Music360

A 360 DEGREES PERSPECTIVE ON THE VALUE OF MUSIC

Deliverable 6.4
International Music Ecosystem Models

Disclaimer

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[1] PU= Public, CO=Confidential, only for members of the consortium (including the Commission Services), CL=Classified, as referred to in Commission Decision 2001/844/EC

Contents

1. Introduction

In this deliverable, we develop conceptual models of the international music ecosystems. Following [2], a business ecosystem is a system of economic actors that depend on each other for their survival and well-being.

The international ecosystems developed in this deliverable provide the scope for the international living labs. They will be subject to further analysis and evaluation. Hence, the models proposed in this document should be considered as an introduction to the domain of the international living lab, and not as the final result.

We have selected two variations of international intellectual property rights clearing cases relevant for policy makers.

- The first case is the RAAP/PPI judgment by the Court of Justice of the European Union (C-256/19). This judgment has a direct impact on the way in which remuneration for the use of background music paid by users in the EU is distributed to right holders.
- The second case is a variation on the RAAP/PPI theme, namely whether the EU is an integrated market with respect to intellectual property rights.

The goal of these two cases is to illustrate how the Music360 platform can help policy makers when confronted with such cases. We emphasize that it is not the goal the draw valid conclusions about the data sets themselves as the Music360 data set is currently too limited for that. This requires that enough CMOs provide to the Music3 platform, which is now limited to CMOs in the Music360 project.

The music ecosystem is global and complex by nature. Therefore, in this deliverable we focus on the European national music ecosystems concerning the use of music recordings as background music. Also, we focus on performer rights for the RAAP/PPI case and performer and author rights for the EU integrated market case.

This deliverable is structured as follows. Chapter 2 presents an overview of international intellectual property rights concerning music. Chapter 3 focuses on two well-known cases about international music rights ecosystems: the RAAP/PPI case and the case concerning an integrated EU market. Chapter **Error! Reference source not found.** provides the ecosystem models for both cases using the *e*^{3}*value* modelling language [4]. Finally, Chapter 5 presents our conclusions.

2. Characterization of international intellectual property rights in music

Composing, performing and recording music are economic activities that create value. Those who benefit from the value created should remunerate the authors, performers and producers in some way.

Which raises the questions: in how many ways you can use music recordings? How much value is created by it, and what is a reasonable price for this value?

We will explain the flows of remuneration, and the type of usage they remunerate, as clear as possible. The structure of remuneration for the use of recordings is partly the result of contractual practices and partly organised by intellectual property (IP) law.

We will focus on the situation in the European Union, where the use of music recordings is to a large extent regulated by the acquis communautaire.

2.1. How are music recordings used?

To describe what you can do with music recordings given the capabilities of modern technology, we need to introduce a few terms used in the profession.

- A musical **work** is the creative product of an author (composers and/or lyricists).
- A **musical recording** is the fixation of a musical work, performed by (a) performer(s), into a phonogram.
- A **phonogram** is any type of carrier that can contain a copy of a music recording (vinyl, cassette, CD, mp3, wav, flacc, etc.). The first fixation of a performance into a phonogram which will serve as the original from which other copies are made is called the master recording.
- **Public performance** is the communication to the public of a musical recording (and as such also of the performed musical work).
- **Distribution** of a musical recording

Now let's see how we can use music with modern technology.

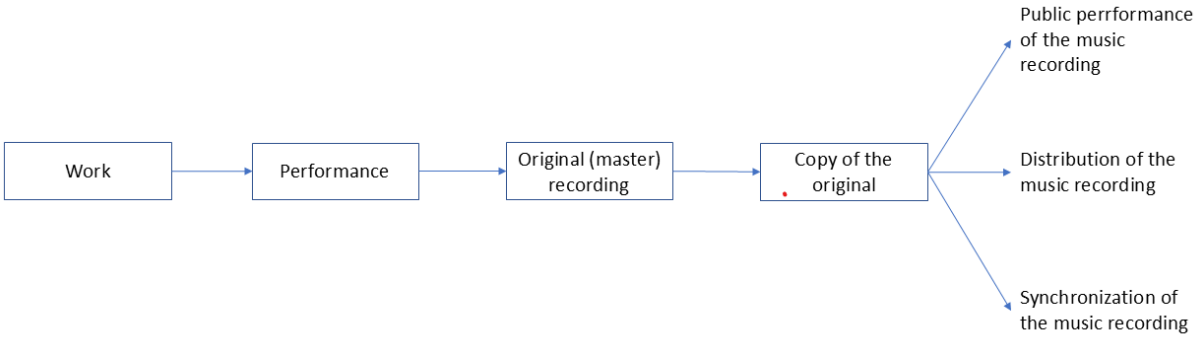

Figure 1 Uses of music

From left to right, a musical work can be performed. A performance can be a momentum (live) or can be recorded, in which case it will result into a music recording.

Music recordings can be copied in different formats (CD, vinyl, mp3, WAV, etc.) and each of these copies can be distributed via sales or streaming. Each copy can also be used to communicate the recording (and the underlying work) to a broader public via broadcasting or public performance.

A recording can also be included in another recording. It can be used as a **sample** as part of a new music **recording**[2]. It can also be **synchronized** into an audiovisual recording such as a movie, an advertisement or a game.

How much value do these activities add? What remuneration can be asked for this? This depends on who is performing the communication to the public and how they create value from it. So let us look at the entities that use music recordings.

