



ARIPO TOOLKIT

On Tariff-Setting Principles & Guidelines
for Audiovisual Collective Management
Organizations in Africa



**ARIPO Toolkit on Tariff-Setting
Principles and Guidelines for
Audiovisual Collective Management
Organizations in Africa**

**ARIPO Secretariat
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2025**

ARIPO Toolkit on Tariff-Setting Principles and Guidelines for AV CMOs in Africa.

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Special thanks also go to colleagues at ARIPO who assisted in one way or another in the development of this publication.

Executive Summary

The audiovisual sector in Africa is a swiftly developing industry with a rich cultural heritage, creative talent, and increasing demand for diverse content. Increasingly, Member States have acknowledged the potential of the creative industries for economic, social, and cultural advancement. Thus, intellectual property rights are essential for unlocking this potential as outlined in the Lusaka Agreement establishing the African Regional Intellectual Property Organisation (ARIPO), which seeks to promote, develop, and harmonise intellectual property laws for its members and the region.

The Toolkit on Tariff Setting Principles and Guidelines for Collective Management Organizations (CMOs) in Africa (the Toolkit) provides a comprehensive framework for CMOs to establish fair, transparent, and effective tariff-setting practices. It aims to support the development of a robust and sustainable audiovisual industry in the ARIPO Member States and Africa as a whole, by ensuring that CMOs can efficiently collect and distribute royalties to rights holders.

Drawing on experiences from Member States, global best practices from experts, and input from key stakeholders, the toolkit provides practical guidance on key areas, including identifying rights holders, rights, uses, and users, as well as principles of fair tariff-setting and methodologies for determining tariffs. The emphasis is on data-informed strategies that align the financial interests of rights holders with the evolving dynamics of audiovisual content consumption across diverse markets.

By encouraging harmonized approaches across audiovisual CMOs and strengthening institutional effectiveness, the Toolkit will empower CMOs to ensure that creators receive meaningful remuneration. At the same time, it promotes a more transparent, collaborative, and efficient licensing landscape. As such, it serves as a critical resource for policymakers, CMOs, audiovisual rights holders, and user communities committed to advancing a balanced and thriving copyright ecosystem in Africa.

Yours sincerely

Bemanya Twebaze
DIRECTOR GENERAL

I. Introduction

Effective tariff-setting is crucial for the sustainability and success of Collective Management Organizations (CMOs) in the audiovisual (AV) sector. In Africa, where the creative industry is burgeoning, establishing clear, transparent, and fair tariff-setting principles and guidelines is essential to ensure that creators are adequately compensated while fostering a vibrant and dynamic cultural landscape.

This toolkit is designed to assist AV CMOs across Africa in developing and implementing robust tariff-setting frameworks. This guide aims to empower CMOs to navigate the complexities of tariff-setting with confidence and transparency by providing a comprehensive overview of best practices, legal considerations, and practical strategies.

The toolkit covers the following key areas:

1. **Identifying Rights Holders, Rights, Uses, and Users:** The toolkit will help CMOs identify who the rights holders are, the specific rights they possess, the uses covered by these rights, and the various user groups involved.
2. **Principles of Fair Tariff-Setting:** An outline of fundamental principles such as transparency, equity, and non-discrimination that should underpin all tariff-setting activities.
3. **Methodologies for Tariff Determination:** Practical guidance on various approaches to tariff determination, including economic valuation of AV works and the different contributions that conform to such works, benchmarking, and stakeholder consultation processes.
4. **Stakeholder Engagement and Negotiation:** Strategies for engaging with stakeholders, including creators, users, and government entities, to build consensus and support for tariff rates.

5. **Case Studies and Best Practices:** Insights and lessons learned from consultations with CMOs across Africa and beyond, reflecting real-world examples and best practices gathered from these consultations and providing valuable context and guidance for other CMOs.

By following the guidelines and principles outlined in this toolkit, AV CMOs in Africa will be able to establish fair and effective tariffs, reflecting the true value of AV works and the creative contributions they incorporate, fostering industry growth and ensuring sustainable income streams for creators. All this will contribute to a thriving AV sector that celebrates and preserves Africa's rich cultural heritage.

2. Understanding Tariff-Setting

2.1 Definition of Tariff-Setting

Tariff-setting refers to the process whereby AV CMOs establish the pricing structures for the use of AV content by users such as; TV broadcasters, video streaming platforms, cable operators, etc. This encompasses determining the fees, royalties, or payment conditions that users must adhere to for the purpose of legally utilising copyrighted AV works managed by the CMOs. Tariff-setting plays a vital role in balancing the interests of rights holders, users, and other stakeholders within the AV industry.

In this section, we will delve into the various facets of tariff-setting, exploring the intricate mechanisms involved in setting fair and equitable pricing structures to facilitate the sustainable distribution and consumption of AV content in Africa.

2.2 Importance of Tariff-Setting for AV CMOs

Effective tariff-setting is of paramount importance for AV CMOs operating in Africa and the world at large for several reasons. Firstly, tariff-setting serves as a mechanism to ensure that rights holders receive fair remuneration for the use of their creative works, thereby incentivizing continued creativity and innovation within the industry. Moreover, transparent and well-defined tariff structures help build trust, enhance compliance and foster positive relationships between CMOs, rights holders, and users.

Furthermore, tariff-setting plays a crucial role in promoting a competitive and vibrant audiovisual landscape by facilitating access to diverse content while safeguarding the economic interests of crea-

tors and rights holders. By establishing clear guidelines for licensing and usage fees, CMOs can contribute to a more sustainable ecosystem that supports the growth and development of the AV sector in Africa. At the same time, tariff setting gives users an opportunity to be compliant, knowing that their favourite actors, directors and writers are being compensated when they access their favourite AV works. It could enhance wanting to compensate the creators so that more works are created and there is a sense of fulfilment contributing to the value chain.

2.3 Key Considerations

When embarking on the process of tariff-setting, AV CMOs in Africa need to take into account several key considerations to ensure the efficiency and fairness of their pricing strategies. These considerations may include but are not limited to:

- **Market Dynamics:** Understanding the prevailing market conditions, demand trends, and competitive landscape to determine optimal pricing levels that align with industry standards.
- **Operational Costs:** Factoring in the administrative, operational, and enforcement costs associated with managing and licensing AV content, and incorporating these expenses into the tariff structures.
- **Regulatory Requirements:** Adhering to relevant copyright laws, regulations, and industry standards to ensure compliance and legitimacy in tariff-setting processes.
- **Stakeholder Engagement:** Involving and consulting with rights holders, industry experts, and other stakeholders to gather di-

verse perspectives and insights that can inform decision-making around tariff-setting.

