



ReCreating Europe

Rethinking digital copyright law for a culturally diverse, accessible, creative Europe

A brief introduction

Web conference “The implementation of the CDSM Directive – Snapshots into the future of EU copyright law”

Zoom – 21st June 2021



Sant'Anna
School of Advanced Studies – Pisa



This project has received funding from the European Union's Horizon 2020 research and innovation programme under grant agreement No 870626

The consortium



Sant'Anna
Scuola Universitaria Superiore Pisa



UNIVERSITY OF AMSTERDAM



University
of Glasgow



CREATE



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Sant'Anna
School of Advanced Studies - Pisa



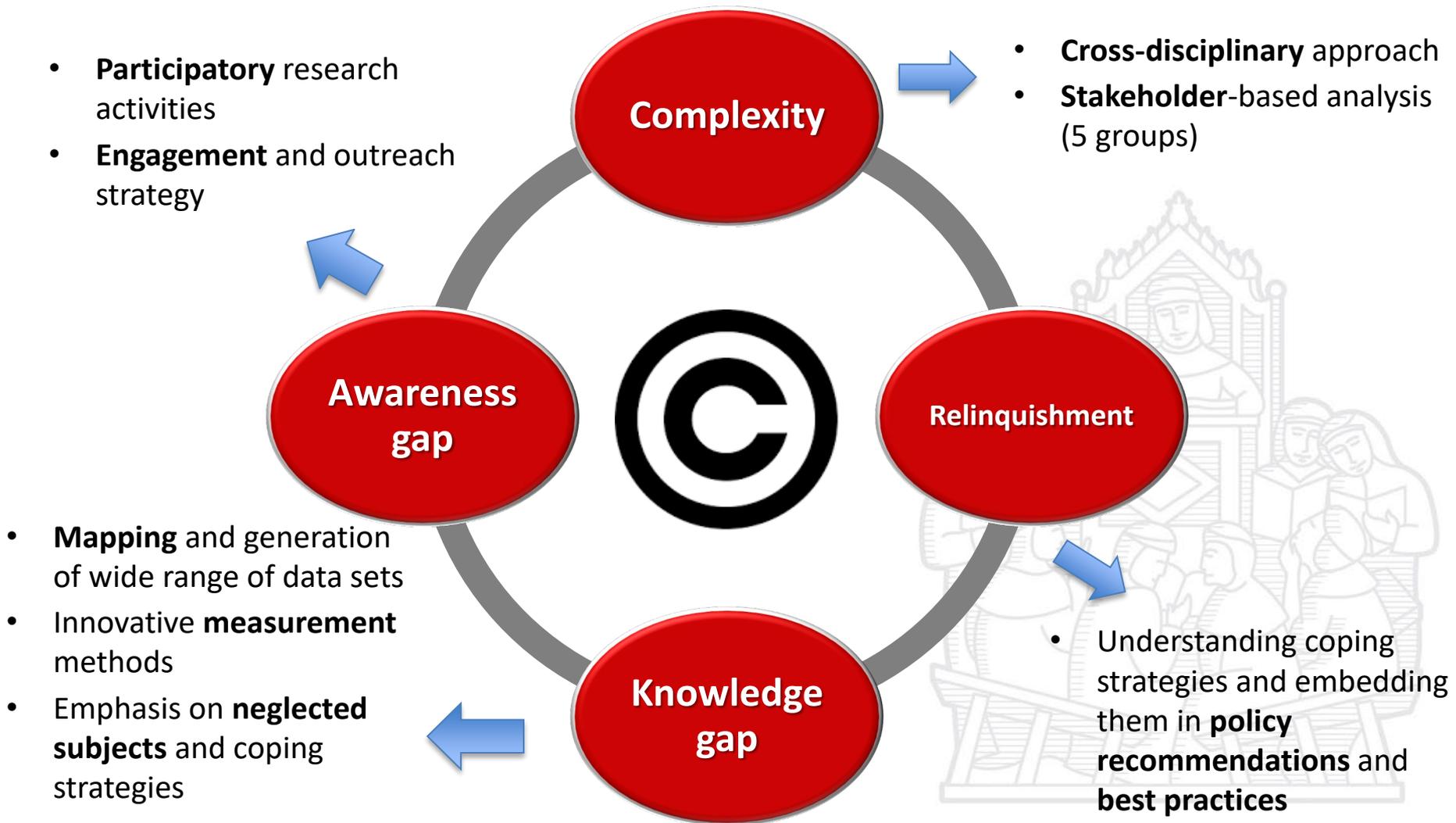
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Background and concept

- Crafting EU copyright in rapidly changing society
 - **New models** of creation, dissemination, consumption of cultural and creative content; **new actors** in the value chain
 - 20 years of **EU harmonization** tackling structural and regulatory constraints
 - Pitfalls
 - Regulatory → fragmentation; uncertainties; lack of flexibility and adaptability; balancing issues; weak link with cultural and media policies
 - Market → fragmentation; inefficiencies; distortion in competition; abuses
- Four parallel phenomena



Concept: general goals



Three levels of impact

- Better comparative knowledge
- New assessment tools
- Evidence-based recommendations

Policy



- Best practices
- Stakeholders' platform & training toolkit
- Increased awareness
- Increased intra- and inter-collaboration

Stakeholders



- Raising awareness on needs of cultural/creative SHs
- Devising strategies for better balance
- Moving towards a closer Union

Societal



Work plan

WP 1 – Management and coordination

WP 2
USERS



WP 3
Authors and
performers



WP 4
Creative
industries



WP 5
GLAM



WP 6
Intermediaries



WP 7 – Dissemination, Engagement and Outreach

Conference program

- **Crafting EU copyright in rapidly changing society**
 - **New models** of creation, dissemination, consumption of cultural and creative content; **new actors** in the value chain
 - 20 years of **EU harmonization** tackling structural and regulatory constraints
 - Pitfalls
 - Regulatory → fragmentation; uncertainties; lack of flexibility and adaptability; balancing issues; weak link with cultural and media policies
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- **Four parallel phenomena**



Conference program

Keynotes

2:05-2:20pm – The aftermath of CDMSD: where do we stand, where shall we go? (**Raquel Xalabarder**, Professor of Intellectual Property, Universitat Oberta de Catalunya)

2:20-2:35pm – The future of EU copyright harmonization: which role for the CJEU? (**Maciej Szpunar**, First Advocate General of the Court of Justice of the European Union)

2:35-2:45 Q&A

Intermezzo: implementation trackers

2:45-2:55pm – CDSMD implementation tracker (**Martin Kretschmer**, Professor and Director, CREATE – University of Glasgow)

2:55-3:05pm – The new copyrightexceptions.eu (**Paul Keller**, President, Communia)

Panel sessions

3:05-3:45pm – Panel 1: Remuneration and reversion rights

- Chair: **Rebecca Giblin** (Associate Professor, University of Melbourne; Director, IP Research Institute of Australia (IPRIA))
- Presenters: **Ula Furgal** (Research Fellow, CREATE – University of Glasgow), **Joost Poort** (Associate Professor and Vice-Director, IViR – University of Amsterdam)
- Respondents: **Eanna Casey** (Chairman of the Board, Societies' Council for the Collective Management of Performers' Rights (SCARP)); **Cecile Deniard** (Vice-President, European Council of Literary Translators' Associations (CEATL))

3:45-4:00pm Virtual coffee break (in breakout rooms)



Conference program (ii)

4:00-4:40pm – Panel 2: A new era for copyright exceptions and limitations?

- Chair: **Christophe Geiger** (Professor of Law, CEIPI – University of Strasbourg)
- Presenters: **Caterina Sganga** (Associate Professor of Private Comparative Law, Scuola Superiore Sant'Anna), **Thomas Margoni** (Research Professor, KU Leuven; Fellow, CREATE)
- Discussants: **Agustin Reyna** (Director, Legal and Economic Affairs, BEUC), **Jeremy Rollinson** (Senior Director of European Government Affairs, Microsoft)

4:40-5:20pm – Panel 3: Setting the rules for automated content-filtering

- Chair: **Eleonora Rosati** (Professor of Intellectual Property Law, University of Stockholm)
- Presenters: **João Pedro Quintais** (Assistant Professor, IViR – University of Amsterdam), **Sebastian Schwemer** (Associate Professor, CIIR – University of Copenhagen)
- Discussants: **Cédric Manara** (Head of Copyright, Google), **Martin Husovec** (Assistant Professor, LSE)

5:20-6:00pm – Panel 4: Preservation of cultural heritage

- Chair: **Andrea Wallace** (Senior Lecturer in Law, University of Essex)
- Presenters: **Giulia Dore** (Research Fellow, University of Trento), **Marta Iljadica** (Lecturer in Law, CREATE – University of Glasgow)
- Discussants: **Ariadna Matas** (Policy Advisor, Europeana); **Ben White** (Chair of Copyright Working Group, LIBER)

User rights in the post DSM EU copyright framework

<https://www.copyrightexceptions.eu>



Paul Keller, @paul_keller



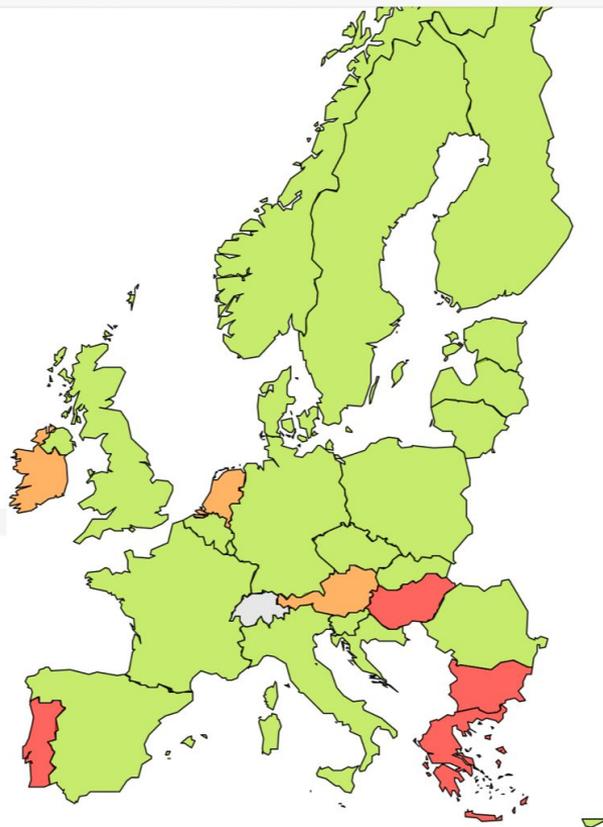
An increasingly complex system of exceptions and limitations

- One exception that can be overridden by licensing (Art.5)
- One exception that can be overridden by robots.txt (Art.4)
- One exception that applies only when no CMO exists + opt out (Art.8(2))
- Two exceptions that are partially mandatory (Art.17(7))
- Two exceptions that are mandatory and cannot be overridden (Art.3 and 6)

COPYRIGHT EXCEPTIONS

- 5.1 Temporary acts of reproduction
- 5.2(a) Photocopying/photo-reproduction
- 5.2(b) Private copying
- 5.2(c) Reproductions by Libraries, Archives & Museums
- 5.2(d) Ephemeral recordings made by broadcasters
- 5.2(e) Reproduction of broadcasts by social institutions
- 5.3(a) Illustration for teaching or scientific research
- 5.3(b) Use for the benefit of people with a disability
- 5.3(c) Reporting by the press on current events
- 5.3(d) Quotation for criticism or review
- 5.3(e) Use for public security purposes
- 5.3(f) Use of public speeches and public lectures
- 5.3(g) Use during religious or official celebrations
- 5.3(h) Use of works of architecture or sculptures in public spaces
- 5.3(i) Incidental inclusion
- 5.3(j) Use for advertising the exhibition or sale of works of art
- 5.3(k) Use for the purpose of caricature, parody or pastiche**
- 5.3(l) Use for the demonstration or repair of equipment
- 5.3(m) Use for the purpose of reconstructing a building
- 5.3(n) Use for the purpose of research or private study
- 5.3(o) Pre-existing exceptions of minor importance
- Reproducing and making available of orphan works

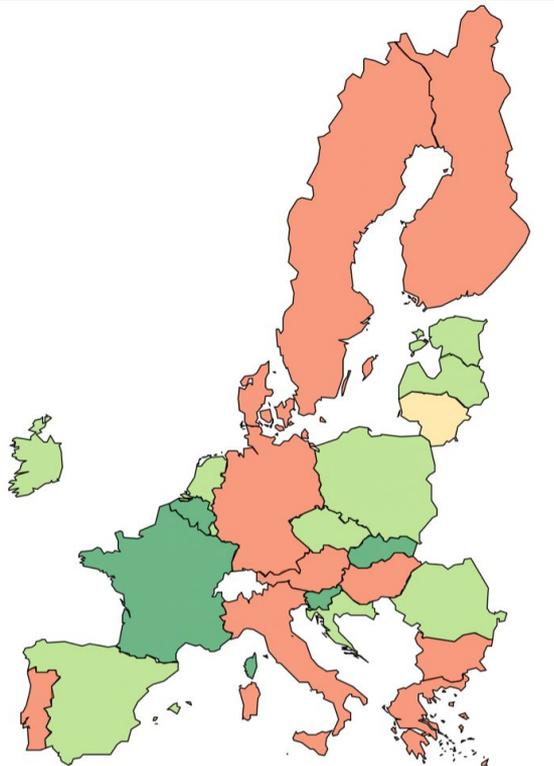
■ Implemented ■ Partly Implemented
■ Not Implemented ■ Unknown



