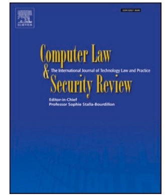
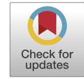
Computer Law & Security Review 60 (2026) 106246

Contents lists available at ScienceDirect

Computer Law & Security Review: The International Journal of Technology Law and Practice

journal homepage: www.elsevier.com/locate/clsr





Volunteering for the platforms – How social media terms of service may violate the fair remuneration principle of authors and performers

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ARTICLE INFO

Keywords:
Copyright
Fair remuneration
Authors and performers
Free Licenses
Social Media

ABSTRACT

Major social media terms of service (*i.e.*, YouTube, TikTok, Facebook, Instagram, LinkedIn, X) impose to users a royalty-free license covering uploaded "content" protected by intellectual property rights ("IPRs"). Consequently, while social media service providers' revenues are significant, users that are also authors and performers do not directly receive any remuneration in most cases. Most recently, the benefits of training artificial intelligence ("AI") tools on what is published on social media further intensify this imbalance.

This bargain has not gone completely unnoticed. However, the doctrine often questioned the workability of any legislative or judicial intervention aimed at restoring balance. This article argues that online social media service providers have an obligation under EU law to share the revenues derived from the exploitation of works and performances published on their platforms with authors and performers.

For this purpose, this work discusses the legitimacy of free licenses with the fair remuneration principle of authors and performers. It interprets the so-called "Linux clause" of Recital 82 Directive (EU) 2019/790 ("CDSMD") and proposes a distinction between "free licences for the benefit of any users" ("open licenses") and those for the benefit of specific licensees ("gratuitous licenses"). Abuses by the general public cannot occur in the case of open licenses. On the contrary, specific licensees who have a stronger position could unfairly impose gratuitous licenses to authors and performers. This inquiry runs in parallel with a recent litigation in Belgium on the matter (the "Streamz" case).

1. Introduction

This article questions whether there is a legal obligation for online social media service[1] providers to share with users that are also authors and performers the revenues derived from the exploitation of their licensed copyright-protected works or performances.

Social media are an integral part of everyday life for the majority of people, in particular for the young generations.[2] The typical user spends several hours a day on these platforms.[3] Also most companies use at least one type of social media.[4] They are instruments of communication,

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[1] The terms "social media" (*i.e.*, where the focus is on the production of works and performances) and "social networks" (*i.e.*, where the focus is on the interactions of users) are interchangeable nowadays. In this sense, Beatrice Kelly, 'The (Social) Media Is the Message: Theories of Liability for New Media Artists' (2017) 40(4) Columbia Journal of Law & the Arts, 511 https://doi.org/10.7916/jla.v40i4.2040. Social media fall under several legal definitions, such as: "online social networking service" pursuant to Article 2(1)(7) Regulation (EU) 2022/1925 ("DMA"); "online content-sharing service provider" pursuant to Article 2(1)(6) Directive (EU) 2019/790 ("CDSMD"); "online planform" pursuant to Article 3(1)(i) Regulation (EU) 2022/2065 ("DSA").

[2] Eurostat, 'Young people – digital world' (2024) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Young_people-digital_world, in 2023, 97 % of young people aged 16-29 years in the EU used internet daily and creating a user profile and posting messages or other activity was a common practice for 83% of them.

[3] DataReportal, 'Digital 2024 Global Overview Report' (2024) https://datareportal.com/reports/digital-2024-global-overview-report, in 2024, the typical user spends more than two hours a day online.

[4] Eurostat, 'Social media – statistics on the use by enterprises' (2024) https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Digital_economy_and_society_statistics-enterprises, in 2023, 60,9% of EU enterprises used at least one type of social media.

https://doi.org/10.1016/j.clsr.2025.106246

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information, entertainment, and business. Here, potentially everyone can find their online community and develop their personality.[5]

Social media accounts are generally equal in their design and granted indistinctly to everyone. However, there are important differences among users. First, in terms of influence, as some may have a greater or lesser following than others. Second, in terms of activity, as some may limit to enjoy and eventually interact with "content" shared by others ("passive user") or may also create and share their own "content" ("active user").

