# THE SHIFTING LANDSCAPE OF COPYRIGHT: EXPLORING THE NEEDS OF MODERN CREATORS

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***Abstract:*** *This paper is an attempt to develop initial thoughts on a new growing class of authors designated as non-institutionalized creators. After a brief characteristic of non-institutionalized creators and an outline of their socioeconomic impact, we focused on identifying the principal needs of non-institutionalized creators which can be satisfied by means of favourable settings of law. We formulated two needs that are a conditio sine qua non for their successful activities on online platforms – to reach their audience and to be adequately remunerated for their creative efforts.*

*Given the fact that creators often borrow from existing works, benefitting from legitimate uses such as exceptions to copyright, the main obstacle to fulfilment of the first need is tendency of platforms to excessively block legitimate content, exacerbated by Article 17 of the DSM Directive. Seeing as the issue of overblocking was a subject of extensive academic debate and there exists a prolific body of literature on the topic, discussion in the paper is limited to examining one possible solution to alleviate the problem, which was presented by the Finnish Ministry of Culture in the course of efforts to transpose the DSM Directive.*

*As regards the need for adequate remuneration, unsuitability of traditional remuneration schemes under collective management is considered which arises from the difference between offline and online environment and technological advance that sets prerequisites for a remuneration model based on direct evidence for the number and manner of uses of copyright-protected work. Next comes an analysis of means to achieve this objective – connecting metadata regarding rights to works and their user metrics on online platforms. Once the metadata are aligned, there is room for building an open-access registry which can be used to create direct licensing solutions for authors of all sizes, including the non-institutionalized creators.*

## 1. Introducing Non-institutionalized Creators

In the last two decades, due to the advent of participative web, there was a paradigm shift in the nature of creators. While traditional types of authors, backed by powerful rightsholders such as record labels, music publishers or collective management organisations, are obviously also present in online environment, the nature of interactions on the internet, which enables literally anyone to convey messages to a broad and undefined audience, gave rise to a new class of creators. They could be labeled as non-institutionalized authors. Generally, they are users of various content-sharing platforms and fora who enjoy giving new meaning to the existing works by means of creative transformation. Examples of such contemporary works include memes, cosplays or fanfiction.

Non-institutionalized creators mostly begin their activity on online platforms as a hobby and creative outlet. In some cases, they undergo gradual transition from ordinary users to professional creators as their audience grows and they are able to gain sufficient revenues from monetization of their content. The number of such authors and their impact on contemporary culture and society shouldn't be underestimated.

As it happens, there are already 50 million non-institutionalized creators, out of which over 2 million create content for a living.[1] According to a study by Signalfire, content creation has become the fastest-growing type of small business.[2] As regards social implications, the OECD sees user-generated content as one of the core elements of the participatory web.[3] Besides, a survey commissioned by LEGO on the occasion of the 50th anniversary of the historic Apollo 11 Moon Landing revealed that today's children are three times more likely to aspire to be a YouTuber (29%) than an astronaut (11%).[4] It is also important to note that, contrary to popular belief, the content created on online platforms has a significant economic value. The influencer marketing is expected to be worth $13.8 billion this year.[5]

Non-institutionalized creators differ from the traditional type of authors in many ways. Firstly, they are individuals who in most cases, lack any institutional backing, such as representation via collective management organisations. Both the second and the third difference follow from this characteristic. Seeing as they aren't entitled to remuneration collected by the institutions, they profit from different monetisation schemes. In fact, there has already evolved a complex and multi-layered ecosystem including third-party services such as subscription-based funding, influencer marketing marketplaces etc.[6]

Thirdly, the new kind of creators wields comparatively less power than traditional rightsholders as concerns exercise of their rights, especially when the need arises to assert them before courts. Also contrary to traditional authors, it is feasible to assume that many disputes involving new creators will be with other rightsholders rather than infringers of the new authors' rights. The reason for this circumstance is the fact that as was mentioned before, non-institutionalized creators largely build upon the existing copyright-protected works produced by the established type of authors. Legal grounds for such uses would often be exceptions and limitations of copyright.