+ - SHOW TABLE



- Text and data mining for scientific research (Art. 3 DSM)
- Exception or limitation for text and data mining (Art. 4 DSM)
- Use in digital and cross-border teaching activities (Art. 5 DSM)
- Preservation of cultural heritage (Art. 6 DSM)
- Use of out-of-commerce works by cultural heritage institutions (Art. 8 DSM)
- Temporary acts of reproduction (Art. 5.1 InfoSoc)
- Photocopying/photo-reproduction (Art. 5.2(a) InfoSoc)
- Private copying (Art. 5.2(b) InfoSoc)
- Reproductions by Libraries, Archives & Museums (Art. 5.2(c) InfoSoc)
- Ephemeral recordings made by broadcasters (Art. 5.2(d) InfoSoc)
- Reproduction of broadcasts by social institutions (Art. 5.2(e) InfoSoc)
- Illustration for teaching or scientific research (Art. 5.3(a) InfoSoc)
- Use for the benefit of people with a disability (Art. 5.3(b) InfoSoc)
- Press review (Art. 5.3(c) 1st part InfoSoc)
- Reporting by the press on current events (Art. 5.3(c) 2nd part InfoSoc)
- Quotation for criticism or review (Art. 5.3(d) InfoSoc)
- Use for public security purposes (Art. 5.3(e) InfoSoc)
- Use of public speeches and public lectures (Art. 5.3(f) InfoSoc)
- Use during religious or official celebrations (Art. 5.3(g) InfoSoc)
- Use of works of architecture or sculptures in public spaces (Art. 5.3(h) InfoSoc)
- Incidental inclusion (Art. 5.3(i) InfoSoc)
- Use for advertising the exhibition or sale of works of art (Art. 5.3(j) InfoSoc)
- Use for the purpose of caricature, parody or pastiche (Art. 5.3(k) InfoSoc)**
- Use for the demonstration or repair of equipment (Art. 5.3(l) InfoSoc)
- Use for the purpose of reconstructing a building (Art. 5.3(m) InfoSoc)
- Use for the purpose of research or private study (Art. 5.3(n) InfoSoc)
- Pre-existing exceptions of minor importance (Art. 5.3(o) InfoSoc)
- Make and disseminate accessible format copies of works (Art. 4 MKD)
- Permitted uses of orphan works (Art. 6 OWD)



Legend for map implementation status:
No implementation (orange) Very restrictive implementation (yellow) Restrictive implementation (light green)
Broad implementation (dark green) No data (grey)

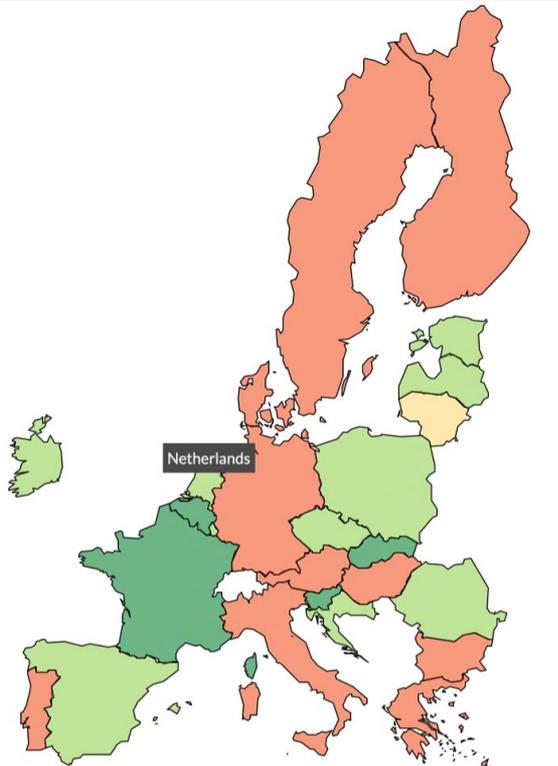
COPYRIGHT EXCEPTIONS

Use for the purpose of caricature, parody or pastiche (Art. 5.3(k) InfoSoc)

This (optional) exception allows reproduction, communication to the public or making available to the public - by any user, of works, for the purpose of caricature, parody or pastiche.

[See overview of all implementations](#)

- Text and data mining for scientific research (Art. 3 DSM)
- Exception or limitation for text and data mining (Art. 4 DSM)
- Use in digital and cross-border teaching activities (Art. 5 DSM)
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COPYRIGHT EXCEPTIONS

The Netherlands has implemented the Use for the purpose of caricature, parody or pastiche (Art. 5.3(k) InfoSoc) exception in **Article 18b of the Copyright Act**. The national exception is slightly more restrictive than the EU exception.

This exception allows for disclosure to the public or reproduction of a literary, scientific or artistic work in the context of a caricature, parody or pastiche, provided that the use is in accordance with what is generally regarded as reasonably acceptable.

[More information on this implementation](#)

The Netherlands has implemented the Use for the purpose of caricature, parody or pastiche (Art. 5.3(k) InfoSoc) exception in **Article 18b of the Copyright Act**. The national exception is slightly more restrictive than the EU exception.

Implementation summary:

This exception allows for disclosure to the public or reproduction of a literary, scientific or artistic work in the context of a caricature, parody or pastiche, provided that the use is in accordance with what is generally regarded as reasonably acceptable.

Implementation details:

Beneficiaries:

- any user

Purposes:

- caricature, parody or pastiche

Usage:

- reproduction
- making available to the public

copyrightexceptions.eu/v2dev/implementations/nl/info53k/

Subject Matter:

- works
- performances
- phonograms
- broadcasts
- film fixations
- press publications

Compensation:

- not required

Attribution:

- not required

Other Conditions:

- the use must be in accordance with what is generally regarded as reasonably acceptable

Introduced/last updated: 07 June 2021

Remarks: There is a corresponding provision in Article 10(j) of the Neighbouring Rights Act

 [view/contribute additional information on GitHub](#)

This website is maintained by the COMMUNIA Association for the Public Domain. The information provided on this website is for informational purposes only. You can find more information about the project and its contributors [here](#). All texts and data presented on this website are in the Public Domain.

Open "https://github.com/copyrightexceptions/copyrightexceptions.eu/tree/master/content/implementations/NL/info53k.md" in a new tab

```
1 ---
2 title: "Article 18b of the Copyright Act"
3 date: 2021-06-07
4 draft: false
5 weight: 61
6 exceptions:
7 - info53k
8 jurisdictions:
9 - NL
10 score: 2
11 description: "This exception allows for disclosure to the public or reproduction of a literary, scientific or artistic work in the context of a caricature, parody or pastiche, provided that the use is in accordance with what is generally regarded as reasonably acceptable."
12 beneficiaries:
13 - any user
14 purposes:
15 - caricature, parody or pastiche
16 usage:
17 - reproduction
18 - making available to the public
19 subjectmatter:
20 - works
21 - performances
22 - phonograms
23 - broadcasts
24 - film fixations
25 - press publications
```



The Netherlands

The Netherlands has separate acts dealing with copyright (Auteurswet - AW), neighbouring rights (Wet Naburige Rechten WNR) and Database rights (Databankenwet DB). The exceptions are implemented across these 3 acts.

The Netherlands has implemented the following exceptions in its national laws:

- Art. 3 DSM in Artikel 15n Auteurswet
- Art. 4 DSM in Artikel 15n Auteurswet
- Art. 6 DSM in Artikel 16n Auteurswet
- Art. 8 DSM in Artikel 18c Auteurswet
- Art. 5.1 InfoSoc in Artikel 13a Auteurswet
- Art. 5.2(a) InfoSoc in Artikel 16h
- Art. 5.2(b) InfoSoc in Artikel 16b, 16c, 16d, 16e, 16f, 16g and 16ga Auteurswet
- Art. 5.2(d) InfoSoc in Article 17b Auteurswet
- Art. 5.3(a) InfoSoc in Artikel 12(5) en Artikel 16 Auteurswet
- Art. 5.3(b) InfoSoc in Artikel 15i Auteurswet
- Art. 5.3(c) (1st part) InfoSoc in Artikel 15 Auteurswet
- Art. 5.3(c) (2nd part) InfoSoc in Artikel 16a Auteurswet
- Art. 5.3(d) InfoSoc in Artikel 15a Auteurswet
- Art. 5.3(e) InfoSoc in Artikel 22 Auteurswet

About copyrightexceptions.eu

This site is a collaborative effort to map user rights in the European Union's copyright framework. To do this copyrightexceptions.eu provides information on the national implementations of the various exceptions and limitations to copyright and related rights foreseen in the following EU copyright directives:

- the 2001 Copyright in the Information Society Directive ,
- the 2019 Copyright in the Digital Single Market Directive ,
- the 2012 Orphan Works Directive , and
- the 2017 Marrakesh Directive .

Copyright exceptions is a joint project by the COMMUNIA Association for the Public Domain , Open Future and Digital Republic .



You can reach us at feedback@copyrightexceptions.eu .

Methodology and Data Sources

The information made available on copyrightexceptions.eu is the result of a collaborative effort by academics and copyright reform advocates across Europe. The information made available here is based on analysis of primary sources (the copyright legislation of the respective jurisdictions). Whenever possible information has been peer reviewed before

Contribute to copyrightexceptions.eu

The information on copyrightexceptions.eu is a collaborative effort and represents our current best understanding of the national implementations of the copyright exceptions foreseen by the EU copyright framework (the 2001 Copyright in the Information Society Directive, the 2019 Copyright in the Digital Single Market Directive, the 2012 Orphan Works Directive and the 2017 Marrakesh Directive).

National implementations of these directives are not static and may change as Member States update their domestic copyright legislation and not all such changes will immediately come to our attention. **We are therefore grateful for any updates, corrections or additions to the information that is available on copyrightexceptions.eu**

How to contribute?

There are two ways of contributing to copyrightexceptions.eu:

1. Get in touch with us via feedback@copyrightexceptions.eu
2. Proposes changes/updates/additions directly via GitHub (preferred method)

All information displayed on copyrightexceptions.eu is hosted in our GitHub repository. This allows anyone with a (free) GitHub account to propose changes, corrections, updates or additions, directly in GitHub. To facilitate this each individual implementation page contains a link to the source information in our GitHub repository:



Thank you!



Maarten Zeinstra mzeinstra

I'm an information professional and intellectual property lawyer. My projects and activity mostly involve concepts of access, open licensing and copyright.

 Netherlands

 Committed to this repository

 Member of Copyrightexceptions.eu



Thank you!



The image shows a screenshot of two GitHub profiles. The profile on the left is for Maarten, with a circular profile picture of a man with short brown hair. His bio reads: "I'm an intellectual projects concept and copy" and "Nether". Below his profile, it says "Committed to this repository" and "Member of Copyrightexceptions.eu". The profile on the right is for Ana Lazarova, with a circular profile picture of a woman with long dark hair. Her bio reads: "Ana Lazarova ana-lazarova IP Lawyer | CC Chapter Lead for Bulgaria | Chair of Digital Republic Association | Doctoral Researcher at the University of Sofia" and "Bulgaria". Below her profile, it says "Opened this pull request" and "Committed to this repository in the past day".

Thank you!

Maarten
I'm an in
intellect
projects
concept
and copy
Nether

Ana Lazarova ana-lazarova
IP Lawyer | CC Chapter Lead for
Bulgaria | Chair of Digital Republic
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Lawyer, Vice-President of the
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Chapter Lead
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Paul Keller paul2keller
Director of Policy at Open Future,
President of the COMMUNIA
Association for the Public Domain,
collector of collerteral knowledge.
Amsterdam

Committed to this repository in the past week
Member of Copyrightexceptions.eu, and 4 more

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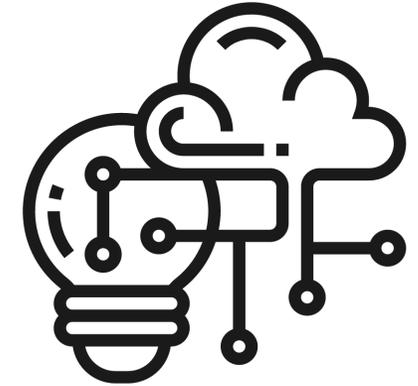
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Use-it-or-lose-it: Creators' reversion rights

Ula Furgal
Postdoctoral researcher
CREATE, University of Glasgow

Copyright modernisation process



2013/14 Public consultation on review of copyright rules

Reversion rights briefly mentioned in the 2014 Report

Only **12% of authors' organisations** called for the introduction of the reversion right

2016 Proposal for the Copyright Directive **does not include right of revocation**

2018 **European Parliament compromise** introduces right of revocation

→ **No focused debate** on the form or merit of the revocation right on the EU level

Right of revocation



„Member States shall ensure that where an author or a performer has **licensed or transferred** his or her rights in a work or other protected subject matter on an **exclusive basis**, the author or performer may **revoke in whole or in part** the licence or the transfer of rights where there is a **lack of exploitation** of that work or other protected subject matter.”