2.2. Who uses music recordings?

The following diagram shows the stakeholders that create music recordings and those that use music recordings.

Each box in the diagram represents a *set* of stakeholders, or more accurately a *role* played by many stakeholders. Some stakeholders play more than one role. For example, a single person can be the author, the performer and producer of a music recording.

[2] The official legal term is phonogram, for reasons of consistency with other Music360 documents, we refer to a phonogram as a recording.

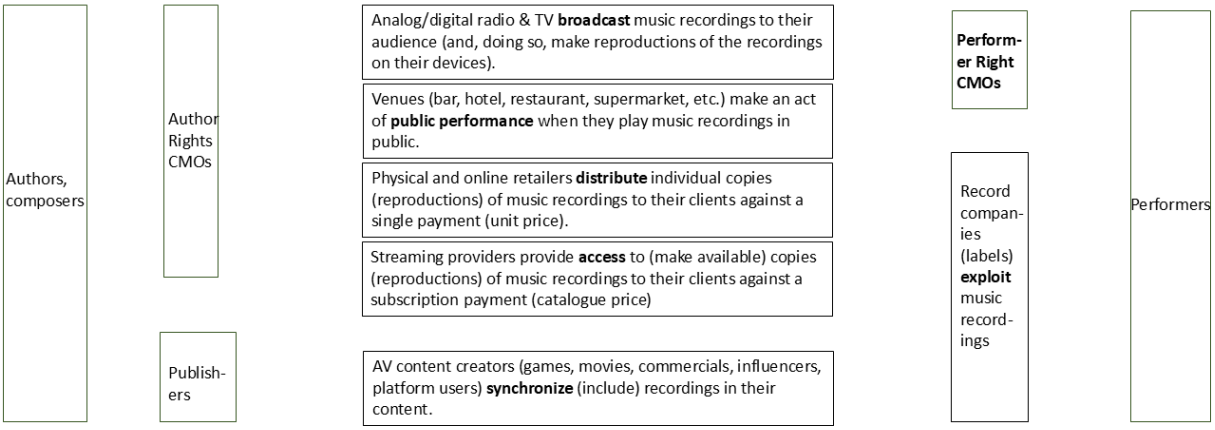

Figure 2 Stakeholders that create and use music

On the left we see **authors,** which is anyone who composes music, arranges it, writes lyrics, or translates lyrics, resulting in a musical work.

On the right we see **performers,** which are the people performing a work.

Authors usually enter into a contractual relationship with a **publisher** that receives a mandate to market and distributes the **author rights** in their musical works. It is not common that authors transfer their author rights to publishers in return for their services.

Performers usually enter into a contractual relationship with a **record company** or label to market and distribute the music recordings.

When a record company finances (or at least participates in the financing of) a music recording, it obtains a separate set of **neighbouring rights** as **producer of phonogram**.

There is often confusion between the term ‘producer of phonogram’ and the term ‘producer’ which is used within the music industry to refer to different types of players. There is the ‘artistic producer’, the person that is responsible for the artistic coordination of the recording. These are often credited as ‘producer’. There is also the ‘music producer’, a term broadly used in the dance- and rap-music scene which refers to the person that provides the music tracks to which at a later stage vocals are added.

It is important to note that in this schedule the term ‘producers’ refers to ‘producer of phonograms’, i.e. the record company in its role of financing and commercialising the music recordings as an end-product.

When a performer and a record company both share the financial burden of this activity, this is called a co-production. In this situation both receive the capacity of ‘producer of phonograms’. Over the past two decades a growing amount of music recordings is completely financed by its performers resulting in a reduction in the signing of traditional recording contracts and an increase of alternative contracts such as marketing deals and distribution deals. More recently record companies have extended their activities by offering self-producing music artists so-called ‘label services’.

In the middle of the diagram, we see the users, those who use music recordings and hereby generate revenue for authors, performers, producers and publishers. Let’s identify them by their business models.

2.3. Business models

We discuss the diagram from the bottom up.

Creators of audiovisual (AV) content (games, movies, commercials, videos) generate revenue from advertising, sales, transaction fees, usage fees, subscription fees, referral fees or a combination of these. What is important for musicians is that AV content can generate royalties for them in the same way as music can generate royalties. For musicians, music usage includes usage of their music recordings and of AV content that contains their music recordings.

Streaming providers like Deezer, Spotify or Apple Music obtain digital copies of music recordings. Their users can play this immediately as part of a streaming service. The business model of streaming providers is advertising- or subscription-based.

Online Content Sharing Service Providers (OCSSPs) like YouTube and TikTok allow users to *upload* AV content as well as to *stream* content uploaded by any user. As such, they perform an act of communication to the public. In Europe, when such OCSSPs allow their users to make use of music recordings in their self-produced content, they need to obtain permission from the right holders to allow these acts of communication to the public.

Physical (offline) and online retailers distribute copies of music recordings. Offline retailers sell vinyl records, tapes, CDs, and DVDs. Online retailers sell digital copies that the buyer can download on a device. This is a classical business model in which ownership of a copy is transferred from seller to buyer.

Venues such as bars, discos, nightclubs, restaurants, hotels, supermarkets, etc. play music recordings mostly as background music. These commercial surfaces pay different tariffs, depending on the importance of music for their business model. Venues hope that adding music to their commercial activity, has a positive impact on their revenue, as well as on customer experience.

