



Society of
Audiovisual
Authors

The European audiovisual market, authors' rights and technology

IPKey South-East Asia conference, 24 July 2024

Presentation outline

- ✦ The Society of Audiovisual Authors
- ✦ The European audiovisual market
- ✦ Authors' rights
 - ✦ Who is an audiovisual author?
 - ✦ Authors' rights and contractual practices
- ✦ Collective management of audiovisual authors' rights
 - ✦ SAA members' aggregated collections
 - ✦ Statutory remuneration rights
- ✦ New technologies & artificial intelligence



The Society of Audiovisual Authors

- ✦ 34 audiovisual authors' CMOs in 26 European countries
- ✦ 167,000 film & TV screenwriters and directors
- ✦ Objectives:
 - ✦ Promote audiovisual authors' rights and remuneration
 - ✦ Develop the collective management of AV authors' rights and remuneration
 - ✦ Provide information on how audiovisual CMOs work and their challenges



The European audiovisual market: Diversity and concentration

European Audiovisual Observatory (2023)

12 703

AV media services

9 434

TV channels

3 269

VOD services and video-sharing platforms

55%

Fiction titles
commissioned by
public broadcasters

32%

Fiction titles
commissioned by
private broadcasters

12%

Fiction titles
commissioned by global
streamers

€130 billion

Value of the
European AV market

Top 20 European AV groups by operating revenues (2022 - in mEUR)

Rank	AV group	Country	Statute	Final owner	Country of final owner	Revenues (EUR million)
1	Comcast (Europe)	EUR	Private	Comcast	US	20 500
2	Netflix (Europe)	NL	Private	Netflix	US	8 674
3	The Walt Disney Company (Europe)	EUR	Private	The Walt Disney Company	US	8 000
4	RTL Group	LU	Private	Bertelsmann	DE	7 224
5	ARD	DE	Public	State of DE	DE	6 958
6	BBC	GB	Public	State of GB	GB	6 623
7	Groupe Canal Plus	FR	Private	Vivendi	FR	5 870
8	Warner Bros. Discovery (Europe)	EUR	Private	AT&T	US	5 300
9	ITV	GB	Private	ITV	GB	4 372
10	ProSiebenSat.1 Media	DE	Private	ProSiebenSat.1 Media	DE	4 163
11	Bouygues	FR	Private	Bouygues	FR	3 172
12	France Télévisions	FR	Public	State of FR	FR	3 088
13	Vodafone	GB	Private	Vodafone	GB	3 050
14	Liberty Global	EUR	Private	John Malone	US	2 959
15	Paramount (Europe)	EUR	Private	Paramount	US	2 900
16	MediaForEurope (MFE)	IT	Private	MediaForEurope (MFE)	IT	2 801
17	Deutsche Telekom	DE	Private	Deutsche Telekom	DE	2 789
18	RAI	IT	Public	State of IT	IT	2 738
19	ZDF	DE	Public	State of DE	DE	2 431
20	Amazon Prime Video (Europe)	EUR	Private	Amazon Inc	US	2 377