By carefully considering these, and other relevant factors, AV CMOs can develop robust tariff-setting frameworks that promote transparency, fairness, and sustainability in the management and licensing of AV content across Africa.

3. Legal and Regulatory Framework

3.1 Overview of Relevant Laws and Regulations

In the realm of AV CMOs in Africa, understanding and adhering to a robust legal and regulatory framework is crucial for effective tariff setting. The relevant laws and regulations span international, regional, and national levels, each playing a significant role in shaping the operational landscape for AV CMOs, impacting how AV CMOs manage and set tariffs.

3.1.1 International Laws and Treaties:

- Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) administered by WIPO: Establishes minimum standards for copyright protection and the rights of authors of AV works.
- The World Intellectual Property Organization (WIPO) Copyright Treaty (WCT) of 1996 is a special Agreement under Article 20 of the Berne Convention, and the Beijing Treaty on Audiovisual Performances (BTAP) of 2012 both Administered by WIPO provide additional protections for AV authors and performers in the digital environment.
- The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) of 1994: Administered by the World Trade Organization, is a comprehensive multilateral agreement on IPRs and enforcement. It sets minimum standards for many forms of intellectual property regulation as applied to nationals of other WTO Members.

3.1.2 Regional Regulations:

- The African Regional Intellectual Property Organization (ARIPO) facilitates cooperation in intellectual property matters, harmonizing laws, and policies that foster creativity and innovation for growth and development. ARIPO has 5 Protocols¹. Among them is the Kampala Protocol on Voluntary Registration of Copyright and Related Rights, which ensures that creative industries contribute to the socio-economic development of countries. While the ARIPO Model Law on Copyright and Related Rights, provides a comprehensive, modern and efficient set of rights for authors, performers and producers of AV works, and includes certain provisions on the collective management of such rights.
- African Continental Free Trade Area (AfCFTA): Promotes intra-African trade, including the protection and enforcement of intellectual property rights across member states, indirectly influencing tariff setting by AV CMOs.

3.1.3 National Legislation:

- Each African country has its copyright laws, which often reflect international standards but may have unique national provisions. These laws govern the establishment, operation, and regulation of AV CMOs, including their tariff-setting processes. As shown in the ARIPO Online Collective Management Organizations

¹ Harare Protocol, Banjul Protocol, Swakopmund Protocol, Arusha Protocol and Kampala Protocol

² Available in https://www.aripo.org/storage/copyright-publication/1674828426_phprbtdBN.pdf

Survey Report of 2021², most national copyright laws include provisions on collective management of rights:

Country	Provision for CMOs in the Act	Relevant Sections
Botswana	Yes	Section 36A
Ghana	Yes	Section 49
Kenya	Yes	Sections 46-47
Liberia	Yes	Section 2(46)
Malawi	Yes	Section 4-24
Namibia	Yes	Sections 56-57
South Africa	Yes	Section 9A (and 39 Copyright Amendment Act 2002)
United Republic of Tanzania		
1. Tanzania mainland	Yes	Section 46
2. Zanzibar	Yes	Section 38-43
Uganda	Yes	Section 57-78
Zambia	Yes	Section 22-24
Zimbabwe	Yes	Sections 91-95

3.2 Compliance Requirements

Ensuring compliance with the complex web of laws and regulations is critical for the lawful and effective operation of AV CMOs. Key compliance requirements include:

- **Licensing and Registration:** AV CMOs must be properly licensed and registered with relevant national authorities (regulatory bodies). This often involves fulfilling specific legal criteria, including demonstrating the ability to manage rights effectively and transparently.
- **Reporting and Transparency:** Regular reporting to regulatory bodies and the AV general assembly detailing collections, distributions, and financial management is mandatory. Transparency in operations helps maintain trust among stakeholders and ensures accountability. Giving generic communication to users on the collections and distributions also builds trust and compliance.
- **Adherence to Tariff Regulations:** National laws often stipulate the processes for determining and adjusting tariffs, including requirements for stakeholder consultations, dispute settling mechanisms, etc. AV CMOs must ensure that their tariff-setting methodologies are transparent, equitable, and justifiable.

According to the findings, 85% of the survey respondents stated that the tariffs are set by the concerned CMO. In other cases, the tariffs are usually negotiated between the CMOs and the users or licensees, and one respondent (from Ecuador) declared that the tariffs are set by the Government.

It is recommended that CMOs should have the autonomy to establish their own tariffs, ensuring these are aligned with the criteria and methodologies prescribed by the relevant laws. This autonomy is essential because tariffs function as the mechanism through which the price for the use of works and performances owned by rights holders, whom the CMO represents, is determined. In essence, we are dealing with private property, and it is fundamental that the owner of the asset—in this case, the author, performer or producer—sets the price for its use.

However, the public interest lies in ensuring that the process of determining the tariff prices is conducted in a manner that is transparent, fair, and equitable. The tariffs must be justifiable and free from abuse, which is particularly critical in scenarios where the CMO operates with a monopolistic influence. Such a monopolistic position can create an environment where users have limited alternatives, making the need for fairness and justification in tariff-setting even more paramount.

Public authorities, therefore, while they may not have the power to approve the tariffs set by CMOs, must possess the capability to oversee and ensure that the tariffs are established in accordance with the legally mandated criteria and methodologies. This oversight is crucial to prevent potential abuses and to maintain a balance between the interests of the rights holders and the users.

To this end, CMOs are usually obliged to communicate their tariffs to the competent national authority (IPO, Ministry, etc.), as per the result of the ARIPO survey, where the vast majority of CMOs who declared to be competent to set their tariffs also declared an obligation to communicate them to their IPO. Only one respondent (from

Kenya) declared that the tariffs are subject to approval by said body.

Moreover, it is essential to have effective dispute-resolution mechanisms. These mechanisms, such as arbitration or mediation, provide a structured process for resolving conflicts that may arise between the CMOs and the users or licensees. For instance, if a user believes that the tariff set by the CMO is excessive, they should have a recourse to challenge this through a fair and impartial process.

Most of the respondents to the survey 70% declared that their national legislation provides for a mechanism other than the courts of Justice for settling eventual disputes between the CMOs and the users regarding the tariffs. Such mechanisms include arbitration and/or mediation (Nigeria, Ghana) or the participation of that national competent authority in the negotiations between CMOs and users (Kenya, Italy).

In some cases, the matter can be brought to a Copyright Tribunal, which may even have the competence to set alternative tariffs (Ghana, Kenya, Philippines, Spain, Italy, Slovenia).

