

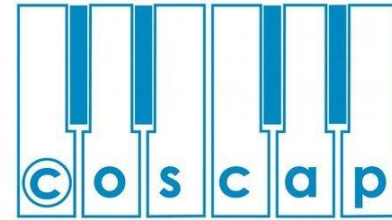
Music has Value



Transfer of Rights and Remuneration Schemes



Introduction

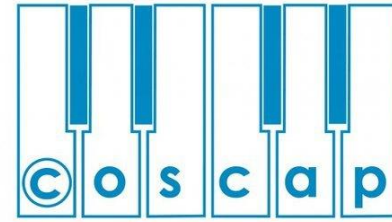


Music has Value



- The Copyright Society of Composers, Authors & Publishers Incorporated (COSCAP) is a Barbados based collective management organization which represents approximately 1,200 local rights holders. These are the songwriters, publishers, performers and producers of musical works, performances and recordings.
www.coscap.org
- Regionally, COSCAP is a member of the Association of Caribbean Copyright Societies (ACCS) – **www.acccaribbean.com**. Internationally COSCAP is a member of the CISAC, IFPI and FILAIE

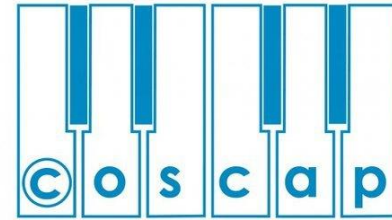
+ Transfer of Rights & Remuneration Schemes



Music has Value

- Beijing Treaty - A treaty on audiovisual performances which:
 - “develop and maintain the protection of the rights of performers in a manner as effective and uniform as possible.”
 - Takes into consideration the WIPO Development Agenda
 - Recognises the need to introduce new international rules in order to provide adequate solutions to the questions raised by economic, social, cultural and technological developments....

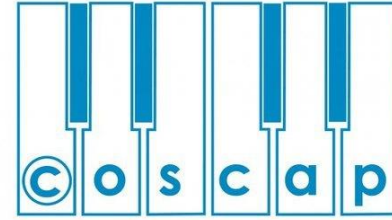
+ Transfer of Rights & Remuneration Schemes



Music has Value

- This Treaty has no connection with other treaties except the WPPT and does not prejudice any rights and obligations under any other treaties
- Performers are those who perform a work (including those in the public domain) or folklore but does not include “extras” - It is understood that the definition of “performers” includes those who perform a literary or artistic work that is created or first fixed in the course of a performance – improvisation (Agreed statement concerning Article 2a).

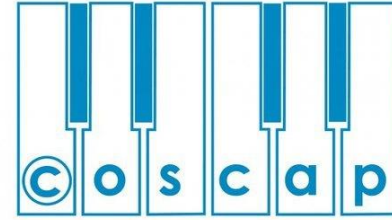
+ Transfer of Rights & Remuneration Schemes



Music has Value

- Does not provide exclusive rights to audiovisual producers
- Protection is provided for “audiovisual fixations of unfixed performances”. However, it is important to understand the relationship with phonograms - Confirmed that the definition of "audiovisual fixation" contained in Article 2(b) is without prejudice to Article 2(c) of the WPPT.

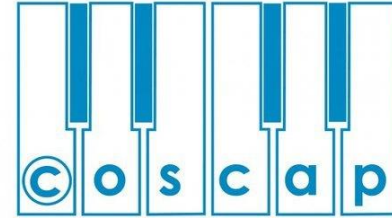
+ Transfer of Rights & Remuneration Schemes



Music has Value

- “phonogram” means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;”
- The result is that where a commercial phonogram is embodied in an audiovisual product there is a right to equitable remuneration under Article 15 of the WPPT for the broadcast and communication to the public of the audiovisual product.

+ Transfer of Rights & Remuneration Schemes



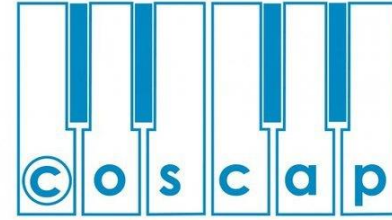
Music has Value

Art. 4 – National Treatment

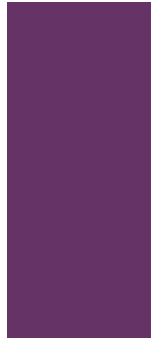
A Contracting Party shall be entitled to limit the extent and term of the protection accorded nationals of another Contracting Party ...with respect to the rights granted in Article 11(i) and 11(2) (broadcasting, communication to the public) ...to those rights that its own nationals enjoy in that other Contracting Party.

