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Digital Music Licensing in Europe

Collective and individual management in data-driven markets for recording and publishing rights

Prof. Giuseppe Mazziotti (Coordinator and Principal Investigator)
Universidade Catolica Portuguesa, Catolica Global School of Law - Lisbon
International Conference on the 30th Anniversary of the Hellenic Copyright Organization



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Copyright in the Spotlight
7 March 2025, Athens

Fair MusE promotes **fairness in the European music industry** by raising awareness about how music algorithms, data collection, and exploitation models of social media and streaming platforms influence music creators and audiences.

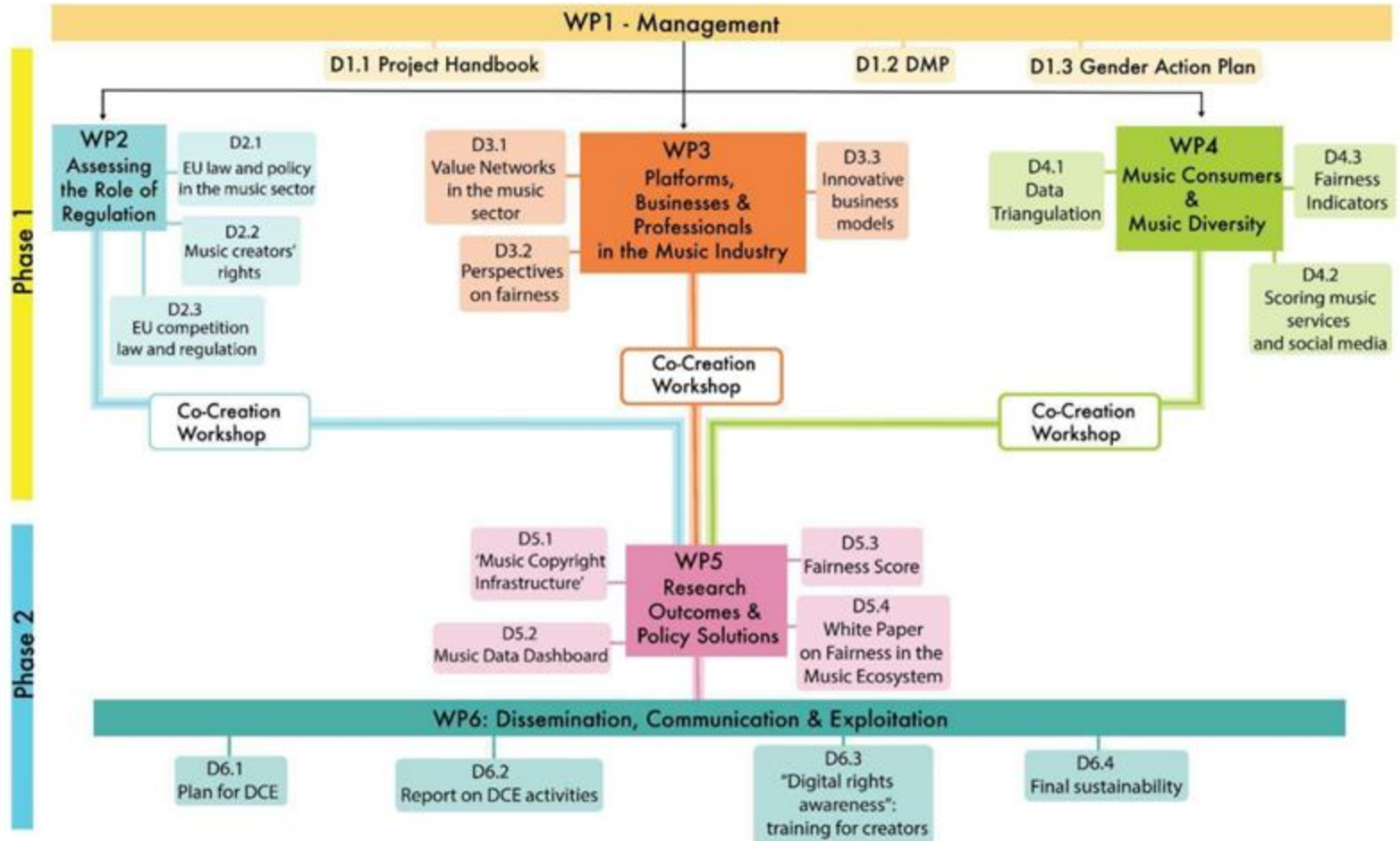
- **EU-FUNDED INITIATIVE PROMOTING FAIRNESS, TRANSPARENCY, AND SUSTAINABILITY IN THE EUROPEAN MUSIC INDUSTRY**
- **PART OF THE BROADER HORIZON EUROPE PROGRAM**
- **COORDINATED BY UNIVERSIDADE CATÓLICA PORTUGUESA**



