

# Audiovisual Authors' Remuneration: Challenges for fairness in the digital era

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Society of Audiovisual Authors

# Presentation outline

- The Society of Audiovisual Authors - SAA
- Who are audiovisual authors?
- How are audiovisual authors' paid?
- The role and importance of the contract
- Secondary payments by CMOs
- Focus on the retransmission right
- Proposal for an unwaivable right to remuneration for the on-demand exploitation of audiovisual works
- EC proposal for a Directive on Copyright in the DSM

# SAA - Society of Audiovisual Authors

- 31 AV authors' CMOs in 23 European countries in 2017
- 135,000 audiovisual authors represented
- Objectives:
  - Promote audiovisual authors' rights and remuneration
  - develop the collective management of AV authors' rights and remuneration
  - Provide information on how AV CMOs work and their challenges

# Who are audiovisual authors?



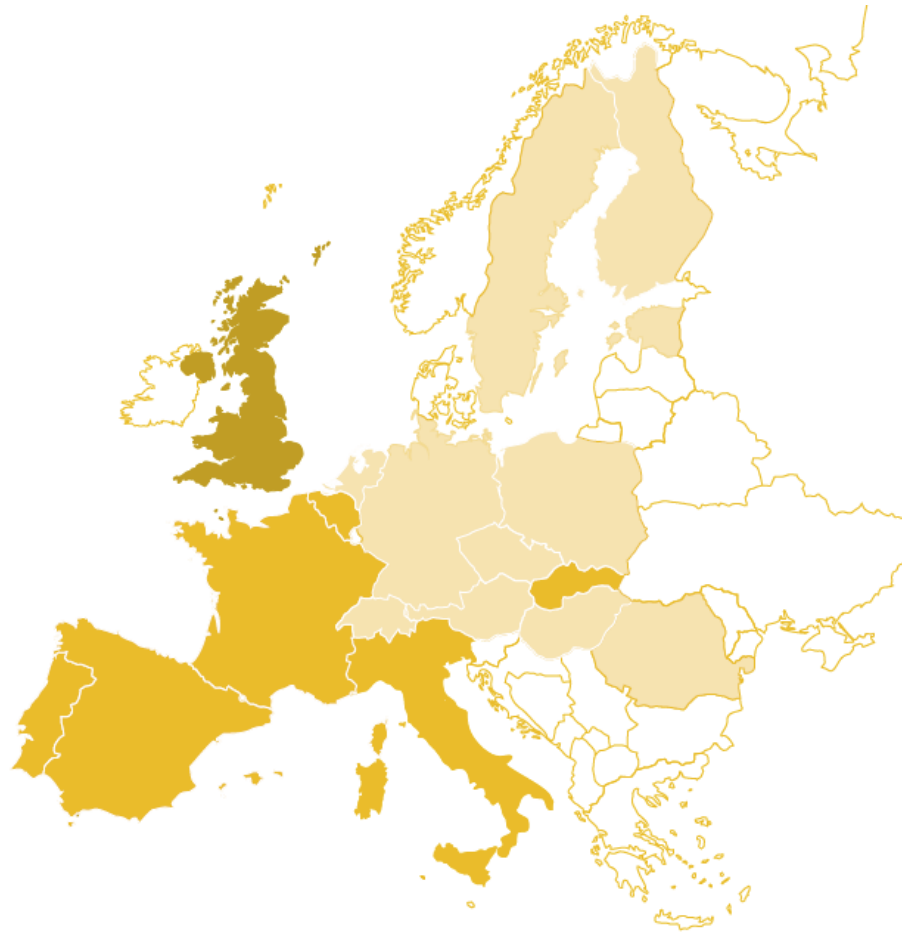
**Director, screenwriter  
& composer of the original music**