If the essential function of copyright is to promote welfare of the society as a whole by enriching its culture, then it should be constructed in such a manner that it spurs further creation. Taking into account the changes in the composition of creators described above, it's time to reassess the relevant parts of current copyright framework in terms of whether it still fulfils this function.

Besides, given the gradual replacement of offline fora for social discourse by online platforms[7], there are human rights considerations, such as preservation of freedom of speech and access to information, which strongly warrant the re-examination of current legal framework, especially due to the fact that many works of non-institutionalized creators benefit from copyright limitations which are underpinned by these human rights. To sum up, the question is, is current legislative framework well-suited to accommodate changes in the copyright landscape? If not, what is the course to be taken?

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1 Yuan, Yuanling and Josh Constine. What is the creator economy? Influencer tools and trends. In: *SignalFire* [online]. 29. 11. 2020 [cit. 25.10.2021]. Available from: https://signalfire.com/blog/creator-economy/.

2 Ibid.

3 OECD, Graham Vickery and Sacha Wunsch-Vincent. *Participative Web and User-Created Content* [online]. 2007 [cit. 26.09.2020]. Available from: https://www.oecd-ilibrary.org/content/publication/9789264037472-en.

4 GROUP, The LEGO. LEGO Group Kicks Off Global Program To Inspire The Next Generation Of Space Explorers As NASA Celebrates 50 Years Of Moon Landing. In: [cit. 25.10.2021]. Available from: https://www.prnewswire.com/news-releases/legogroup-kicks-off-global-program-to-inspire-the-next-generation-of-space-explorers-as-nasa-celebrates-50-years-of-moon-landing-300885423.html.

5 Geyser, Werner. *The State of Influencer Marketing 2021: Benchmark Report* [online]. 2021 [cit. 25.10.2021]. Available from: https://influencermarketinghub.com/influencer-marketing-benchmark-report-2021/.

6 Yuan, Yuanling and Josh Constine. *What is the creator economy?*.

7 Balkin, J.M. Old-school/new-school speech regulation. *Harvard Law Review*. 2014, vol. 127.

## 2. Identifying the Needs of Non-institutionalized Creators

As a starting point for this discussion, it is obviously necessary to identify the principal needs of non-institutionalized creators which can be satisfied by means of favourable settings of law. The first and utmost need of the creator is to be heard. Content produced by the creator should reach their audience. The second necessity is to derive gratification from the content. On an immaterial level, the creator desires their content to be appreciated by their audience, which translates into likes, comments and views. The material aspect of this want is adequate remuneration for the content.

## 3. The Need to Reach the Audience

Regarding the need to reach the audience, the main obstacle to its fulfilment is the blocking of content, either at the upload or later. As mentioned above, content of non-institutionalized creators is often particularly prone to being blocked because it borrows from existing works. In many cases, creators rely on exceptions and limitations of copyright. However, seeing as on many platforms, the content is automatically matched with works of other rightsholders and a corresponding policy set by them is applied, there is no room for considering the *context* of the match at the outset.[8] Of course, the content may be reinstated later, following a dispute. Nonetheless, in terms of ranking the content by recommender algorithms and offering it to new audiences, the damage has been done.

The phenomenon of systematic disabling of access to lawful content in the environment of UGC platforms has been dubbed overblocking. Much has been said and written about overblocking, particularly in the context of Article 17 of the DSM Directive.[9, 10, 11] In this paper, we don't aspire to examine all facets of this problem. Our objective is to offer one possible perspective how to alleviate it. Therefore, we will first briefly outline the issue and then proceed to analyse a palliative which originated in one of national transpositions.

The roots of overblocking can be traced to power imbalance between big rightsholders who often have agreements with the platforms and non-institutionalized creators and to the asymmetry of incentives provided by legal regulation,[12] when the platform faces sanctions for allowing the infringing content to stay up, while there are no such repercussions for not being sufficiently discerning about the content with a liminal or contentious legal status.

