



# Newsletter

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### EGEDA Publishes Panorama Audiovisual 2005

Spanish productions broadcast on TV have increased, while the number of American productions shown has gone down.

For the second consecutive year, fiction is again the genre which gets the highest audience ratings for TV channels.

*"The Audio-visual Producers' Rights Management Association" (la Entidad de Gestión de Derechos de los Productores Audiovisuales – EGEDA) has published, for the fifth year in row, the "Panorama Audiovisual 2005", a report published by this association, with the sponsorship of FUJIFILM ESPAÑA, S.A. and the collaboration of the Ministry of Culture via the I.C.A.A. whose general manager, Fernando Lara, wrote the prologue to the report.*

The *Panorama Audiovisual*, the annual reference book for the sector, contains consolidated quantitative data with comparisons and commentary, and quantitatively analyses it and its trends for the future. The information collected in this study is based on data from 2004, which is compared to that of 2003 and 2002. In some chapters, some data from the first six months of 2005 is also advanced.

This year, *Panorama Audiovisual 2005* includes some new features with respect to previous editions. One of these is the presence of six opinion articles written by well-known audiovisual professionals who introduce some of the main chapters of the report.

The special dossier, which closes the report each year, is dedicated to the analysis of the documentary in Spain, one of the fastest growing genres in our country. Apart from that, *Panorama Audiovisual 2005* maintains its traditional structure of chapters concerning TV audiences – for films, fiction and national TV animation – plus other subjects such as Spanish cinema in international markets, the international TV market, technological advances in production and the broadcast of content, and audiovisual legislation in 2004.

### CONCLUSIONS IN PANORAMA AUDIOVISUAL (2004-2005)

- For the second consecutive year, fiction is again the genre which gets the highest audience ratings for TV channels.
- Spanish is the leading nationality in the ranking of the 100 most-watched programs of 2004, which is logical given that a large part of these are produced by the TV stations themselves.
- Although, in general terms, the broadcasts of films on TV channels has decreased, giving way to other genres, the number of broadcasts of Spanish films has gone up slightly with respect to previous years. Thus, while 1,519 Spanish films were broadcast in 2003, there were

1,712 national cinema productions shown in 2004. The number of broadcasts of US films has decreased, however, from 9,193 in 2003 to 8,537 in 2004.

- Fiction series are the works which generated the highest TV audience ratings in 2004, although the number of broadcasts of these has decreased since 2002, in which an all-time record was recorded. The four series dominating the audience ratings in 2004 were *"Aquí no hay quien viva"*, *"Los Serrano"*, *"Cuéntame como pasó"* and *"Ana y los siete"*.
- The broadcast of animated short-films and feature films, including national productions, has increased in recent years.
- With regard to the broadcast of documentaries, the regional channels have the majority in their programming (80%), while national TV stations had 20% of the total number of documentary works broadcast, with Televisión Española and Canal Plus having the highest percentages.
- The percentage of spectators of Spanish cinema in 2005 stood at 16.7% compared to 13.4% in 2004.
- The film with the highest box-office sales in 2005 was *Torrente 3: el protector*.
- Four Spanish production titles topped one million spectators in 2005: *Torrente 3: el protector*, the co-production *Kingdom of Heaven (El reino de los cielos)*, *El penalti más largo del mundo* and *Princesas*.

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### Private Copy and the Information Society

Rafael Sánchez Jiménez  
EGEDA Private Copy Manager

*These days, as the bill for reform of the Intellectual Property Law is going through the Spanish Parliament and, considering the way this reform deals with private copy – that is to say, private copy for personal use by the one who copies, certain voices who represent the electronics industry argue for the elimination of private copy remuneration for digital equipment or want to lower the amount agreed upon barely two years ago. Furthermore, there are consumer groups who press for a mistaken "right to make a copy by the consumer" for personal use of audio-visual works, without understanding that this exception, although beneficial to the consumer, is not a right. Private copy for personal use limits the rights of the authors because it allows the consumers to make copies for private use without needing to obtain the authors' permission one by one and without doing harm to the rights of the producers, among other rights-holders, to receive fair compensation for these reproductions.*



Directive 2001/29/EC of the European Parliament and of the Council on the harmonisation of certain aspects of copyright and related rights in the information society especially emphasizes that the existence of a legal framework with a high level of protection of Intellectual Property encourages more investment in creation and innovation activities and therefore promotes the development of the European industry and increases its competitiveness. Without protection of intellectual property rights – that is to say, without protecting content – it is difficult to be able to promote the information society.