In summary, while CMOs should set their tariffs, this must be done within a framework that ensures transparency, fairness, and adherence to legal standards. Public authorities should play a supervisory role to ensure compliance with these standards, and robust dispute resolution mechanisms should be available to address any conflicts, ensuring the interests of both rights holders and users are fairly represented and protected.

3.3 Industry Standards

Adhering to industry standards is vital for the credibility and effectiveness of AV CMOs. These standards provide benchmarks for operational excellence and help in aligning with best practices globally.

- The **Global Audiovisual Alliance (GAVA)** provides guidelines and standards for managing performers' rights in AV works, emphasizing transparency, fair distribution and effective administration. Membership in GAVA often signals adherence to these high standards, detailed in its "Benchmarking Standards for Collective Management of Performers' Rights"³, aiming to establish best practices, ensure transparency, and foster efficient rights management within the audiovisual sector. These standards include provisions on governance and organizational structure, rights management processes, transparency and communication, international collaboration, efficiency and cost management, and ethical and social responsibility.
- The **International Confederation of Societies of Authors and Composers (CISAC)** provides guidelines and standards for managing authors' rights in AV works. In particular, CISAC provides its members with "Professional rules"⁴, a set of binding principles to ensure that they operate according to best practices at the business, governance, management, finance, and technical levels. It also offers its members a set of technical criteria that deal with issues like the use of international standards, tools to share documentation between members, and distribution rules to apply in

³ Available in <https://gava.global/benchmarking-standards/>

⁴ Available in <https://www.cisac.org/services/business-and-governance/professional-rules>.

case of unidentified works. All these technical criteria are known as “Binding resolutions”⁵ and work as a complement to the “professional rules”.

- **International Organization for Standardization (ISO)** standards, such as ISO 9001 for quality management and ISO/IEC 27001 for information security management, can be useful for AV CMOs to ensure operational efficiency and data security. While ISO 9001 sets requirements for the establishment and maintenance of a quality management system, covering topics such as leadership, planning, operation, evaluation, and improvement, ISO/IEC 27001 defines requirements that an organization must put in place to properly manage risks related to the security of data owned or handled by the organization, with full observance of best practice principles.

By integrating these legal, regulatory, and industry-standard frameworks into their operations, AV CMOs in Africa can enhance their tariff-setting mechanisms, ensure compliance, and build trust among stakeholders, ultimately leading to more equitable and efficient management of AV rights.

⁵ Available in <https://www.cisac.org/services/business-and-governance/binding-resolutions>.

4. Principles of Tariff-Setting

4.1 Transparency

Transparency in tariff-setting is essential for building trust and accountability within the AV industry. For AV CMOs in Africa, it involves several key practices:

(a) Detailed Methodology:

- **Detailed Process:** AV CMOs should provide a detailed explanation of the process used to calculate tariffs. This includes specifying the sources of data considered (e.g., usage statistics, market analysis), the underlying reasoning in the evaluation of this data, the criteria and the analytical methods applied to determine the tariffs. Transparency in the methodology ensures that all stakeholders understand the rationale behind tariff rates and reduces the likelihood of disputes.
- **Public Documentation:** Methodological details should be documented and made publicly available. This documentation should be updated regularly to reflect any changes or adjustments in the methodology.

(b) Accessible Information:

- **Public Availability:** Tariff information should be easily accessible to all stakeholders. AV CMOs should maintain up-to-date information on their websites, including detailed rate schedules, justification of tariff structures, and any relevant legal or regulatory guidelines.
- **User-Friendly Formats:** Information should be provided in user-friendly formats, including FAQs, guides, and illustrative ex-

amples, to ensure that users of varying levels of expertise can understand it.

(c) Stakeholder Engagement:

- **Consultation Processes:** Regular consultations with rightsholders, and other stakeholders should be institutionalized. This can take the form of public hearings, workshops, and surveys. These consultations provide a platform for stakeholders to voice their opinions and contribute to the tariff-setting process.
- **Feedback Mechanisms:** AV CMOs should establish formal mechanisms for stakeholders to provide feedback on proposed tariffs. This feedback should be taken into consideration and addressed transparently.

4.2 Fairness

Fairness in tariff-setting ensures that tariffs are equitable and reflect the interests of all parties involved. Key aspects include:

(a) Equitable Treatment:

- **Non-Discriminatory Pricing:** Tariffs should be structured to avoid discriminatory practices. This means similar users or user categories must be charged similar rates for comparable uses of AV works. Equitable treatment fosters a level playing field in the industry.
- **Special Considerations:** AV CMOs should consider special rates or discounts for certain categories of users, such as educational institutions, non-profit organizations, or small businesses, to ensure that access to AV works is not unduly restricted.

(b) Justifiable Rates:

- **Value-Based Pricing:** Tariffs should be based on the value of both the works being licensed and the contributions comprising such works. This requires a thorough assessment of factors such as the popularity of the work, its market demand, and its potential for generating revenue. Justifiable rates ensure that rightsholders receive fair compensation while users pay a reasonable price.
- **Transparent Rationale:** AV CMOs should provide clear and detailed justification for the rates set. This includes outlining the criteria used to determine the value of the works and the contributions comprising said works and how these criteria translate into specific tariff rates.

(c) Consideration of Market Conditions:

- **Economic Context:** The economic environment in which users operate should be considered when setting tariffs. AV CMOs should assess the financial capacity of different user segments and ensure that tariffs do not place an undue burden on smaller or emerging businesses.
- **Competitive Analysis:** AV CMOs should analyze the competitive landscape to ensure that tariffs are competitive and do not drive users to seek alternative, possibly unauthorized, sources of content.

(d) Dispute Resolution:

- **Accessible Mechanisms:** Effective and accessible mechanisms for resolving disputes over tariffs should be established. This can include arbitration, mediation, or other neutral platforms

where conflicts between AV CMOs and users can be addressed fairly and impartially.

- **Timely Resolution:** Dispute resolution mechanisms should be designed to resolve conflicts in a timely manner to minimize disruptions to users and ensure continuous access to AV works, while guaranteeing that rights holders are receiving the corresponding remuneration.

4.3 Cost Based Pricing

Cost-based pricing ensures that tariffs are aligned with the actual costs incurred by AV CMOs in managing and licensing rights. This approach supports financial sustainability and operational efficiency. Key aspects include:

(a) Operational Costs:

- **Comprehensive Cost Assessment:** Tariffs should reflect the comprehensive operational costs of the AV CMO. This includes administrative expenses, technology investments, legal fees, and costs related to the collection of royalties. Transparent and accurate accounting practices are essential for determining these costs.
- **Cost Allocation:** Costs should be allocated fairly among different user categories based on their usage patterns and the associated administrative burden. This ensures that no single user group is disproportionately affected by the tariffs.

