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CTDLV20-0929 / Dramatic, Literary and Audio-visual Works Technical Committee / Conference Call, 03/11/2020 - 04/11/2020

Source language: English / Written on: 28/10/2020

Document prepared by Adaptations and shared works

Adapted and Shared works WG

Best practices and guidelines

Context:

The increasing number of co-productions leads to situations where co-authors of different AV CMOs contribute to the same audiovisual work. As a consequence, the same work can be declared in the repertoire of different CMOs, but in some cases, these CMOs are not always aware of the existence of other co-authors.

Conflicts often appear later when the work is uploaded to IDA, with different and incompatible shares, in particular in the sharing between co-authors of the text.

When a conflict arises, it may happen that a third-party CMO withholds the payment of royalties until the resolution of the conflict, which can take several months with a considerable involvement by the concerned CMOs.

The purpose of this document is not to amend CMOs own rules but to propose best practices aimed at a smooth registration process and at the avoidance of conflicts, when possible, or at their management whenever they occur. In fact, it is often not possible to avoid them. Therefore, the conflict, rather than be avoided, has to be managed.

Definitions:

Shared work:

Work with contributors / co-authors being member of different CMOs.

Adapted work:

For the purpose of the present analysis, an adapted work can mean: (1) the creation of a new local audiovisual work (declared in the repertoire of a foreign CMO – CMO A) by national authors for a local audience based on an original foreign audiovisual work declared in the repertoire of a different CMO (CMO B). Depending on local legislations, the authors / contributors of the original work should have a share of royalties in the adapted work; (2) a mere versioning of the original work for local markets, usually by a local co-author rewriting original dialogues before shooting (typically in co-productions).

Compulsory sharing rules: national mandatory rules adopted by the governing bodies of CMOs or set by law (without possibility of derogation for co-authors).

By default sharing rules: standard rules of the CMOs that only apply when no agreement is reached or no shares are expressed.

Agreed shares: shares established by the mutual agreement between the co-authors.

SHARED WORKS

Ante Work Registration

CMOs should inform their members to make them aware that when they work on a co-production with co-authors members of a foreign AV CMO, different sharing rules may exist in the other CMO. Therefore, they need to agree upon a share division not leading to international conflicts.

If the CMOs are aware of the existence of a foreign author before the registration of the work, they should liaise with the sister CMO as soon as possible to find an agreement on the sharing between their respective co-authors.

CMOs should in effect act as facilitators which is a part of their intermediation role, finding solutions to simplify the registration of the work based on the following rules.

Proposal 1: => APPROVED BY CTDLV 2019

Authors should declare the work to the CMO they belong to and inform the CMO that there are co-author members of a different CMO (Upon registration of the work, this information should be systematically asked by the CMO in the case of co-productions).

CMOs shall then liaise to evaluate the situation.

Proposed BEST PRACTICE (approved by CTDLV 2020)

CMOs should liaise with each other when they become aware that at least a contributor / author in a work declared to their repertoire, is member of another CMO.

Priority should be given to negotiations between co-authors to agree on a sharing of royalties. CMOs should guide the authors and liaise to help reach an agreement.

Post Work Registration

As a consequence of centralizing information on the common database IDA, it may happen that AV societies discover that they have shared works with another society when a conflict arises in IDA.

The conflict appears when a society enriches a work already uploaded in IDA by another society with (a) new contributor(s) and/or with a different sharing among co-authors that creates a conflict between co-authors for the distribution of royalties.

As a consequence, the royalties distribution by third CMOs is blocked until the conflict is solved, which may take a long time.

Proposed BEST PRACTICE (approved by CTDLV 2020)

If the CMOs are aware of the existence of a foreign author only after the registration of the work and the upload to IDA and, therefore, only after the conflict arose, they should liaise with the sister CMO as soon as possible to find an agreement on the sharing between their respective co-authors in order to solve the conflict in a short time.

In solving the conflict, priority must be given to the use of legal or contractual sources such as the credits of the audiovisual work, the national audiovisual public registries (if any), authors' production contracts.

In case sufficient evidence is found on the unregistered author's contribution, the missing author is added in IDA. Since – in some cases – It could be difficult to get back to the other co-authors so long after the work's declaration, possibilities to solve the conflict– in those cases – could be:

- 1) to apply an equal split between all co-authors of the concerned category/role for the documentation of the work in IDA.
- 2) to make a proportional reduction of the contentious share.

Examples:

- A. CMO A and CMO B: Agreed share system. Original audiovisual work; 3 authors.
CMO A claims: A=80
CMO B claims: B=30, C=10
Total claimed shares = $A+B+C = 80+30+10 = 120$
→ Total A= $80*100/120=66,67\%$; B= $30*100/120=25\%$; C= $10*100/120=8,33\%$
- B. CMO A and CMO B: Agreed share system. Original audiovisual work; 3 authors.
CMO A claims: A=75, C=25
CMO B claims: B=50
Total claimed shares = $A+B+C = 75+50+25 = 150$
→ Total A= $75*100/150=50\%$; B= $50*100/150=33,33\%$; C= $25*100/150=16,67\%$

CONCLUSION ON SHARED WORKS:

It may be difficult to adopt a best practice at a multilateral level that offer a technical resolution for all cases. However, a commitment of cooperation among CMOs could be adopted multilaterally.

Then, CMOs may wish to solve practical issues related to shared works at a bilateral level, for instance by drafting an annex to their representation agreement to establish a common procedure to solve such sharing conflicts.

The present document can serve as guidelines to work on solutions for particular cases faced by CMOs.

ADAPTED WORKS

APW as a category in IDA:

Conflicts arising on Shared Works are different from those arising on Adapted Works. Conflicts on IDA regarding Adaptations of Pre-Existing Works can be easily avoided by considering the role APW (author of the pre-existing work) as a category, with a unique role.

IDA MC/TC are considering the technical feasibility of this proposal.

CMOs not representing APW role / category, should nevertheless register adapted works properly in IDA, ie. document (if known) the nature of the pre-existing work, and the contributor(s) (if known) as APW.

Another possibility could be to document by role instead, which would have an equivalent result as creating an additional category in IDA.

In any case, the management of APW contributions will have to be consistent with the rules and best practices set by the IDA Management Committee.

Adaptation as a Versioning:

Another specific type of conflict in case of adaptations has to be considered. It arises when a work was shot in more than one language and the second language is only for distribution in the minority co-producing country. An author is hired to adapt the screenplay in the second language before the shooting and his contribution is used (and credited) only in the work's version circulating in the minority co-producing country (and same-language countries).

Proposed BEST PRACTICE (approved by CTDLV 2020)

CMOs should bear in mind that only works liable to be used internationally should be uploaded in IDA.

Versioning works are usually produced for a local market which means that such works are not always meant to be used abroad.

Should the CMO still consider that the local version has to be uploaded in IDA, it should:

- (1) use their distribution scheme, accordingly to the credits of the version circulating in their country, for domestic uses,
- (2) link it as a version of the original work in IDA and agree with the other CMO on a common distribution scheme (if not in conflict with their compulsory rules) to be applied in IDA for international uses. In this case, a link to the original masters /work should be added to state that the adaptation "is a version of" the original series /work.

Adaptations of formats:

Bilateral agreements can establish specific rules for adaptations of formats. These agreements should prevail in case of discrepancies with this best practice guideline.