Exercised after a **reasonable time**

Process: notice of intention + **appropriate deadline** + notice of termination

Precluded when lack of exploitation is predominantly due to circumstances that **the creator can reasonably be expected to remedy**

Right of revocation - Implementation

Specific provisions can be provided for:

- Different sectors

- Different types of work

- Collective works

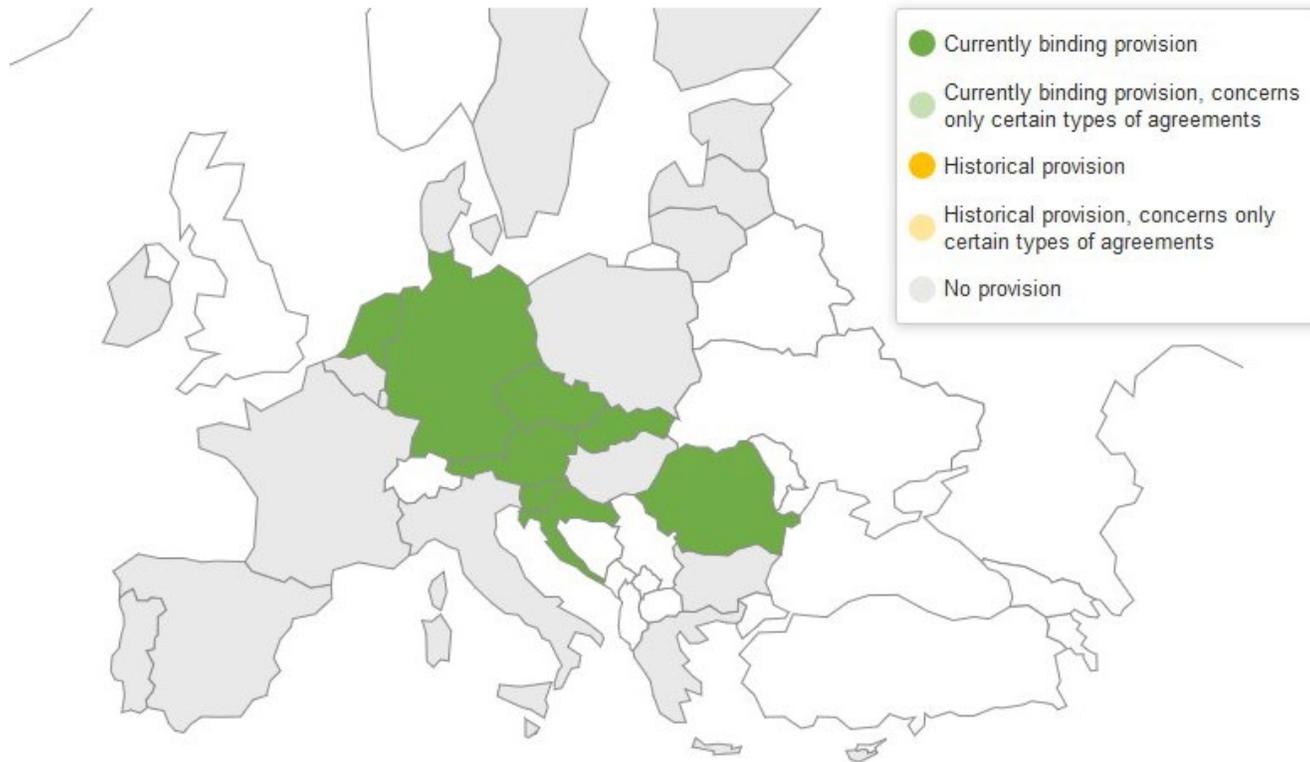
Exclusion of works usually including contributions of **plurality of creators**

Exercise within the specific **time-frame**

Change of exclusive to **non-exclusive assignment**

Waivability

Use-it-or-lose-it



Lack of use or **insufficient use**
which impairs author's
legitimate interests

Time limitation

Partial termination/change to
non-exclusive assignment

Process: notice of intention +
appropriate deadline + notice of
termination

Remuneration/compensation

Implementation



4 countries* implemented the provision

***Hungary** (§51): lack of implementation

Belgium (XI.167/1; XI.205/1), **Luxembourg** (13quater), **Bulgaria** (39), **Estonia** (§49³) and **Lithuania** (40³): lack of exploitation within set time following conclusion of the agreement/delivery of work

Czechia (§2378): insufficient use removed

Romania (48¹): new provision alongside current use-it-or-lose-it; works with contributions of more than 10 creators

France (L. 131-5-2): procedure to be determined in a professional agreement

Cyprus (27): does not apply to rights acquired before 7 June 2021

Conclusions

Use obligation

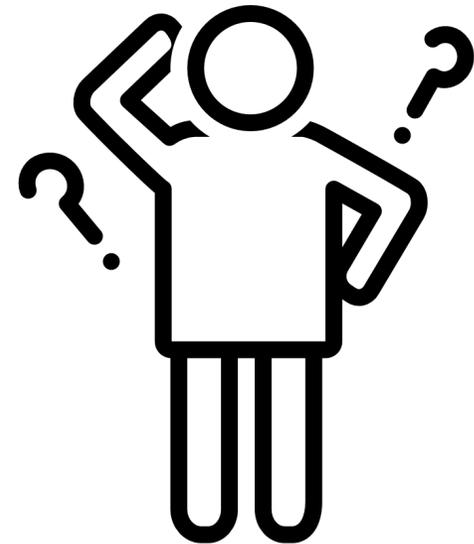
Lack of initial exploitation vs continuous use obligation
No use = no remuneration

Digital uses of works

Availability of a digital file
Exploitation as a yes-no question

Guidance on exercise of right

Terms and remuneration
Termination is not the only option



RECREATING EUROPE

PERSPECTIVE OF CREATORS AND PERFORMING ARTISTS ON DIGITIZATION, COPYRIGHT AND THE DIGITAL SINGLE MARKET

Joost Poort
Institute for Information Law (IViR), University of
Amsterdam

Webinar on The Implementation of the CDSM
Directive
21 June 2021



OUTLINE

- **Survey coming up in ReCreating Europe**
- **Perspectives from the pre-platform age**
- **Evaluation of Dutch Copyright Contract Act and Reversion Right Clause after five years**



BACKGROUND:

THREATS AND OPPORTUNITIES OF DIGITIZATION FOR AUTHORS AND PERFORMERS

Opportunities

- Disintermediation and autonomy
- New players for dissemination
- Creative re-use
- Cheap production technology
- Further decentralization and democratization of creative process

Threats

- Disintermediation, competition from amateurs and debutants
- New players disrupt
- Creative re-use
- Dominance of global platforms
- Piracy
- Competition from AI



SURVEY

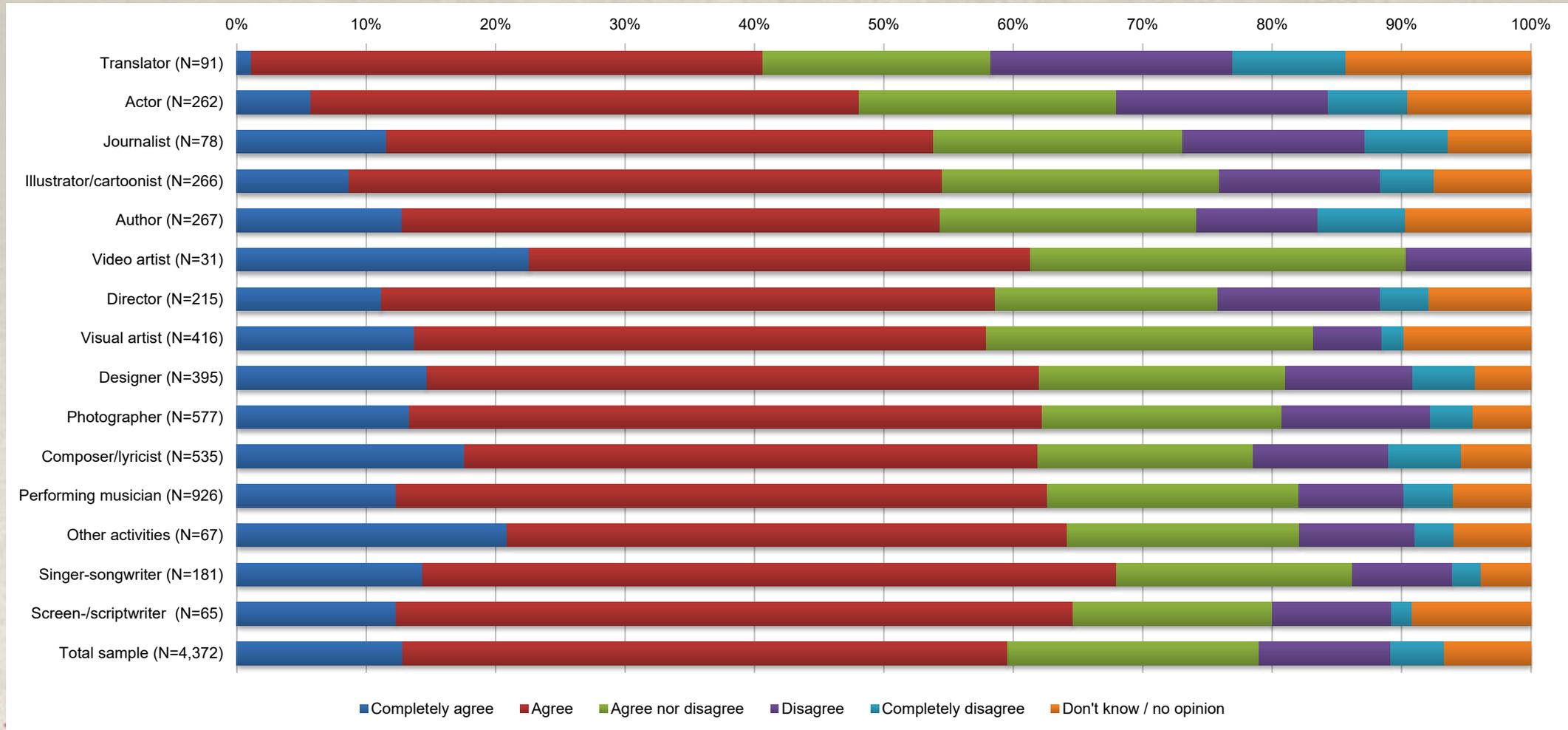
- EU-wide survey, available online in official EU languages
- Target creators and performers (musicians, songwriters, composers, photographers, video artists, designers, actors, illustrators, authors, etc.)
- Topics to include:
 - Income developments and remuneration
 - Digitalisation
 - Platforms and publishers
 - Copyright and piracy
 - Content removal from platforms, prominence issues due to algorithmic ranking
 - Competition from AI driven creation
 - Copyright reversal, second publication rights, out of commerce issues
 - ...



OUTLINE

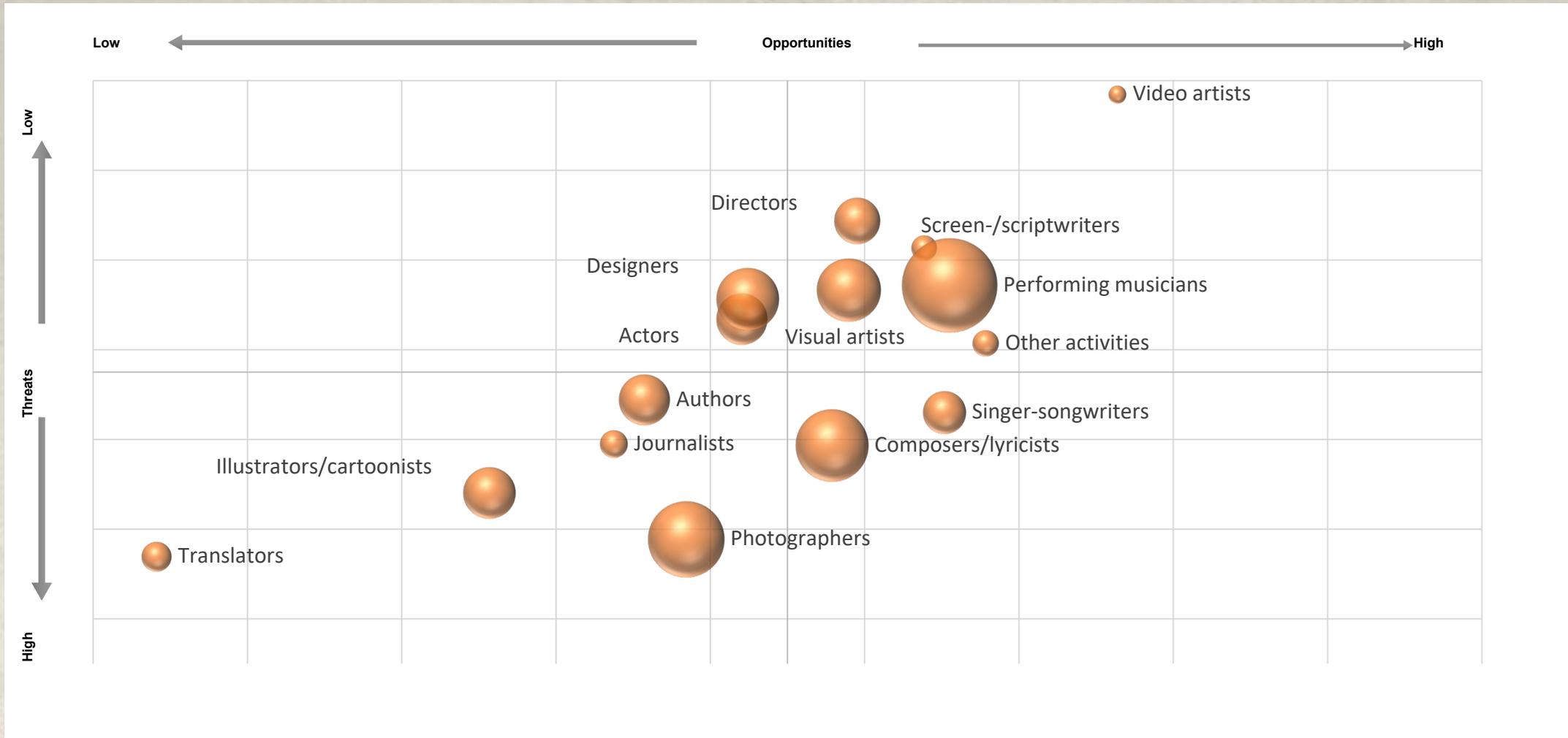
- Survey coming up in ReCreating Europe
- **Perspectives from the pre-platform age**
- Evaluation of Dutch Copyright Contract Act and Reversion Right Clause after five years

Expectations 2010: *'I expect more earning opportunities as a consequence of digitisation'*