Analog and digital radio and TV broadcasters perform an act of communication to the public of music recordings and AV content containing music recordings. They generate revenue from advertisements and retransmission fees. Public broadcasters receive public funding as well.

Now that we know how stakeholders generate revenue by using music recordings, we can ask how musicians themselves generate revenue from this. They do this by selling stakeholders the *right* to use their music, as explained next.

2.4. Author rights and neighbouring rights

Author rights are often referred to as *copyrights.* **Performer rights** (and the right of phonogram producers) are also called *neighbouring rights* or *related rights*. In French they are *droits voisins.* In German *Nachbarrechte.*

Authors of music works are - in almost all circumstances - remunerated through the intervention of their **Collective Management Organisation (CMOs).** Author CMOs collect royalties from almost all value-adding activities represented in figure 2. When a business uses music to generate revenue, author CMOs will collect remunerations for their authors. The CMO then distributes these collections in the form of individual royalties to its members. In Europea, each country has at least one author CMO and each of these CMOs collect royalties for a large amount of authors. Collective management offers authors a scale advantage and provides them with remunerations that they would individually not be able to collect.

Authors of music works often have a contractual relationship with a publisher to increase the use of their music works. Publishers will also take on the administration of registering with a CMO and declaring the works of a music author. In return they request a percentage of the income generated with the exploitation of the works. Many author CMOs allow publishers to directly affiliate as members and distribute part of the income collected for authors directly to the publisher.

Performers in music recordings also receive remunerations via their own CMOs. The possibility for performer CMOs is however limited in comparison with author CMOs. Contrary to publishers, record labels will be responsible for the large part of the exploitation of the music recordings themselves. As a result, they will collect the payments for their use directly and distribute this further to performers themselves via royalty-payments. A large part of the performers on music recordings do not receive such a royalty-payment but receive a single lump-sum buy-out payment.

But for certain types of use, even record labels will not collect the payments themselves but via their own producer CMOs. In some European countries performers and record labels manage these right together via so-called joint-societies.

2.5. Remunerations

There are two kinds of rights that users of music recordings need to take into account: copyright and neighbouring rights.

Copyright refers to the rights of authors and are called **author rights** in the following diagram.

Neighbouring rights are the rights of performers and are called **performer rights** in the following diagram.

Author CMOs handle collective licensing on behalf of authors, performer CMOs handle collective licensing on behalf of performers.

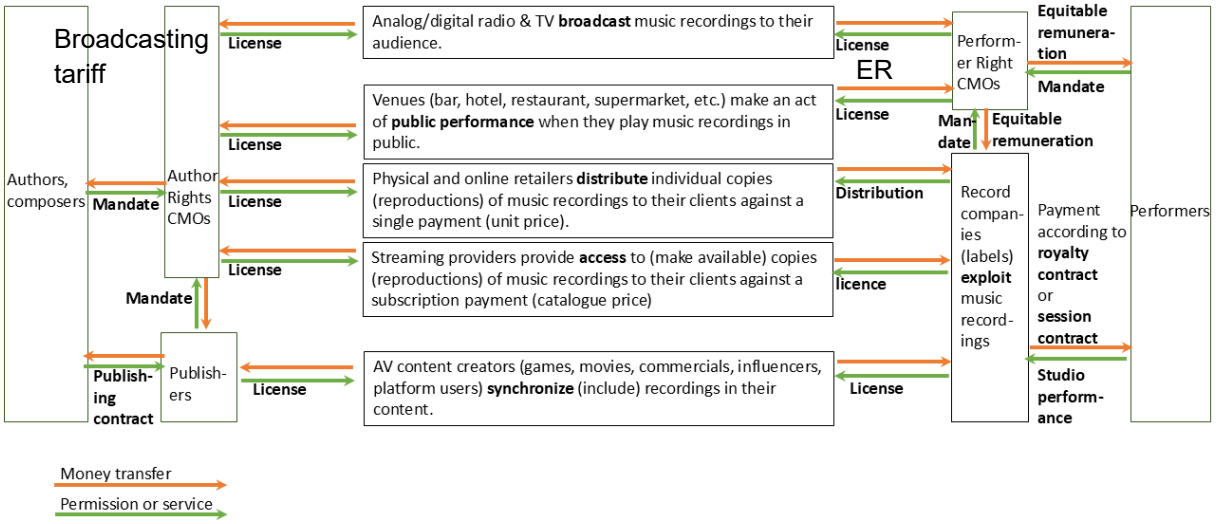

Figure 3 Different intellectual property rights on music recordings

Orange arrows represent money transfers. They are paired with green arrows, that represent the granting of a permission to create or use a work or music recording. Each of these transfers of permissions or services or sales is coupled with a money transfer.

On the left in the diagram we see the money transfers that are related to the exploitation of author's rights. The CMO collects royalties and pays them out to the authors and their publisher according to their publishing contract. We review the different kinds of licenses, the middle part of the diagram, below.

On the right of the diagram we see the money transfers connected to the exploitation of neighbouring rights. Performers receive payments for the use of their neighbouring rights from CMOs and record companies.

Performers usually have a contract with a record company to exploit a recording of their performance. As phonogram producer, record labels are deemed to finance the making (production) of the music recording. With joint financing, there may be several producers of one single music recording.

Usually, the performers transfer their neighbouring rights to the record company in return for some of the revenue generated by the recording. *Featured musicians* receive a percentage of the revenue as specified in the recording contract. This is called a **royalty payment**. *Non-featured musicians* sign session contracts and receive a single payment, a lump sum buy-out.