(b) Value of Rights Managed:

- **Market Valuation:** The value of the AV works and the con-

tributions comprising them, managed by the AV CMO, should be a key factor in tariff calculations. This involves assessing the market demand, popularity, and commercial potential of the works. Tariffs should correspond to the value provided to users, ensuring fair compensation for rightsholders.

- **Dynamic Pricing:** AV CMOs should consider implementing dynamic pricing models that can be adjusted based on the market conditions of the users, as well as usage trends. This approach helps in aligning tariffs with real-time market dynamics.

(c) Sustainability:

- **Revenue Adequacy:** Tariffs should be set at a level that ensures the financial sustainability of the AV CMO. This includes covering all operational costs and generating sufficient revenue to support ongoing activities, such as the development of new licensing models and the support of rightsholders.
- **Investment in Growth:** Part of the revenue generated from tariffs should be reinvested into initiatives that promote the growth of the AV industry, such as capacity-building programs, technology upgrades, and market expansion efforts.

(d) Periodic Review:

- **Regular Assessments:** Tariffs should be periodically reviewed and adjusted to reflect changes in operational costs, market conditions, and the economic environment. Regular reviews ensure that tariffs remain relevant, fair, and responsive to industry dynamics.
- **Stakeholder Involvement:** Periodic reviews should involve con-

sultations with stakeholders to gather input and ensure that any adjustments are made transparently and equitably. This collaborative approach helps in maintaining stakeholder trust and support.

By integrating these principles—transparency, fairness, and cost-based pricing—AV CMOs in Africa can establish robust tariff-setting practices that are equitable, justifiable, and supportive of both rightsholders and users. These principles ensure a balanced approach that fosters a healthy and sustainable audiovisual ecosystem.

5. Guidelines for Effective Tariff-Setting

5.1 Preliminary considerations

When determining the tariffs, the concerned CMO needs first to consider a number of preliminary elements:

- * Which categories of AV rights holders are represented by the CMO: producers, authors and/or performers; and within each category of represented rights holders, which specific groups (directors, writers, actors, dubbers, dancers, etc.).
- * Which rights and types of uses are managed by the CMO:
 - (a) **Primary uses:** These are uses that are usually licensed individually by the holder of the exclusive right, most commonly the producer, but sometimes suitable for collective licensing (either voluntarily or mandatory), for instance, in the case of massive or geographically dispersed uses. In the AV sector, the most common primary uses are TV broadcasting, TV transmission, making available, rental and exhibition in movie theatres.

Some legislations also grant certain rights holders, most notably the ones in a weaker bargaining position vis-à-vis the producer (i.e., the author and the performer), the right to receive remuneration from the user (the remuneration rights), most commonly subject to mandatory collective management. With these rights, as provided in many national legislations, and even in the BTAP (article 12.3) and the ARIPO Model Law on Copyright and Related Rights (article 17), authors and/or performers secure the economic content of their exclusive rights, automatically transferred to the producer when con-

senting to the fixation of their performances in the AV fixation or work (i.e. when concluding an agreement with the AV producer).

In the case of primary uses, the most common situation is that producers individually (and directly) license the content, while authors and/or performers are entitled to an unwaivable right to remuneration subject to mandatory collective management.

Even though the power inherent to each right (exclusive or remuneration) is different – right to authorize in the case of exclusive rights, right to receive remuneration in the case of remuneration rights –, the relevant aspect is the uses to which they refer (primary), in terms of the relevance that AV works have in the users' businesses. AV works are crucial for TV channels, movie theatres and video streaming services, for instance.

- (b) **Secondary uses:** uses not included in the initial license (either individual or collective) granted by holders of the exclusive right, such as the retransmission, (including cable and/or satellite, as well as the distribution of TV signals to hotel rooms); the communication to the public in public venues (bars, nightclubs, gyms, etc.); or the communication to the public and/or making available in passenger carriers (airplanes, buses, trains, etc.).

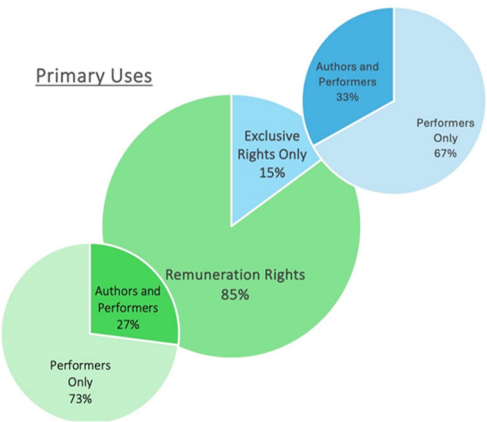
While the exclusive rights referred to as primary uses are usually consolidated in the producer, keeping the authors and/or performers an unwaivable right to remuneration, in the case of secondary uses the three categories of rights

holders (producers, authors and performers) should be entitled to either collectively license such secondary uses or to claim remuneration, in both cases through their CMO.

Again, when determining the tariff in connection to secondary uses, the main factor is not the right itself (either exclusive or remuneration), but the relevance of the repertoire in the user's business. While the use of AV works is crucial for the business of a TV channel or a video streaming service (in both cases a primary use), its relevance, for instance, in a nightclub, hotel room or airplane, even though important, is not crucial (secondary uses).

The tariff rate may be the same in the case of a primary use and a secondary use, but the intensity and the relevance of the use should result in a lower effective rate in the case of most secondary uses, as explained further in this Toolkit.

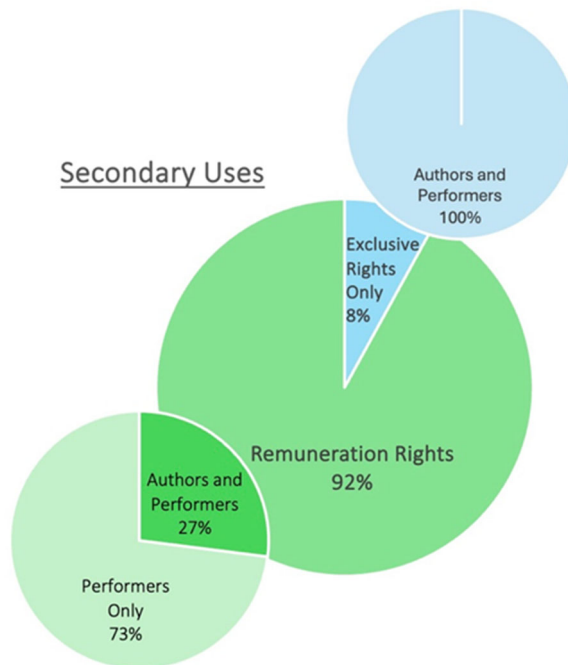
From the survey conducted by ARIPO in this respect, 15% of the respondents declared that their respective national legislations granted authors (directors and writers) a remuneration right for certain primary uses of their AV works (TV broadcasting, TV transmission, making available, and exhibition in movie theatres), while 77% declared that under their legislations performers (actors, dubbers, dancers) are entitled to such remuneration right for such uses. 15% of the respondents declared that their national legislations only grant exclusive rights for such primary uses.