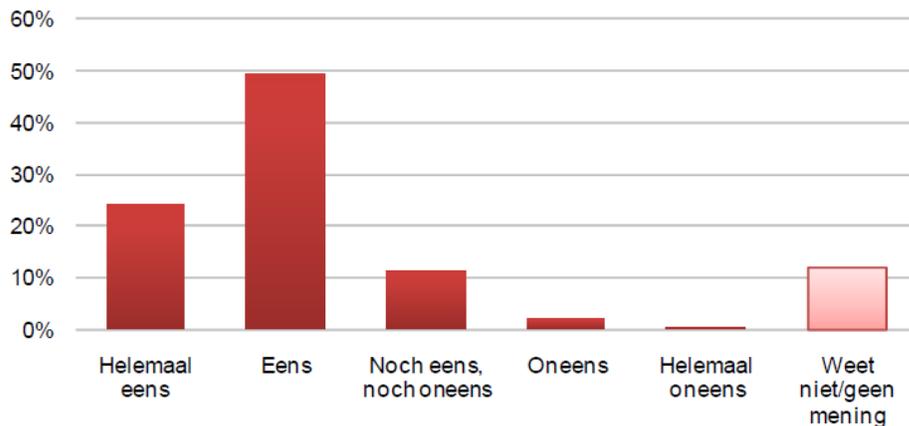


Translators were most fearful of digitisation

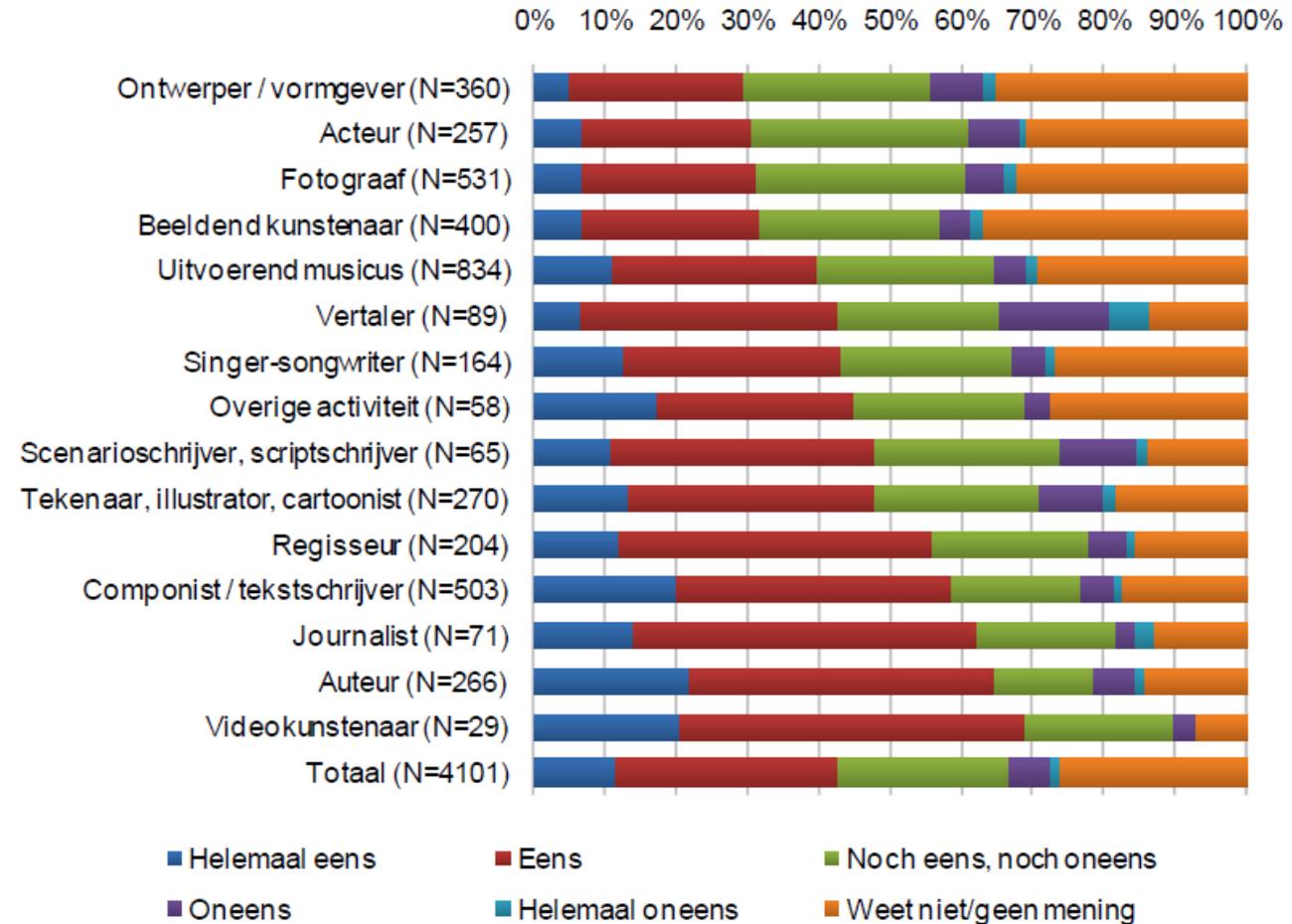


In 2010, a large majority favoured right reversal clause and many regularly saw unused exploitation opportunities

Als ik vind dat een exploitant mijn werk onvoldoende actief exploiteert, zou ik de exploitatie zelf of via een derde moeten kunnen regelen.



Het komt wel eens voor dat ik exploitatiekansen voor mijn werk zie, die mijn exploitant niet benut.





OUTLINE

- Survey coming up in ReCreating Europe
- Perspectives from the pre-platform age
- **Evaluation of Dutch Copyright Contract Act and Reversion Right Clause after five years**



DUTCH COPYRIGHT CONTRACT ACT (ENTERED INTO FORCE ON 1 JULY 2015)

- Aim to strengthen the contractual position of authors and performers vis-à-vis the exploiters of their works.
- “Right to a contractually stipulated fair remuneration” and bestseller clause scarcely exercised in practice out of fear of loss of contracts or blacklisting → Formulating best practices and collective arrangements better route.
- Complaints about transparency of exploitation income.
- Rights reversal:
 - Contract dissolution also possible pursuant to Article 6:265 Dutch Civil Code
 - Not clear what ‘sufficient exploitation’ means, in particular in digital realm (PoD)
 - In print or available not enough, rather look at promotion and prominence on significant platforms
 - Annual revenues alternative criterion (<€200 for Dutch authors)



Thank you!

poort@uva.nl



The implementation of the CDSM directive: Remuneration and reversion right

Cécile Deniard, CEATL authors' rights WG

ReCreating Europe conference, 21 June 2021

- CEATL is an international non-profit association under Belgian law, officially created in **1993**
- **34 associations, 28 European countries**
- **10.000 individual literary translators**
- **Working groups** : authors' rights, working conditions, training and education, visibility, best practices

CEATL and the CDSM directive

- 2013-2019: intensive lobbying
- Helping our members make the best of provisions 18-23: PPT document
- Monitoring the implementation process: survey (Dec. 2020-Jan. 2021)

Recital 74

Authors and performers need information to assess the economic value of rights of theirs (...).

Article 19.1

Member States shall ensure that authors and performers receive on a regular basis, at least once a year, and taking into account the specificities of each sector, up to date, relevant and comprehensive information on the exploitation of their works and performances from the parties to whom they have licensed or transferred their rights, or their successors in title, in particular as regards modes of exploitation, all revenues generated and remuneration due.

- Without relevant information, it is impossible for authors to assess the economic value of their rights.
- So the information provided by publishers should include all modes of exploitation and all revenues generated worldwide.
- And it should be delivered at least once a year.
- this should not be limited to authors receiving royalties – every translator, including those only receiving lump sums, should get this information to know if their remuneration is actually appropriate and proportionate.

Article 19.3

- *The obligation set out in paragraph 1 shall be proportionate and effective in ensuring a high level of transparency in every sector. (...) Where the administrative burden resulting from the obligation (...) would become disproportionate in the light of the revenues generated by the exploitation of the work the obligation is limited to the types and level of information that can reasonably be expected in such cases.*

Article 19.4

- *(...) The obligation (...) does not apply when the contribution of the author or performer is not significant having regard to the overall work or performance (...).*

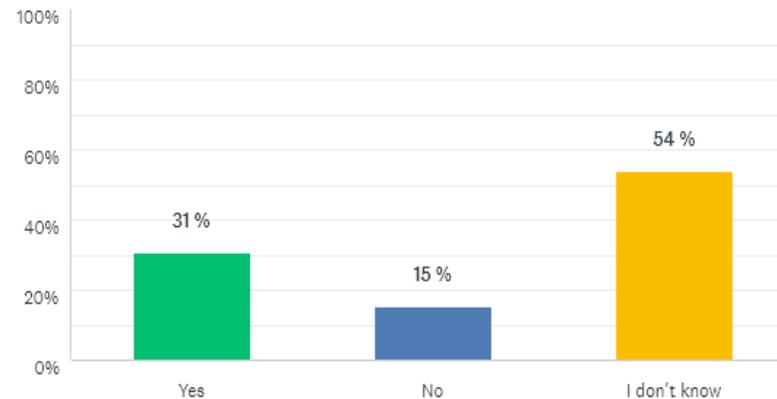
- The wording is strong in favour of a “high level of transparency”, but the directive leaves open avenues of evasion (if the publisher puts forward the administrative burden or the insignificance of the contribution), so care must be taken for translators not to be excluded from the transparency obligation.

- It goes without saying that the contribution of translators to their translations can never be regarded as “not significant”: they are the authors!

Implementation of the EU Digital Single Market Directive: flash-survey among our members – CEATL

To your knowledge, are there plans to establish a right of revocation in case of lack of exploitation (or, if already in existence, to reinforce it)?

Réponse(s) obtenue(s) : 26 Question(s) ignorée(s) : 2



Remuneration

- How do “fair and proportionate” translate at the national level?
 - The importance of collective bargaining to set standards
- “fair”: how to remunerate creative work in the case of commissioned works (bonus for the commission vs. work-for-hire)
- “Proportionate”: the problem of lump sum payments for literary translators and the importance of reporting

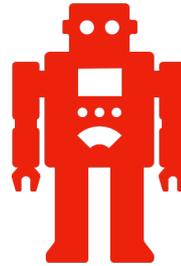
Revocation right

- not a goal in itself...
- as a threat to get exploitation and reporting (see French law) ?
- as a means to be able to relicence your work : the case of the literary translator and importance of the transparency obligation
- practicality questions (definition of "lack of exploitation" in a print-on-demand era - threshold of revenues ? Formalities and burden of proof : who is the "rightsholder"? See the case of the out-of-commerce works)

Conclusion

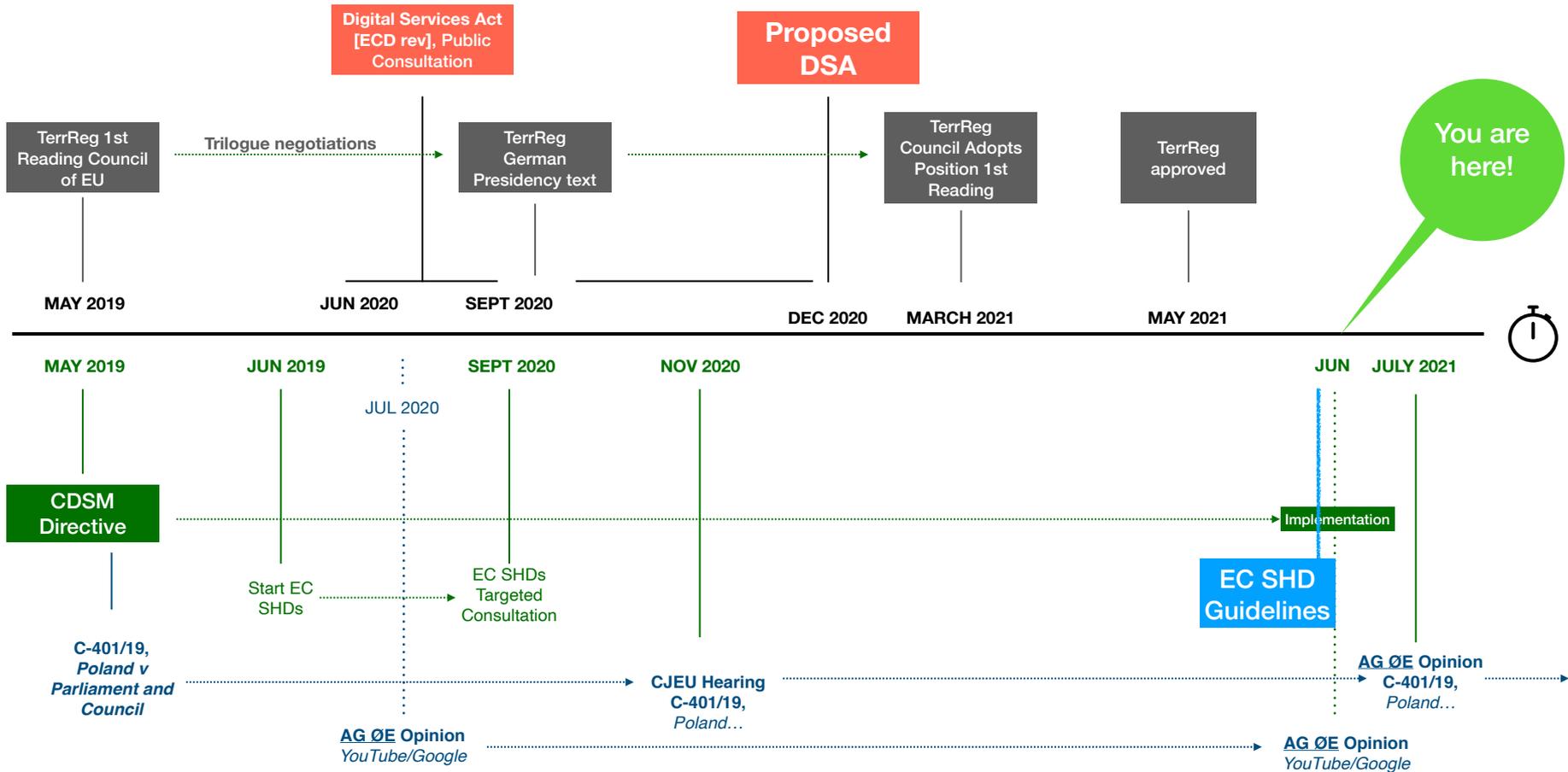
- the rights to fair and proportionate remuneration and to revocation both point to **transparency** to be effective : a new system placing authors center and front.
- **Beyond the legal transposition, the actual implementation** of these new European principles will be **a long-term fight for authors' representatives** who will hopefully be able to rely on collective bargaining and stakeholders' dialogues.

