

# EU Contractual protection of creators Blind spots and shortcomings

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CONTRACTUAL  
ARRANGEMENTS APPLICABLE  
TO CREATORS : LAW AND  
PRACTICE OF SELECTED  
MEMBER STATES

STUDY

EN

2014



We have no idea what we're signing, in  
an act of legendary mental deficiency

*Morrissey, Autobiography*

The median revenue of EU creators is  
below the minimal revenue and  
includes non-creative jobs

**MARKET**

Contractual  
bargain: access  
to markets –  
assignment of  
copyright

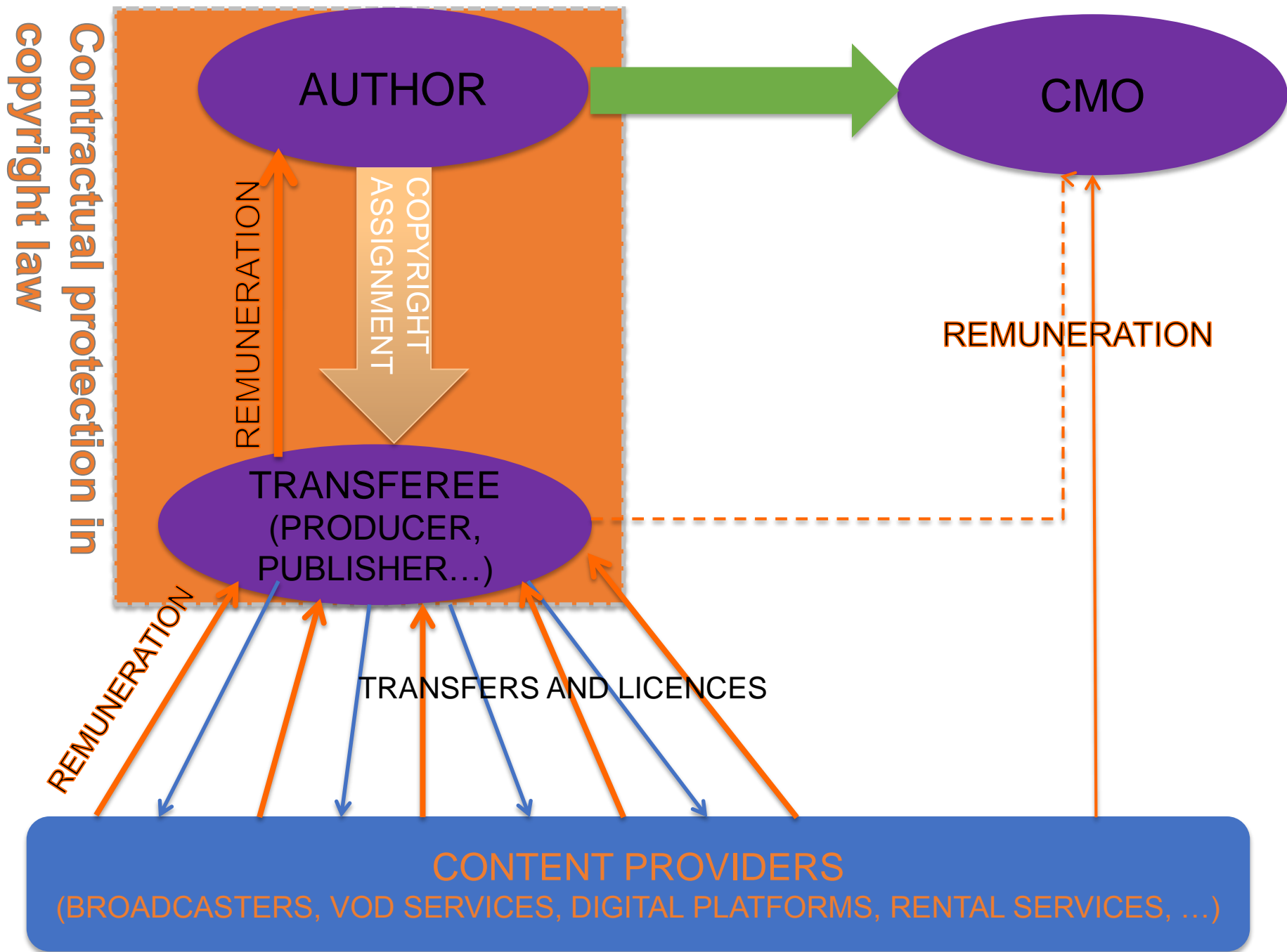
Weaker position  
of creators

Role of  
remuneration

**The  
contract**

Different  
sectorial  
practices

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



# Protective schemes

<b>Copyright Law</b>	Form requirements, scope of rights and remuneration, obligation of the parties, interpretation rules,... No international minima – national diversity Non sector-specific
<b>Contract Law</b>	Good faith, equity, usages, unfair terms, unconscionability... Interesting cases in all over Europe Serve to complete copyright protection Non copyright-specific
<b>Collective agreements</b>	(relatively) new tool to reinforce creators' bargaining position CMOs, trade unions, authors representatives or guilds State-sponsored negotiations and framework agreements (FR ebook, streaming) Sector-specific

# Usual copyright law protections (in EU)

- Restrictions as to the form of transfer
  - Assignments/licences
- Form requirements
  - Written form (validity or evidence effect)
- Scope of rights transferred
  - Assigned/licensed rights and modes of exploitation
  - Geographical scope and duration
  - Prohibition to transfer some rights of remuneration or moral rights
  - Future works
  - Unknown modes of exploitation
- Determination of remuneration
  - Determination of its amount or type ( lump-sum, proportional)
  - Best seller clause (art. 15 Draft DSM Dir)
  - Legal right of adequate remuneration