A concrete example of incentive asymmetry is Article 17 of the DSM Directive[13], which makes a certain subclass of platforms who store or provide access to a significant amount of copyright-protected subject matter to the public (online content-sharing providers, "OCSSPs")[14] liable for uses of this subject matter by their users, obliging them to obtain authorization from the rightsholders.[15] If the OCSSPs fail to obtain authorization, they can avoid liability either by making best efforts to ensure the unavailability of subject matter for which

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8 Keller, Paul. *Article 17 stakeholder dialogue: What we have learned so far – Part 1 – Kluwer Copyright Blog* [online]. 2020. Available from: http://copyrightblog.kluweriplaw.com/2020/01/13/article-17-stakeholder-dialogue-what-we-have-learned-so-far-part-1/?doing_wp_cron=1590693562.1587688922882080078125.

9 Senftleben, Martin. Bermuda Triangle – Licensing, Filtering and Privileging User-Generated Content Under the New Directive on Copyright in the Digital Single Market. *SSRN Electronic Journal*. 2019. DOI: 10.2139/ssrn.3367219.

10 Quintais, João Pedro et al. Safeguarding user freedoms in implementing article 17 of the copyright in the digital single market directive: Recommendations from European academics. *Journal of Intellectual Property, Information Technology and E-Commerce Law*. 2020, vol. 10, č. 3. DOI: 10.2139/ssrn.3484968.

11 Husovec, Martin. *Over-Blocking: When is the EU Legislator Responsible?*. Rochester, NY: Social Science Research Network, 2021. DOI: 10.2139/ssrn.3784149.

12 Husovec, Martin. *(Ir)Responsible Legislature? Speech Risks under the EU's Rules on Delegated Digital Enforcement*. Rochester, NY: Social Science Research Network, 2021. p. 4. DOI: 10.2139/ssrn.3784149.

13 Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC.

14 Article 2 (6) of the DSM Directive.

15 Article 17 (2) of the DSM Directive.

the rightsholders have provided relevant and necessary information or by taking down content based on sufficiently substantiated notice from the rightsholders and ensuring that the content stays down in the future.[16] The threat of liability that is looming over the OCSSP is thus very perceived.

On the contrary, provisions designed to balance this motivation to block content, especially Article 17 (7) of the DSM Directive, which according to AG Øe is a primary safeguard,[17] are weak. Article 17 (7) states that cooperation between OCSSPs and rightsholders shall not result in the prevention of the availability of protected subject matter uploaded by users, which does not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation. It then proceeds to enumerate six exceptions from which the users should benefit. The second safeguard is a complaint and redress mechanism which should help to reinstate wrongfully blocked content.[18] Among other issues, it lacks a specific deadline for the decision, indemnity for the OCSSP in case any party is dissatisfied with the decision and initiates a lawsuit and, lastly, any guarantees of impartiality of the decision maker.

It is obvious that that the problem lies on the level of EU legislation, given vague wording of the safeguards and the fact that the form chosen by the legislature is a directive, which does not have direct horizontal effect. This means that there is no possibility to invoke the Directive against private law entities before courts. Thus, national implementations of Article 17 and fulfilment of corresponding platforms' duties lack default supervision.[19]

Even though it is true that due to these shortcomings, Article 17 does stand a chance to get struck down by the CJEU in the Polish case[20], it is not very likely, given the AG Øe's Opinion is in favour of preserving it.[21] The AG argues that administrative and judicial authorities of the Member States, as supervisors of implementation of Article 17 (7), should consider the collateral effect of the filtering measures and ensure that content falling within, inter alia, the scope of the exceptions and limitations to copyright doesn't get blocked.[22] In my opinion, it follows that the AG thus encourages Member States not to transpose Article 17 verbatim, should they fulfil expectations he has of them.