Audiovisual Authors' Rights



Director

Co-author of the AV work
in all EU Member States



Screenwriter

Author of a pre-existing/separate work or co-author of the AV work



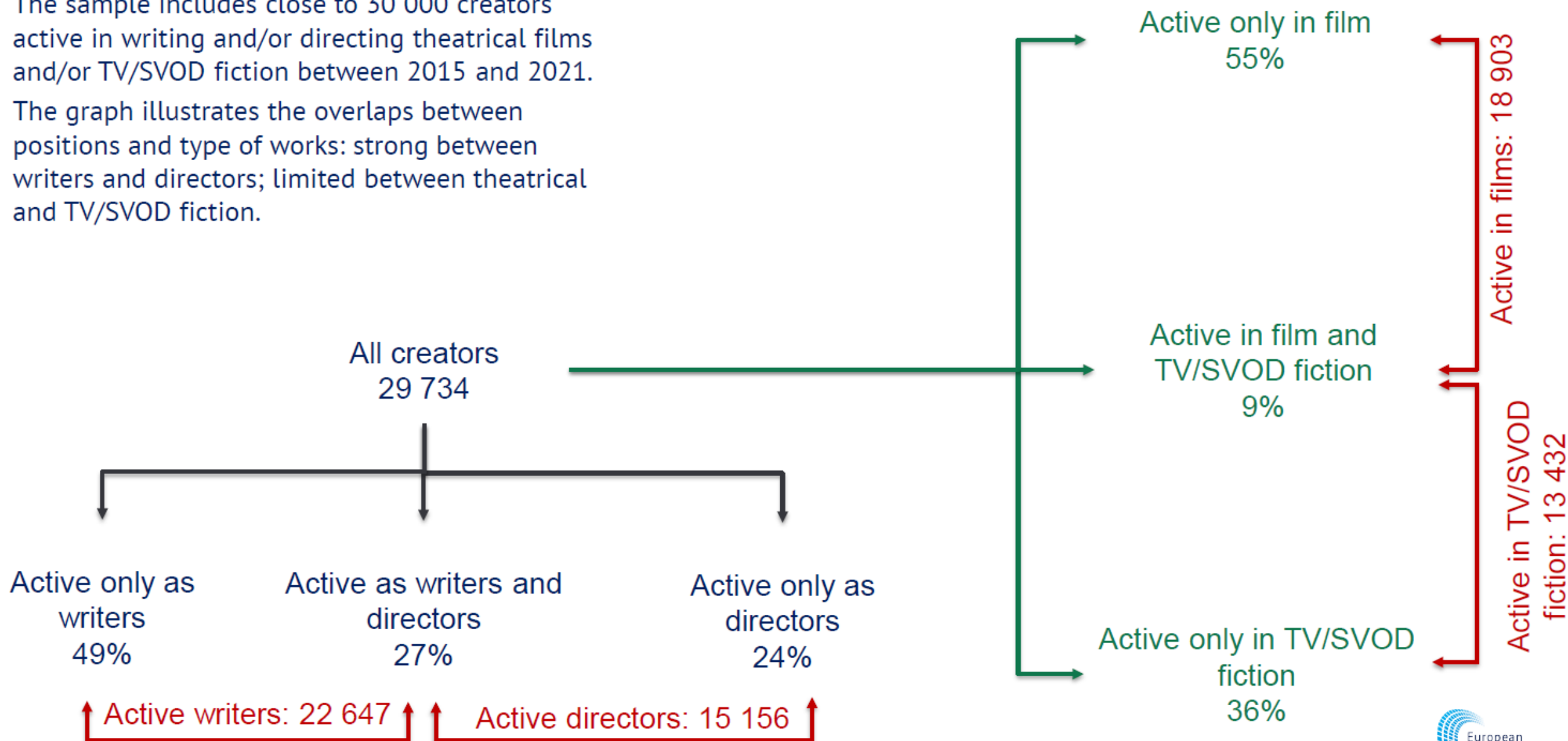
Composer of the original music

Co-author of the AV work or author of his/her contribution

Overview of the writers' and directors' activities

The sample includes close to 30 000 creators active in writing and/or directing theatrical films and/or TV/SVOD fiction between 2015 and 2021.

The graph illustrates the overlaps between positions and type of works: strong between writers and directors; limited between theatrical and TV/SVOD fiction.



Authors' rights



- ✦ Exclusive right of **reproduction**
- ✦ Exclusive right of **communication to the public** and right of making available
 - ✦ Broadcasting
 - ✦ Retransmission
 - ✦ Public performance
 - ✦ Online and on-demand uses
- ✦ Exclusive right of distribution
- ✦ Moral rights (not harmonized)