The term "content", including "user-generated content", "content creators", but also "influencers", is potentially misleading. In common language, it is generally understood as anything uploaded by users on online platforms, including videos, audios, images, or texts. Content is at the very heart of social media, attracting and keeping users online.

Not all content is subject to copyright protection (*e.g.*, short comments, reviews, and reactions; infringing works; artificial intelligence ("AI") generated works, whose protectability is questioned). However, a considerable part, if not the majority, are copyright-protected works.[6] Indeed, it is not unusual to come across creative videos, songs, texts, photographs, and illustrations. Potentially everyone can be an author or performer and be connected to a public, whether composed of acquaintances or strangers.[7]

The misclassification of users that are also authors and performers as "content creators" may disregard their moral and economic interests, ultimately hindering their recognition and professionalization.[8] For the purpose of this article, assuming that the requirements are met, reference is made to more technical terminologies of copyright law. Instead of "content creator" or "user", it will be used "author" or "performer", intended as a sub-category of active users. Instead of "content", it will be used "work" or "performance". Instead of "share", it will be used "licensing", "publishing", or "communicate to the public". Instead of "monetize", it will be used "exploit".[9]

Social media services are not free to use, but are provided for remuneration. Generally, users access these services by providing data and watching personalized advertisements.[10] This is the most chosen business model and on which a substantial part of providers' revenues is based. Alternatively, some services have a monetary subscription.[11] In addition, providers may derive further benefits (*e.g.*, the sublicense to third parties; the training of AI tools through what is published on social media).[12]

Major social media terms of service generally provide for a royalty-free license covering uploaded works and performances protected by intellectual property rights ("IPRs"). Consequently, although service providers' revenues are significant,[13] authors and performers do not directly receive any remuneration in most cases. They are generally self-financed or supported through contributions of other subjects (*e.g.*, sponsorship agreements with brands; subscriptions, donations, commissions, or purchases from fans).

In the light of this, it seems that authors and performers pay for the service twice. First, with the subscription or providing data and watching personalized advertisement, as every inactive user. Second,

[5] OECD, 'Participative Web and User-created Content. Web 2.0, Wikis and Social Networking' (2007). Cf. Jan H. Kietzmann and others, 'Social Media? Get Serious! Understanding the Functional Building Blocks of Social Media' (2011) 54(3) Business Horizons, 241-251 https://doi.org/10.1016/j.bushor.2011.01.005; Christian V. Baccarella and others, 'Social media? It's serious! Understanding the dark side of social media' (2018) 36(4) EMJ, 431-438 https://doi.org/10.1016/j.emj.2018.07.002. See also Massimo Durante, 'The Online Construction of Personal Identity through Trust and Privacy' (2011) 2 Information, 607 https://doi.org/10.3390/info2040594.

[6] The requirements to qualify as an author are not strict and the notion is open to new kind of works. In this sense, Maurizio Borghi, 'A Venetian Experiment on Perpetual Copyright', in Ronan Deazley, Martin Kretschmer and Lionel Bently (eds), *Privilege and Property. Essays on the History of Copyright* (Open Book 2010) 143 https://doi.org/10.11647/obp.0007.06: "*Modern copyright can be described as a content-neutral system, whereby rights are granted unconditionally to anyone who 'authors' anything, irrespective of the worth of the creation. No substantive examination is required. The 'originality' qualification is not an absolute test of quality, but only a minimal requirement that the work actually originated from the author*"; Martin Senftleben, João Pedro Quintais and Arlette Meiring, 'How the European Union Outsources the Task of Human Rights Protection to Platforms and Users: The Case of User-Generated Content Monetization' (2023) 38(3) BTLJ, 1004 https://doi.org/10.2139/ssrn.4421150: "*Oftentimes, UGC is the product of a certain amount of creative effort, whether it is in creating the content from scratch or in adapting existing works to create a new one.* [...] *Thus, considering the low threshold for originality in EU law, it is likely that in many instances, UGC will qualify as copyrighted content, meaning that the user-uploader should be entitled to monetize it, or at least part thereof*". Marco Ricolfi, 'The new paradigm of creativity and innovation and its corollaries for the law of obligations', in: Peter Drahos, Gustavo Ghidini and Hanns Ullrich (eds), *Kritika: Essays on Intellectual Property* (EE 2015) 143 https://doi.org/10.4337/9781784712068.00013: "C*urrently, user generated content and social networks are growing exponentially: creators and public are finally merging into each other*". See also Recital 61, second and third phrase, CDSMD.

