

# Enforceability of the Private Copy Limitation against DRM

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# General Trend in Copyright

Abolishing copyright law (= a publicly negotiated balance of interests of rightsholders and users) in favor of contracts and technology.

Nominally, exceptions and limitations still exist, if not online.

A self-help right against DRM does not exist.

# Limitations and DRM

EUCD: voluntary measures by rightsholders (Art. 6 (4) EUCD).

Most European implementations: A mechanism forcing rightsholders to enable beneficiaries to make use of their rights.

# Limitations and DRM

Germany: only analog private copy from offline media is enforceable.

If rightsholders don't comply, beneficiaries or their organizations can sue (§ 95b (1) UrhG).

Enactment postponed by one year.

Idea: industry would develop systems that enable restricted private copying by default.

# German 2<sup>nd</sup> Round of Copyright Lawmaking

1. Abolish private copy altogether?
2. Should categories of works be excluded (music, film, scientific publications)?
3. Should temporal exceptions be made?
4. Should the number of permissible private copies be fixed?
5. Should the private copy be made enforceable in digital form?
6. If so, what practical solutions can be imagined?

# Enforcement of Limitations against DRM

models suggested by industry:

- Copy station in music store (secure hardware operated by shop-personell)
- Delayed copy protection (every permitted copy devalues a copy option) or smartcard enabling a number of copies.
- Online registration (Bertelsmann's Digital World Services)
- Personally signed private copies (Fraunhofer's LWDRM)

# DRM is a Dead-end Street

DRM is ...

- „inefficient" (Peter Biddle et al., MS; Stuart Haber et al., HP)
- „futile" (Bruce Schneier)
- „stupid" (David Safford, IBM Research)

# Therefore we Need to Propose Alternatives

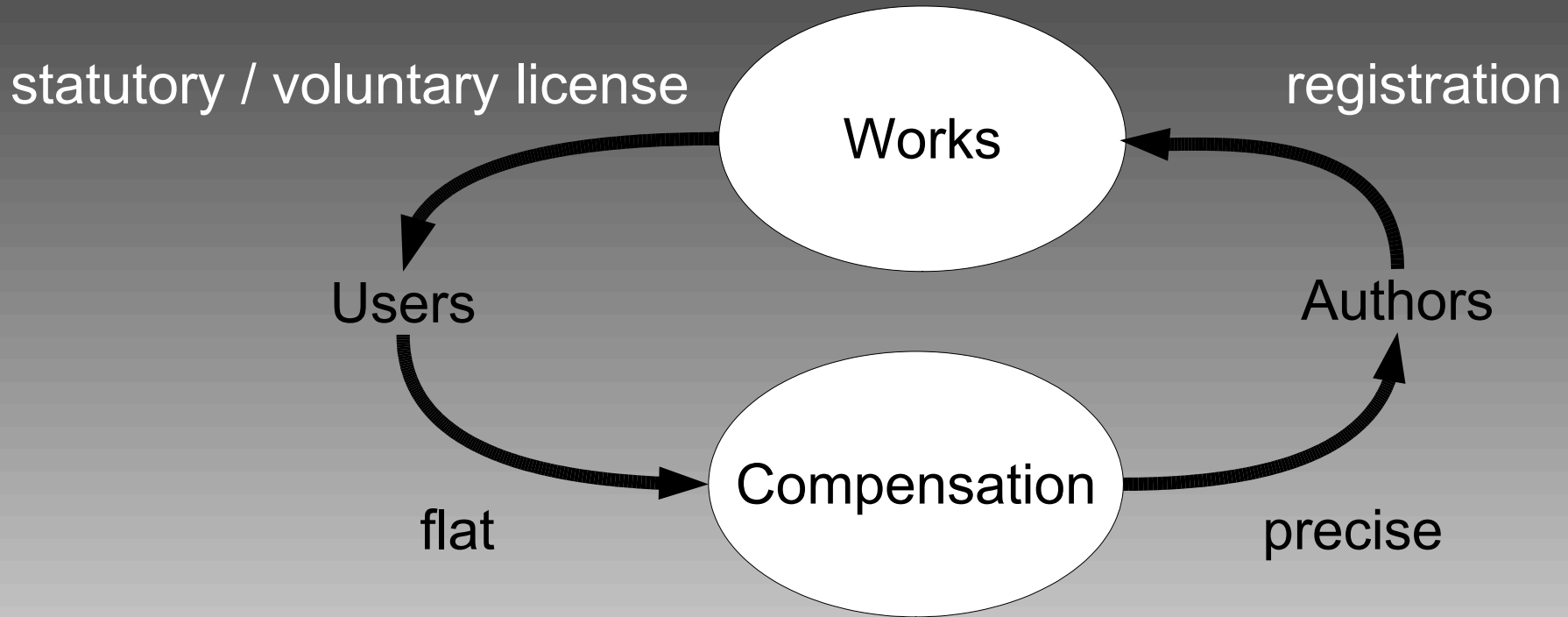
"Control what can be controlled, compensate what cannot be controlled."

DRM can't control bits on the net, ergo they should be free and compensated.