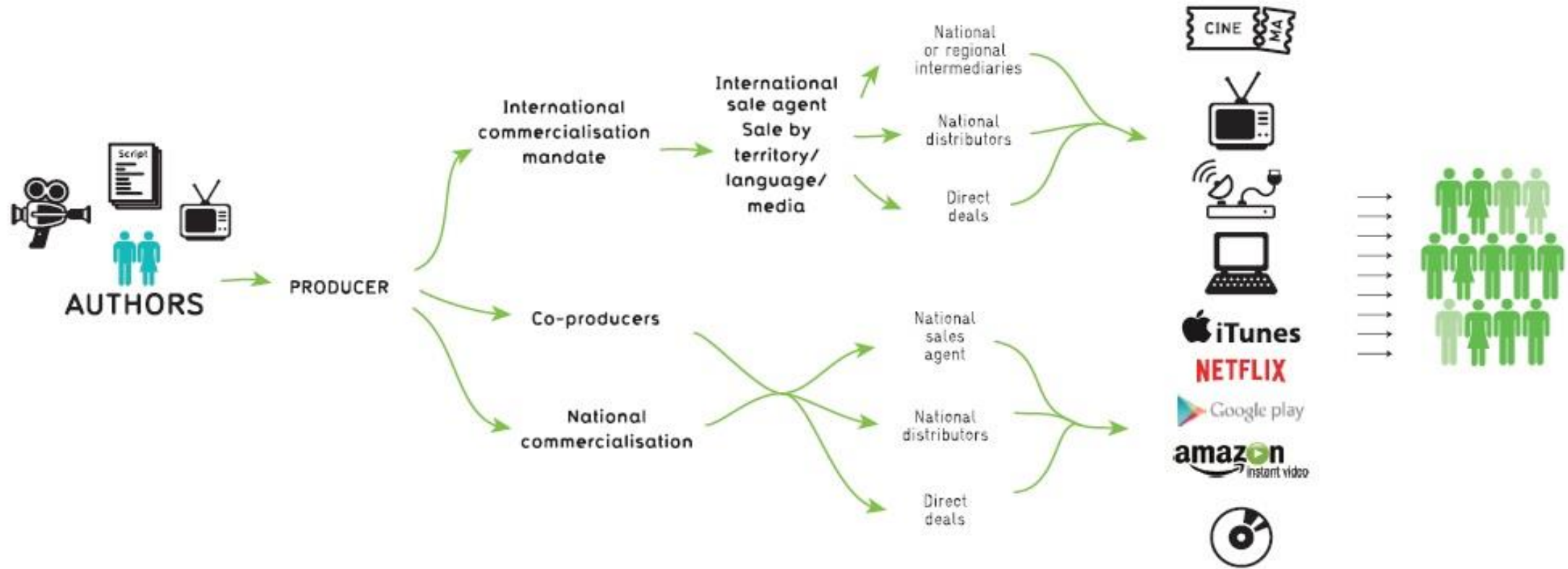
Contractual practices



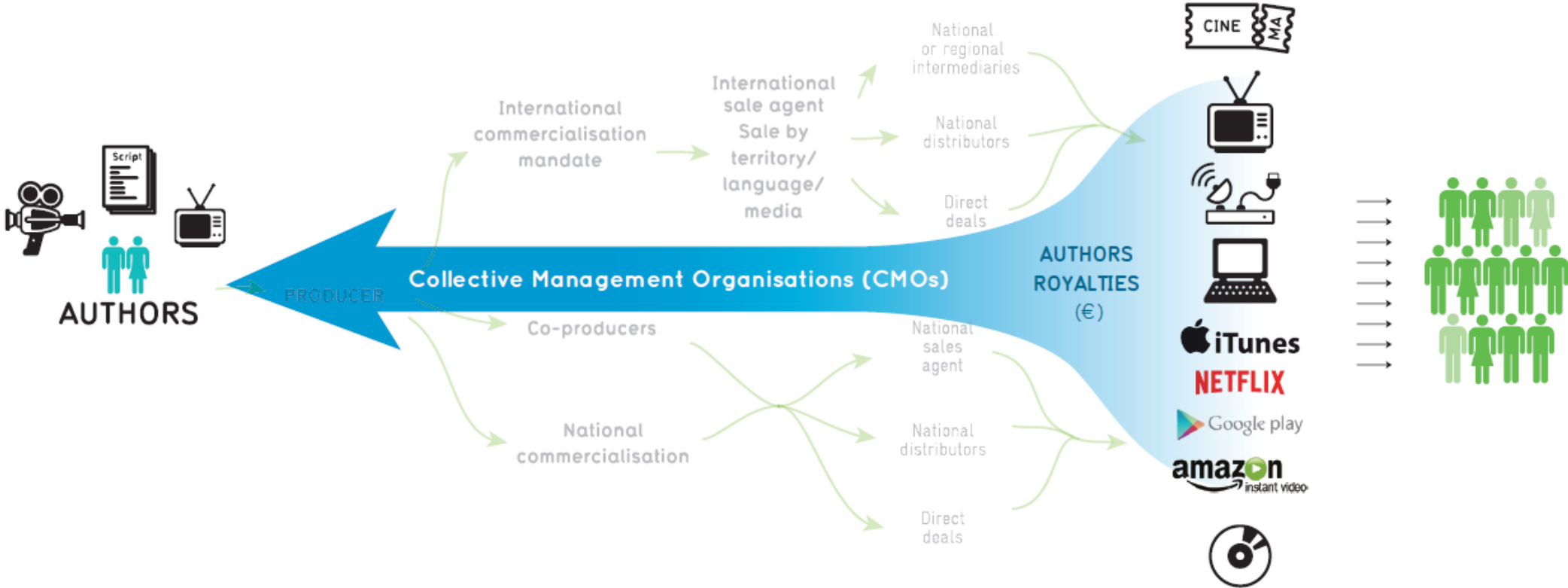
- ✦ Many contracts signed by authors with producers transfer the authors' exclusive rights to the producer.
- ✦ **Buyout contracts:** many authors receive a lump sum payment which covers the work done and the rights transferred.
- ✦ Unless copyright law protects them, it is difficult for authors to really negotiate their contracts (contract negotiation takes place before the AV work exists and its value on the market is known).