An interesting solution to the overblocking problem was devised by the Finnish Ministry of Culture. It shifts the burden of making the blocking decision from platforms to rightsholders, except for cases of manifest infringement. The platform uses automated content recognition only to block content which is identical to the rightsholder assets.[23] The remaining cases are up to the rightsholder,[24] who *may* deploy any means of their choice to sift through content, including automated solutions, human review by their employees etc, provided they accept the risk that if they make an erroneous or unjustified decision, they will face liability and probably have to pay compensation introduced specifically for this purpose by the transposition draft to the injured party.[25] Thus, the proposal attempts to create a position of risk for the rightsholders rather than to force them directly to assess their claims with adequate degree of circumspection and care.

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16 Article 17 (4) of the DSM Directive.

17 Opinion of AG Øe in C-401/19, *Poland v Parliament and Council*, ECLI:EU:C:2021:613, para 170.

18 Article 17 (9) of the DSM Directive.

19 Husovec, Martin. *(Ir)Responsible Legislature? Speech Risks under the EU's Rules on Delegated Digital Enforcement*. Rochester, NY: Social Science Research Network, 2021. p. 16. DOI: 10.2139/ssrn.3784149.

20 Case C-401/19, Poland v European Parliament and Council, pending.

21 According to empirical research, CJEU is approximately 67 per cent more likely to annul an act (or part of it) if the Advocate General advises to annul than if it advises to dismiss the case or declare it inadmissible. Cf. Arrebola, Carlos, Ana Mauricio and Héctor Portilla. An Econometric Analysis of the Influence of the Advocate General on the Court of Justice of the European Union. *Cambridge International Law Journal*. 2016, vol. 5. DOI: 10.4337/cilj.2016.01.05.

22 Opinion of AG Øe in C-401/19, *Poland v Parliament and Council*, ECLI:EU:C:2021:613, para 193.

23 *Draft Government Bill to Parliament Proposing to Amend the Copyright Act and Section 184 of the Electronic Communications Services Act* [online]. Available from: https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=bf2bc712-ff6e-4a23-81de-91581bc2bf81.

24 § 55c (2) of Ibid.

25 § 55k of Ibid.

Such an approach seems sustainable for more than one reason. First and foremost, national legislature treads a thin line when it implements EU legislation. If it deviates significantly from the original text, it may face repercussions such as infringement proceedings initiated by the Commission. Suffice to remember the backlash following the original German attempt at novel approach to transposing Article 17. The German Ministry of Justice and Consumer Protection proposed to create a new exception for marginal uses for non-commercial purposes. After many critical voices stating among other that creating a new exception contradicts the EU internal-sphere pre-emption[26] and thwarts harmonization,[27] the exception was watered down to a procedural instrument which can also be refuted on the basis of being flagged by a trustworthy rightholder.[28] On the contrary, the Finnish approach seems to navigate creatively the margins of consideration left to national lawmakers while by no means overstepping them.

Secondly, this approach very ingenuously disincentivizes the concerned parties from overblocking. It removes the burden of assessment and takedown decision from the OCSSP and places it on the party which would otherwise be the one to most likely cause excessive blocking of creators' content. However, the rightsholder may feel less inclined to do so when faced with a threat of having to reimburse the creator, especially taking into consideration that Copyright Disputes Board that is designated to decide these cases[29] has all the ingredients to be successful. Unlike dispute resolution bodies in other national transpositions, where the dispute resolution according to Article 17 (9) of the DSM Directive is entrusted to entities or certified individuals which clearly lack personal resources and technical infrastructure to effectively resolve these disputes (e.g. Czech transposition draft mandates the so-called intercessors to resolve disputes over reinstatement of content,[30] a legal institute primarily designed to facilitate negotiation of collective licensing agreements which has become obsolete – currently, only 4 people hold the corresponding certification), Copyright Disputes Board is going to have efficient technological backing. The proposal envisions an independent operator selected by the state[31], possibly in procurement procedure. Besides, the efficiency of safeguards against overblocking is further enhanced by the right of the OCSSP to bring an action in court to prohibit a person who repeatedly makes unjustified block requests from using means of content identification and blocking.[32]