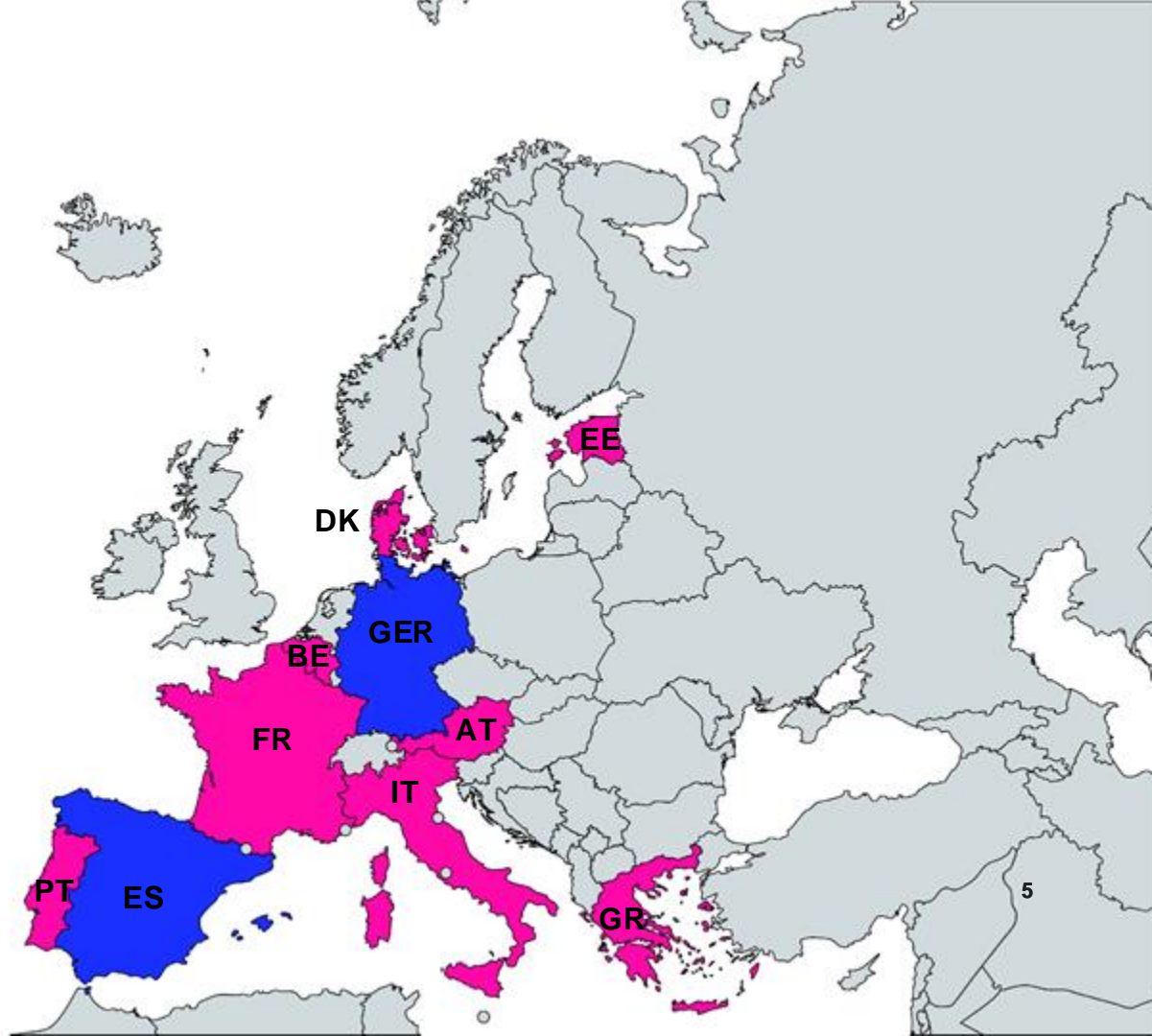
INTERDISCIPLINARY ANALYSIS



INVOLVE MUSIC CREATORS AND CONSUMERS



**Member States
investigated by
Fair MusE**



- **Start of the project:** 01 March, 2023
- **Duration:** 3 years (until 01 March, 2026)
- **Currently:** 2 years in: beginning of Phase 2





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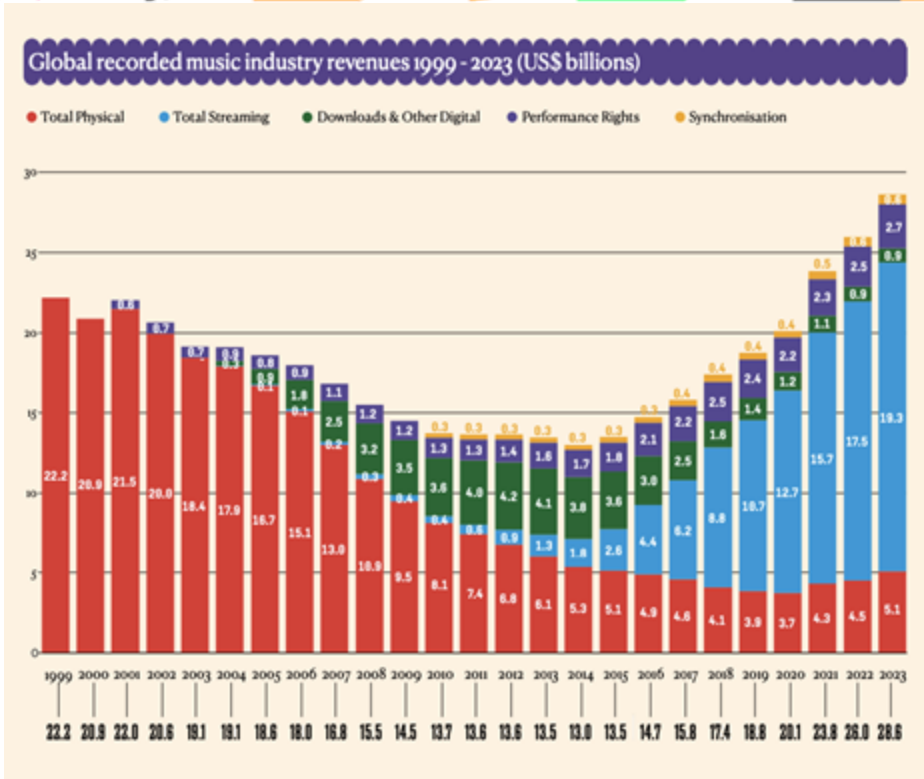
Share your music streaming data



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Source: IFPI *Global Music Report 2024: State of the Industry* (IFPI, 2024) [except publicly available at <https://www.ifpi.org/wp-content/uploads/2024/04/GMR_2024_State_of_the_Industry.pdf>](https://www.ifpi.org/wp-content/uploads/2024/04/GMR_2024_State_of_the_Industry.pdf) accessed 30 August 2024. All statements in this presentation attributable to Fair Muse’s interpretation of data published as part of the IFPI Global Music Report in March 2024, and have not been reviewed by IFPI. Each IFPI publication speaks as of its original publication date (and not as of the date of this presentation).