**Director, screenwriter,  
composer & some technicians**  
(either by law or contract)



**Director, screenwriter,  
composer & producer**



# Who are audiovisual authors?



**Dardenne Brothers**  
Belgium



**Susanna White**  
United Kingdom



**Lars Lundström**  
Sweden



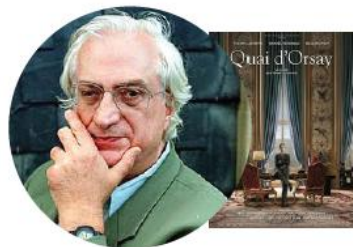
**Amma Asante**  
United Kingdom



**Borja Cobeaga**  
Spain



**Julie Bertuccelli**  
France



**Bertrand Tavernier**  
France



**Jan Hřebejk**  
Czech Republic



**Paolo Sorrentino**  
Italy

# How are audiovisual authors paid?

- In theory



# How are audiovisual authors paid?

- In reality

**Lump sum**

for working time & ©

**< 3% of authors**

Receive anything  
beyond their minimum guarantee

Source: OPCA Cinema 2015, SACD France

# How are audiovisual authors paid?



Median net monthly pay of screenwriters & directors in Austria in 2014

Source: VDfS (2015)



median net yearly income of a screenwriter in the EU

Source: FSE (2013)



of UK authors earning solely from writing

Source: ALCS—  
What are words worth now?  
(2015)



decline in Spanish writers able to make a living from their work since 2004

Source: DAMA (2015)



of UK TV & film writers have experienced a significant increase in work they are asked to do for free

Source: WGGB (2015)



# Contract

- It determines 2 things



**TERMS &  
CONDITIONS  
OF EMPLOYMENT**



**TRANSFER  
OF RIGHTS  
TO THE PRODUCER  
& ASSOCIATED  
REMUNERATION**

# Contract negotiation

- It take place before

the audiovisual work exists

**1-3 years**

between contract signature  
& film release  
(for 70% of films)

Source: OPCA Cinema 2015,  
SACD France

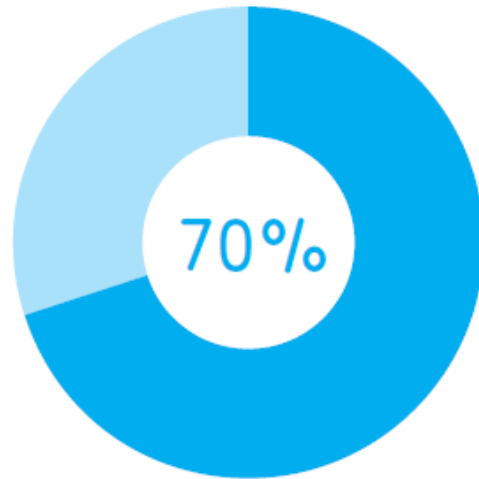
&

its value is known

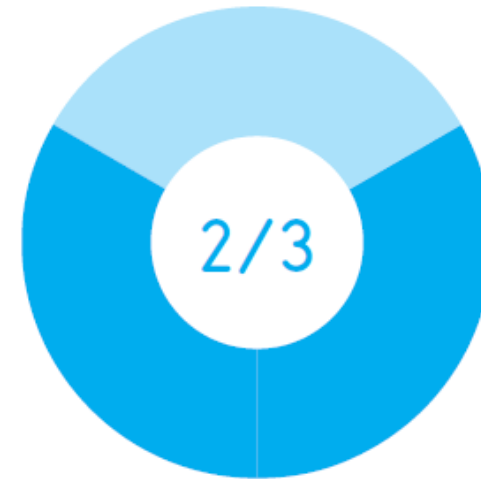
You cannot know  
in advance  
if your film is worth

**€0 or €millions**

# Contract negotiation



of Dutch screenwriters  
report their individual  
negotiating position as weak or  
very weak