Art. 17 CDSM Directive and automated content-filtering



Panel 3: Setting the rules for automated content-filtering,
21 June 2021 (Zoomland)

João Pedro Quintais,
Assistant Professor, IViR, University of Amsterdam
@jppquintais



Digital Services Act [ECD rev], Public Consultation

Proposed DSA

TerrReg 1st Reading Council of EU

Trilogue negotiations

TerrReg German Presidency text

TerrReg Council Adopts Position 1st Reading

TerrReg approved

MAY 2019

JUN 2020

SEPT 2020

DEC 2020

MARCH 2021

MAY 2021

You are here!



MAY 2019

JUN 2019

JUL 2020

SEPT 2020

NOV 2020

JUN

JULY 2021

CDSM Directive

Start EC SHDs

EC SHDs Targeted Consultation

Implementation

EC SHD Guidelines

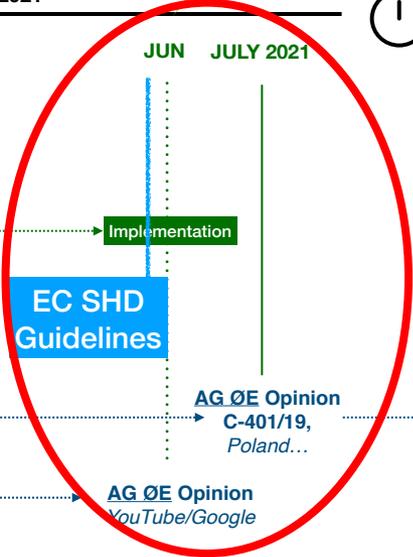
C-401/19, Poland v Parliament and Council

CJEU Hearing C-401/19, Poland...

AG ØE Opinion C-401/19, Poland...

AG ØE Opinion YouTube/Google

AG ØE Opinion YouTube/Google





Brussels, 4.6.2021
COM(2021) 288 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT AND THE COUNCIL**

Reluctant

Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market

a case-by-case assessment of

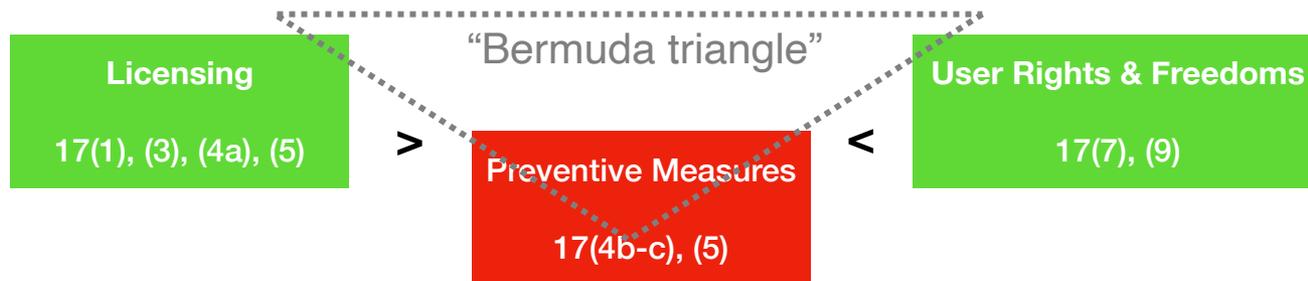
Article 17

Normative hierarchy



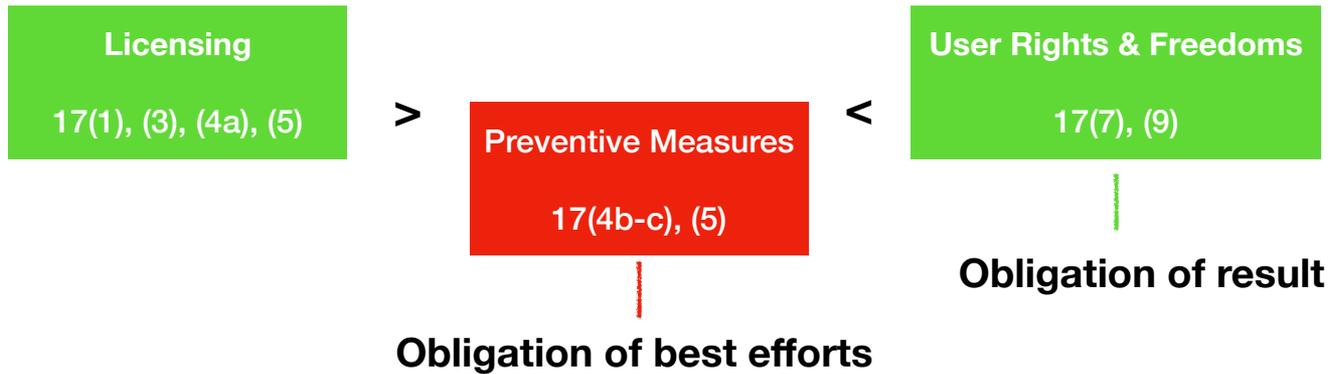
Article 17

Normative hierarchy



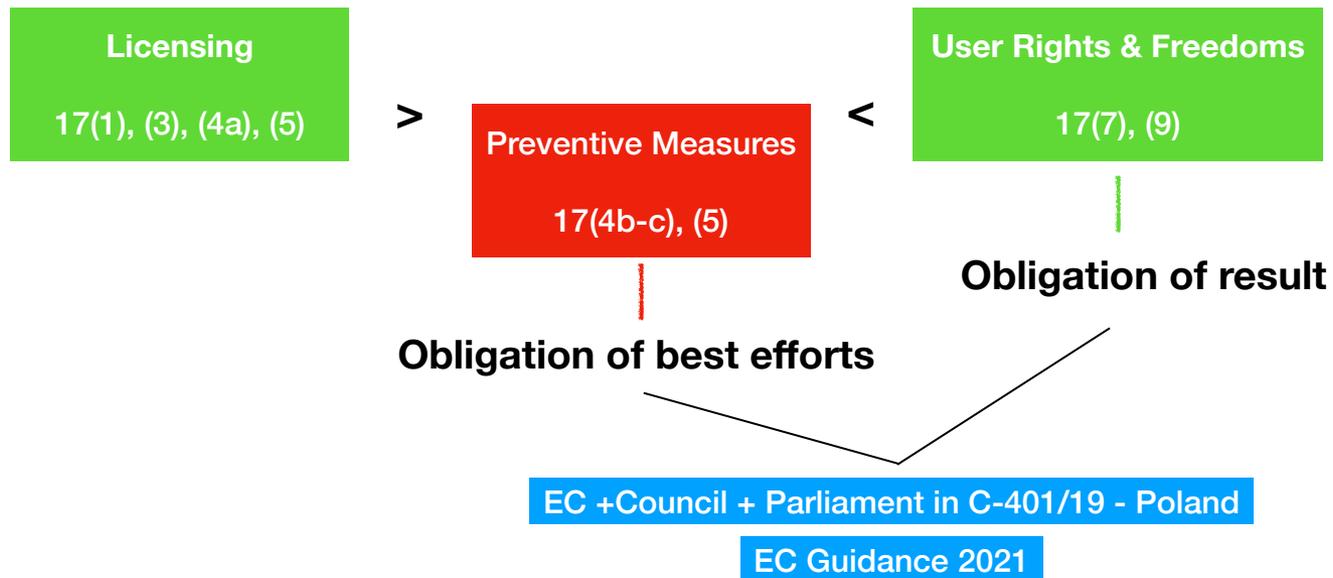
Article 17

Normative hierarchy



Article 17

Normative hierarchy





Authorization



**Best efforts to
obtain authorization
17(4)(a)**



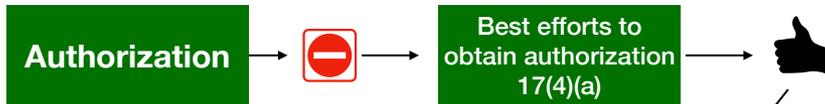
Authorization



**Best efforts to
obtain authorization
17(4)(a)**



**Preventive Measures
17(4)(b-c)**



Preventive Measures 17(4)(b-c)

Requirements

- b) + c)-NSD: “relevant and necessary information”
- c)-NTD: “sufficiently substantiated notice”

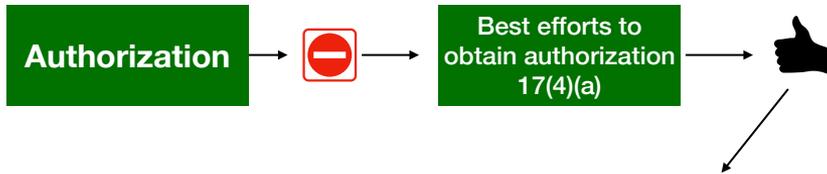
EC Guidance 2021

b) + c)-NSD:

- Relevant: at least accurate metadata
- Necessary: varies depending on technical solutions... must allow their effective application
- Pragmatic “cooperation is key”!

c)-NTD

- Notice should follow Rec. Illegal Content Online, points 6-8

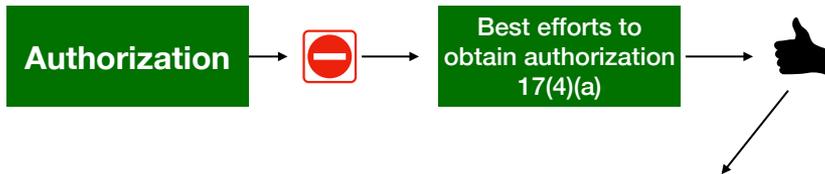


**Preventive Measures
17(4)(b-c)**

NTD?
Others?



CRTs
(Filters, NSD)



Preventive Measures 17(4)(b-c)

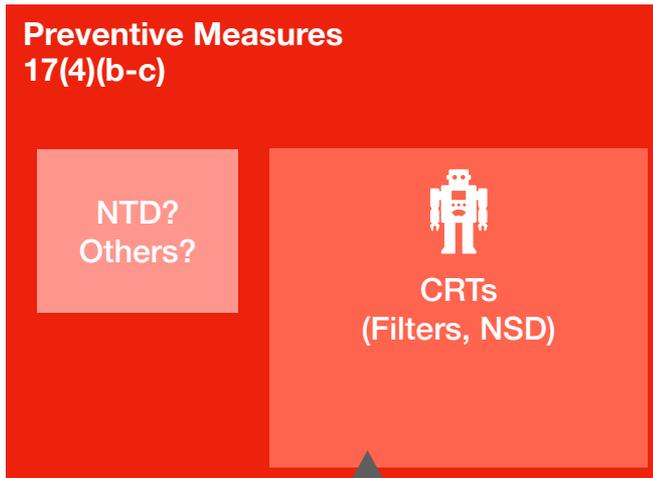
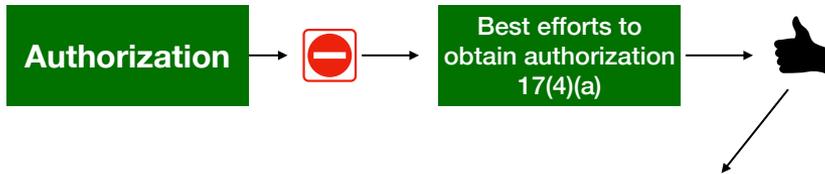
NTD?
Others?



CRTs
(Filters, NSD)

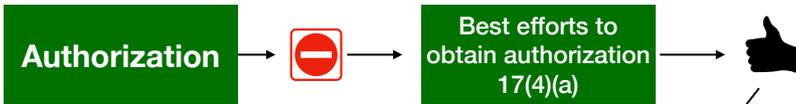
EC Guidance 2021 on (4) - b)

- “high industry standards...” = “available industry practices on the market”, incl. incl. tech/ solutions
- Content recognition based on fingerprinting as main example ... but not market standard for smaller OCSSPs
- Others: hashing, watermarking, use of metadata and/or keyword search
- Multi-factor case-by-case assessment w/ respect for 17(5), (7) and (9), incl. asymmetric obligations, cost assessment, content differentiation



not suited for 17(7) uses

- Bad metadata
- Context blind
- False positives



Preventive Measures 17(4)(b-c)

NTD?
Others?



CRTs
(Filters, NSD)

not suited for
17(7) uses

User Rights & Freedoms 17(7), (9)

- covers most “transformative” UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)

+

Other E&Ls and lawful uses 17(7), (9)

+

Complaint & Redress (Procedural Safeguards) 17(9)

Authorization



Best efforts to obtain authorization 17(4)(a)



Preventive Measures 17(4)(b-c)

NTD?
Others?


CRTs
(Filters, NSD)

not suited for 17(7) uses

Ex Post Safeguards only?

User Rights & Freedoms 17(7), (9)

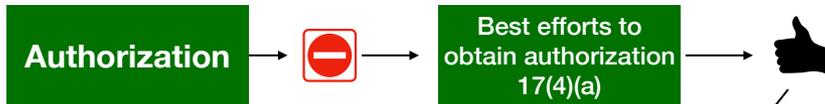
- covers most UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)

+

Other E&Ls and lawful uses 17(7), (9)

+

Complaint & Redress (Procedural Safeguards) 17(9)



Preventive Measures 17(4)(b-c)

NTD?
Others?



CRTs
(Filters, NSD)

not suited for 17(7) uses

- incompatible 17(7) and FoE
- Inconsistent w/ CRT capabilities & empirical evidence counter notices
- proportionality (alternatives exist)

EC Guidance 2021



User Rights & Freedoms 17(7), (9)

- covers most UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)

+

Other E&Ls and lawful uses 17(7), (9)

+

Complaint & Redress (Procedural Safeguards) 17(9)

Authorization



Best efforts to obtain authorization 17(4)(a)



Preventive Measures 17(4)(b-c)

NTD?
Others?


CRTs
(Filters, NSD)

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Other E&Ls and lawful uses 17(7), (9)



+

Complaint & Redress (Procedural Safeguards) 17(9)

Authorization



Best efforts to obtain authorization 17(4)(a)



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Others?


CRTs
(Filters, NSD)

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User Rights & Freedoms 17(7), (9)

- covers most UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)



How?

