



Society of
Audiovisual
Authors

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Market

Role of remuneration

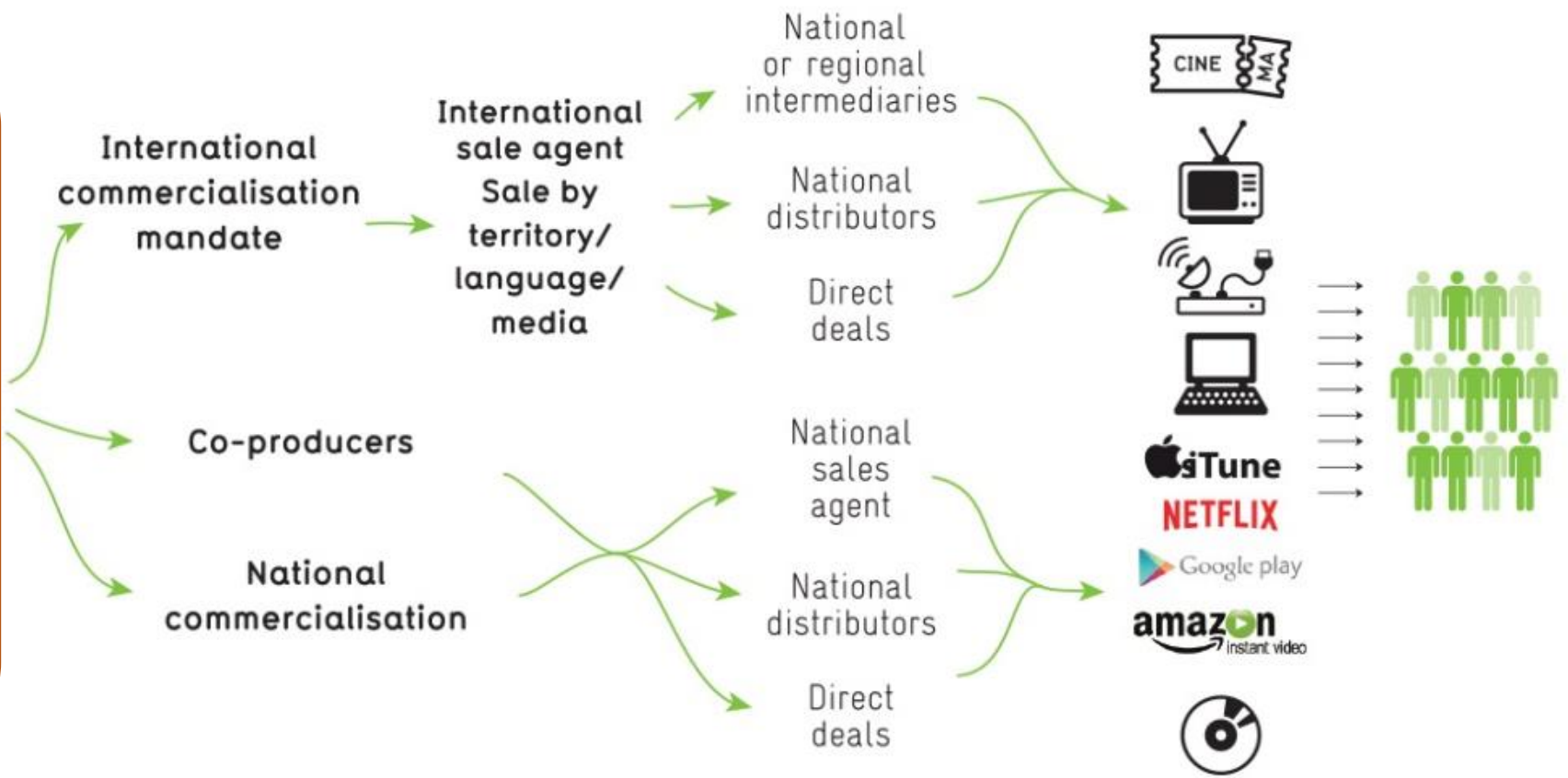
Contractual bargain:
access to production
& exploitation –
assignment of ©

Weaker position of creators

The contract

Major exploiters are non-contractual parties

Life of contract:
from negotiation to enforcement
Evolving environment and forces