[7] Cf. Giancarlo Frosio, 'Communia and the European Public Domain Project: A Politics of the Public Domain', in Melanie D. de Rosnay and Juan Carlos De Martin (ed), *The Digital Public Domain. Foundations for an Open Culture* (OpenBook 2012) 31 https://doi.org/10.11647/obp.0019.01: "*Amateur production has been the driving force of the Internet informational revolution*".

[8] Cf. OECD (n 5) 57: "*It is expected that the quality of the UCC can be improved if creators are remunerated. Finally, professional and paying careers can arise for users creating content*".

[9] In this sense, Giuseppe Mazziotti, 'Authors', not 'content creators'' (2024) 19(6) JIPLP, 465-466 https://doi.org/10.1093/jiplp/jpae009: "*the ongoing debates on copyright and enhanced online platform liability, especially in Europe, would gain in clarity if scholars and policy makers relied on the classical notion of 'authors' to preserve the idea of encouraging and enabling professionals who seek to make a living with their intellectual and creative work to enforce their rights and to gain fair remuneration, even in the social media ecosystems*".

[10] Instagram's sign-up page: "*We fund our services by using your personal data to show ads*" https://www.instagram.com/accounts/emailsignup/. See also Rafał Mańko and Shara Monteleone, 'Contracts for the supply of digital content and personal data protection' (2017) 11 https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603929/EPRS_BRI%282017%29603929_EN.pdf: "*an entire business model based on offering consumers digital content and services 'in exchange' for their economically valuable personal data, without requiring them to pay a separate price in money*"; Jacopo Ciani Sciolla, 'Il pubblico dominio nella società della conoscenza. L'interesse generale al libero utilizzo del capitale intellettuale comune' (Giappichelli 2021) 127-130 https://www.giappichelli.it/media/catalog/product/openaccess/9788892194618.pdf.

[11] See, *e.g.*, Meta, 'About subscription for no ads' https://www.facebook.com/help/262038446684066.

[12] Jane C. Ginsburg, 'The author as a revenue sharer: lecture in memory of William R. Cornish' (2023) 18(11) JIPLP, 795 https://doi.org/10.1093/jiplp/jpad087: "*When a creator authorizes the platform to 'use' her content, she is ceding control over unanticipated exploitations. Worse, she may in effect be permitting the platform to usurp what limited opportunities for remuneration exist on the Internet. That is because platforms, with their vast repositories of royalty-free (from the authors) sub licensable works, may be the most efficient entity from which to acquire non-exclusive exploitation rights*". See also Ludovico Bossi, 'Meta's AI Arriving in Europe: Privacy Disputes Concealing Copyright Concerns' (2024) https://copyrightblog.kluweriplaw.com/2024/06/20/metas-ai-arriving-in-europe-privacy-disputes-concealing-copyright-concerns/, reporting the complaints that followed the announcements of some providers to train their AI tools with users' posts. While the debate was centered on privacy aspects, there are clear copyright implications.

[13] See, *e.g.*, Meta, 'Meta Reports Third Quarter 2025 Results', 29 October 2025 https://investor.atmeta.com/investor-news/press-release-details/2025/Meta-Reports-Third-Quarter-2025-Results/default.aspx. LinkedIn, 'LinkedIn Business Highlights from Microsoft's Q4 FY25 Earnings', 30 July 2025 https://news.linkedin.com/2025/Q4FY25_Earnings_Highlights.

with the exploitation of their works and performances.[14] This second payment becomes more significant in proportion to the amount of works published and the extent of their dissemination.

