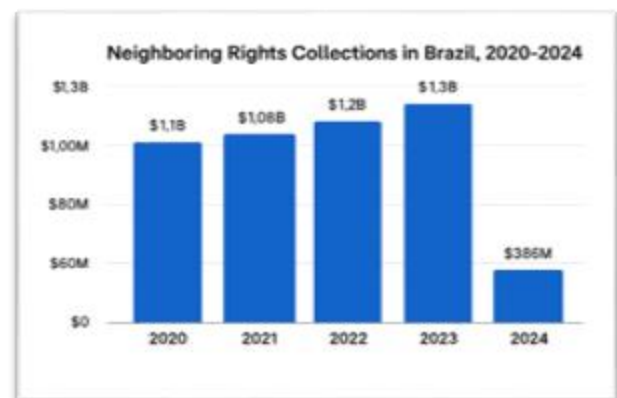


Fig. 1 – Neighboring Rights Collections in Brazil, 2020 – 2024

4. Challenges and Perspectives:

The main challenges in the Brazilian context involve both legal literacy and

system transparency. There is still a lack of awareness and understanding among audiovisual producers about the importance of registration and compliance with regard to neighboring rights. This often results in unregistered work and, as a consequence, unpaid rights. The second structural issue is needing more transparency in the way that the CMOs distribute the royalties they collect. CMOs have to be working on these things on a continuous basis, and they will need to invest increasingly in strong/ robust technology for tracking data and management of rights. Building interoperable systems and improving like-data record are necessary steps to equitable distribution and with enforcing rights. There is some consideration to bringing the rights management ecosystem in Brazil in line with core best practices internationally, such as clarity within contracts as exists in part we see in frameworks in the European context. Legal reform, a stronger technical capacity operating in the space, and educational development will be crucial to building upon empowerment of rights holders and developing the collaborative governance of CMOs. The potential to strengthen these mechanisms may assist Brazil in further establishing global leadership in neighboring rights and realizing harmonized institutional engagement internationally.

5. Conclusions

The assignment of neighboring rights for record producers in audiovisual soundtracks is an urgent concern in an ever-changing audiovisual market. Brazil has made progress both technologically and institutionally but still faces systemic challenges regarding fair compensation. With the right use of legal, technological, and educational mechanisms, the country can continue to assert its position and role as the world leader in collective rights management and set standards for international harmonization.

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