Publishing v Recording rights

- Commercial users need authorizations from different **right-holders**:
 - ◆ Composers + Publishers: «publishing rights»
 - ◆ Phonogram Producers + Performers: «recording rights»
- Collective management
 - Essential for **authors'** and **music publishers'** rights
 - Much less developed for “**neighbouring rights**”
- Individual management
 - Traditionally, it is much more developed for recording rights, which are normally licensed directly by or through rights aggregators (e.g., Merlin)
 - It has grown significantly in the domain of publishing rights with the emergence of IMEs and publishers' «mono-repertoire» licensing hubs

Evolution of collective rights management

- While **CMOs** originally resembled trade unions, they soon became a ‘**one-stop shop**’ for clearing “**performing**” and “**mechanical**” rights and to distribute royalties
- In the field of **neighbouring rights**, performing artists’ and phonogram producers’ organisations remained active mostly in collecting remuneration under **national statutory schemes**
- The clearing of rights in one country with one CMO representing the entire global music repertoire ensured that all users’ reports were or could be **processed by one CMO**
- However, CMOs’ monopolies and their network of **reciprocal representation agreements (RRAs)** presupposed *territorial* exploitations. RRAs started being insufficient or inadequate as soon as online music services started seeking multiple licences for all territories where they operated simultaneously
- CISAC members’ original response to these new needs was the conclusion of the **Santiago** (performing/online) and **Barcelona** (mechanicals/online) **agreements** in 2002. However, both agreements were dismissed after being notified to the EU Commission on EU competition law grounds



2005 Commission Recommendation of 18 May 2005 (2005/737/EC)

Targeted copyright and related rights alike; identified right-holders' freedoms: **1.** Join any collecting society (no economic residence); **2.** Select their territorial scope; **3.** Transfer online rights separately from other categories. No involvement of the EU Parliament (soft law)

2008 CISAC Decision of 16 July 2008 (COMP/C2/38.698)

Targeted reciprocal representation agreements for the licensing of communication to the public rights: **1.** No economic residence and no territorial exclusivity clauses in the bilateral agreements; **2.** No territorial segmentation for satellite and online transmissions insofar as this is the result of (unlawful) concerted practices

Case T-442/08 CISAC v EU Commission (2013): upheld only a half of the CISAC decision (economic residence) annulling the portion on the European CMO's "cartel"

Initial responses from CMOs and publishers

- Major music publishers established **new licensing bodies** such as CELAS (EMI+GEMA+PRS) and DEAL (SACEM+UNIVERSAL MUSIC)
- CMOs formed “regional” **joint ventures** to aggregate national repertoires such as ARMONIA (SACEM+SGAE+SIAE+SPA) and the Scandinavian + Baltic CMOs (Nordic Copyright Bureau)



Right-holders' freedom of choice in Europe: Directive 2014/26 - Article 5

- Right-holders shall have the right to choose the rights and categories of rights to confer to CMOs (5.2)
- Unless a CMO has objective reasons *not* to accommodate the request of rights holders, it shall be obliged to manage their rights, categories of rights or types of works
- Termination/withdrawal of rights (5.4 – 5.5)
- Right to grant licences for non-commercial uses (5.3 and 5.8)
- Specific consent for each type of right managed (5.7)
- Info to right-holders on each right managed (5.8)

Role and regulation of 'Independent Management Entities' (IMEs)

- IMEs were **not contemplated in the original proposal** of the European Commission. The inclusion of IMEs in the CRM Directive's scope was discussed mostly in the Parliament's debate.
- **IMEs** differ from CMOs:
 - 1) neither owned nor controlled, directly or indirectly, wholly or in part, by right-holders; and,
 - 2) organised on a **for-profit** basis (Article 3).
- Now, IMEs shall be subject to regulation to the extent they carry out the same activities as CMOs (**Recital 15**)
- IMEs' specific obligations include: • good faith in licensing activities; • transparency of information provided to right-holders, other licensing entities and users upon request; • disclosure of information to the public (including membership and termination rules, standard contracts, tariffs and amounts due to right-holders); • compliance with the Directive, under the control of the national supervisory authorities; and • the processing of personal data in accordance with EU law (**Article 2(4)**)



Italy

Lack of clarity/NO uniformity in the regulation of IMEs:

Significant divergences
in national transpositions

(1)