Ex ante Safeguards

⋮
▼ +

Other E&Ls and lawful uses 17(7), (9)

⋮
▼ +

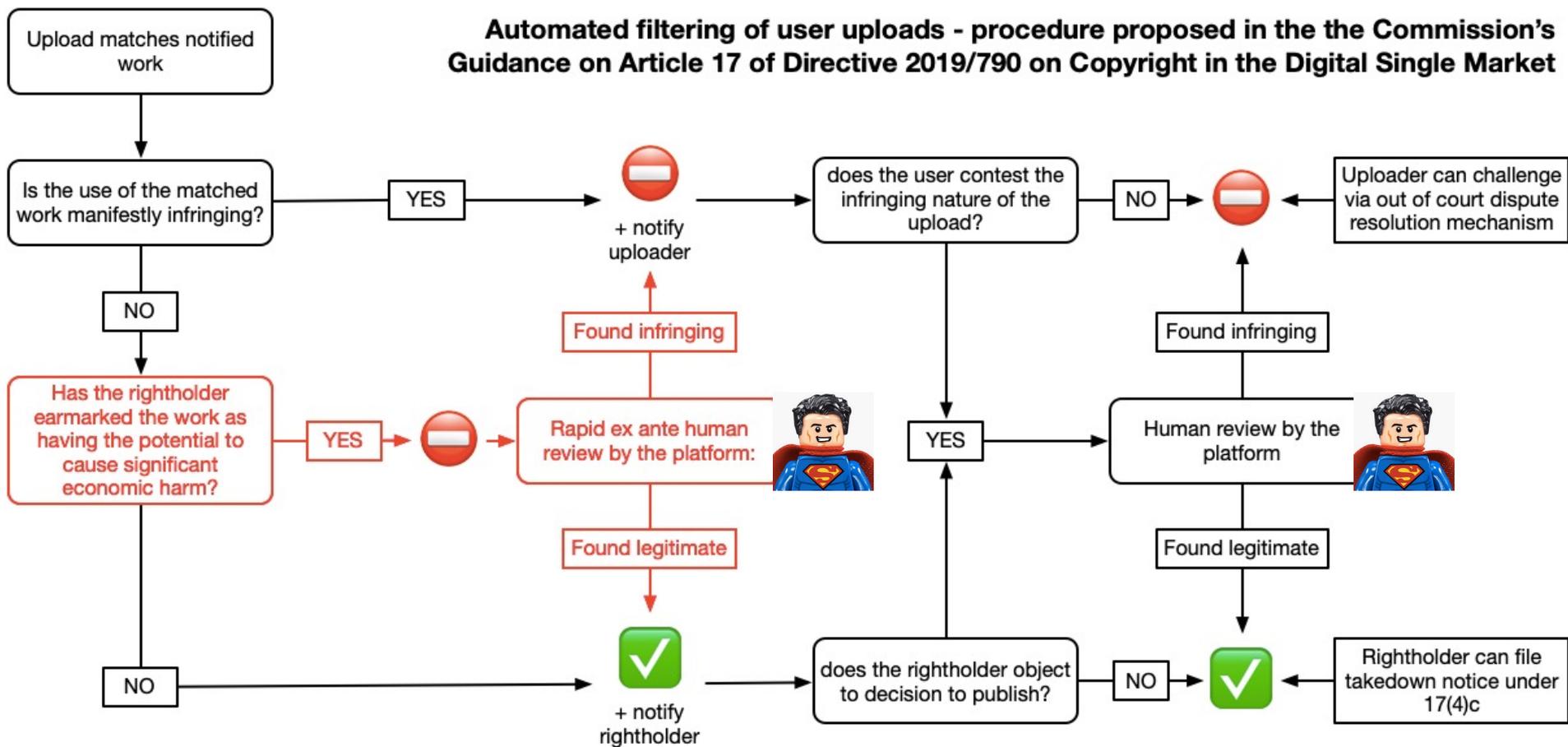
Complaint & Redress (Procedural Safeguards) 17(9)

EC Guidance 2021

- Ex-ante safeguards needed (obligation of result vs best efforts)
 - CRT incapable or recognizing legitimate uses
 - Mostly matching “relevant & necessary information”
 - Ex post C&R insufficient
- Nuanced interpretation of best-efforts in 17(4)b) and c)-NSD
- **Automated blocking/filtering** only for
 - (1) “**manifestly infringing content**” (MIC)
 - Fuzzy concept (pp.21-22) → filtering possible?
 - If not MIC: content stays up... **human review** if ©-holder complains
 - MIC **not** a legal assessment → does not impact assessment of best efforts
 - (2) **earmarked content**
 - High-risk of economic harm (justified) + time sensitive... “rapid ex-ante **human review**”
 - compatible w/ C-18/18?
 - **Different than** (& partially overlapping w/?) **MIC!** (p.23)
 - Affects **negatively** the assessment of best efforts (p. 23) → incentive to block

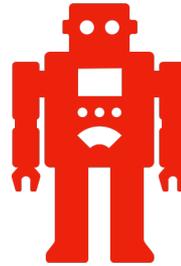


Automated filtering of user uploads - procedure proposed in the the Commission's Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market



Schematic overview of the mechanism proposed in the EC Guidance, with the new earmarking mechanism highlighted in red.

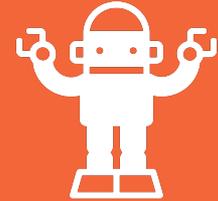
Art. 17 CDSM Directive and automated content-filtering



Panel 3: Setting the rules for automated content-filtering,
21 June 2021 (Zoomland)

João Pedro Quintais,
Assistant Professor, IViR, University of Amsterdam
@jppquintais

Setting rules for



content moderation

On the relation of
CDSMD & DSA



21.6.2021

ReCreating Europe

@schwemer

jura.ku.dk/schwemer



Disclaimers:

Based on ongoing work w/ Joao Quintais (reCreating)
Thoughts in progress

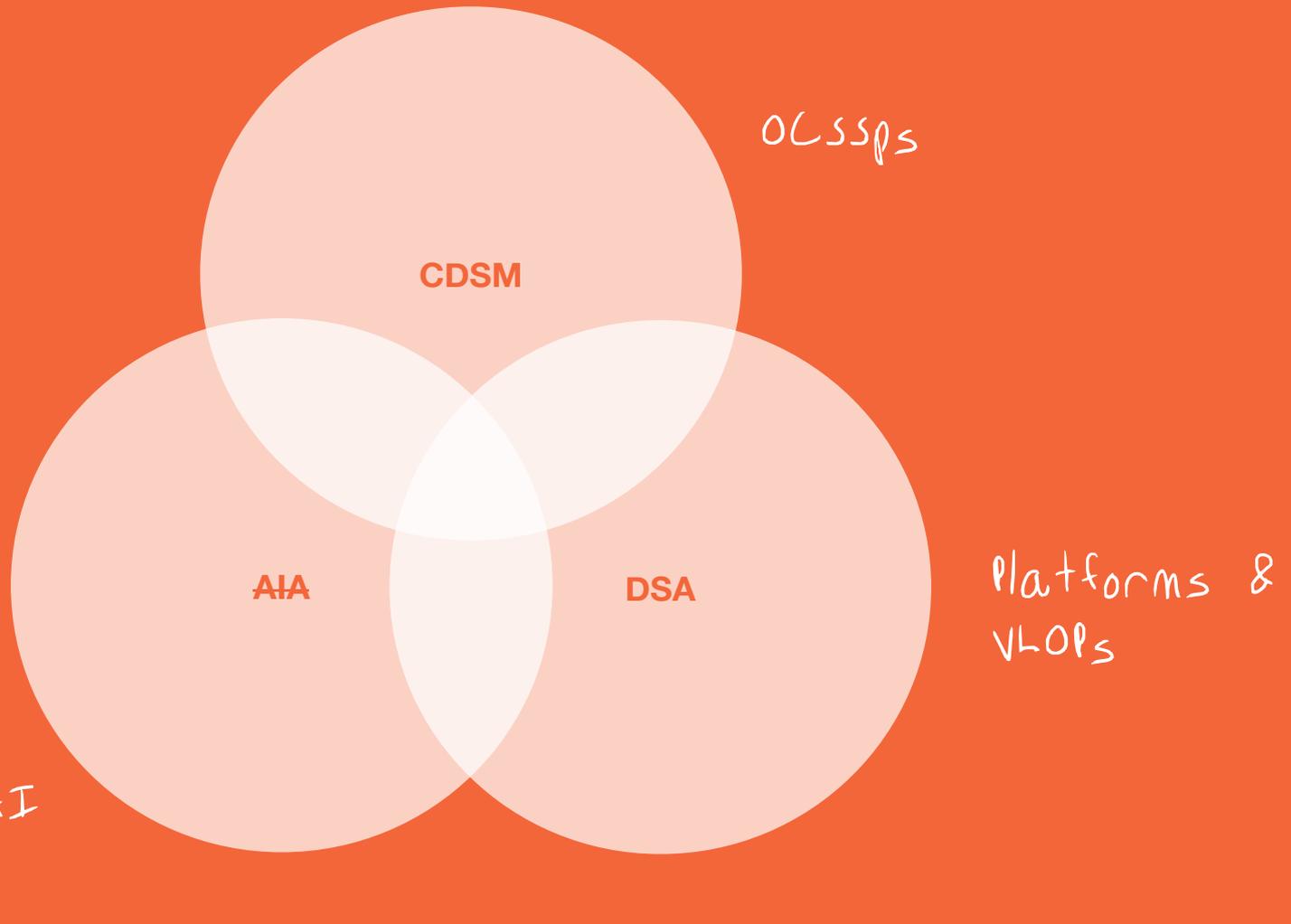


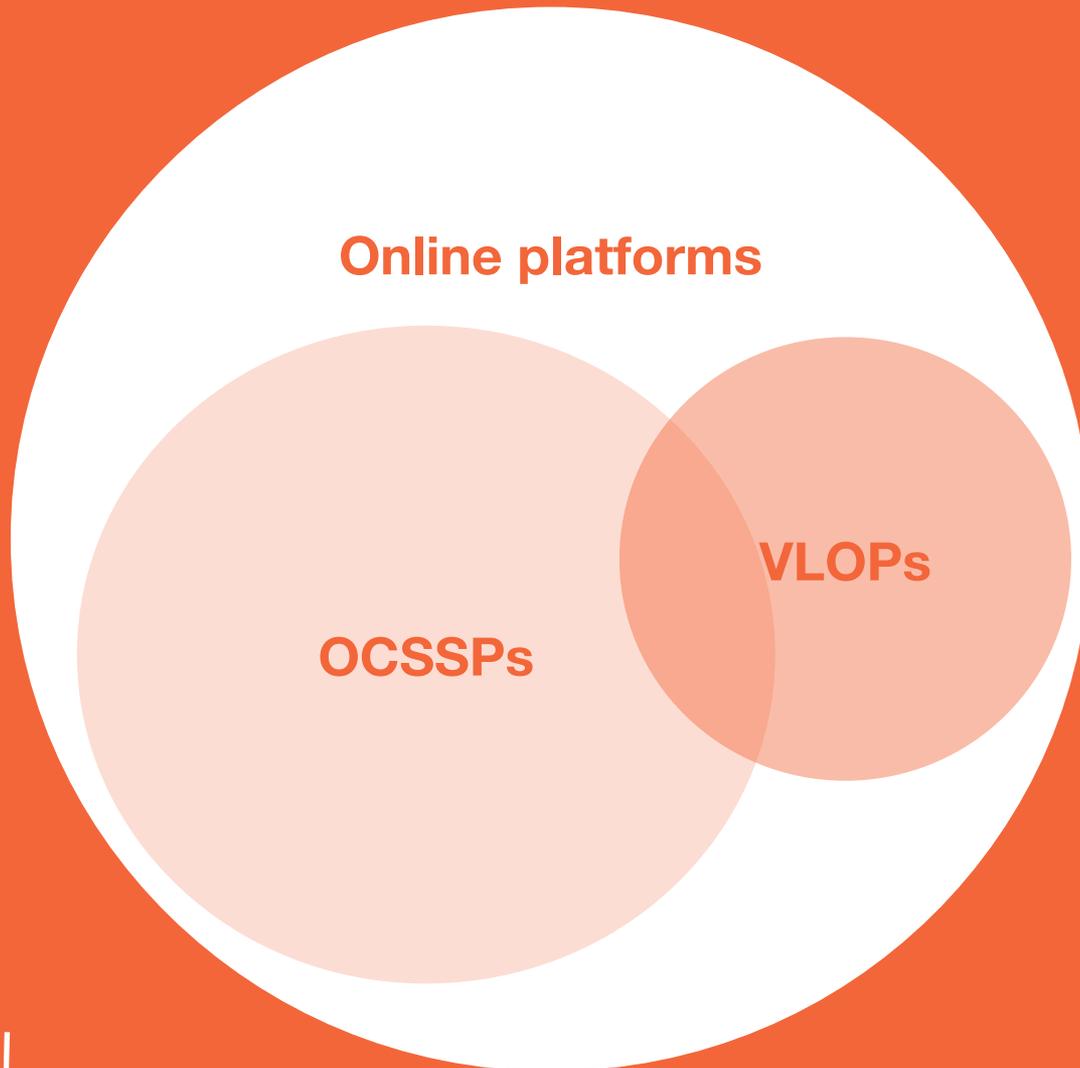
Content moderation

‘the **activities** undertaken by providers of intermediary services **aimed at** detecting, identifying and addressing *illegal content or information incompatible with their terms and conditions*, provided by recipients of the service, **including measures** taken that affect the availability, visibility and accessibility of that illegal content or that information, such as demotion, disabling of access to, or removal thereof, or the recipients’ ability to provide that information, such as the termination or suspension of a recipient’s account;’

art. 2(p) DSA

EU framework for content moderation...?