Several studies confirmed the precarious situation of authors and performers,[15] and there is a growing international ferment to remunerate them fairly, particularly in the digital environment.[16] Nevertheless, less attention has been paid to social media.[17] The described bargain has not gone completely unnoticed.[18] However, the doctrine often questioned the workability of any legislative or judicial intervention aimed at restoring balance, mainly due to the lack of legal basis, the novelty of the phenomenon, or the reticence of the parties.

The development of the exploitation of works and performances on social media makes it necessary to revisit traditional preconceptions in relation to "user-generated content".[19] Analyzing the legitimacy of these

[14] Cf. Marco Loos and Joasia Luzak, 'Update the Unfair Contract Terms directive for digital services' (2021) 41 https://www.europarl.europa.eu/RegData/etudes/STUD/2021/676006/IPOL_STU(2021)676006_EN.pdf: "*consumers typically do not realise that they pay for the digital service not only in money or by providing personal data, but also by offering such a gratuitous license*".

[15] See, *ex multis*, with general scope, Sophie Valais, 'The status of artists and cultural and creative professionals in Europe: social rights and circulation' (2025) IRIS, European Audiovisual Observatory https://rm.coe.int/iris-the-status-of-artists-and-cultural-and-creative-professionals-in-/488028b282; European Commission and others, 'Study on contractual practices affecting the transfer of copyright and related rights and the ability of creators and producers to exploit their rights (2025) https://data.europa.eu/doi/10.2759/7915120; European Commission and others, 'The status and working conditions of artists and cultural and creative professionals' (2023) https://doi.org/10.2766/46315; Amy Thomas, Michele Battisti and Martin Kretschmer, 'Authors' Earnings in the UK: Policy briefing' (2023) https://pec.ac.uk/policy_briefing_entr/authors-earnings-in-the-uk/; Christa Kammerhofer-Schlegel and others, 'EU framework for the social and professional situation of artists and workers in the cultural and creative sectors. European added value assessment' (2023) https://doi.org/10.2861/094733; AEPO-ARTIS, 'Performers' Rights in International and European Legislation: Situation and Elements for Improvement' (2018) https://www.aepo-artis.org/wp-content/uploads/2022/07/AEPO-ARTIS-Study-2018-Performers-Rights-in-International-and-European-_20181161711.pdf; Stef van Gompel, Olivia Salamanca and Lucie Guibault, 'Remuneration of authors and performers for the use of their works and the fixations of their performances' (2015) https://doi.org/10.2759/834167; Séverine Dusollier and others, 'Contractual Arrangements Applicable to Creators: Law and Practice of Selected Member States' (2014) https://data.europa.eu/doi/10.2861/47005.

[16] European Parliament, 'European Parliament approves new copyright rules for the internet' (2019) https://www.europarl.europa.eu/news/en/press-room/20190321IPR32110/european-parliament-approves-new-copyright-rules-for-the-internet: "*The directive aims to ensure that the longstanding rights and obligations of copyright law also apply to the internet. YouTube, Facebook and Google News are some of the internet household names that will be most directly affected by this legislation*"; European Parliament, 'The situation of artists and the cultural recovery in the EU' (2021) para. 41 https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430_EN.pdf: "[The European Parliament] *underlines the importance of remuneration for authors and performers online and offline, specifically through the promotion of collective bargaining*", and para. 22: "*the practice by dominant or large streaming platforms of imposing buy-out clauses* [that] *deprives authors of their royalties and hinders adequate and proportionate remuneration for creators*".