## 4. The Need to Be Remunerated

The second part of this paper, which aims to address the question of adequate remuneration of non-institutionalized creators, is going to be more visionary and *de lege ferenda* than the previous section. If the current trend of increasing numbers of non-institutionalized creators increases, it is feasible to imagine that in time more and more of them would desire to protect and license their IP rights. Already at this early stage of creator

[26] Rosati, Eleonora. *The legal nature of Article 17 of the Copyright DSM Directive, the (lack of) freedom of Member States, and why the German implementation proposal is not compatible with EU law* [online] [cit. 29.10.2021]. Available from: https://ipkitten.blogspot.com/2020/08/the-legal-nature-of-article-17-of.html.

[27] Nordemann, Jan. Art. 17 DSMCD: a class of its own? How to implement Art. 17 into the existing national copyright acts, including a comment on the recent German Discussion Draft – Part 2. In: *Kluwer Copyright Blog* [online]. 17. 7. 2020 [cit. 28.10.2021]. Available from: http://copyrightblog.kluweriplaw.com/2020/07/17/art-17-dsmcd-a-class-of-its-own-how-toimplement-art-17-into-the-existing-national-copyright-acts-including-a-comment-on-the-recent-german-discussion-draft-part-2/.

[28] § 10 of Gesetz über die urheberrechtliche Verantwortlichkeit von Diensteanbietern für das Teilen von Online-Inhalten.

[29] § 55h of *Draft Government Bill to Parliament Proposing to Amend the Copyright Act and Section 184 of the Electronic Communications Services Act*.

[30] § 53 of the *Bill amending Act No. 121/2000 Coll., on Copyright, on Rights Related to Copyright and on Amendments to Certain Acts (Copyright Act), as amended, and other related acts* [online]. 2021. Available from: https://apps.odok.cz/veklepdetail?pid=KORNC-7DHSVAC.

[31] *Draft Government Bill to Parliament Proposing to Amend the Copyright Act and Section 184 of the Electronic Communications Services Act*.

[32] § 55l of the *Draft Government Bill to Parliament Proposing to Amend the Copyright Act and Section 184 of the Electronic Communications Services Act* [online]. Available from: https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=bf2bc712-ff6e-4a23-81de-91581bc2bf81.

economy expansion, IP issues arise in the online creator community. A good example, even though it concerns registered designs rather than copyright, is knockoff and mass production of YouTube's most popular dress historian and costumer Bernadette Banner's reconstruction of a 15th-century dress.[33]

As regards remuneration models that are currently predominant, it is safe to say that they aren't particularly well-suited for non-institutionalized creators. There are at least two reasons for this. Firstly, the current system assumes that small creators should be organized within an umbrella association which represents them and grants authorization to use their works on their behalf. This is not the case for non-institutionalized creators.

Secondly, even if non-institutionalized creators would find shelter under the wings of collecting societies, they would probably find themselves worse off than in their original state. The cause for this change for worse would be the logic behind apportioning remuneration to individual creators. While many of current monetisation schemes of non-institutionalized creators are based on direct evidence (e. g. advertising revenue depends on the number of views the video gets), this is not the case in collective management schemes.

It follows from the nature of licensing agreements typically concluded by collecting societies, when often the whole repertoire is licensed for a flat-rate remuneration, that the distribution of revenue also won't be derived directly from the frequency and manner of use of individual work or other protected subject matter.[34] In (Czech) practice, the collecting society establishes general rules for the scoring of individual protected works by means of awarding points to the work. The value of one point then represents a share of the total amount of revenue distributed.[35]

While this approach made perfect sense in the offline world, in online environment technological advance allows to track the use of individual pieces of content. In fact, this information is a vital source for training of recommendation algorithms used on online platforms. A direct consequence is that remuneration model based on real use of the protected subject matter is no longer a utopia.