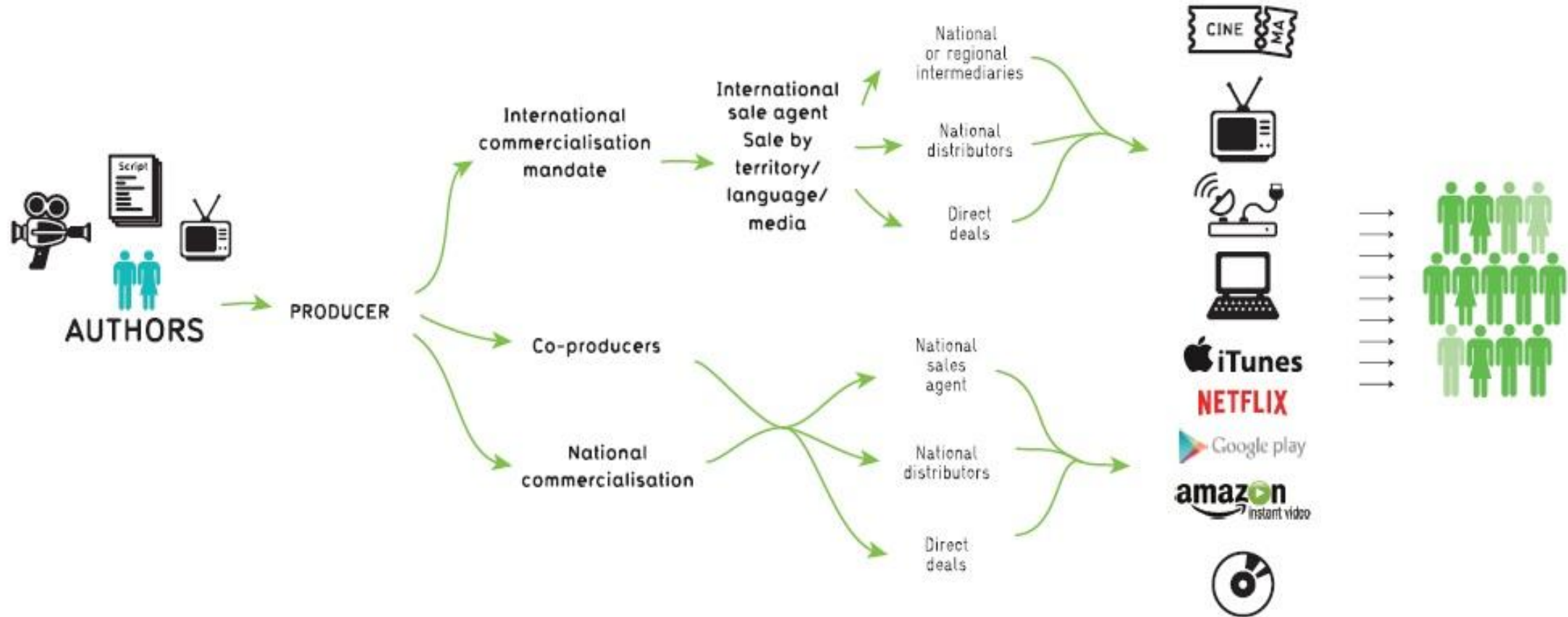
of Dutch screenwriters  
& directors have assigned  
more rights than they intended  
in individual negotiations