2.6. Author royalties

When

- broadcasters and venues who play music recordings, and
- streaming providers who stream music recordings.

Then author CMO will collect **public performance royalties**.

It may come as a surprise that streaming a recording of a work to individual listeners counts as a public performance of the work. This is because for authors the making available of music recordings by streaming services is considered to be a communication to the public.

When

- broadcasters play a recording of a work,
- when offline and online retailers sell music recordings, and
- when a streaming provider streams music recordings.

Then the author CMO will collect **mechanical royalties**.

Mechanical royalties are also called reproduction royalties. The term “mechanical” stems from the time that perforated paper with an encoding of a work was used to drive a mechanical pianola.

Mechanical royalties are paid whenever a copy of a music recording is produced. This used to happen when a physical music recording such as a CD or LP was printed. Today, this happens when a physical music recording or a digital music recording (such as an mp3 download) is sold. This remuneration is also collected when a music recording is streamed, based on the fact that even with streaming a copy is always (although temporarily) downloaded on the user’s device.

Royalties for syncing are not collected collectively by the authors CMOs, but by publishers themselves. Once synced, the author CMO can also collect royalties for AV content containing the musical work. As such with syncing there is a first up-front payment to the publisher to receive permission to use the musical work and additional payments to the CMOs that will allow the author (and publisher) to be remunerated in relation to the actual commercial use (success).

Instead of contracting a publisher, an author may also mandate a CMO to permit synchronisation.

2.7. Performer and producer royalties

Performer CMOs and record labels collect the following royalties.

When a music recording is broadcasted on radio or used as background music in a venue, the CMOs representing performers and record labels collect a so-called **equitable remuneration** for the communication to the public which is distributed further to performers and record labels who have the neighbouring rights to the recording. Like with author societies, this fee is not individually negotiated between the CMOs and the users but based on tariffs that are agreed at the level of the user’s federations and in many EU countries are embedded in an executive decree.

Offline and online retailers and streaming providers **distribute** music recording, which generates revenue in terms of sales (for retailers) or subscription fees advertisements (for streaming providers). Record labels will collect a remuneration directly with these users and distribute a percentage of what they receive to featured musicians based on the existing contractual agreements.

Streaming providers will provide their users with access to music recordings, without selling them a personal copy of the recording. Record labels are paid directly by streaming platforms or indirectly via so-called aggregators. A percentage of what record labels receive from streaming providers is paid to featured musicians in accordance with existing contractual agreements.

AV creators who include the recording in their content must also pay a **sync fee** to the record label. A part of that fee goes to featured musicians in accordance with existing contractual agreements.

3. International music ecosystems

In this chapter, we briefly reflect on deliverable 6.3 (National music ecosystems), where already international aspects of the national music ecosystems are mentioned. We also discuss two cases in the international music ecosystem: the RAAP/PPI case, and the integrated EU market. These two cases, with a strong international orientation, will be further explored in WP6 (as the international living lab) and WP4 (as cases for the dashboard of the music ecosystem modelling).

3.1. The international perspective of the national music ecosystems

In deliverable 6.3 (National music ecosystems) [3], we have presented a series of ecosystem models, following the *e³value* methodology for designing and analysing digital business ecosystems (see [1,3]). Although these ecosystems focus on the national situation of the CMOs of Music360 (FI, N, IE, SP, and PT), they are (1) quite similar, and (2) already have an international focus too, as we represented the situation where a CMO in country A collects fees (collecting CMO), while a CMO in country B receives a part of these fees and distributes these fees further to the right holders in country B (claiming CMO). We review the reusable model for national CMOs as introduced in deliverable 6.3.

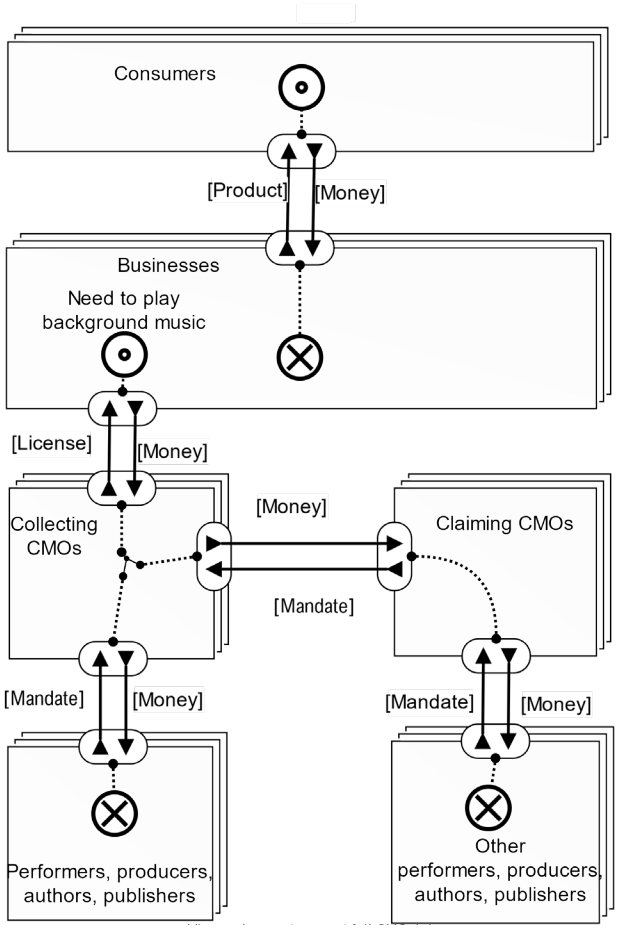

Figure 4 The general CMO ecosystem model

A business sells products or services to consumers. For this, it needs a physical space, lighting, electricity, water, furniture, and, in most cases, background music. When a business chooses to include music in its activity, it will need a license and pay a fee to a CMO in its country.