We shouldn't forget that the above Directive also recognises the greater economic impact the digital copy-format has in relation to the analogue and points out that *"with respect to analogue private reproduction, [it] should not have a significant impact on the development of the information society. Digital private copying is likely to be more widespread and have a greater economic impact."*

Therefore, when Member States of the European Union choose to include an exception or limitation regarding private copy, they must take into account technical and economic developments, especially those regarding compensation systems. In the case of States not including such exception or limitation with the corresponding compensation, along the lines of the proposal backed by certain groups in Spain, those who say they represent consumers among them, the rights-holders would recover the ability to authorise or prohibit any reproduction, including that which is for personal use, and it would therefore be logical and, at the same time, necessary, that legislation guarantee in these cases that the authorisation or prohibition would be granted in effect by the rights-holders. This would have two immediate effects. The first would be the prohibition of selling equipment and digital-format material which enable making digital reproduction without having prior authorisation from the holders of the intellectual property rights. Secondly, the private user, the typical citizen, would have to request necessary authorisation for each copy from each author, artist and producer. Given the customary copying practices, getting support for legislation which balances the rights of owners and the desires and practices of users, such a pretension would be absurd, except for their final goal which would be to permit unremunerated and unauthorised copying.

Compensatory remuneration for private copy has been in place in Spanish legislation since 1987, and is applied to the suitable equipment and formats for making reproductions for personal use on the part of the individual copying. From its beginnings, the regulation has been based on the suitability of the equipment and supports for private use reproduction and not according to whether their technical means for doing so, given the video or audio signal, is analogue or digital. With the present law in effect, the subjection of remuneration for digital-format materials has been unanimously confirmed by the courts which have had the opportunity to review the issue.

The payment of compensatory remuneration for private copy provided for in the Intellectual Property Law Collected Text with regard to equipment and supports doesn't have any retroactive nature. The version from 1992 clearly anticipates that whatever kind of copy for personal use, as it makes no reference to technologies, formats, or means, but rather, as was from the wisdom of the Spanish lawmaker, to the suitability of the equipment or supports for making copies. The affirmation of a supposed retroactivity must be understood in the framework of strict conformity with the directives coming from international bodies, or with the intention of obtaining a greater profit margin. Both are perfectly justified, but they mustn't be disguised under any justification, at least that which is *ex casatio non petita accusatio manifesta*.

Consequently, the affirmations of those who argue for the elimination of compensatory remuneration for private copy on digital equipment, justifying their arguments by claiming that this remuneration holds back the development of the Information Society in Spain, makes little sense and has no credibility these days, especially if we take into account the position of the European lawmaker.

On the other hand, it's surprising that the same groups defend the establishment of a patenting system for inventions applicable to computer programs because, understanding that such protection promotes indus-

trial creation and enables companies to have exclusive exploitation of an invention, or to obtain remuneration by third parties by allowing the manufacture of articles subject to an invention (for example, royalties for the manufacture of the CDs themselves or other electronic components), state that a remuneration which shares a similar basic premise holds back and impedes the development of the Information Society and lessens the productivity and competitiveness of Spanish companies despite the fact that their capital and, by the way, their jobs, are in other countries.

If protecting Intellectual Property holds up technological development so much, why not take the same posture when we speak of Industrial Property?