# Contractual practices

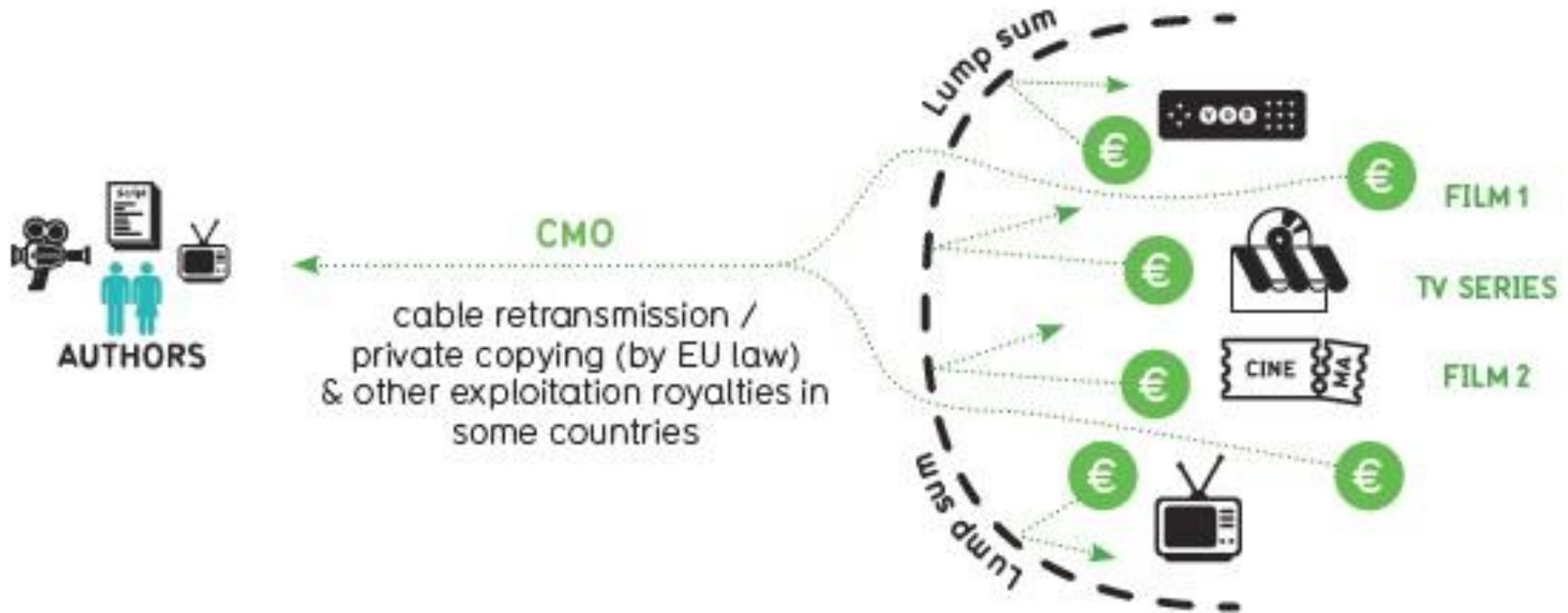
In the end we transfer a lot of things  
when we transfer our rights

**Cédric Klapisch** - Screenwriter and director, France

# AV commercialisation chain



# Result



Country	SAA member	Cable retransmission	Private copying	Other retransmission rights*	Online/ on demand uses	TV broadcasting	Video sales	Educational uses	Video rental	TV archives	Video lending	Cinema/ Public performance
Austria	Litara-Mechana											
Austria	VDFS											
Belgium	SABAM											
Belgium	SACD / SCAM											
Czech Republic	DILIA											
Estonia	EAAL											
Finland	Kopijosto											
France	SACD											
France	SCAM											
Germany	VG Bild-Kunst											
Germany	VG Wort											
Hungary	Filmjus											
Italy	SIAE											
The Netherlands	LIRA											
The Netherlands	VEVAM											
Poland	ZAPA											
Portugal	SPA											
Slovakia	LITA											
Spain	DAMA											
Spain	SGAE											
Sweden	Copyswede											
Switzerland	SSA											
Switzerland	SUISSIMAGE											
UK	ALCS											
UK	Directors UK											
	<b>TOTALS</b>	<b>24</b>	<b>23</b>	<b>19</b>	<b>17</b>	<b>16</b>	<b>15</b>	<b>15</b>	<b>11</b>	<b>11</b>	<b>9</b>	<b>8</b>
	<b>Percentage</b>	<b>96%</b>	<b>92%</b>	<b>76%</b>	<b>68%</b>	<b>64%</b>	<b>60%</b>	<b>60%</b>	<b>44%</b>	<b>44%</b>	<b>36%</b>	<b>32%</b>