One has to ask, what are the obstacles for achieving this objective? The challenge lies in bringing together all pieces of puzzle – alias relevant metadata[36] from the stakeholders. The platforms have data concerning the usage of content and the rightsholders possess knowledge about what works are in their catalogues. At the same time, it is important to note that not all stakeholders share their metadata with equal willingness. While there have been attempts by the rightsholder ecosystem to create joint databases of metadata[37], there was no similar attempt at collaboration on the platform side.

Besides, in some of creative industries there is considerable fragmentation within the rightsholder group. For example, in music, phonographic rights and author rights to a composition are often managed by different entities. This results in difficulties in aligning metadata pertaining to one music piece. Record companies usually do not add publisher information to metadata unless it is easily available.[38] According to Network of Music Partners statistics, composer/author data is still missing from more than 1/3 of the top 10% of reported tracks, which represent more than 90% of commercial value.[39] The missing data will probably result in misallocation of revenue from these tracks which should have been apportioned to composers.

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33 Banner, Bernadette. *Buying a Knockoff of My Own Dress: An Educated Roast (actual fire used for Scientific Purposes*) [online]. 2019. Available from: https://youtu.be/J80J4oaGVnY.

34 TELEC, Ivo, Tůma, Pavel. § 99c [Rozdělování a výplata příjmů nositelům práv]. In: TELEC, Ivo a Pavel TŮMA. *Autorský zákon. Komentář. 2. vydání*. Praha: C. H. Beck, 2019.

35 Ibid.

36 Oxford Dictionary describes metadata as "data about data". According to NISO, metadata can be defined as "structured information that describes, explains, locates, or otherwise makes it easier to retrieve, use, or manage an information resource." In: Riley, Jenn. *Understanding Metadata: What is Metadata, and What is it For?: A Primer* [online]. NISO, 2017. Available from: http://www.niso.org/publications/understanding-metadata-2017.

37 For example, International Music Joint Venture or Global Repertoire Database.

38 Muikku, Jari. *Metadata of Digital Music Files: Summary* [online]. Digital Media Finland, 2017. Available from: https://musiikintekijat.fi/sites/default/files/metadata_170925_eng_final.pdf.

39 Ibid.

A partial solution is offered by Article 17 (8) of the DSM Directive, which requires OCSSPs to inform rightsholders, who they concluded licensing agreements with, about the use of content covered by the agreements. However, the vagueness of this provision which doesn't specify important parameters such as what data are to be provided and in which format or frequency of reports, doesn't seem to have much potential in uniting rightsholders with metadata on the use of their works.

It appears that the objective of connecting copyright metadata could be linked to EU initiative of creating common European data spaces[40] which should be part of a cross-sectoral European data space announced in Strategy for Data.[41] It is reasonable to expect that one of these European data spaces would be for copyright. Therefore, it makes sense to consider what actions could EU legislature take to support the sharing of copyright metadata.

The goal of making metadata open can only be achieved gradually, seeing as much of it is held privately. It would be advisable to begin with the area in which the EU does exercise influence – the collective management societies, which, beside in many cases being public bodies and subject to heavy regulation, also happen to hold large quantities of metadata and to engage in activities which attempt to unify metadata databases, as was mentioned above.[42] A possible tool for imposing a duty on collecting societies to disclose their metadata is revision of the Directive 2014/26/EU[43], which is aimed at reducing inefficiencies in the exploitation of copyright and related rights.

There are two ways how this obligation could be formulated. In the first scenario, the collecting societies would be obliged to construct an API interface which will allow interested parties to access their databases. It would be essential to accompany this obligation by a piece of implementing legislation which will establish uniform API standards for information requests and the output. The alternative would be an obligation to export metadata in an agreed commonly acceptable format.