Any Contracting Party may declare that it will apply the provisions of para (1) or (2) only in respect of certain uses or that it will limit their application in some other way or that it will not apply the provisions of paragraphs (1) and (2) at all.

+ Transfer of Rights & Remuneration Schemes



Music has Value

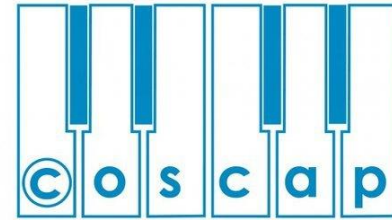


Article 6 – Economic Rights of Performers in their Unfixed Performances

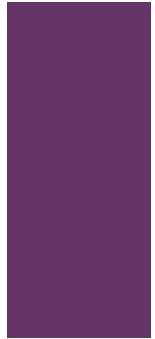
Performers are granted the exclusive right of authorizing as regards their performances:

- The broadcasting and communication to the public of their unfixed performances except where the performance is already a broadcast performance
- The fixation of their unfixed performance

+ Transfer of Rights & Remuneration Schemes



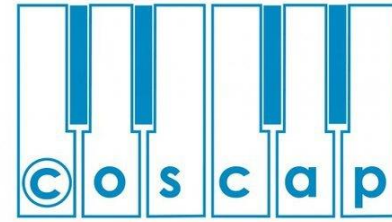
Music has Value



Article 7 – Right of reproduction

- Performers shall enjoy the exclusive right of authorizing the direct or indirect reproduction of their performances fixed in audiovisual fixations, in any manner or form.

+ Transfer of Rights & Remuneration Schemes



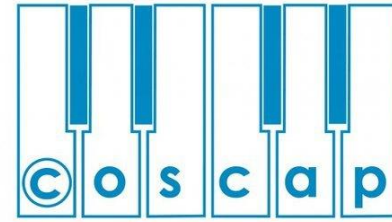
Music has Value



Article 8 – Right of Distribution

- Performers shall enjoy the exclusive right of authorizing the making available to the public of the original and copies of their performances fixed in audiovisual fixations through sale or other transfer of ownership
- There is the possibility of exhaustion at the national level after the first sale or other transfer of ownership of the original or a copy of the fixed performance with the authorization of the performer.

+ Transfer of Rights & Remuneration Schemes

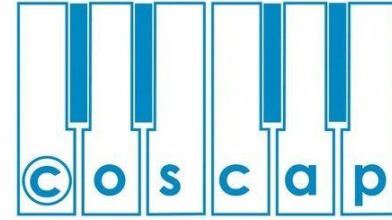


Music has Value

Article 9 - Right of Rental

- Performers shall enjoy the exclusive right of authorizing the commercial rental to the public of the original and copies of their performances in audiovisual fixations as determined in the national law of the Contracting Parties, even after the distribution of them by, or pursuant to, authorization by the performer.
- There is no provision for equitable remuneration for commercial rental.

+ Transfer of Rights & Remuneration Schemes

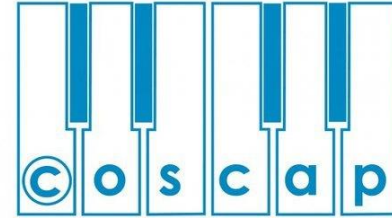


Music has Value

Article 10 – Right of Making Available of Fixed Performances

- Performers have the exclusive right of authorizing the making available to the public of their performances fixed in audiovisual fixations, by wire or wireless means, in such a way that members of the public may access them from a place and at a time individually chosen by them.

+ Transfer of Rights & Remuneration Schemes

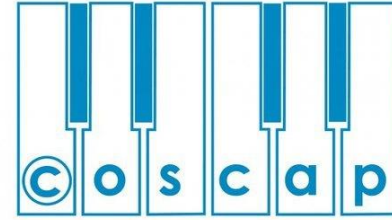


Music has Value

Article 11 – Right of Broadcasting and Communication to the Public

- Performers enjoy the exclusive right of authorizing the broadcasting and communication to the public of their performances fixed in audiovisual fixations.
- *However, Contracting Parties may through the deposit of a notification **instead establish a right to equitable remuneration for the direct or indirect use of performance fixed in audiovisual fixations for broadcasting or for communication to the public.***

+ Transfer of Rights & Remuneration Schemes



Music has Value

The Contracting Parties are also able to set conditions in their legislation for the exercise of the right to equitable remuneration.