National legislation granting performers a remuneration right for the primary use of their performances fixed in AV fixations:

Country	TV broadcasting	TV transmission	Making available	Theatres
Belgium		✓		
Colombia	✓	✓	✓	✓
Ecuador	✓	✓	✓	✓
Ghana	✓	✓	✓	✓
Greece	✓	✓		
Italy	✓	✓	✓	✓
Nigeria	✓	✓	✓	✓
Panama	✓	✓	✓	✓
Philippines	✓	✓	✓	
Slovenia	✓	✓	✓	✓
Spain	✓	✓	✓	✓

In the case of secondary uses (such as the retransmission, including the distribution of TV signals to hotel rooms, or the communication to the public in public venues and/or in passenger carriers), 92% of the respondents declared that their national legislation grants a remuneration right to authors and performers.



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National legislation granting performers a remuneration right for the secondary use of their performances fixed in AV fixations:

Country	Retransmission	Public venues	Passenger carriers
Belgium	✓	✓	✓
Colombia	✓	✓	✓
Ecuador	✓	✓	✓
Ghana	✓	✓	✓
Greece	✓	✓	✓
Italy	✓	✓	✓
Nigeria	✓	✓	✓
Panama	✓	✓	✓
Philippines	✓	✓	✓
Slovenia	✓	✓	✓
Spain	✓		

* Which categories of users are targeted by the respective CMO's tariffs:

- (a) **Main users:** those whose main activity is the exploitation of AV content, including AV works, such as TV stations, cable and/or satellite operators (telecommunication companies), video streaming platforms (Netflix, HBO Max, Amazon, etc.), user-generated platforms (YouTube, TikTok, Instagram, etc.), webcasters (Pluto TV, Plex, Rakuten, Samsung, etc.), and movie theatres.

For the users within this category, the exploitation of AV content, most notably AV works, is crucial and, hence, the intensity of use of such content is much higher than in the case of any other users, where the exploitation of AV content is not their main economic activity.

Therefore, the application of the tariff in the case of main users must result in a higher rate, as explained further in this toolkit.

- (b) **Ancillary users:** those whose main activity is not the exploitation of AV content, but involves significant use of such content, such as hotels, public venues (including bars, gyms, nightclubs, etc.), passenger carriers (airlines, bus companies, etc.).

The intensity of the use in the case of ancillary users can vary significantly from one user to another, but in general terms is much lower than in the case of main users, and so, the effective rate resulting from the application of the tariff should be lower.

5.2 Structure of the Tariffs: Components / Variables

With the above-mentioned considerations in mind, the CMO is in the position to launch the process for determining the corresponding tariffs (preferably one tariff per modality of use, as explained above). The first step should be to identify the category of users (e.g. TV stations, video streaming platforms, cable and/or satellite operators, hotels, movie theatres, etc.) and uses to which each tariff is referred (modalities of exploitation, such as broadcasting, making available, communication to the public, retransmission, exhibition, etc.).

In all cases, the tariffs should be determined considering the **economic value** of AV works in the users' activity, which, as explained above, is not the same for main users and ancillary users. To that

purpose, the structure should be determined considering three main variables: (a) the economic value of the contribution of rights holders to the AV work, (b) the use of AV works by users, and (c) the revenues obtained by users from the exploitation of AV works.

The following are the components of the tariffs:

- (a) **Economic factor**: measures the percentage of the economic contribution of the rights holders' contributions to the value provided by AV works in a reference industry (in this case, the AV industry) in a scenario with maximum use of the CMO's repertoire. The above requires quantifying the economic contribution of the corresponding rights holders' contributions in a reference industry where the use of said contributions is maximum. In other words, the economic factor must be a comparable unit of measurement that provides a benchmark of the percentage of the economic contribution that the CMO's repertoire contributes to the users' activity.
- (b) **Use**: measures the relative importance and degree of use of the rights in the CMO's repertoire in the activity of different users. For this purpose, the following criteria, among others, may be taken into consideration:
 - **Breadth of Repertoire**: the proportion of protected works and/or performances, within a certain category of rights holders, whose rights are managed by the CMO. For mandatory collective management rights, it shall be presumed that a universal repertoire is managed when only one CMO is authorized to manage such rights.
 - **Intensity of Use**: greater or lesser quantitative use (broadcasting time, stream time, etc.) of the AV recordings

in the CMO's repertoire during the user's activity.

- **Relevance of Use:** greater or lesser qualitative importance of the use of the CMO's repertoire in the user's activity. For this purpose, the use of the repertoire may be considered to be of a principal, significant, or incidental nature, taking into account if the use of the repertoire is being carried out by main or ancillary users.
- (c) **Revenues:** Numerical factor that represents the monetary basis on which the rest of the factors are modulated. To determine the amount on which the general tariffs are applied, the difference between users for whom the exploitation of the repertoire is part of their main activity, or is significant or, where appropriate, incidental, must be taken into consideration. This is because it is impossible to determine revenues directly linked to the exploitation of AV recordings, generated by users in all user sectors.

On the one hand, for those main users where there is a direct link between the use of protected AV recordings and revenues, the economic revenues obtained by the user from the exploitation of the repertoire will be considered. On the other, for other cases of users where there is no such direct link, indirect estimation techniques may be used to determine the revenues of a sector of users.

In addition to these three elements or components, the tariffs may include **deductions** that may be applied based on objective (e.g. related to cost savings, improved liquidity, or even when referring to certain categories of users, such as non-profit or cultural associations or charities), transparent, and non-discriminatory criteria.

5.3 Tariffs for Main Users

5.3.1 Tariff structure: components

$[(\% \text{ Economic Factor} \times \% \text{ Use}) \times \text{Revenues}] - \text{Deductions}$

- (a) **Economic Factor**: although this variable should be the same for all users' sectors, it has to be weighted by the corresponding use percentage and revenues generated in each user's sector.
- (b) **Use**: this variable may be determined in two manners:
 - (1) based on average use data of the corresponding sector, –meaning that this percentage will be the same for all users–, or
 - (2) based on the actual level of effective use, –meaning that the percentage is calculated with actual data provided by the user. This means that each user will have its use percentage.