\* Satellite, IPTV

# Focus on the retransmission right

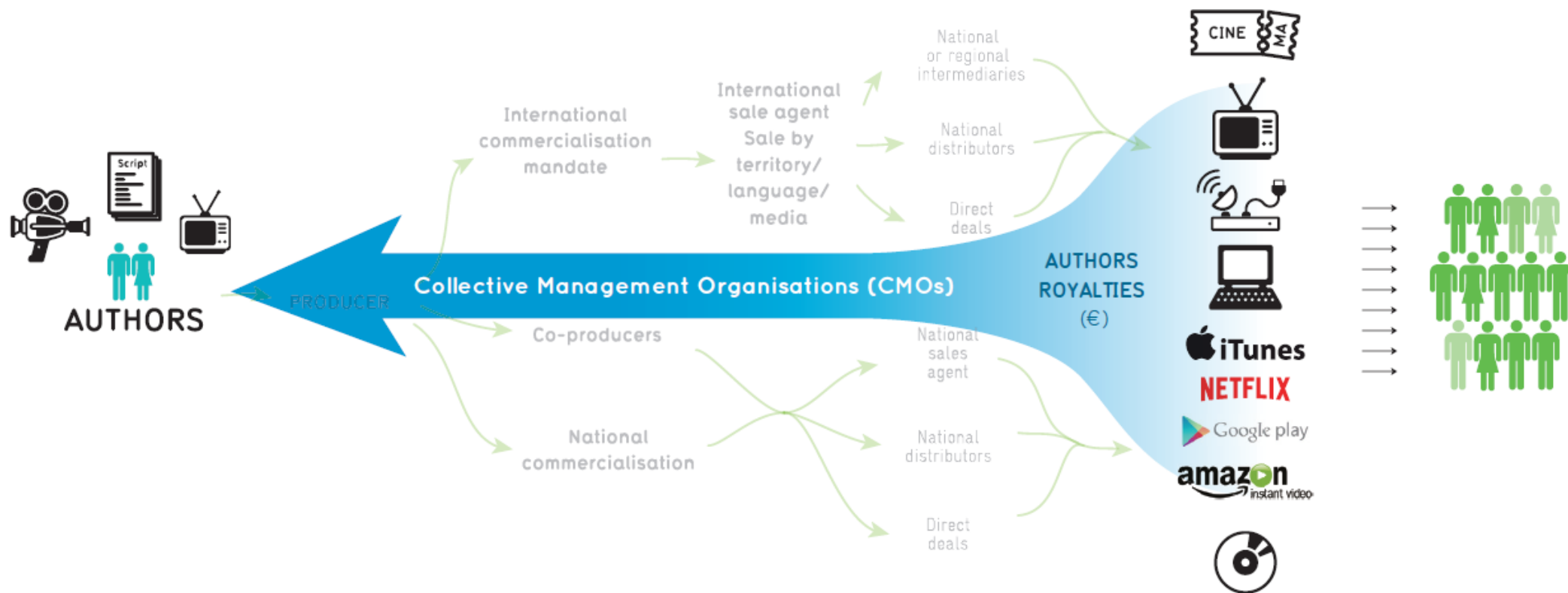
- Sometimes difficulties for AV CMOs to negotiate with retransmission operators
  - Presumption of transfer of rights
  - All rights included model
  - Direct injection
  - Expensive court proceedings to oblige retransmission operators to pay
- Solution:
  - authors' right to remuneration for retransmission in the law (exists in DE, NL and BE)
  - Direct injection fix
- EC proposal for a Broadcasting and Retransmission Regulation: an opportunity to fix the two problems



# Focus on the on-demand exploitation

- New mode of exploitation developing rapidly
- Right of making available recognised to AV authors in the 2001 Directive, but same difficulties to implement as other rights
- Opportunity to develop a EU harmonised model for the remuneration of AV authors
- A right to remuneration paid by the on-demand platforms and collectively managed
- Thanks to the European network of AV authors' CMOs, the model would fit national and international on-demand platforms