DSA



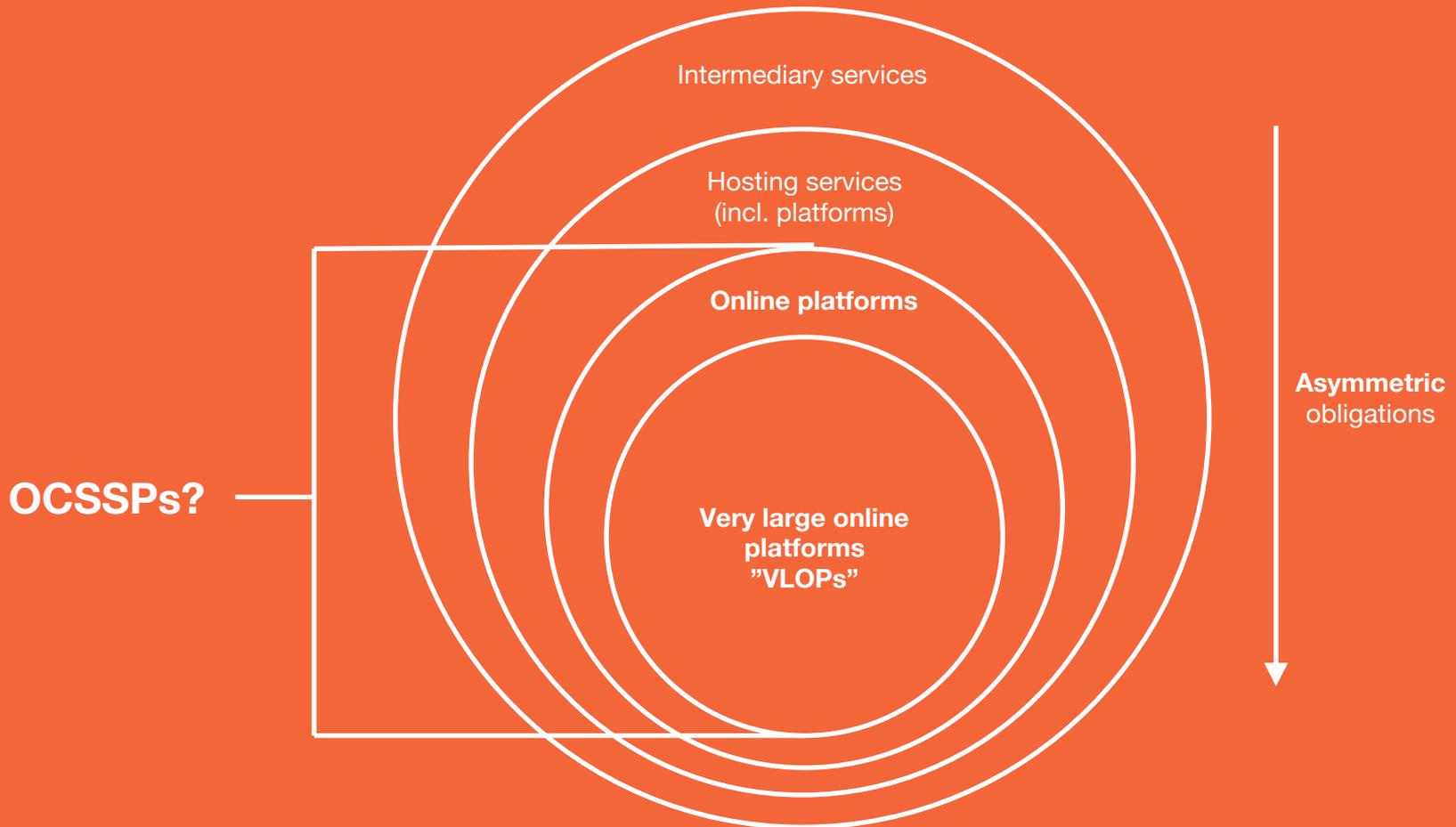
lex specialis

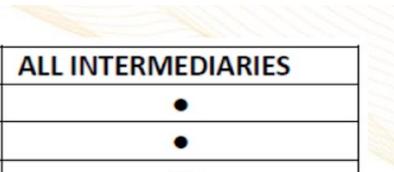
CDSM Directive

1) DSA liability regime

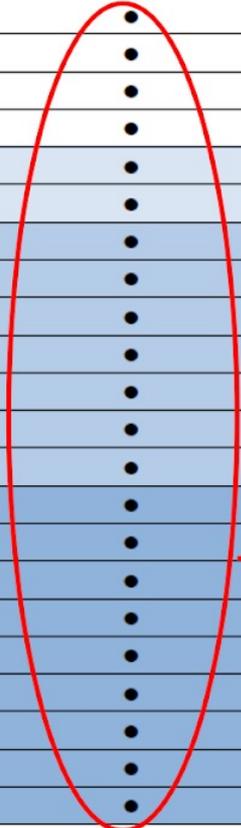
DSA Liability Regime (Chapter II)	Applicable to OCSSPs?
Hosting safe harbor (art. 5)	 (Excluded 17(3) CDSM)
“Good Samaritan” (art. 6)	 (even necessary? Cf. art. 17(4)(b-c) CDSM)
General monitoring prohibition (art. 7)	 (art. 17(8) CDSM)
Orders against illegal content (art. 8)	 (Prob/ applicable; art. 8(3) InfoSoc & OCSSPs?)
Orders to provide information (art. 9)	 (Prob/ applicable)

2) Due diligence obligations





	VERY LARGE PLATFORMS	ONLINE PLATFORMS	HOSTING SERVICES	ALL INTERMEDIARIES
● Points of contact	●	●	●	●
● Legal representatives	●	●	●	●
● Terms and conditions	●	●	●	●
● Reporting obligations	●	●	●	●
● N&A	●	●	●	
● Statement of reasons	●	●	●	
● Complaint handling	●	●		
● OOC	●	●		
● Trusted flaggers	●	●		
● Abusive behaviour	●	●		
● KYBC	●	●		
● Reporting criminal offences	●	●		
● Advertising transparency	●	●		
● Reporting obligations	●			
● Risk assessment and mitigation	●			
● Independent audits	●			
● Recommender systems	●			
● Enhanced advertising transparency	●			
● Crisis protocols	●			
● Data access and scrutiny	●			
● Compliance officer	●			
● Reporting obligations	●			



→ CUMULATIVE OBLIGATIONS!



DSA Due Diligence Obligations (Chapter III)

Applicable to OCSSPs?

N&A + statement of reasons (arts. 14+15)

- ✓ specifics of 14/15 beyond 17 CDSM (nature of DSA re: procedural obligations)
- ✗ rationale for the vaguer regime of art. 17 CDSM precisely to allow some margin of discretion to platforms and rights holders? [but: relationship to art. 5 DSA?]

Internal Complaint Mechanism + OOC dispute settlement (arts. 17+ 18)

- ✓ specifics of 17/18 beyond 17 CDSM (= “archetypes of “effective and expeditious”?)
- ✗ different approach justified in light of specific character of rights concerned? [but: relationship to art. 5 DSA?]

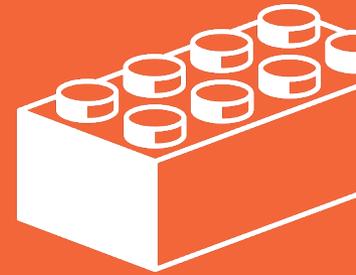
Trusted flaggers/notifiers (art. 19)

- ✓ No specific rules in 17 CDSM [but: relationship to art. 14 DSA?]

Abusive behavior (art. 20)

- ✓ No specific rules in 17 CDSM [but: relationship to art. 14 and 17 DSA?]

So...



Content moderation rules for OCSSPs in art. 17 CDSM = *lex specialis*

DSA would apply to OCSSPs insofar it 1) contains rules **not covered** by art. 17 CDSM + 2) specific rules on matters where art. 17 leaves **margin of discretion** to MS

(should) apply even where art. 17 CDSM contains specific (but less precise) regulation on the matter; DSA's aim to establish "uniform rules for a safe, predictable and trusted online environment, where fundamental rights enshrined in the Charter are effectively protected"

- \ - (ツ) - / -

applies as horizontal framework
mutatis mutandis also to those intermediary services
covered by other secondary legislation,
to the extent no more specific rules are laid out

The Interplay between the Digital Services Act and Sector Regulation: How Special is Copyright?

21 Pages - Posted: 10 May 2021

João Quintais

University of Amsterdam - Institute for Information Law (IViR)

Sebastian Felix Schwemer

University of Copenhagen, Centre for Information and Innovation Law (CIIR); University of Oslo, Norwegian Research Center for Computers and Law (NRCCL)

Date Written: May 7, 2021

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lego by jon trillana from the Noun Project

Centre for Information and Innovation Law (CIIR)

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jura.ku.dk/schwemer

@schwemer



MESS*

- Dr. Martin Husovec

MESS* =

“**M**ore **D****S**M fragmentation than
before the **C****D****S**M Directive”

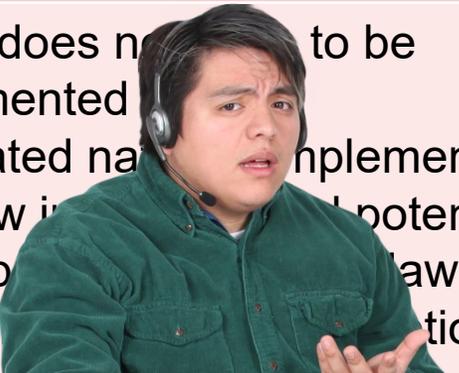
What IF

C-401/19

	Art 17 is constitutional	Art 17 is <u>un</u>constitutional
OCSSPs engage in CTP	<ul style="list-style-type: none"> • Non-OCSSP UGC services might have a big problem • Art 17 now limits RHs due to liability mitigation mechanism • Art 17 ironically becomes a safe harbour for YouTube • Lot of litigation re: scope of such SH 	<ul style="list-style-type: none"> • Nothing makes any sense anymore • Peterson seems incompatible with the Poland/Council • Strict liability is worse than Art 17 as there is no adjustment for UGC element of use • Lot of litigation re: scope of CTP
OCSSPs do <u>not</u> engage in CTP	<ul style="list-style-type: none"> • Art 17 is a special regulation of YouTube-alike services • MSs are free to implement it broadly • Non-OCSSP UGCs remain in the same regulatory environment as today • Lot of litigation re: Art 17's scope 	<ul style="list-style-type: none"> • Art 17 does not have to be implemented • Legislated national implementations are now in free-fall and potentially partly pre-empted by EU law • Lot of litigation re: pre-emption by ECHR/ECJ

C-682/18

Summary

	6 Art 17 is constitutional	1 Art 17 is <u>un</u> constitutional
OCSSPs engage in CTP	<ul style="list-style-type: none"> • Non-OCSSP U services might have a big problem • Art 17 now limits value to liability mitigation • Art 17 iron safe harbour for YouTube • Lot of litigation with SH 	<ul style="list-style-type: none"> • Nothing makes sense anymore • Peterson compatible with the Poland • Strict on Art 17 as there is UGC element • Lot of litigation TP 
OCSSPs do <u>not</u> engage in CTP	<ul style="list-style-type: none"> • Art 17 is special of YouTube-alike services • MSs are free to implement it broadly • Non-OCSSP in the same regulatory • Lot of litigation 	<ul style="list-style-type: none"> • Art 17 does not to be implemented • Legislated national implementations are now in potentially partly p law • Lot of litigation by ECJ/D 

Ranking of MESS*

1. Nothing makes sense anymore (endless mess)
2. The rest of the internet has a problem (20 PremRef)
3. Existing national implementations are in free-fall (15 PremRef)
4. MS continue to experiment (10 PremRef)
- 5. Pre-CDSM Directive (familiar mess)**

???

Ranking of MESS*

1. Nothing makes sense anymore (endless mess)
2. The rest of the internet has a problem (20 PremRef)
3. Existing national implementations are in free-fall (15 PremRef)
4. MS continue to experiment (10 PremRef)
5. **Pre-CDSM Directive (familiar mess)**
6. **New law, preferably Regulation**



RECREATING EUROPE

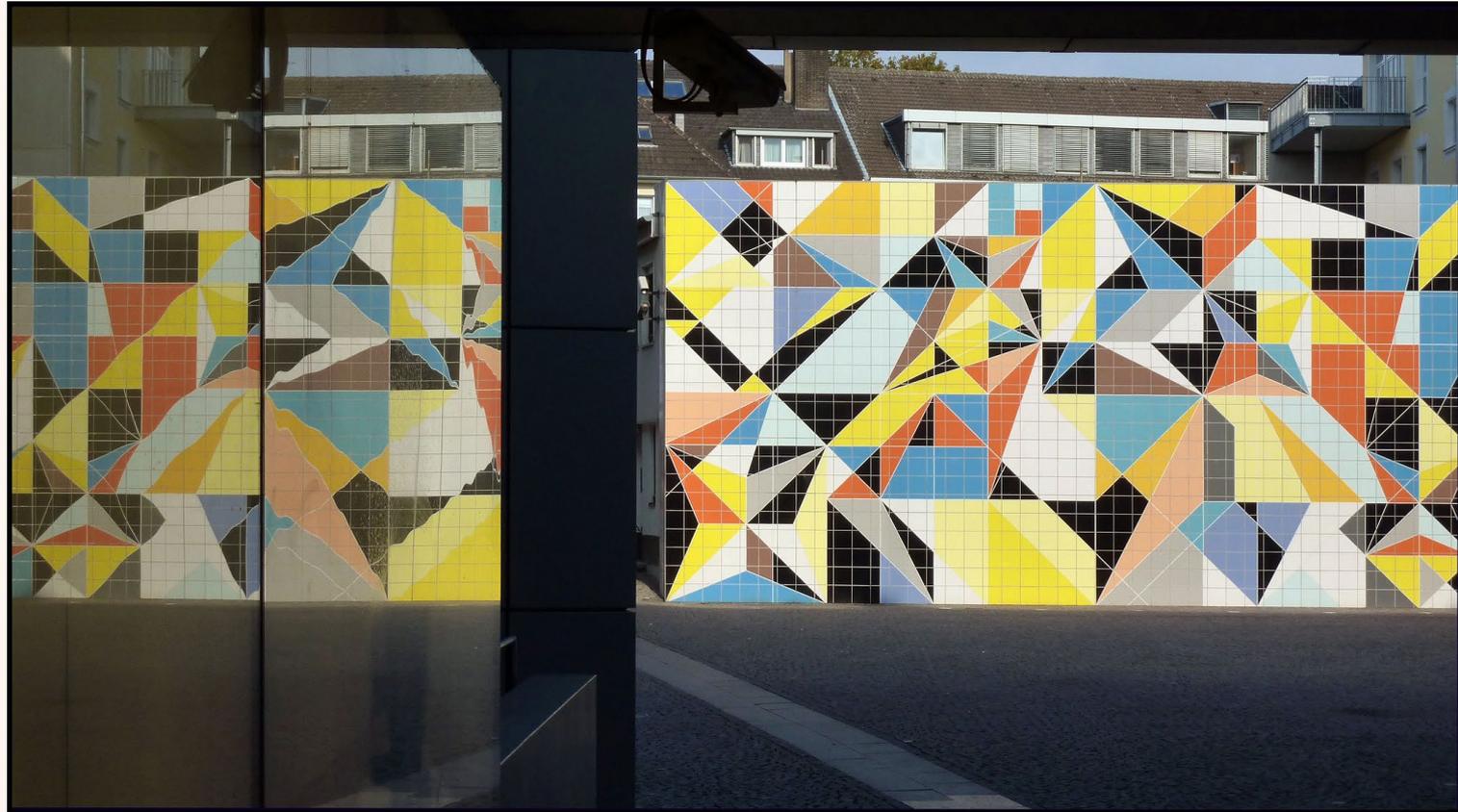
Rethinking digital copyright law for a culturally diverse, accessible, creative Europe

Preservation of cultural heritage

Dr Giulia Dore and Dr Marta Iljadica



Preservation of cultural heritage



["Düsseldorf / Germany: K20. Building of the art collection of the state of Northrhine-Westphalia Sarah Morris: 'Hornet \(Origami\)'"](#) by [wwwuppertal](#) is licensed under [CC BY-NC 2.0](#)



Our GLAM survey

The Impact of Copyright Law and Open Policies in relation to digitisation practices in the GLAM Sector.