# Usual copyright law protections (in EU)

- Obligations
  - Exploitation obligation
  - Reporting and transparency (art. 14 Draft DSM Dir)
- Interpretation of contracts
  - In favour of author
- Termination of contracts
  - Reversion (rare)
  - Term of protection directive (art. 3.2a): performers
- Transfer of contract
- Rules for specific contracts
  - Employment, commissioned works
  - Publishing contracts, audiovisual production

No EU harmonisation

Protection of authors



contractual freedom

# SELECTED ISSUES I

- Imbalance in contract
  - Far-reaching assignments or buy-out v. incomplete exploitation
    - Absence of an exploitation obligation
    - Legal obligations are insufficient

Obligation to exploit in e-publishing or author can regain her right (FR)

- Weaker position of authors in negotiation and enforcement
  - Fear of black-listing
  - No possibility of revision or termination of contract

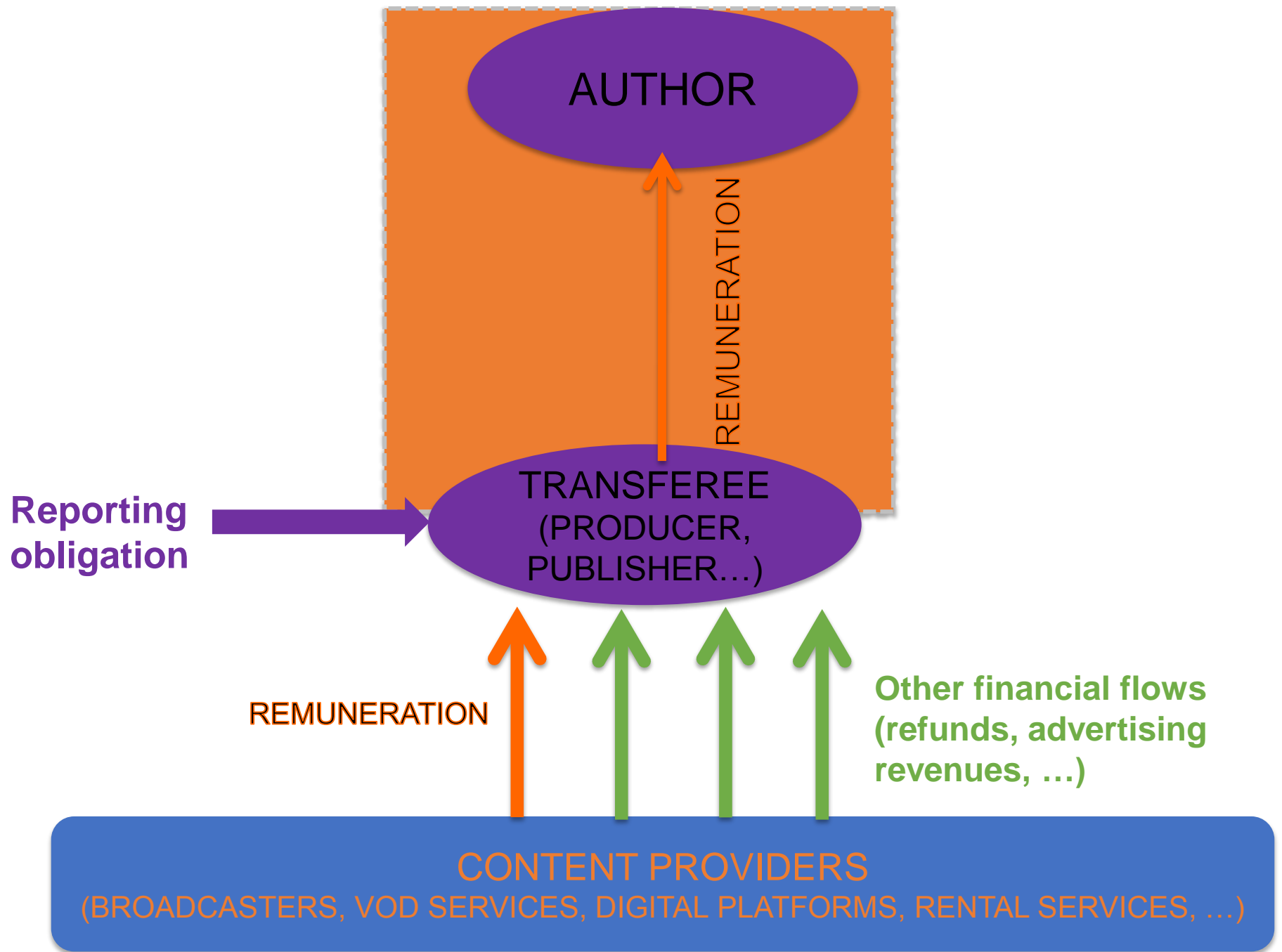
Need for collective agreements and reversion/revision possibilities



# SELECTED ISSUES II

- Contract being the law of (only two) parties
  - Secondary exploiters are outsiders
    - Powerful actors have changed
    - Issue of remuneration right managed by CMO
    - Remunerations calculated on the pie of publisher/producer (other hidden revenues)

Regulation of copyright contract is not enough



# Conclusion

If digital economy is about creation

Then creators should partake in its benefit and revenues

## Restore the contractual bargain

What you give and what you receive

Exploitation obligation

Strengthening the author from negotiation to enforcement

Revision clause / reversion

## Broaden the contractual lens to the bigger picture of exploitation of works and revenues flows

Fair share of revenues sector by sector (France for music streaming)

Obligations of transparency and reporting on transferees (and on further exploiters ?)

Equitable right of remuneration when needed and easier to manage

Thanks for your attention

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