Performers, producers, authors, and publishers register with a CMO located in a country (usually the country where they live) and, where necessary, give them a mandate to directly or indirectly license background music to businesses in their country. Each CMO monitors where in that country music recordings are being used. They distribute the money derived from their different licenses to their members. This is the **collecting** (and distributing) role of a CMO, often also referred to as collecting society.

CMOs worldwide are connected via bilateral representation agreements. With these agreements, they mandate each other to collect revenues for each other's members for the use of their music repertoire in other countries. If the music of these right holders has been played in another country, they receive the money from the relevant CMO in that country and distribute it to their members. This is the **claiming** (and distributing) role of the CMO. It reflects the international aspects of the music ecosystem: CMOs form an ecosystem in which they exchange payments made for music played with CMOs representing right holders from different countries.

To demonstrate the potential advantage of the Music360 platform for policy makers, we use two cases with respect to the international music ecosystems because they require a decision to legislate and/or regulate, or not. Since the data set of the Music360 is too limited, the goal is not to offer a motivated policy recommendation but to show how the platform can help policy makers make an informed decision.

3.2. The RAAP/PPI case

The first case is known in the industry as the RAAP-case. For more in-depth information about this case, please consult [5]. Under section 4 we develop the relevant ecosystem models.

The RAAP-case results from a conflict between RAAP (the Irish CMO representing performers) and PPI (the Irish CMO representing phonogram producers). In Ireland, the collection of the single equitable remuneration for the broadcasting and public performance of music recordings is done by PPI. Whereas in other EU countries, the equitable single remuneration collected is split 50/50 at source between producers and performers, PPI does not automatically transfer 50% of its collection to RAAP for further distribution to their performers (and performers of CMOs with whom they have bilateral representation agreements). The Irish law allows PPI to decide what the remuneration is an individual performer is entitled to and to oblige RAAP to 'claim' these amounts track by track, performer by performer.

There are many cases in which claims by RAAP are refused. One of them is when it concerns performers on US music recordings. Although PPI calculates a value for these music recordings, it does not allow RAAP to claim a share of this value for the performers on these recordings. As such, the full value is paid out to the US record label. PPI claims that they are merely applying Irish national law, which indeed explicitly excludes non-EU/EEA performers from the scope of the right to equitable remuneration.

RAAP initiated proceedings against PPI, and the Irish court saw itself incompetent to respond to the question of whether or not PPI was entitled to refuse claims by RAAP on non-EU/EEA music recordings. Following a request from the Irish High Court, the case was presented to the Court of Justice of the European Union, that ruled on the matter in its judgment of 8 September 2020 (C-265-19).

In a ruling ultimately motivated by the European Charter of Human Rights, the Court found the Irish legislation to be not conforming with EU norms in limiting the right to receive equitable remuneration to nationals of the EU/EEA only. It concluded that the relevant Directive, considered in the light of international treaties that impose national treatment, only provides the EU with the right to limit this principle.

The Court's decision has severe consequences for the international exchange of remuneration among performer and producers CMOs. Although Ireland is the only EU member state that has legislation that

explicitly excludes non-EU/EEA performers from this remuneration, there are many member states that apply the principle of reciprocity and only provide the right to equitable remuneration to performers and producers from countries that offer this type of remuneration to their nationals.

The impact is most significant in the exchange of remuneration with the US. The US does not offer equitable remuneration for the public performance of music recordings, but US recordings represent a very large part of the music used as background music by businesses in the EU. A direct implementation of the Court's decision without a proportionate increase of the tariffs applied by the CMOs will result in a net loss over more than €1bn over the next decade to the US alone, as calculated by the IMPALA, the European federation of independent record labels.

The situation caused the EU Commission to conduct a study on the on the international dimension of the single equitable remuneration right for phonogram performers and producers and its effect on the European Creative Sector which was published in 2023. The study pointed out the complete lack of harmonisation at the EU for what concerns the international dimension of the equitable remuneration, but the EU still has to make a clear decision on how it wants members states to respond to the CJEU ruling.

3.3. An integrated EU market

The second case will demonstrate that the MUSIC360 platform can be used to perform economic analysis (by deploying econometric models) on the data generated by the music market.

The rationale behind the use case is that there are some publications (for example, Music Moves Europe – A European music export strategy – Final report, Publications Office, 2020, https://data.europa.eu/doi/10.2766/40788) that report that on average, only 15% of the music listened to on streaming services in the EU comes from European countries (excluding the UK), while 42% is music originating in the United States. The British repertoire occupies a larger share than all continental European Music in EU markets. Despite the absence of physical borders within the EU, invisible barriers fragment the music market. Each country tends to consume mainly its local production and Anglo-American repertoire, with little exchange of intra-European repertoires.

There is an ongoing discussion in economics about the markets in Europe (or some of the markets in Europe). The discussion concerns categorizing European markets as integrated or fragmented markets. The answer to these questions significantly impacts policy choices, primarily if an explicit or implicit goal exists to create an integrated single market.