- Italian law granted SIAE a **legal monopoly** on collective copyright management, even after the transposition of 2014/26 Directive via Legislative Decree 2017/35 (Art. 180 of the Italian Copyright Law)
- Subsequently, an amendment to Art. 180 eventually **repealed** SIAE's monopoly by reserving copyright's intermediation (just) to **CMOs**. This solution still prevented IMEs from operating in Italy (Art. 19, Law Decree 148/2017, converted with Law 172/2017)
- This anomaly led to 2 cases before the Court of Rome:
 - 2018 C-781/18:** SIAE objected to UK-based IME Soundreef's eligibility to operate in Italy → case was settled out of court
 - 2022 C-10/22:** LEA (Liberi Editori Autori) sued Jamendo (Luxembourg-based nonprofit organisation licensing works under Creative Commons) arguing that Jamendo, as an IME, was not permitted to operate under Italian law. In March 2024, the CJEU held that prohibiting IMEs from offering their services on a EU-wide basis (i.e. across borders, including Italy) is incompatible with EU law



Lack of clarity/NO
uniformity in the
regulation of IMEs:

Significant divergences
in national transpositions

(2)

Spain

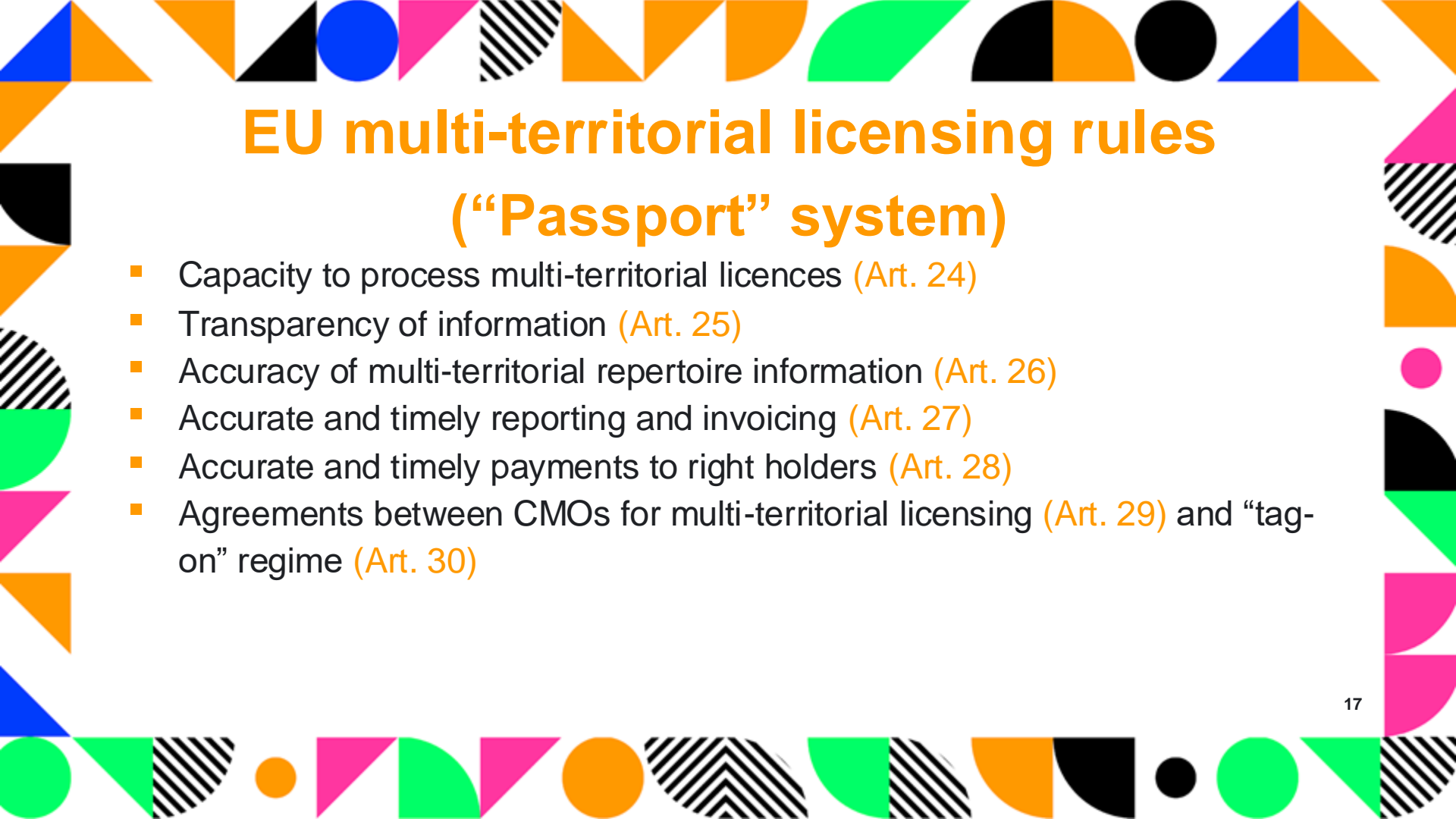
- **Unison Rights** (Spain-based IME) has been active against CMOs' practices impeding new competitors from entering national markets
- In May 2019, the Spanish Competition Authority (CNMC) sanctioned SGAE for abuse of dominant position (S/DC/0590/16) consisting, among other conducts, of imposing statutory and contractual restrictions on its members' freedom to partially withdraw their rights from SGAE (decision appealed and annulled)
- Following another complaint by Unison, CNMC kept scrutinising SGAE's operations and sanctioned it again in June 2024 (S/0641/18) for having distorted competition through misleading "flat" licensing fees and the offering of a supposedly "universal" rights clearance and tariffs service to users