Determining this variable may take into consideration some criteria pointed out above. Regarding the **Breadth of the CMO's Repertoire**, the calculation of this percentage must consider if the CMO manages exclusive or remuneration rights, as well as if it is the only CMO managing the rights of a certain group of rights holders. **Relevance of Use** in these sectors is maximum, as in all of them, the use of AV content is essential for the development of the user's activity. Finally, to calculate the **Intensity of Use** or the presence of the CMO's repertoire in the user's activity, the duration of AV works should be measured in the user's activity.

The formula to calculate the Use percentage is as follows:

$\% \text{ Breadth of Repertoire} \times \% \text{ Relevance of Use} \times \% \text{ Intensity of Use}$
--

The calculation of this percentage involves its determination for each of these variables:

- **Breadth of Repertoire:** For remuneration rights, if subject to mandatory collective management and the CMO is the only one representing a specific group of rights holders, this percentage will be 100%. If the CMO is not the only one managing such rights, or the rights are subject to voluntary collective management, this percentage will be calculated in relation to the repertoire managed by other CMOs representing the same group of rights holders and/or to the members of the CMO.

For exclusive rights or, in general, to any right subject to voluntary collective management, this percentage will be calculated taking into account the number of rights holders who have entrusted the management of their rights to the CMO, in relation to the total number of rights holders within a certain category and a certain act of exploitation. By way of example, and to show how the calculation of the Use percentage works, we could consider that the CMO manages 80% of all rights for a given act of exploitation within a specific category of rights holders.

- **Relevance of Use:** By way of example, and since this category of users is “main users” for whom the use of AV content is necessary for carrying out their activity, we could say that the relevance of AV content is 100%.

- **Intensity of Use:** It will be calculated considering the duration of AV works within the user's activity. This percentage will be different considering the user's sector.
 - * For TV Stations / IPTV / Cable / Satellite / Webcasters: It will be calculated based on the data of the TV emissions of each channel, considering the duration of AV works within the TV programming of each channel.
 - * Depending on the channel, the use percentage could range from 100% in thematic channels (films, animation, or documentary channels) to around 60% in generalist channels.
 - * VoD Online Platforms: It will be calculated based on the catalogue offered by the platform, considering the duration of AV works in said catalogue.
 - * Depending on the platform's catalogue, the use percentage could range from 100%, in those online platforms where the platform offers only AV works (films, series, animation, documentaries, etc.), to around 90%, which is the average use percentage in the main VoD platforms.
 - * Movie Theaters: It will be calculated based on the data of AV works exhibited in cinemas. In this case, the average use percentage will be around 95%.

Considering the above, the results of the calculation of the use percentage would be as follows:

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TV STATIONS / IPTV / CABLE / SATELLITE / WEBCASTERS			
Remuneration Rights			
Thematic Channels		Generalist Channels	
Breadth of Repertoire	100%	Breadth of Repertoire	100%
Relevance of Use	100%	Relevance of Use	100%
Intensity of Use	100%	Intensity of Use	60%
Use %	100%	Use %	60%
Exclusive Rights			
Thematic Channels		Generalist Channels	
Breadth of Repertoire	80%	Breadth of Repertoire	80%
Relevance of Use	100%	Relevance of Use	100%
Intensity of Use	100%	Intensity of Use	60%
Use %	80%	Use %	48%

VoD ONLINE PLATFORMS			
Remuneration Rights			
Platforms offering only AV works (films, etc.)		Platforms offering various types of AV Content	
Breadth of Repertoire	100%	Breadth of Repertoire	100%
Relevance of Use	100%	Relevance of Use	100%
Intensity of Use	100%	Intensity of Use	90%
Use %	100%	Use %	90%
Exclusive Rights			
Platforms offering only AV works (films, etc.)		Platforms offering various types of AV Content	
Breadth of Repertoire	80%	Breadth of Repertoire	80%
Relevance of Use	100%	Relevance of Use	100%
Intensity of Use	100%	Intensity of Use	90%
Use %	80%	Use %	72%

MOVIE THEATERS			
Remuneration Rights		Exclusive Rights	
Breadth of Repertoire	100%	Breadth of Repertoire	80%
Relevance of Use	100%	Relevance of Use	100%
Intensity of Use	95%	Intensity of Use	95%
Use %	95%	Use %	76%

(c) **Revenues:** all revenues linked to the exploitation of AV works will be taken into account. For clarification purposes and by way of example, the following will be considered revenues:

- All types of advertising revenues (among them, advertising exchange, bartering, promotion, sponsorship, product placement and/or sponsorship of products or services). In case of advertising not paid by monetary consideration, the revenues corresponding to these advertising spaces will be calculated by applying the tariff most generally applied by the user to advertisers or agencies for the emission of spaces of similar characteristics.
- The amount of the subsidies received by the operator for carrying out its activity. If subsidies or other items are covering deficits of previous years, they will be computed in whole as the basis of the tariff of the year in which the revenues were generated; in the event, that the coverage is partly deferred to subsequent years, the part of the deficit corresponding to that period will be computed as revenues of that year. The consideration of these revenues will be made with absolute independence of which accounts they are recorded in. All opera-

tors, which duly justify it, will be able to deduct from the revenues base the subsidies for activities wholly unrelated to the communication to the public of AV recordings (this deduction may be applied regardless of the legal nature and the ownership -public or private- of the operators).

- In any case, it will be considered as revenues those which, corresponding to the operator pursuant to generally accepted accounting rules and principles, are assumed or offset by other entities or the ones allocated to their accounts offsetting expenditure accounts.
- Those amounts not linked in any way to the communication to the public of AV works and/or recordings, including protected subject matter will not be considered revenues. Among others, financial income, income from the sale or assignment of programs to third parties, etc., will not be considered revenues for the effects of applying the tariffs.

Deductions:

- Prompt Payment of invoices: for the payment of invoices within a certain period upon receipt of the invoice by the user.
- Usage Reports: for the submission of detailed Usage Reports in the format agreed with users, allowing the CMO a timely and cost-effective distribution of the collected rights.
- Non-Profit Organizations dedicated to cultural activities related to AV works.
- Own Production of AV works.

5.3.2 Tariffs

Depending on the sector, tariffs may be fixed with different methodologies. For instance,

- a percentage of the revenues for TV stations; or
- a fixed price per subscriber for telecommunication companies or online platforms; or
- a fixed price per stream or access may also be considered for online platforms.