Several econometric models, such as the gravity models, try to answer this question by working with trade flow between countries (normalizing by factors such as size or distance).

Using the data or MUSIC360 platform to do this is really interesting from an economics/data science perspective, and the implications regarding the cultural support to remove barriers and incentivize music circulation are obvious.

4. Music ecosystem value models

4.1. The RAAP/PPI case

The international performing rights music ecosystem

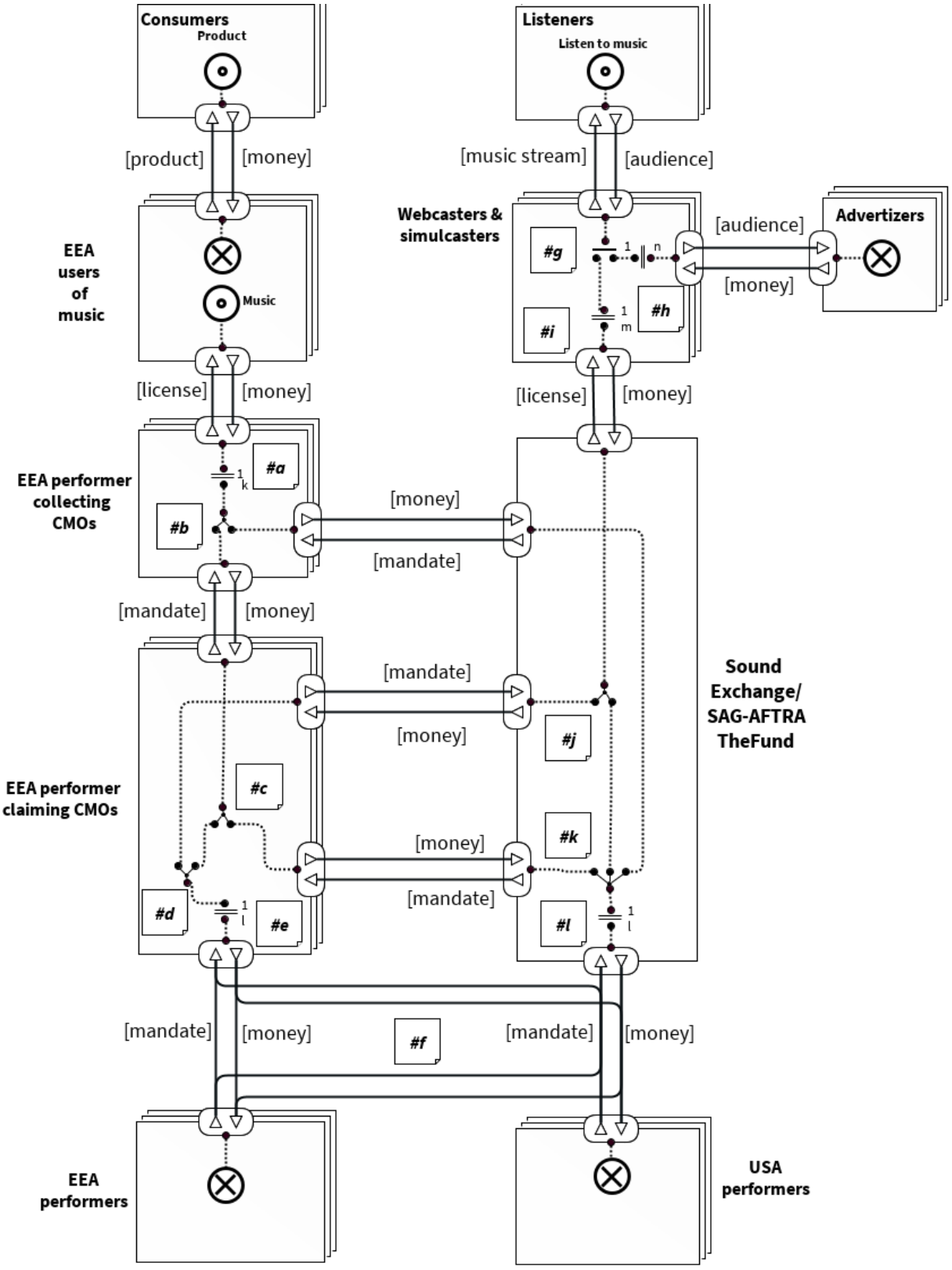

Figure 5 Exchanging equitable remuneration between the EU and the USA

Figure 5 presents the ecosystem value model (cf. the *e³value* modelling language) for the exchange of equitable remuneration between the EU and the USA. We explain the model below briefly.

In EU countries, performer rights are collected by CMOs if music is played in public. This happens amongst others in the case of radio and television stations, bars, restaurants, shops, and many other venues that play music in public. For example, shops do so to create a more attractive store for their consumers. In Music360, we investigate (in WP6) whether music used in shops and restaurants leads to increased sales. Hence it is relevant to consider the consumers at the top-left of the model because some of the earnings resulting from the consumers are paid to right holders.