Collective management of audiovisual authors' rights

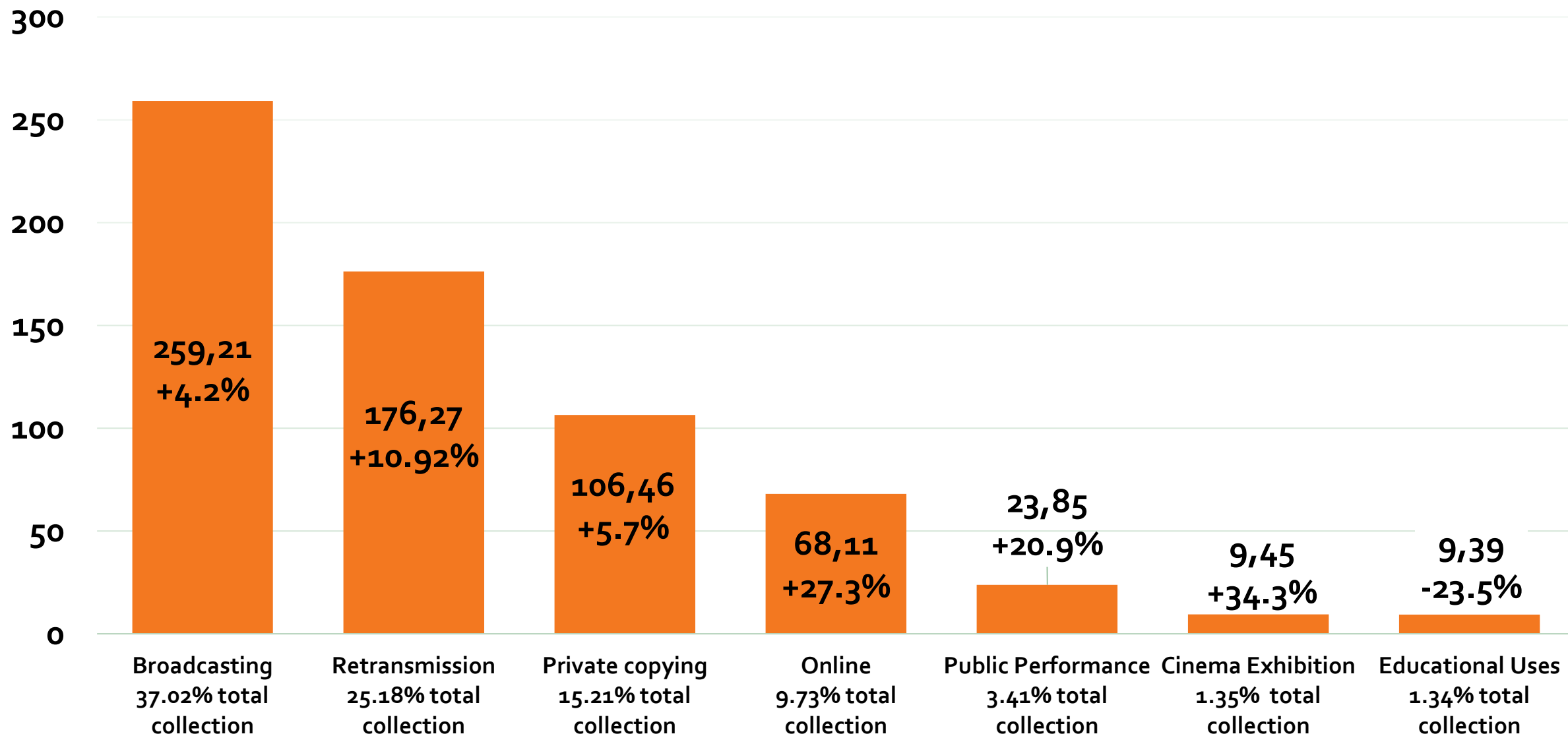
Commercialisation/licensing chain



Collective management model



SAA MEMBERS AGGREGATED COLLECTIONS FOR 2022 (IN MILLIONS €)