Once the metadata of collective management organisations are made accessible, the initiative becomes attractive for commercial market players as well. To incentivize them further and to ensure the pooling of metadata, the access to common EU copyright infrastructure including the metadata provided by the collecting societies should be conditioned on the participation of interested parties in providing access to their own metadata. Naturally, there should also be a control of provenance and quality of metadata at the input.

Nonetheless, it is important to keep in mind that all these endeavours would be in vain in the absence of a common standard for metadata. It is imperative that such a standard is used across the EU. This standard should probably be laid down in a binding legal document, such as implementing legislation, and the EU may choose to uphold the existing standards, such as DDEX[44] or CWR[45] in the music industry and their equivalents in other fields.

After the common open standard for metadata and the obligation of collecting societies to give access to their metadata collections is established, the question is whether to leave further development to market forces which will create their own products utilising the APIs of participating entities, or whether there should be some EU-sponsored development running in parallel with the commercial efforts. Both approaches have their merits. However, given the failure of previous attempts by public-law bodies and the fact that public

[40] https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12491-Data-sharing-in-the-EU-common-Europeanda-ta-spaces-new-rules-_en.

[41] *A European Strategy for Data* [online]. European Commission, 2020. Available from: https://eur-lex.europa.eu/legalcontent/CS/TXT/PDF/?uri=CELEX:52020DC0066&from=EN.

[42] Cf. supra 34.

[43] Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market.

[44] https://ddex.net/standards/.

[45] https://cwr-dataapi.readthedocs.io/en/latest/cwr_standard/.

procurement projects in ICT are prone to vendor lock-in[46], it may be worth considering to merely lay down the foundations of European copyright infrastructure by making the metadata accessible and unifying the copyright metadata standards.

Either way, many stakeholders would benefit from accurate and interoperable metadata from verified sources. Ideally, the output of either laissez-faire approach or EU-orchestrated initiative would be an open-access registry of copyright metadata which will hopefully combine a variety of both public and private sources. Moreover, the metadata pool created under EU copyright infrastructure could be leveraged to collect information about works under public domain or permissive licenses (such as Creative Commons).[47]

However, to return to the original point of this section – once an open-access registry of works is built, it is feasible that such a registry would be an opportunity for private licensing intermediaries who could directly connect creators of all sizes to any potential licensees (in the context of Article 17 of the DSM Directive, that would be OCSSPs), effectively cutting the middleman. This has a potential to ensure an evidence-based distribution of revenue to creators of all size, which is by nature more accurate and just than remuneration models prevalent in the current system of copyright.

## 5. Conclusion

This paper is an attempt to develop initial thoughts on a new growing class of authors designated as non-institutionalized creators. After a brief characteristic of non-institutionalized creators and an outline of their socioeconomic impact, we focused on identifying the principal needs of non-institutionalized creators which can be satisfied by means of favourable settings of law. We formulated two needs that are a *conditio sine qua non* for their successful activities on online platforms – to reach their audience and to be adequately remunerated for their creative efforts.

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As regards the need for adequate remuneration, unsuitability of traditional remuneration schemes under collective management is considered which arises from the difference between offline and online environment and technological advance that sets prerequisites for a remuneration model based on direct evidence for the number and manner of uses of copyrightprotected work. Next comes an analysis of means to achieve this objective – connecting metadata regarding rights to works and their user metrics on online platforms. Once the metadata are aligned, there is room for building an open-access registry which can be used to create direct licensing solutions for authors of all sizes, including the non-institutionalized creators.

[46] Jelínek, Kamil. *Vendor lock-in ve veřejných zakázkách na IT a specifika řízení o přezkumu zadávání navazujících veřejných zakázek v jednacím řízení bez uveřejnění*. 2019, Masarykova univerzita, Právnická fakulta.

[47] Keller, Paul and Julia Reda. Whitepaper: Proposal to leverage Article 17 to build a public repository of Public Domain and openly licensed works. *Open Future* [online]. Open Future Foundation, 2021 [cit. 30.10.2021]. Available from: https://openfuture.pubpub.org/pub/whitepaper-article17-public-domain-repository/release/2.

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