

## INTELLECTUAL PROPERTY IN THE CONTEXT OF ONLINE DISTRIBUTION AND MONETIZATION

With our partners, we sought to explore and develop a system to showcase our creativity on multiple platforms and reach a wider audience, while diversifying our revenue streams — the pandemic having highlighted the importance of creators not being exclusively dependent on one avenue of dissemination.

During the workshops on monetization opportunities for the arts (performing, contemporary, digital) prepared by Edouard Reinach, senior consultant in business strategy and digital transformation at Adviso, we became aware of intellectual property issues and the importance of taking them into account upstream.

Indeed, the creation of an artistic work often involves several participants, who may hold copyright or resale rights on it. For example, an artist creating a work for the stage may retain the services of co-designers (costumes, sets, music). Depending on the agreement, these co-designers may receive resale rights each time the work is broadcast (deferred remuneration), or they may assign their rights in exchange for a higher immediate remuneration. This example is common in direct monetization, i.e. when the artistic product is sold or accessed (such as a performance).

If the work is born of a shared will between several artists, these collaborators may both own the copyright on this work. It will be important, in the contract, to clarify the status of the "collaborator" and the distribution of their respective rights.

Currently, many actors are trying to lay the groundwork for a compensation structure for performing artists in a digital context, such as webcasting, as this gap was glaring in the midst of the pandemic when everything was digital only<sup>1</sup>.

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<sup>1</sup> Regroupement québécois de la danse (2021). « L'émergence de la webdiffusion dans les arts de la scène : enjeux de création et de propriété intellectuelle », en ligne.

<https://www.quebecdanse.org/actu/2021/01/26/l'emergence-de-la-webdiffusion-dans-les-arts-de-scene-enjeux-de-creation-et-de-proprieté-intellectuelle/>

Conseil québécois du théâtre (2021). « Le droit d'auteur à l'ère du numérique », en ligne.

<https://cqt.ca/accueil/actualites/1531>

Conseil québécois de la musique (2021). « Ressources numériques », en ligne.

[http://www.cqm.qc.ca/1306/Developpement\\_numerique.html](http://www.cqm.qc.ca/1306/Developpement_numerique.html)

Union des artistes (2022). « Captation des œuvres théâtrales : l'UDA signe une lettre d'entente avec Théâtres associés inc. », en

ligne. <https://uda.ca/salle-de-presse/captation-des-oeuvres-theatrales-luda-signé-une-lettre-dentente-avec-theatres>

The complexity of intellectual property and remuneration issues is also evident in the example of diversifying revenues from a creative work:

- Who owns the rights to a print of a video work?
- Who can claim resale rights, image rights or other royalties?
- Were these rights previously assigned?
- Who should be involved in sharing the sale of an NFT from an existing work?
- What impact might variations of a work (distribution in another format, reproduction of only a part, modification) for commercial purposes have on the rights owned or assigned by the various actors involved in its creation?
- Do the existing contracts foresee these monetization possibilities?

These questions speak to the layers of complexity that emerge and accumulate, at times, in the desire to properly compensate the artists involved — even more so when monetizing in other media or formats.

These considerations are even more important when monetizing via digital platforms. Indeed, existing webcasting and sales platforms, or even social networks, require from the outset that the entity uploading its content has all the necessary rights to do so. Hence the importance of knowing all the rights holders and, as the case may be, freeing the rights or obtaining the necessary licenses or authorizations.

Moreover, the terms of use of these platforms remain an issue to keep in mind: some social networks, which have notably contributed to the rise of webcasting in times of pandemic, grant themselves a license on the content uploaded on their platform. Although this license is not exclusive, and the creator retains their intellectual property rights, the creator nevertheless gives up their exclusivity on the use and exploitation of their work.

In this context, the Ecosystem Transformation 10.10 project has had the effect of raising participants' awareness of the importance of thinking about intellectual property issues and fair compensation for artists, well upstream of a monetization approach.