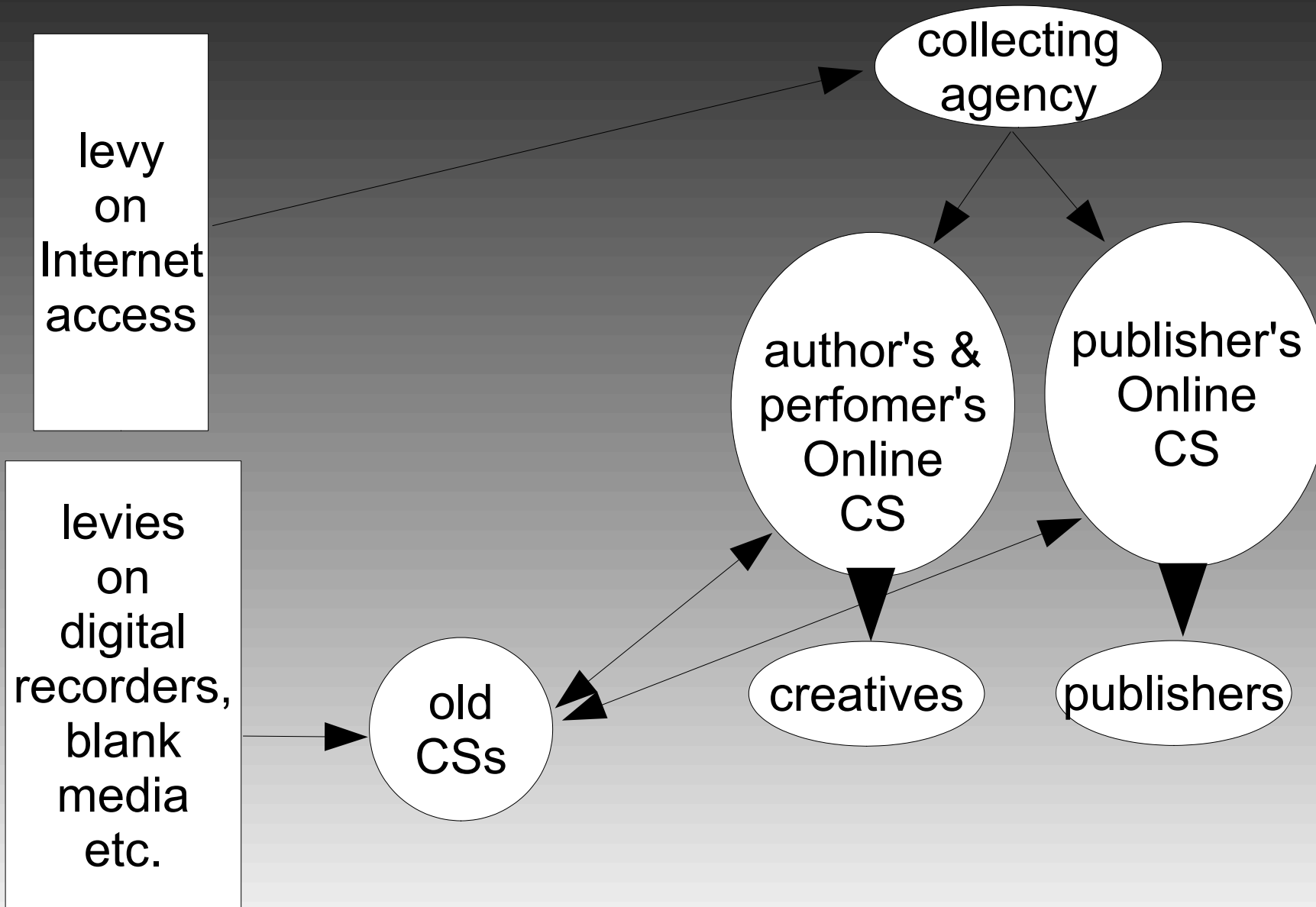
# ACS: EU on CSs

EU Report on a Community framework for collecting societies for authors' rights (2002/2274(INI)), A5-0478/2003, 11 December 2003, Committee on Legal Affairs and the Internal Market, Rapporteur: Raina A. Mercedes Echerer

# ACS: The Basic Idea



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# ACS: The Voluntary Version

The Online CS registers works.

Rightsholders grant a contractual license to the same effect as the statutory license discussed before.

The Online CS negotiates levy tariffs with ISPs proportional to its growing catalog.

Allocation in the beginning would be very rough. Plugins for players, anonymous access to logfiles, black-boxes for sampling use etc. would be developed on the go.

# ACS: New Business Models

## Services to Creatives

- Mixing, tour management, marketing, VC funding, proof-reading, managing peer-reviews etc.

## Services to Users

- Webhosting a la Akamai, portals for genres, webcasting, live chats, reviews etc.

# ACS: People to Watch

Berkman Center's Digital Media Project  
<http://cyber.law.harvard.edu/media/>

Jim Griffin

Neil Netanel

William Fisher

James Love

Peter Eckersley

Felix Stalder & Volker Grassmuck

at al.

# ACS & Copyright Law

Moving from property rights to liability rights.

(Jerome Reichman, Duke University, and others)

# Thank you!

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