# Collective management model



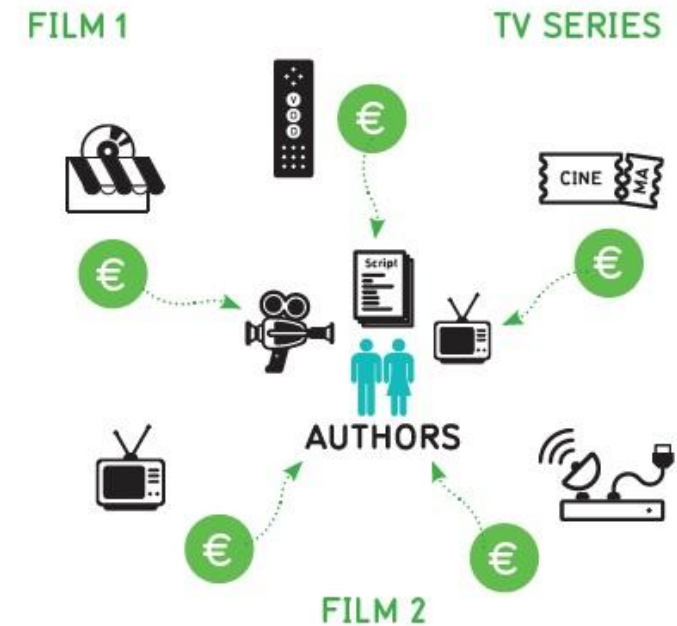
We are too weak as individual artists. A system needs to be established to ensure we receive money for the uses and exploitations of our works online.

**Fred Breinersdorfer**

Screenwriter, Germany

# SAA Remuneration Right Campaign

- SAA 2<sup>nd</sup> edition [white paper](#), March 2015
- Audiovisual Authors' Remuneration infographic ([EN](#), [CRO](#), [FR](#), [DE](#) and [ES](#)), Sept 2016
- Audiovisual Authors' Remuneration [video](#) (EN with sub-titles in BG and ES), Oct 2016



# Draft Directive on Copyright in DSM

- EC proposals on fair remuneration in contracts of authors and performers (Chapter 3) - Transparency triangle:
  - Exploitation transparency obligation (Art 14)
  - Contract adjustment mechanism (Art 15)
  - Dispute resolution mechanism (Art 16)
- SAA [proposals](#) to improve the transparency triangle
  - Art 14: accurate information, right to audit, automated reporting statements using international identifiers, obligation transferred & abusive derogation to be deleted
  - Art 15: should include a EU principle of proportionate remuneration and requirement that MS encourage collective discussions
  - Art 16: collective representation
- SAA proposal to add an unwaivable right to remuneration for on-demand uses

# Draft Directive on Copyright in DSM - SAA activities

- Remuneration right [flyer](#): what's missing? Feb 2017
- 2 European Parliament briefings with FERA and FSE in March and Sept
- Cannes European Filmmakers' [call](#)
- 12 point [myth busting](#), May



# Draft Copyright Directive - state of play in EP

- 4 opinion committees:
  - Internal Market (IMCO), 8 June – Remuneration right not put to the vote after being dropped from a compromise amendment at the last minute ([SAA press release](#))
  - Culture (CULT), 11 July – **Remuneration right adopted** but compromise includes derogation for contracts providing fair remuneration.
  - Industry (ITRE), 11 July – **Remuneration right adopted** ([SAA press release](#))
  - Civil Liberties (LIBE), 20 Nov -- focused on value gap only
- Legal Affairs (JURI) lead committee to vote on 25 Jan / 22 Feb
  - Unwaivable Remuneration right submitted in multiple amendments
  - No compromise amendment presented so far

# Draft Copyright Directive - state of play in Council and EC

## Council

- No Member State (MS) has raised the full unwaivable remuneration right so far, but FR talks about proportionate remuneration
- MS representatives aware of the issue in Brussels
- National governments being pressured by SAA members

## Commission

- Following adoption of CULT and ITRE opinions, the issue is on the Commission's radar.
- Discussions on practical aspects with the Copyright unit
- Constructive meeting with Commissioner Gabriel on 15 Nov



# Next steps

## European Parliament

- Vote in JURI + negotiation mandate given in JURI or plenary

## Council

- General approach to be adopted by Competitiveness Council:  
Estonian or Bulgarian presidency?

Trilogue negotiations and final adoption in 2018

# Thank you!

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@CDespringre



Society of Audiovisual Authors