

# Ibero-American Animation Quirino White Paper

ANNEX VI  
LEGAL ASPECTS ON  
IBERO-AMERICAN CO-PRODUCTIONS



## Legal aspects on Ibero-American co-productions

*Previously, when participating in an international co-production, it is necessary to analyze the chain of intellectual property contracts, prior to the signing of any co-production contract, and verify that it is properly implemented, since in the co-production the rights are shared of intellectual property in the percentage held by each co-producer. Additionally, as stated in the Latin American Convention on Cinematographic Co-production and the bilateral agreements that govern the relations between the Film Institutes and the production companies, the participations shares on the ownership of the audiovisual work will depend, and will be proportional, on the authors' elements, technical and artistic, national or resident, that each country contributes to the co-production. The correct revision of the national regulations in cinematographic matters and the fulfillment of the co-production agreements is fundamental so that our audiovisual works can have access to direct aids and fiscal incentives. In short, undertaking an international co-production requires, in legal and financial terms, good planning, as they must be approved by the Film Institutes before the filming of the audiovisual work begins.*

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In this article, we will analyze the legal aspects of Ibero-American co-productions, ranging from the acquisition of exploitation rights of the screenplay or preexisting work on which the film will be based, the structuring of the project's plan, the funding sources and the aspects we should consider for our project to have access to funding in countries participating in the co-production, to the implementation of international co-production agreements, taking the Latin American Film Co-production Agreement as reference.

### Acquisition of Exploitation Rights, Planning for Funding Sources and Budget Adjustment

The international co-production of an audiovisual work generally begins with the proposal of a production company or group of production companies that decide to take the initiative and take responsibility for the production of said audiovisual work. To that end, these companies must acquire the intellectual property rights on which the production of the above-mentioned work will be based.

In most cases, the production company acquires the rights to a script or a work it intends to transform, such as a literary work, another preexisting audiovisual work, a graphic work, etc. Then, the acquired rights are contributed to the work's co-production and start to be shared among co-producers by virtue of the share-percentage each co-producer has in the audiovisual work's co-production. Therefore, if rights are contributed by a third party co-producer, it is important to confirm the validity of the assignment of rights and the exploitation of the audiovisual work to be peacefully produced before the co-production agreement is executed.

The correct planning of funding sources and their adjustment to the budget is another key item to be taken into account. This will require previous knowledge of existing funding possibilities in the different Ibero-American countries, the regulations in force in each country and the applicable bilateral or multilateral co-production agreements, since co-production implies that the audiovisual work may obtain national status in all countries involved in it, thus having access to screen quotas that some Ibero-American countries have enforced in order to protect the screening of domestic works.

If the inflow of funds into an audiovisual work has not been planned through a production company from another country, it could end up being very difficult to add such co-producer at a later stage and conclude the work successfully.

### Co-production Agreements

In terms of film co-production, there are two types of agreements: bilateral agreements and multilateral agreements.

Bilateral agreements regulate relations between the two signatory countries and set guidelines so that the audiovisual work may be granted national status in both territories. Furthermore, the addition of a third minority co-producer that is not signatory to the agreement may be stipulated. An example of bilateral co-production agreement is the one signed between Spain and Mexico.

Multilateral agreements set co-production guidelines when three or more signatory countries to an agreement are involved. Audiovisual works under this framework will be considered “national” in each one of the co-producing countries. In Ibero-America, the Latin American Film Co-production Agreement applies. Besides being used for multilateral co-production among signatory nations, it is also applicable to bilateral co-productions of countries that are parties to the agreement but lack their own bilateral agreement for regulation purposes.

The Latin American Agreement stipulates that the share of co-producers must neither exceed 80 per cent of the work’s ownership, nor be lower than 20 per cent. These are fundamental standards when it comes to proposing co-productions, being really important to previously know the amount of funding to be contributed by the third co-producer, since its ownership share shall be defined by virtue of such contribution. In the case of a third country that enters into the co-production without being party to the Agreement, its participation shall not exceed 30 per cent, having – in this case – a minimum and maximum participation of 10 per cent and 70 per cent, respectively.

Co-productions with technical and artistic participation should be distinguished from financial co-productions. In technical and artistic co-productions, the co-producer will contribute, as a percentage share of its participation, technical and artistic professionals as well as professional writers. Meanwhile, in financial co-productions, the co-producer does not contribute technical and artistic elements; rather, its contribution is exclusively limited to the financial area and can range – in the case of multilateral co-productions – from 10 to 25 per cent.

When we talk about national staff, this refers to staff with national status or residence in the co-producing country. We cannot ignore the fact that the role of co-production agreements is to facilitate cultural exchange between signatory countries, as well as to preserve cultural identity; therefore, the participation of professionals from the different countries producing an audiovisual work is of paramount importance.

In addition, the Agreement sets forth that revenues generated in the co-producer’s country territory shall be allocated to the national co-producer from said country, unless otherwise agreed, with approval by the corresponding film institute.

One of the main advantages of co-productions carried out under agreements is obtaining national status in each co-producing country and, consequently, having access to the diverse aids and benefits operating in each corresponding territory. To this effect, besides fulfilling the provisions of the agreement, the internal regulations of each country shall be complied with. Furthermore, provisional approval of national status shall be requested – in due time as per domestic regulations but always before the start of shooting – through the competent film institute and agency in charge of enforcing the fulfillment of the provisions set forth in the diverse agreements. That is, it will be checked whether participation percentages fall within the limits of the agreement, whether creative and technical participation is proportional to the participation of each co-producing country, etc. Once the shooting of the audiovisual work has begun, requesting the provisional approval of national status will not be possible. Thus, an official co-production will not be allowed and the audiovisual work will not have access to the benefits resulting from being considered “national” in several territories, which will make access to public funds difficult or even impossible. However, during the production process and once the provisional certificate has been obtained, the producer can make changes to the co-production, provided said changes are duly communicated and approved by the corresponding agency in each country.

It is also important to take into account that each co-producer is responsible for the relations with its film institute. That is to say, each co-producer must request its certificate, communicate changes and information about the project and such information must coincide with the information stated by the other co-producers. In the event a co-producer fails to carry out the corresponding proceedings, national status will no longer be an option. Film institutes are in constant communication regarding projects submitted for co-production purposes.

Finally, once the work has been finished, the final certificate of national status must be requested. At this moment, it will be checked whether the statements in the provisional application and – as the case may be – in subsequent amendments have been fulfilled; if this is so, the final certificate of national status will be issued.

In short, in a co-production, besides many other issues, it is fundamental at legal level to have adequately carried out the acquisition of exploitation rights, the planning of funding sources and their structuring pursuant to the international and domestic regulations applicable in each specific case.