Unwaivable rights to remuneration collectively managed in Europe

- ✦ Copyright laws providing for a right to remuneration for AV authors, collectively managed
 - **Spain** (Art 90), **Italy** (Art 46bis) and **Estonia** (Art 14.6): general provision.
 - **Poland** (Art 70): list of rights collectively managed (cinemas, TV, public performance, rental).
 - **The Netherlands** (Art 45d): all communications to the public (exclusion of on-demand uses)
 - **Switzerland** (Art 13a): on-demand uses.
 - **Germany**: retransmission (Art 20b (II)) and direct injection (Art. 20d (II)) + Art 17 uses (**NEW**).
 - **Belgium**: retransmission (Art XI.225) + on-demand uses (**NEW**) + Art 17 uses (**NEW**).
 - **Slovenia**: (Art 107.4 & 5 **NEW**) broadcasting, retransmission, on-demand uses, Art 17 uses, other making available uses, public performance.
 - **Croatia** (Art 301-303 **NEW** & Art 304 **NEW**): uses of AV works by public TV.
- ✦ Combination of strong legal principles and voluntary CM practices
 - **France, Belgium, Switzerland, Lithuania (NEW), Romania (NEW), Portugal (NEW)**

A model fit for streaming services and online content sharing services

- ✦ Collective agreements between CMOs and streaming services cover the whole repertoire of the CMOs
 - ✦ not just authors working on the local productions of the service
 - ✦ Also authors of acquired works
- ✦ Cover foreign works' authors based on reciprocal agreements

SAA

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

Fred Breinersdorfer
Screenwriter (Germany)

"The royalties help a lot to continue, to live, to create new works and make a career in this hard job."

Julie Bertuccelli
Director (France)

New technologies & Artificial Intelligence

SAA position paper on Artificial Intelligence, Oct 2023

- ✦ Looked into the impact of AI on audiovisual authors
- ✦ Criticised the application of the TDM exception (Art 4 DSM) to generative AI (three-step-test)
- ✦ Asked AI models to respect basic principles when using protected works as training data:
 - ✦ authorisation
 - ✦ Authors' remuneration
 - ✦ Transparency
- ✦ Highlighted the role of CMOs

Regulation EU 2024/1689 of 13 June 2024 laying down harmonised rules on artificial intelligence

Chapter V - Art 53§1: Obligations for providers of general-purpose AI models

- ✦ c) **Put in place a policy to respect Union copyright law** in particular to identify and respect, including through state-of-the-art technologies, the reservations of rights expressed pursuant to Art 4(3) of Directive 2019/790
- ✦ d) Draw up and make publicly available a **sufficiently detailed summary about the content used for training of the GPAI model**, according to a template provided by the AI Office
- ✦ Recitals 105-108

Implementation timeline of the AI Act

✦ Article 113: Entry into force and application

The regulation shall apply from 2 August 2026 [24 months from the date of entry into force of this Regulation]

However, **Chapter V** shall apply from **2 August 2025** [12 months from the date of entry into force of this Regulation]

✦ Art 111: AI systems already placed on the market or put into service

§3. Providers of general-purpose AI models that have been placed on the market before **2 August 2025** shall take the necessary steps in order to comply with the obligations laid down in this Regulation by **2 August 2027**.

What's next?

Two parallel and intertwined processes

- ✦ **Application of the transparency obligations provided by the AI Act**
 - ✦ Participate in the drafting of the template of the summary about the content used for training the GPAI models, developed by the AI Office
 - ✦ Participate in the preparation of the codes of practice by AI developers, facilitated by the AI Office
- ✦ **Exercise the opt-out option, as the AI Act supports the interpretation of the DTM exception as applicable to generative AI**

- ✦ **Explore possible legal solutions on AI & copyright**
 - ✦ that would generate remuneration to the authors for the use of their works in the training of gen AI
 - ✦ That would provide a role to CMOs
- ✦ **Build momentum on the need for such a solution as opt-out does not work**



Thank you for your attention!

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