Greece

- '**Simple**' IMEs vs IMEs with a **dominant position** (Greek Law 4481/2017, Art. 32 and 50)
- Issues: Lack of definition of 'dominant position'; Non-dominant IMEs cannot manage rights under mandatory collective licences

Portugal

- **IMEs** in Portugal **can still be owned by right-holders** (cf. Art. 3(b)(i) and (ii) of Portuguese Copyright Law) in contrast with Recital 15 of the Directive 2014/26



EU multi-territorial licensing rules (“Passport” system)

- Capacity to process multi-territorial licences (Art. 24)
- Transparency of information (Art. 25)
- Accuracy of multi-territorial repertoire information (Art. 26)
- Accurate and timely reporting and invoicing (Art. 27)
- Accurate and timely payments to right holders (Art. 28)
- Agreements between CMOs for multi-territorial licensing (Art. 29) and “tag-on” regime (Art. 30)

Achievements and failures of the “Passport”

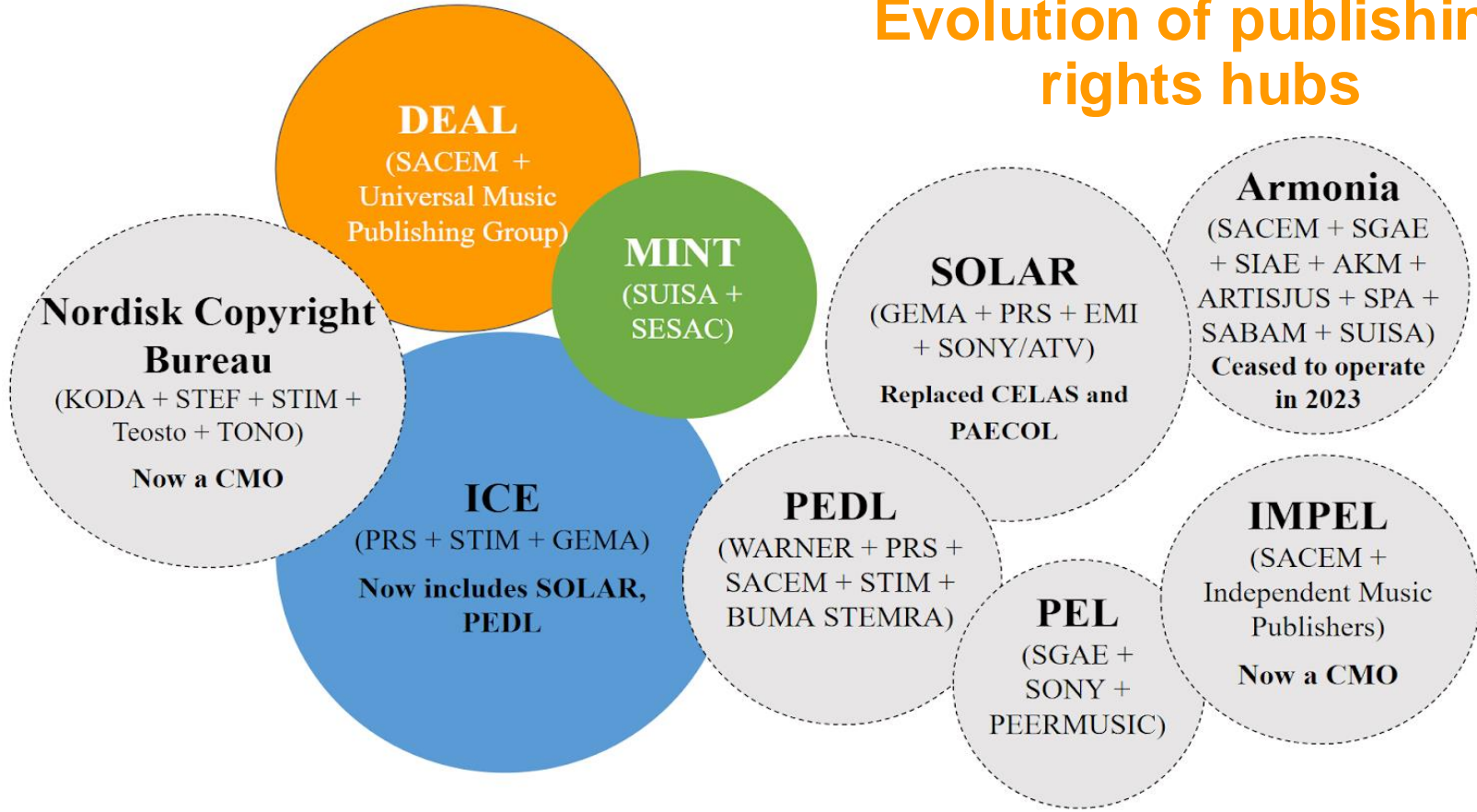
Achievements:

- Modernisation of collective rights management
- Incentives to CMOs to significantly invest in their data processing capacity and the development of the necessary infrastructures
- Greater transparency towards right-holders, other CMOs and online exploiters

Failures:

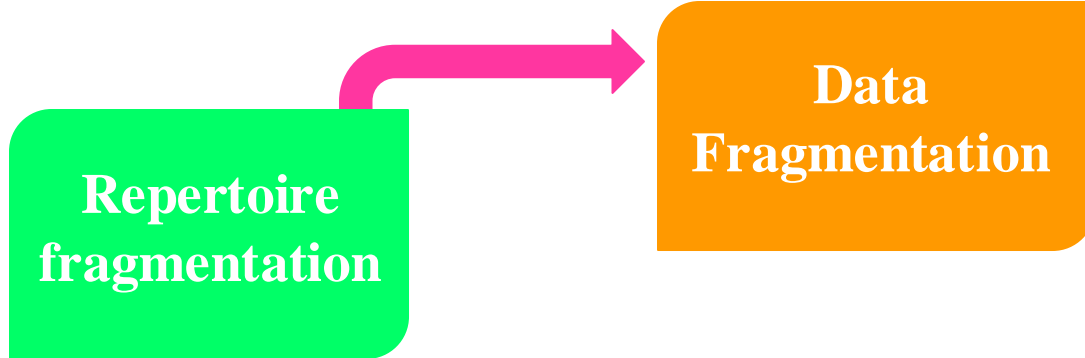
- Greater inequalities among CMOs: creation of a two- or three-tier licensing market favourable to major publishers → **this is a clear challenge for cultural diversity (being detrimental to small/local repertoires and new/small DSPs)**
- Inconsistent enforcement of the “Passport” rules at national level → **This does not help digital music licensing become more transparent and fair**