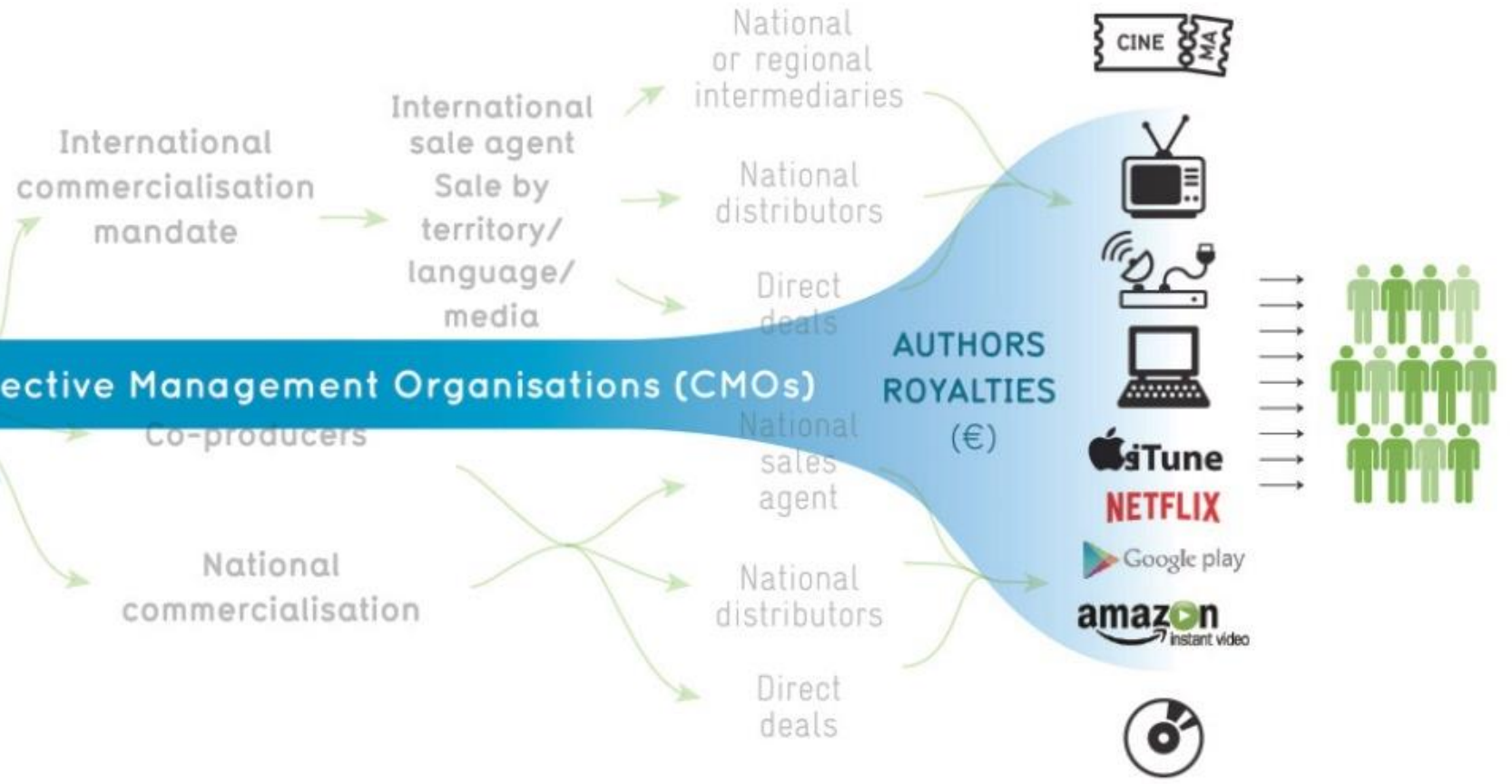
Contract



AUTHORS

PRODUCE Collective Management Organisations (CMOs)

Remuneration





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Raquel Xalabarder

Copyright law specialist and Universitat Oberta de
Catalunya Intellectual Property Chair Professor

Article 18 of the EU Copyright Directive

- ✦ Principle of appropriate and proportionate remuneration
- ✦ Applies to ANY license or transfer of exploitation rights
- ✦ Applies to NEW as well as OLD productions
- ✦ Not only a binding principle, but an obligation!
- ✦ Art. 18 justifies the “contractual corpus” of Art. 19-22 + other mechanisms
- ✦ “Copy pasting” Art. 18 will not suffice!

Member States need to go further

...

- ✦ Art.18(2): In the implementation in national law of the principle set out in paragraph 1, **Member States shall be free to use different mechanisms** and take into account the principle of contractual freedom and a fair balance of rights and interests.
- ✦ Recital 73: **Member States should be free to implement** the principle of appropriate and proportionate remuneration through **different existing or newly introduced mechanisms**, which could include **collective bargaining** and **other mechanisms**, provided that such mechanisms are in conformity with applicable Union law.

Statutory remuneration right

“Residual” rem.
retained by authors
after transferring
exclusive rights

Sanctioned by EU
acquis: Art.5(1) Rental
& Lending Dir.

Used (successfully) in
national laws to
secure rem. in
complex markets

Do not duplicate
rights / depend on
transfer + license of
rights

Do not turn exclusive
rights into statutory
licenses

Do not disturb the
pre-existing contract
(transferred rights)

Ius prohibendi,
licensing & revenue
streams in hands of
producers

Flow of remuneration
to authors, via CMOs,
also new exploitation
means



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Dominik Skoczek,

Managing Director at ZAPA, Poland



The film industry in Poland

- ✦ Buy-out contracts
- ✦ Presumption of transfer of rights to the producer
- ✦ Statutory right to remuneration (may not be waived, transferred or executed)
- ✦ Wide range of co-authors of audiovisual works entitled to seek for remuneration
- ✦ Mandatory collective management

The problem

Actual users (end distributors) have been obliged to pay statutory royalties but:

- ✦ Only a few entities willing to conclude contracts and clear their status,
- ✦ Lack of binding tariffs,
- ✦ Problems with enforcement,
- ✦ Users take advantage of every situation to avoid payment - dozen years of court proceedings and negotiations.



The solution

- ✦ Unwaivable right to remuneration is the best way to ensure a fair share of revenues for authors
- ✦ The concept weighs economic interests of the producer, authors of the audiovisual work and users
- ✦ Poland lacks a similar regulation in relation to the “digital” exploitation
- ✦ Implementation of Art 18 of EU Copyright Directive is the opportunity to fill the gap and introduce a right to remuneration for authors for the online uses