CMO's collect from users of music recordings (shops, restaurants, radio stations, etc.). The music users hope to make more money (e.g. by selling more) as a result of playing music. The license provided to EU users of music allows to play all recordings (with the underlying works). As this is an annual license, we have to break down the license **into the number of recordings, which is represented by the cardinality dependency #a (**`k` represents the average number of recordings played in a year). CMOs allocate the received money from users to recordings. This allocation is calculated using different datasets, such as radio-playlists and TV broadcasting schedules and data provided by background music providers. In addition, market research is used to improve the accuracy of the calculation. As more data becomes available CMOs are able to provide more granularity and accuracy in the calculation of the value of each specific music recording.

In a next step, represented by the OR dependency **#b**, money for recordings that are assigned to a performers or producers represented by an EU claiming CMO, is paid to the relevant EU claiming CMO. At the same time, recordings represented[3] by US-based CMO (Sound Exchange, SAG-AFTRA, TheFund) are paid to these CMOs.

A collection CMO will pay distribute its own collections directly to the right holders it represents. A majority of these are EU or even national right holders. This is represented by **#c**, and **#d**. But it can also be right holders located in the USA. This is represented by the group of value transfers annotated **#f**.

A claiming CMO then breaks down (see cardinality dependency **#e**, where `l` represents the average number of performers on a recording[4]) the money received for a particular recording into parts, which are paid to the EU performers.

The DMCA, amongst others, obliges web-casters and simul-casters (ethereal radio stations who also broadcast via the Internet at the same time) to pay for music streamed. The DMCA defines what 'streaming' is: one of the most important properties is that music should not be user-selectable. This comes very close to the format of a traditional radio station, but for example, excludes streaming services such as Spotify, where the user *can* select the playlist.

What is interesting about DMCA is that the fee to be paid by a broadcaster is $0.0026 **per recording per listener**. The assumption is that a broadcaster can count their listeners (e.g. by counting the TCP connections to their broadcast servers) accurately. Therefore, in the *e³value* model, the dependency path starts at the listeners and ends with the performers who receive money. In other words, there is a direct relationship between the number of listeners (and the specific recordings they listen to), and the amount of money that performers receive. Performers receive an amount of money directly related to the number of persons who listened to their recordings. Note that in the EU countries, this is different. If

[3] The precise criterion to decide whether a recording is in or out the EU (see dependency element **#b**) differs per country. For example, in The Netherlands, a recording is considered as a non-EU recording if the recording is **produced** by a record label that is located outside of the EU. This can lead to a situation where a Dutch performer receives money from a contribution to a recording that is produced by someone outside the EU. In other countries, for example Germany, a different criterion is used. There, the country-of-first-publication determines the origin of a recording and hence whether the recording is considered as entitled to remuneration or not. Often, a recording is released worldwide at the same time. This implies that, in the case of Germany, a recording is often classified as a recording entitled to remuneration, while the recording could have been produced in the USA (for example).

[4] The average number of right holders per recording is a modelling simplification. Obviously, CMOs pay all registered right holders, also depending on the role the right holder plays in relation to the recording.

detailed playlist information is available (e.g. from web- and simul-casters), the information is used for distributing the money too. However, in many cases, detailed usage information is not available, for example if music is played in shops or restaurants. In such cases, performers are paid based on the playlists of the most important radio and television stations, background music providers, and market research. As in the USA, due to the DMCA, only web-casters and simul-casters have to pay for playing music in public, and they have to do so per listener per recording, the part of the *e³value* model focusing on the USA starts with the listeners. They can be counted and moreover it is precisely known to which recordings they listen. Hence, the webcasters and simulcasters directly deliver a music stream to the listeners. Mostly, webcasters and simulcasters are funded by advertisers. Hence two things must happen (represented by AND dependency **#g**). First, a number of ads must be played (see cardinality dependency marked **#h**, meaning that a music stream of one hour contains **n** ads). Second, the stream has to be decomposed in recordings, shown by the cardinality dependency (**#i**, a music stream of one hour contains m recordings on average).

The OR dependency **#j** tells that money paid for playing a recording is split over the EU claiming CMOs (which can represent any right holder) and performers represented by Sound Exchange and SAG-AFTRA/TheFund. Also, Sound Exchange and SAG-AFTRA/TheFund receive money from EU CMOs, which is merged with the money they collect themselves for the performers they represent (see OR dependency **#k**). Money can also come from EU claiming CMOs. Finally, Sound Exchange and SAG-AFTRA/TheFund divide the money collected for the play of a recording over their right holders (see **#l**), similar to the EU CMOs.

The consequence of the RAAP-case

The national legislations of several EU member states impose the principle of **material reciprocity** to be applied by CMOs when exchanging remuneration collected for broadcasting and public performance.

Applied to the equitable remuneration, the mechanism of material reciprocity means that the right of nationals from non-EU countries to receive this remuneration depends on **the existence of the same protection in the country of these individuals**. As in the USA, fees for performing rights are only collected for web- and simul-casting, the material reciprocity would entail that USA rightsholders are only entitled to fees collected by EU CMOs for web- and simulcasting too.

However, as a result of the RAAP-case, national legislation is **no** longer allowed to provide any rules on the choice whether or not to apply material reciprocity. EU CMOs must pay **all rightsholders all fees collected**, so also fees paid by traditional radio and television stations, restaurants, and shops, for which the reciprocal criterion in their national legislation no longer stands.

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We already presented the *e³value* model that represents the situation after the RAAP judgment. In the living lab, we plan to do the following:

- Quantification of the *e³value* model for the current situation given the limited data set in the Music360 platform.
- Demonstration of how the platform can be used to analyze and reason about cases such as RAAP. We will not draw valid conclusions about the case itself since this is not possible with the limited data set that we have.

