

# URUGUAY

## INTERNATIONAL INTELLECTUAL PROPERTY ALLIANCE (IIPA)

### 2024 SPECIAL 301 REPORT ON COPYRIGHT PROTECTION AND ENFORCEMENT

**Special 301 Recommendation:** IIPA recommends that Uruguay be placed on the Watch List in 2024.<sup>1</sup>

**Executive Summary:** Uruguay's Budget Bill, introduced in June 2023, contains two provisions that directly relate to the creative industries. The drafters of these provisions did not consult rights holders in the audiovisual and music industries or even the Uruguayan Copyright Council. Adoption of these two provisions would call into question contracts freely negotiated between producers and performers. The legislation would allow additional claims to compensation from third-party users who have no contractual relationship with authors or performers. This bill was approved by the Uruguayan Congress and currently awaits Presidential approval. It is expected that the President will sign the bill into law, which will be followed by a process for drafting regulations on implementation of the amendments. IIPA urges the Uruguayan government to ensure that the implemented regulations limit the negative impact of this law on the creative industries.

#### **PRIORITY ACTION REQUESTED IN 2024**

##### **Legal Reform**

- Ensure that implementing regulations regarding amendments to Articles 36 and 39 of Uruguay's Copyright Law limit to the greatest extent possible the negative impact of this law on the creative industries.

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On June 30, 2023, the Uruguayan Executive Branch proposed the Bill on Accountability and Balance of Budget Execution for the Fiscal Year 2022 (The Bill) in the Uruguayan Parliament, and the Bill was enacted into law in late 2023. The Bill contains four provisions that amend Articles 36 and 39 of the Copyright Law to introduce a problematic remuneration right. These provisions negatively impact the copyright creative industries and rights holders on both sides of Uruguay's borders. These amendments disincentivize creators in Uruguay due to limitations on the ability to freely contract, limit Uruguayan access to international works, and generally contradict international norms for remuneration for the exploitation of copyrighted works and sound recordings. Backend costs related to enforcement of the proposed remuneration right are unquantifiable and will likely result in reduced distribution of foreign and domestic works in Uruguay. It is critical that implementing regulations of these amendments is consistent with international copyright related norms.

For example, under U.S. law, performers have a right to share in statutory royalties limited to non-interactive public performances of digital audio transmissions of sound recordings.<sup>2</sup> By contrast, Uruguay's amendments appear to grant performers the right to demand remuneration for any making available to the public, well beyond the limited case of performances in non-interactive digital audio transmissions.

<sup>1</sup> For more details on Uruguay's Special 301 history, see previous years' reports at <https://www.iipa.org/reports/reports-by-country/>. For the history of Uruguay's Special 301 placement, see <https://www.iipa.org/files/uploads/2024/01/Appendix-B-2024.pdf>.

<sup>2</sup> See 17 USC § 114(g)(2).

The drafters of these provisions did not consult the Uruguayan Copyright Council (*Consejo de Derechos de Autor*) or music and audiovisual stakeholders within Uruguay. The Bill was kept in reserve until introduction, meaning that stakeholders could not provide input on these provisions because the existence of the provisions was undisclosed. Because budgetary bills are only allotted 45 days for approval in Uruguay, consultation after introduction is essentially impossible. Further, the stated rationale for these amendments is that the current copyright law is outdated because it was enacted in 1937. Yet, the Copyright Law has in fact been amended several times in recent years, including in 2003, 2013, and twice in 2019.<sup>3</sup> Uruguay's existing copyright laws are in line with the TRIPS Agreement, the WIPO Copyright Treaty (WCT) and the WIPO Performances and Phonograms Treaty (WPPT) (collectively the WIPO Internet Treaties).

These amendment introduce a right to a “fair and equitable” remuneration for performers for making available to the public of phonograms and recordings of musical works and audiovisual works. Because the amendments are unclear, the full scope of their consequences is indeterminate until the regulatory process implementing the amendments concludes. There is no legislative vacuum or inconsistency with international obligations that required these amendments to be pushed through Parliament without consultation of the Uruguayan Copyright Council. As the copyright laws in Uruguay stood prior to passage of the Bill, performers had the power under existing law to make their performances available as they choose while simultaneously contracting at their own discretion with producers.

This Bill was passed by the Parliament on October 17, 2023, and was subsequently signed by President Lacalle Pou. IIPA urges Uruguayan lawmakers and regulators to develop substantial and comprehensive regulation implementing this law that limits the negative impact to the copyright creative industries and rights holders within and outside of Uruguay. In particular, implementing regulations should avoid imposing a new additional collectively managed right to remuneration for performers in addition to their already-negotiated fees and royalties.

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<sup>3</sup> Uruguay Copyright Laws No. 17,616, No. 19,857, No. 19,858, and No. 19,149, available at <https://www.wipo.int/wipolex/en/legislation/details/21441>.