The argument for the abolition of the so-called *"digital levy"*, curiously defending it with the interpretation that compensatory remuneration for digital private copy slows down the development of the information society is an argument lacking in a real or a legal basis and, furthermore, contradicts market realities. Every year, more and more equipment and supports are manufactured, the use of which will almost exclusively be for the copying of works protected by intellectual property copyright. To give only a couple of facts: in 2005, exclusively in Spanish homes, nearly 160 million hours of audio-visual works were recorded of works protected by intellectual property copyright on blank DVDs, and at the same time, the number of DVD recorders, also the so-called *"digital video recorders"* available in Spanish homes was more than a million units, while two years ago, they were practically non-existent. These recorders only record on DVD format, without needing to be connected to a computer. Are these really for back-up copies?

The defence of their interests which the manufacturers and importers of digital equipment and supporting digital-format material make, directed almost exclusively at easing the copying of works which are the property of others, is legitimate because it seeks to increase their profits through the elimination of compensatory remuneration. It is them and not the consumers who have to pay the remuneration and that is, indeed, their interest. Well, the aforementioned copying causes losses to the revenues of the rights-holders, to the owners of the copyright, and these, with full legitimacy, claim their compensation. We shouldn't forget that, without such works and their copies, the manufacture of equipment and supports would hardly make any sense. Would you buy a CD or DVD recorder if you could only make back-up discs of your files? And, how many blank tapes and DVDs would you need every year?

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## The Spanish Audiovisual Sector Requests More Secure Financing

*Audiovisual sector professionals, who met in the Canary Islands during the fourth edition of the Simposio Digital Español ("Spanish Digital Symposium"), have made their conclusions public, among which stands out the unanimous call for more security in production financing.*

Organised by *Canarias Cultura en Red* and EGEDA, the symposium brought together a large number of audiovisual sector professionals on Gran Canaria Island who exchanged ideas and opinions in meetings over two days in which the central themes were financing, valuation and the registering of works.

Resulting from the event, the following conclusions can be extracted from the numerous reports, presentations and round-table discussions:

### Audiovisual sector viewpoint: the need for secure financing

1. Production needs secure financing, although, at present, public assistance should be oriented towards support for development and promotion.
2. The importance of content and innovation predominate over financing issues.
3. The development phase is fundamentally important for production and for international distribution of short-films, drama series, TV movies,

documentaries or animation as well as feature films. More resources need to be invested in order to avoid risks to producers in the exploitation of their works.

4. Audiovisual financing models are undergoing a transformation process due to the development of technology, investments in R+D+i, and the generalization of the Internet and digital distribution and exhibition.

#### Autonomous Regions facing audiovisual challenges: increase in support

Representatives from the Autonomous Regions of the Canary Islands, the Basque Country, Catalonia, Galicia and Andalusia, along with the ICAA, participated in roundtable discussions.

1. The strategic importance of the audiovisual industry in all regions translates into the weight of financial support that these regions in turn dedicate to development, production, and commercialisation of the audiovisual product.
2. The interest the Regional governments have in the development in their a-v content industries rebounds to increased financial support year after year.
3. The need is clear to coordinate the audiovisual policies of the autonomous regions in conformity with the sector. With that aim, a meeting of all of those in charge of the sector is planned, which will be held in the Canary Islands in March.

#### The audiovisual work and the Registry of Intellectual Property: moving towards greater legal certainty

1. Considering the volume which is being reached by audiovisual production, the overlapping of ownership of various rights and the lack of reliable, up-to-date and easy-to-access information systems, finding ways of giving legal certainty needed for the business of audiovisual works and recordings is an urgent necessity.
2. On this matter, the appropriate registry of audiovisual works and recordings, in which the ownership of intellectual property rights is made perfectly clear, will be an indispensable tool to providing legal certainty.
3. In Spain, we have the "Registry of Movable Goods" (*Registro de Bienes Muebles*) on one hand, and the "Intellectual Property Registry" (*Registro de la Propiedad Intelectual*) on the other, along with the EGEDA's "Registry of Audiovisual Works and Recordings" (*Registro de Obras y Grabaciones Audiovisuales*), considered to be an efficient and reliable tool for the purposes of identifying rights-holders of intellectual property rights concerning this type of work.
4. The main conclusion reached was the serious commitment of all involved institutions to study, in a joint manner, the development of a specific registry system of audiovisual works and recordings.
5. The work initiatives to be dealt with should be: to study the possibility of adapting the "Registry of Movable Goods" to be mandatory registering mechanism, promoting more collaboration between the "Intellectual Property Registry" and the "Registry of Movable Goods", and, at the same time establishing synergy with EGEDA's "Registry of Audiovisual Works and Recordings", which is recognised by the "Institute of Audiovisual Arts and Sciences" (ICAA).