Taking into account an Economic Factor of 1.50% and the Use percentage applicable considering the user's sector, the modality of exploitation, and the use percentage of AV content, the tariffs applicable on the revenues will be the following:

TV STATIONS / IPTV / CABLE / SATELLITE / WEBCASTERS				
Remuneration Rights				
Thematic Channels			Generalist Channels	
Economic Factor	1.50%		Economic Factor	1.50%
Use %	100%		Use %	60%
Tariff	1.50%		Tariff	0.90%
Exclusive Rights				
Thematic Channels			Generalist Channels	
Economic Factor	1.50%		Economic Factor	1.50%
Use %	80%		Use %	48%
Tariff	1.20%		Tariff	0.72%

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VoD ONLINE PLATFORMS				
Remuneration Rights				
Only Film Platforms			Platforms with various AV Content	
Economic Factor	1.50%		Economic Factor	1.50%
Use %	100%		Use %	90%
Tariff	1.50%		Tariff	1.35%
Exclusive Rights				
Only Film Platforms			Platforms with various AV Content	
Economic Factor	1.50%		Economic Factor	1.50%
Use %	80%		Use %	72%
Tariff	1.20%		Tariff	1.08%

MOVIE THEATERS				
Remuneration Rights			Exclusive Rights	
Economic Factor	1.50%		Economic Factor	1.50%
Use %	95%		Use %	76%
Tariff	1.43%		Tariff	1.14%

5.4 Tariffs for Ancillary Users

5.4.1 Tariff structure: components

- (a) **Economic Factor**: although this variable should be the same for all users' sectors, it should be weighted by the corresponding use percentage and revenues generated in each users' sector.
- (b) **Use**: this variable can only be determined based on average use data of the corresponding sector, meaning that this percentage will be the same for all users within a certain sector.

Determining this variable will take into consideration some criteria pointed out above. Regarding the **Breadth of the CMO's repertoire**, calculating this percentage must consider if the CMO manages exclusive or remuneration rights, or if the collective management of said rights is mandatory or voluntary, as well as if it is the only CMO managing the rights of a certain group of rights holders. **Relevance of Use** in these sectors may be significant or incidental, depending on whether or not the repertoire alters the development of the user's activity. Finally, to calculate the **Intensity of Use** or the presence of the CMO's repertoire in the user's activity, different approaches will be carried out considering different data sources.

- * Bars / Restaurants / Hotels / Hospitals / Gyms: it will be determined taking into account the average use of AV content in TV stations, as these types of users are usually retransmitting the TV signal. In addition to this information, surveys and market data on the TV offer of each sector must be analyzed.

- * Passenger Transport: it will be determined based on the market and users' data regarding the entertainment offered by passenger carriers.
- (c) **Revenues:** revenues of the corresponding sector will be taken into account. Said revenues will be weighted considering their relation to the use of AV works when possible.
- * Hotels: revenues obtained by the sector from the price per room/bed.
 - * Hospitals: revenues obtained by the sector from the TV service offered in the hospital rooms (when it is a pay TV service), or from the price/cost per room/bed.
 - * Bars / Restaurants / Gyms: revenues obtained by the corresponding sector from the commercial activity.
 - * Passenger Transport: revenues obtained by the sector per passenger.

Deductions:

- Bank Direct Debit: for paying the invoices through bank direct debit.
- Advanced Payment: for paying the remuneration in advance (for example, each year on January 1st).
- The Use of Electronic Means for Communication between the CMO and the User: including the sending of invoices.
- Belonging to an Association: when there is an agreement establishing the conditions for the payment of the rights with a user's Association in a certain sector.
- Early Agreement: when there is an agreement establishing the

conditions for the payment of the rights with a user's Association. This bonus may be agreed upon with the association when individual users sign an agreement with the CMO within a certain period of time (for example, if an individual user signs an agreement with the CMO within six months after the signing of the agreement between the CMO and the association).

5.4.2 Tariffs

Depending on the sector, tariffs may be fixed with different methodologies. For instance, tariffs will be a fixed price to be applied on the corresponding element to be considered.

- * Hotels / Hospitals: a fixed price per occupied or available bed/room.
- * Hospitals: when hospitals have a pay TV service in the rooms, a tariff consisting of a percentage to be applied to the revenues directly generated by the TV service.
- * Bars / Restaurants / Nightclubs: a fixed price per TV set or square meters of the premises.
- * Gyms: a fixed price per TV set installed on cardio machines (individual TV sets) and the premises (collective TV sets).
- * Passenger Carriers: a fixed price per passenger in airplanes, train wagons, buses or vessels. A fixed price per aircraft, train wagons, buses or vessels could be determined as well.

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By way of example, tariffs for these categories of users could be as follows:

SECTOR	KEY ELEMENT	TARIFF (USD)
BARS / RESTAURANTS	per TV set	\$10
	up to 50m2	\$10
	51m2 to 100m2	\$15
	over 101m2	\$20
GYMS	per individual TV set (installed in cardio machines)	\$1.50
	per collective TV set (installed in premises)	\$10
HOTELS	per occupied bed	\$1.50
	per available bed	\$2.20
HOSPITALS	per occupied bed	\$1
	per available bed	\$0.50
PASSENGER CARRIERS	per passenger	\$0.006
	per wagon/vessel	\$200

6. Tariff-Setting Process and Dispute-Setting Mechanisms

6.1 Competent Body

As stated in Section 3.2 of this Toolkit, CMOs should have the autonomy to establish their tariffs, ensuring these are aligned with the criteria and methodologies prescribed by the relevant laws. This is reflected in the answers received to the above-mentioned survey, where 85% of the respondents declare that the tariffs are determined by the concerned CMO, while in 7.5% of the cases, the tariffs are negotiated with users, and in one single case (Ecuador) the tariffs are set by the national Copyright Office.

As per the ARIPO survey, in those cases where the CMO determines its tariffs, in 82% of the cases, the competent body is the Board of Directors, while in 18% it is the competence of the General Assembly.

The general recommendation is for the Board of Directors (or similar body) to have the exclusive competence for the adoption of the tariffs, insofar as it provides the CMO with greater flexibility when negotiating with the licensees or users. Otherwise (i.e. should the General Assembly have exclusive competence) it could be understood that the Board lacks enough power to agree with the licensee or user an adjusted tariff –unless the General Assembly specifically empowers the Board (or any other body) to negotiate adjustments to the tariff.

In any case, and as was mentioned in section 3.2, public authorities, while lacking the power to approve the tariffs, should have the capability to oversee them and ensure that they are deter-

mined in compliance with the legally mandated criteria and methodologies. This oversight is crucial to prevent potential abuses and to maintain a balance between the interests of the rights holders and the users.