These analyses are interesting for (EU) policymakers as they may directly influence legislation. They also demonstrate the power of ecosystem-level modelling and thinking.

4.2. An integrated EU market

The EU music ecosystem on neighbouring and author rights

The model in Figure 6 looks similar to the model in Figure 5 for RAAP/PPI case. There are two countries in Figure 6, namely country A and B, which are both EU countries, and hence follow the treaty of Rome with respect to neighbouring rights.

The most important differences are that EU countries:

- collect for all ways of making music public and
- collect based on potential audience, e.g. based on the square meters of a venue, its function, and/or any other metrics, and
- pay performers based on an estimate how many times a recording was played, e.g. by using playlists of radio stations, background music providers, and market research.

This results in a symmetrical model where each country collects for all performers (so also for performers outside the country at hand), and pay the claiming societies, which can be in the same country as the collecting CMO, or abroad (country B).

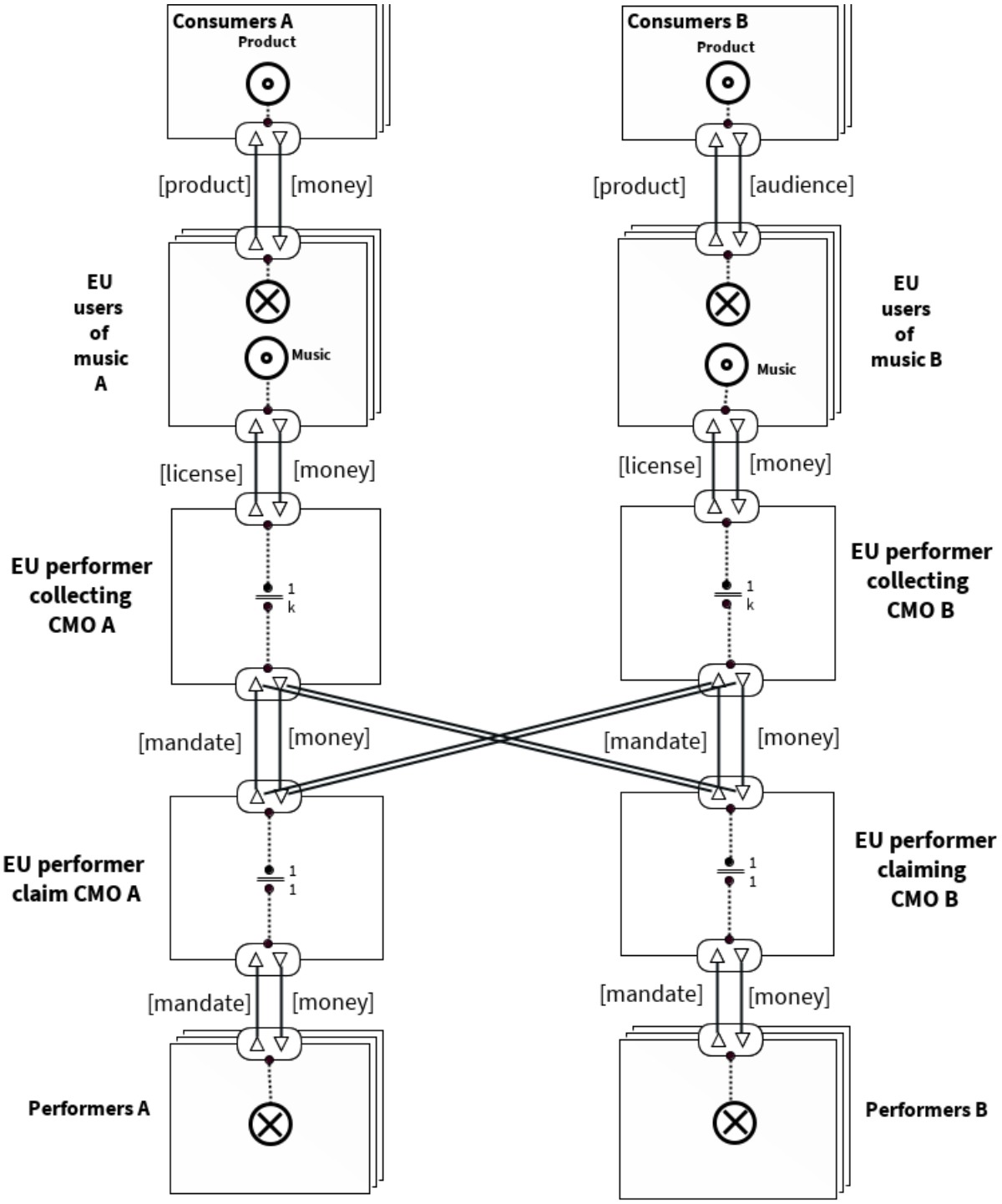

Figure 6 The EU imbalance case

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Figure 6 allows for the analysis of bilateral exchange of fees for rights. For a series of these bilateral relationships, we will analyse to what extent there is an integrated EU market concerning recorded music used in venues, by using the gravity model of international trade (see e.g. https://en.wikipedia.org/wiki/Gravity_model_of_trade).

5. Conclusion

In this deliverable. We have sketched the complex landscape of international intellectual property rights management. We have introduced two international cases that need further exploration as part of WP6: the RAAP/PPI judgment and the integrated EU market of intellectual property rights. We have also outlined the living labs associated with these cases.

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