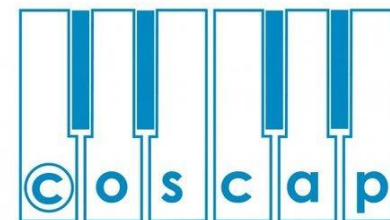
The BTAP offers:

- Exclusive yet transferable rights
- Protection through equitable remuneration

But



Transfer of Rights & Remuneration Schemes



Music has Value



Transfer of Rights & Remuneration Schemes

Article 19 of the Rome Convention (“...once a performer has consented to the incorporation of his performance in a visual or audio-visual fixation, article 7 - Minimum Protection for Performers, shall have no further application”) does not limit the performers’ freedom to negotiate contracts when they authorize the audiovisual fixation of their performances, nor their right to benefit from national treatment under the BTAP.



Transfer of Rights & Remuneration Schemes

Article 12 – Transfer of Rights

A Contracting Party may provide that once a performer has consented to fixation of his/her performance in an audiovisual fixation, the exclusive rights of authorization provided under Articles 7-11, shall be owned or exercised by or transferred to the producer of the audiovisual fixation subject to any contract to the contrary between the performer and the producer of the audiovisual fixation as determined by the national law.



Transfer of Rights & Remuneration Schemes

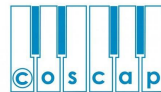


- Articles 12(1) and 12(2) authorize contracting countries to decide whether performers' rights are initially owned by the producer and Article 12(3) declares that contracting countries may additionally provide audiovisual performers with equitable remuneration for the making available to the public, broadcasting and communication to public of their audiovisual performance.



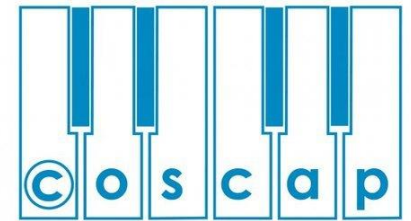
The BTAP, the Caribbean and Development of a Regional Audiovisual Sector

- Although there has been some international success with Caribbean audiovisual products (films), the film/audiovisual sector is still quite nascent.
- There are no strategically developed business models in terms of the issue of rights management rather, there has been the attempted adaptation/adoption of the American model.





The BTAP, the Caribbean and Development of a Regional Audiovisual Sector



Music has Value



The BTAP, the Caribbean and Development of a Regional Audiovisual

- It is important to recognise that there are a number of trade practices/business models within the global AV industry. E.g. Most European countries explicitly recognize the rights of audiovisual performers and there is a statutory mechanism which provides audiovisual performers with a right of equitable remuneration (often this cannot be waived) for broadcasting and/or communication to the public.



The BTAP, the Caribbean and Development of a Regional Audiovisual

The most important AV market for the Caribbean, the USA operates very specifically and in considering how the BTAP can be used a tool to develop the regional AV sector it will be necessary to also to give careful consideration to the type of business model(s) which will best serve the region's interest.



The BTAP, the
Caribbean and
Development of a
Regional Audiovisual
Sector

In the USA collective agreements are used for the payment of residuals for the use of audiovisual works. This obligation is a contractual one between the producers and performers. It does not concern third parties such as broadcasters.

There is no collective rights management system for audiovisual performers.



The BTAP, the Caribbean and Development of a Regional Audiovisual Sector

This right of equitable remuneration does not exist in the USA.

In the US the rights provided to performers under **copyright** law are transferred to the producer. There are no specific distinct AV performers' rights. The US claims compliance with the BTAP through its copyright legislation and therefore with no equitable remuneration as specific in the BTAP.....



The BTAP, the Caribbean and Development of a Regional Audiovisual Sector

Would US producers still be entitled to national treatment/reciprocity?

Bearing in mind that:

Countries which have an equitable remuneration scheme for performers would (where there is reciprocity recognised) have to share equitable remuneration even where the rights have transferred to producers.



The BTAP, the Caribbean and Development of a Regional Audiovisual Sector

Whilst CARICOM nations particularly after voicing the desire to develop the creative industries and specifically the AV sector, should ratify the BTAP it is recommended that:

1. There is a clear understanding of how the sector operates locally/regionally
2. An understanding of what guiding/corrective measures would be useful?



The BTAP, the
Caribbean and
Development of a
Regional
Audiovisual Sector

An understanding of what would be the best approach in terms of remuneration schemes and how these are managed.



Thank You

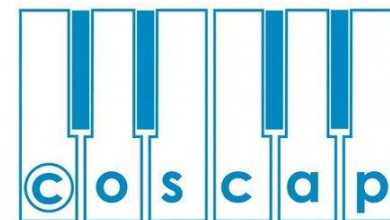
Erica K. Smith

CEO

COSCAP



#11, 8th Avenue, Belleville
St. Michael
Barbados BB11114
Tel: 12464351777
Fax: 12454352777
Email: erica@coscap.org
www.coscap.org



Music has Value