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#### The ARIBSAN Agency Is Now Part of ISAN-IA

On February 2, the Ibero-American agency for the management of the ISAN code (ARIBSAN) and the ISAN International Agency (ISAN-IA),

responsible for world-wide maintenance and administration of the ISAN system, signed an agreement by which ARIBSAN joins to form part of ISAN-IA as a member authorised to promote and spread the ISAN code, as well as to manage and assign it to audiovisual works.

The ARIBSAN Agency, created last December by the EGEDA, FAPAE, SDAE and SGAE organisations, aims to manage the ISAN (*International Standard Audiovisual Number*), a code number which enables the universal identification of all audio-visual works.

The ISAN code is a voluntary numeration system for the identification of audiovisual works, similar to the ISBN used in the publishing world or the ISWC for pieces of music. Each ISAN code identifies a single audiovisual work and remains unaltered through the life of the work, independently of its language, format or the use which is made of it. The code will greatly ease the registry of works and their exploitation, improving communication between data bases and simplifying management for producers, distributors and the whole audiovisual sector, in general. Furthermore, it will contribute to the fight against piracy, as it will be used by experts as a monitoring tool to measure damages.

ISAN-IA is an organisation made up of AGICOA (the Association of International Collective Management of Audiovisual Works), CISAC (the International Confederation of Societies of Authors and Composers) and FIAPF (the International Federation of Cinematographic Producers' Associations), which together are committed to encouraging the creation of regional agencies which manage and spread the use of the ISAN code. Up to now, there have been six regional agencies approved in the world: Agence Française ISAN (France), ISAN Berne (Switzerland), ISAN Australasia (for Australia and New Zealand) and ISAN R.A. Deutschland (Germany), Microsoft Studios USA and Secure Path (also in the USA).

The goal of ARIBSAN, which will have its headquarters in the Ciudad de la Imagen (Edificio EGEDA), is to deliver flexible, efficient and transparent service to users of the ISAN code. Among other functions, the agency will have a structure which allows it to register and activate users, manage purchase orders and resolve computer-related problems in the registry of works.

For further information, please contact [correo@aribsan.org](mailto:correo@aribsan.org)

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#### Significant Spanish Representation in Clermont-Ferrand

The most important short-film festival in the world opened on 29th January with 29 Spanish films.

*The Clermont-Ferrand International Short-film Festival, the most prestigious and best attended on the international circuit, opens up more than its doors to Spanish short-film in 2006, with 29 films from Spain. Of these, three are competing in the official section. Nacho Vigalondo, who was nominated for an Oscar for Best Short-film with "7: 35 in the Morning", returns to participate with Choque; competing with Éramos pocos by Borja Cobeaga, and El corazón delator by Raúl García.*

The goal of the organisers (EGEDA, ICAA, IEX and FAPAE) and collaborators in the "Spanish Presence at Clermont-Ferrand 06" is to push the promotion of the works of young Spanish film-makers in the main international markets, encourage relations and collaboration with production companies and bring our recent short-film productions closer to buyers, distributors and international programmers.

In addition to the works previously mentioned, the competition is presenting 26 other works of Spanish short-film-makers. Among others *El gran Zambini* by Igor Legarreta and Emilio Pérez, *Rosas* by Mikel Fuentes, *Solo para Chelo* by Daniel Chamorro, *La ruta natural* by Alex Pastor, *En lo que va de año* by Inés Enciso, *La explicación* by Curro Novallas, *Luminaria* by Álvaro Jiménez-Sarmiento, *Bluff* by Tacho González, *La gota* by Alfonso Sánchez and *Coolness* by Daniel Rebner will be shown.