Evolution of publishing rights hubs



Legal issues raised by licensing hubs

- **Withdrawal of online rights:** (i) mechanical rights: “easy” for publishers of the Anglo-American music repertoire; (ii) “performing” rights still based on traditional CMOs’ or their joint ventures’ infrastructures (i.e. cost-saving for the hubs)
- **Split copyright and multiple right-holders:** distinct representatives increase the number of licences needed by a DSP or a social media service → **Hubs’ rights + data «concentration» as a solution**
- **Legal status:** limited transparency and indirect subjection to ‘Passport’ rules; conflicts of interest; no *direct* control by right-holders; purely for-profit character (no contribution to the CMOs’ mission).



There is **NO** sufficient or effective music data alignment and interoperability

- **Musical work** identifiers - **ISWCs** (International Standard Musical Work Code)
- Interested Party Information (IPI) numbers assigned to composers and music publishers (An IPI is a unique, international identification number, usually 9–11 digits long)
- **Sound recording** identifiers - **ISRCs** (International Standard Recording Code)
- Links between musical works and sound recordings: TOWGE working group + DDEX reporting formats
- Identity and other relevant right-holder data, including shares and mandates to a given CMO or an IME, ICE Copyright Database, URights, etc.
- Other data & metadata providing details such as modes and length of exploitation



Data interoperability and standardisation are limited

Publishing rights:

- Existing standard (ISWC)
- From GRD's failure to Cis-Net, ICE and URights

Social media services:

- Both professional and amateur works (hybrid)
- Repertoire data from the music industry (Art 17 DSM Directive) - Usage data from platforms (Art 17 CRM Directive)

DSPs:

- Record labels share usage data with DSPs using DDEX reporting standards
- Professional music

Publishers and composers

Social media services

DSPs

Record labels

Performers

Recording rights:

- Existing standard (ISRC)
- Alignment of these rights with publishing rights
- DDEX manages several metadata standards that are built into standard messaging protocols

Performers' rights:

- Missing data because of (i) contractual buyouts (ii) non-harmonisation of remuneration rights and (iii) non-standardised practices
- SCAPR's International Performers Database (Comparable to CISAC's Cis-Net)

Should not data interoperability be boosted by (existing) transparency obligations?

CMOs' obligations (Directive 2014/26):

Transparency & Reporting obligations towards their members, other CMOs and users (Arts. 18 - 20) as well as the general public (Arts. 21 - 22)

Counterparts of individual creators

(Directive 2019/790): Up-to-date, relevant, and comprehensive information to authors and performers on the exploitation of their works and performances **at least once a year, i.e. in an active way** (Art. 19)

DSPs and social media services (Dir. 2014/26):

Users are obliged to disclose essential data to CMOs for collection of rights revenue and distribution and payment of amounts due to right-holders (Art. 17)

Policy suggestions for the future (1/2)

- Even if reporting and transparency obligations are currently targeted at both CMOs and **DSPs/OCSSPs**, **users** are not specifically obliged to
 - Identify unmatched tracks – users shall seek to allocate this “black box” money on fair and transparent grounds, with the help of CMOs;
 - Not accept music content without important metadata, including ISWCs, IPIs and names of authors and artists;
 - Not remove metadata from uploaded music and/or substitute it with their own metadata: **this is against Article 7(1)(a) of Directive 2001/29**
- ISRC submissions without ISWC should not be acceptable
- Licensing hubs co-created by CMOs and music publishers should be legally treated as CMOs (accountability, tariffs, duty to represent)

Policy suggestions for the future (2/2)

- Supervision and enforcement of the “Passport” system for CMOs should be EU-wide, i.e. not national
- Since CMOs have no effective capacity of monitoring online uses, including this capacity in the EU Passport system would give them an incentive to invest in partnerships with data providers (e.g. BMAT)
- Regulation of IMEs should be clearer and uniform at EU level
- Statutory remuneration rights for online exploitations for performing artists could be harmonised across the EU if supported by adequate data and metadata



Thank you!