To this end, CMOs are usually obliged to communicate their tariffs to the competent governmental body (IPO, Ministry, etc.). Indeed, 82% of the respondents to the ARIPO survey declared that they are legally obliged to communicate their tariffs (and modifications therein) to their IPO, and only one respondent (from Kenya) declared that the tariffs are subject to approval by the said body.

6.2 Legal provisions on the criteria that the tariffs must meet

As mentioned above, national laws often stipulate the criteria that the tariffs must meet, instead of stating that they have to be approved by the IPO (as we have seen it is very rarely that such competence is given to the public authorities). Furthermore, it is commonly established that, in case of any eventual dispute regarding the tariffs claimed by a CMO from a user or licensee, said conflict will be solved by the Copyright Tribunal or regular courts of justice.

As reflected in the responses to the ARIPO survey, the most common criteria provided under national legislation for the determination of tariffs are: (i) the economic value of the rights, (ii) the level of use of the CMO repertoire, (iii) the proportionality of the income of the licensee or user related to the use of such repertoire, and (iv) the value that such repertoire adds to the business of the user or licensee. All these criteria may be considered when determining the rates of economic factors and use as the basic components in the tariff.

6.3 Dispute resolution mechanisms

It is essential for national legal frameworks to have effective mechanisms for dispute resolution in place. These mechanisms, such as arbitration or mediation, provide a structured process for resolving conflicts that may arise between CMOs and users or licensees. For instance, if a user believes that the tariff set by the CMO is excessive, they should have a recourse to challenge this through a fair and impartial process.

Most of the respondents to the ARIPO questionnaire (70%) declared that their national legislation regulates a specific mechanism, other than the courts of Justice, for solving eventual disputes between CMOs and users or licensees regarding the tariffs or their application. Such mechanisms include: (i) arbitration and/or mediation; (ii) the participation of a governmental body in the negotiations between CMOs and users; (iii) a Copyright Tribunal, which may even have the competence to set alternative tariffs:

Country	Dispute-Setting mechanism
Ecuador	Regulation in progress through technical regulations of the IPO
Ghana	The Copyright Tribunal serves as a mediator between the CMO and the users
Italy	The authority AGCOM can be asked to participate in a negotiation and recommend a tariff
Kenya	The IPO has the mandate to ensure that all users and the CMO agree on a particular tariff
Nigeria	The legislation provides for arbitration, with the possibility of setting alternative tariffs
Panama	Users can request an arbitration by the IPO
Philippines	The IPO has exclusive jurisdiction over the terms of any license related to IP
Slovenia	The parties can bring the matter to the Copyright Tribunal, which can set alternative tariffs
Spain	The parties can bring the matter to the Copyright Tribunal, which can set alternative tariffs

7. Recommendations

The following recommendations are therefore made:

- * **Holistic and Contextual Approach:** Effective tariff-setting for AV CMOs in Africa requires a comprehensive understanding of local economic conditions, cultural factors, and market dynamics. Tailoring tariffs to reflect the diverse needs and realities of different regions ensures fair compensation for creators while maintaining affordability for users.
- * **Stakeholder Engagement:** Inclusive dialogue with all stakeholders, including creators, users, government bodies, and industry representatives, is crucial for the development of balanced and widely accepted tariffs. This participatory approach helps to foster transparency, trust, and collaboration, leading to more sustainable tariff structures.
- * **Data-Driven Decisions:** Robust data collection and analysis are essential for setting tariffs that accurately reflect market conditions and usage patterns. AV CMOs should invest in technological solutions and research to gather reliable data, which can then inform evidence-based tariff-setting processes.
- * **Legal and Regulatory Frameworks:** A strong legal and regulatory environment is necessary to support the enforcement of tariffs and protect the rights of creators. Governments and regulatory bodies should work towards harmonizing legislation across the region to provide a consistent framework that facilitates compliance and reduces administrative burdens.
- * **Adaptive and Flexible Tariff Models:** Tariff structures should be adaptable to changing market conditions and technological advancements. Periodic reviews and updates ensure that tariffs remain relevant and

effective in addressing new challenges and opportunities in the AV industry.

- * **Sustainability and Growth:** Sustainable tariff-setting not only ensures fair compensation for creators but also promotes the growth and development of the AV industry in Africa. By setting tariffs that encourage creativity and investment, AV CMOs can contribute to a vibrant and dynamic cultural sector.
- * **International Best Practices:** Learning from international best practices and adapting successful models to the African context can enhance the effectiveness of tariff-setting. Collaboration with global federations of AV CMOs, such as GAVA, can provide valuable insights.
- * **Monitoring and Evaluation:** Continuous monitoring and evaluation of tariff policies and their impacts are necessary to ensure they meet the intended objectives. Feedback mechanisms and performance indicators should be established to assess the effectiveness of tariffs and make necessary adjustments.

8. Conclusion

At a time when the creativity industry in general, and AV ones in particular, are flourishing in Africa, the role played by AV CMOs is essential to ensuring that creators receive fair compensation for the exploitation of their works.

In the dynamic and rapidly evolving audiovisual landscape, effective tariff-setting mechanisms are crucial for AV CMOs across Africa and the world at large. This toolkit has provided an overview of the key principles, methodologies, and best practices that can guide AV CMOs in establishing fair, transparent, effective and sustainable tariffs.

Throughout this toolkit, we highlighted the relevant aspects of tariff-setting, from stakeholder engagement through the participation of rightsholders, users, and authorities in the process, to data collection and analysis, mechanisms to enforce tariffs through the legal framework, and mechanisms to ensure the adaptation of tariffs system to new scenarios.

By adopting a strategic approach to tariff-setting, AV CMOs can better navigate the complexities of the market, ensuring that creators are fairly compensated while fostering a thriving audiovisual sector.

As the African audiovisual industries continue to grow, AV CMOs must remain agile and responsive to changes in technology, consumption patterns, and legal frameworks. Collaboration among AV CMOs, stakeholders, and regional bodies will be essential to harmonize tariff-setting practices, address challenges, and seize emerging opportunities.

Ultimately, the success of these mechanisms depends on transparency, stakeholder engagement, and a commitment to balancing the interests of creators, users, and the broader cultural ecosystem. By leveraging the insights and tools provided in this toolkit, AV CMOs in Africa can build robust

tariff-setting frameworks that support the sustainable development of the audiovisual sector and be the basis for solving disputes related to the distribution and allocation of collected amounts, contributing to the continent's rich and diverse cultural heritage.



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