Preliminary results from the GLAM survey 2021



BACKGROUND

ReCreating Europe launched a survey from September 2020 until January 2021, which focused on mapping and determining whether Galleries Libraries Archives Museums (GLAMs) are aware of the implications that copyright law and open policies have on the digitisation practices undertaken by GLAM stakeholders.



OBJECTIVES

The survey informs on the impact of copyright and open policies to digitisation of cultural heritage, determining to what extent the law functions as a barrier to access, use and reuse of digital content and suggesting the possible countermeasures.

Responses are analysed to suggest best practices and policies to carry out digitisation practices in the light of a rebalanced copyright law.



METHOD

Survey online:
from 10/09/2020 to 15/02/2021

Methodological approach:
pilot study on a convenience sample of 125 European GLAM

Data analysis:
Stata IC 16.1



Awareness of the CDSMD

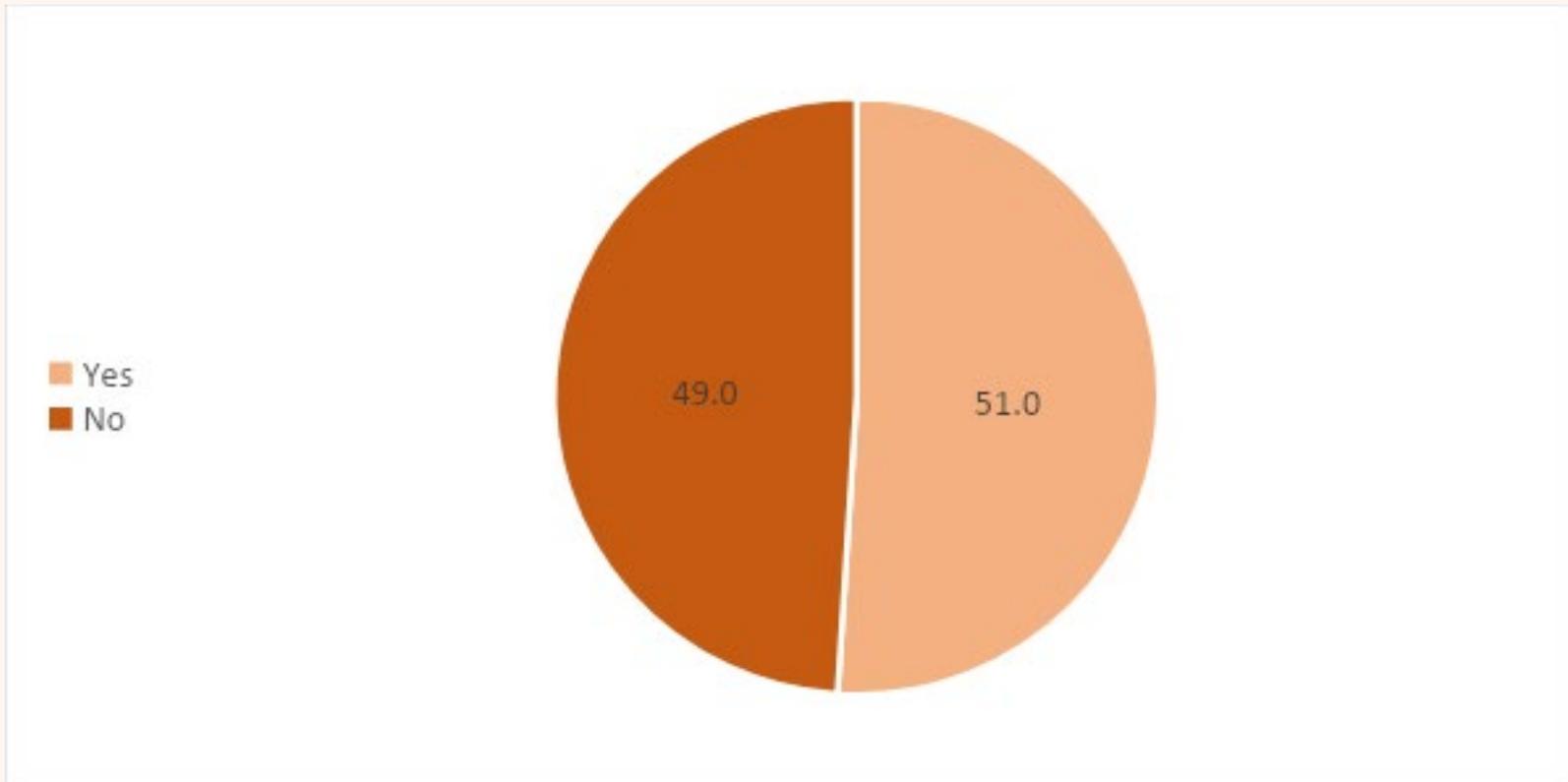


Fig. 21 Knowledge of the EU Directive 2019/790



Non-use of exceptions

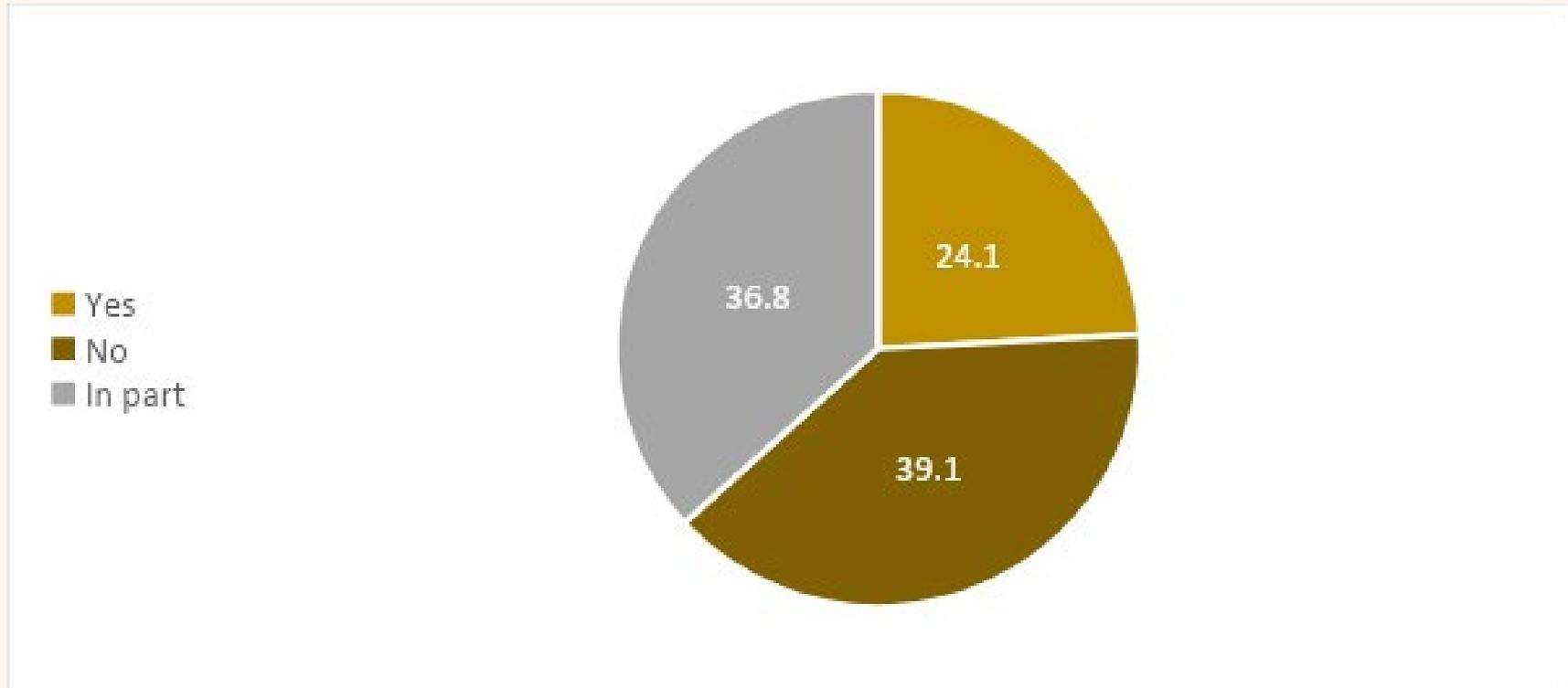
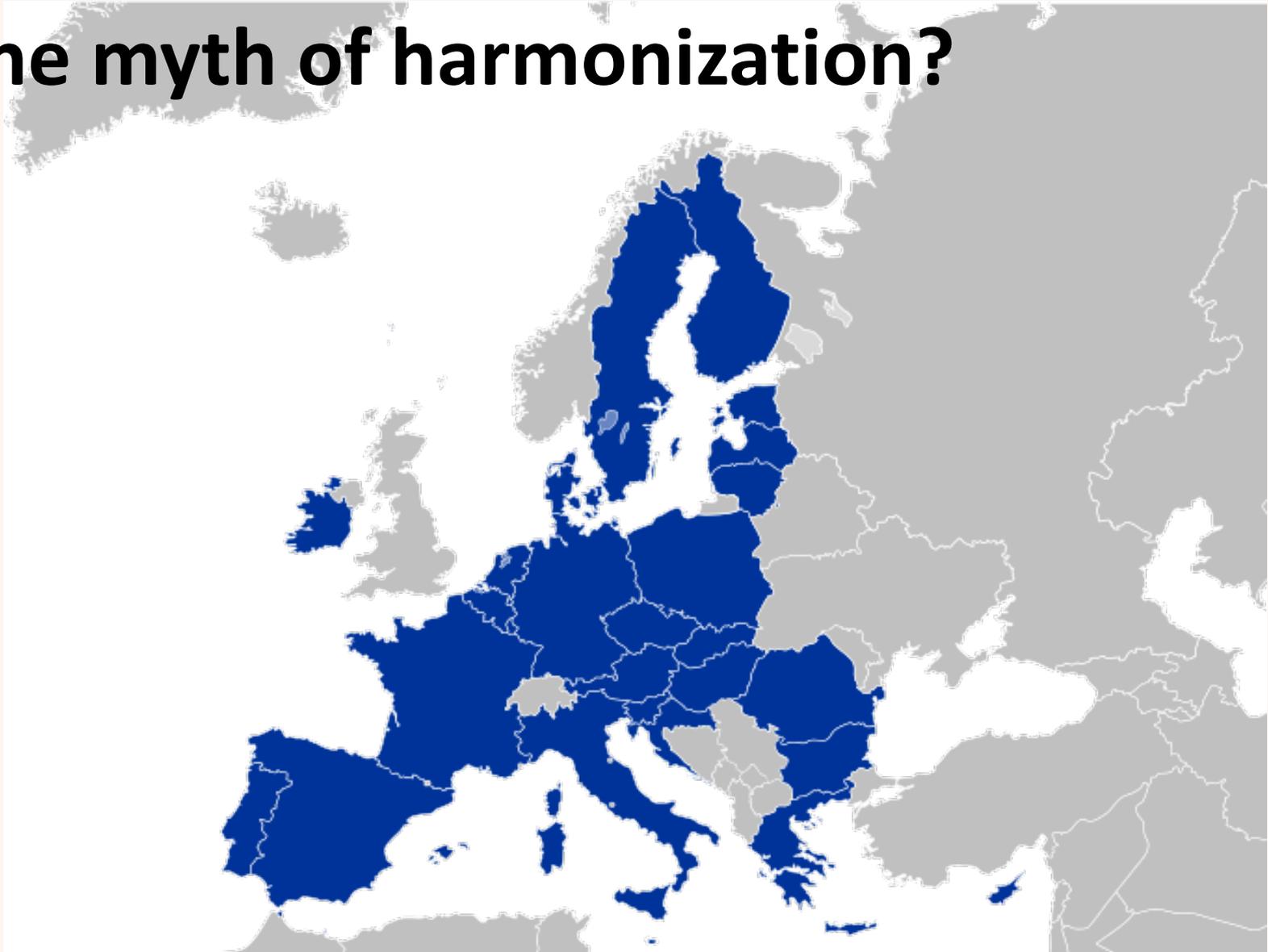


Fig. 31 Use of copyright exceptions to digitise resources



The myth of harmonization?





Cultural heritage and place



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