[17] Confirming this, Jane C. Ginsburg, 'Authors Remuneration: Reforms to Whish For', in Gustavo Ghidini and Valeria Falce (eds), *Reforming Intellectual Property* (EE 2022) https://doi.org/10.4337/9781803922256.00013, raising but not resolving the question of the impact of Articles 18-22 CDMSD on author's remuneration of internet platform terms of service; Zoe Adams and Henning Grosse Ruse-Khan, 'Work and works on digital platforms in capitalism: conceptual and regulatory challenges for labour and copyright law' (2020) 28 (4) IJLIT, 332 https://doi.org/10.1093/ijlit/eaaa017: "*blocking nowadays is the exception and monetizing is the rule. Less attention therefore, in the digital context, has been paid to those that depend on creative work for their subsistence, or to the means of monetizing user expression online, in particular by platforms such as YouTube, Facebook, Instagram or TikTok.* […] *less attention has been paid to the effects of the digital network environment on those working in industries, such as the cultural industries, in which self-employment has long been the norm*"; Senftleben, Quintais and Meiring (n 6) 37; João Pedro Quintais and others, 'Copyright Content Moderation in the European Union: State of the Art, Ways Forward and Policy Recommendations' (2024) 55(1) IIC, 157-177 https://doi.org/10.1007/s40319-023-01409-5: "*monetization of UGC by platforms, despite its economic significance, remains a relatively unregulated space in EU copyright law*"; Enrico Bonadio, Nicola Lucchi and Giuseppe Mazziotti, 'Will Technology-Aided Creativity Force Us to Rethink Copyright's Fundamentals? Highlights from the Platform Economy and Artificial Intelligence' (2022) 53(8) IIC, 1181 https://doi.org/10.1007/s40319-022-01213-7: "*Very little has been written, instead, on the implications for copyright and contract law of the radical transformation of cultural, artistic and entertainment landscapes induced by social media entertainment and the related multiplication of sources, types of authors, varieties of works, creative processes, and formats*"; István Harkai and Péter Mezei, 'Recalibrating Territoriality in Platform End-User License Agreements', in Dušan V. Popovic and Rainer Kulms (eds), *Repositioning Platforms in Digital Market Law* (Springer 2024) 55-81 https://doi.org/10.1007/978-3-031-69678-7_3: "*The gatekeeper role of platforms in the use of user-generated content should be the subject of further research in the future, if only because the relevant standard contractual clauses raise competition issues, in particular with regard to abuse of dominant position*".

[18] Ginsburg (n 12) 787: "*for 'exposure' (or the hope of it), creators often turn to internet platforms, signing up for a Faustian exchange: the prospect of finding an audience in return for the loss of control over the dissemination of their works*"; Mazziotti (n 9) 2: "*Social media have prompted the replacement of* […] *authors legitimate expectation to transfer or license their rights, and receive remuneration ex ante, with a widely accepted culture of 'sharing by default'*"; Bonadio, Lucchi and Mazziotti (n 17) 1184: "[the platform economy] *has irreversibly weakened and threatened the essence of authors' economic rights, persuading creators to prioritise online exposure over remuneration expectations*"; Natali Helberger and others, 'Legal Aspects of User Created Content' (2009) 82 https://doi.org/10.2139/ssrn.1499333: "*Content submitted by users, too, can have commercial value, and also in this respect it is important to guarantee that the interests of users in their relationship with UCC platforms are guaranteed. Yet an open question is to what extent users have an interest or even right to participate in the profits if platforms commercialize user created content.* […] *further initiatives might be needed to prevent that professional suppliers abuse the inexperience and weaker negotiation position of amateur users*". See also European Commission, 'On content in the Digital Single Market' (2012) COM(2012) 789 final, 4 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52012DC0789. European Commission, 'Toward a modern, more European copyright framework' (2015) COM(2015) 626 final, 9-10 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52015DC0626.

[19] Cf. OECD (n 5) 41: "[Emerging approaches] *may have to be revisited with the development of UCC*".

terms of service and, more generally, of certain free licenses, appears pressing.[20] Recent litigations between rightholders and platforms, in particular for the use of songs, as well as the rush of social media providers to also become AI providers, confirm the enormous economic interests at stake.[21]

This article argues that online social media service providers have an obligation under EU law to share the revenues derived from the exploitation of works and performances published on their platforms with authors and performers. The second part discusses the legitimacy of free licenses with the fair remuneration principle of authors and performers. The third part analyses some major social media terms of service (*i.e.*, YouTube, TikTok, Facebook, Instagram, LinkedIn, X). The fourth part questions their lawfulness. The fifth part suggests some possible initiatives. The sixth part specifies the temporal and territorial scope. Finally, this work tries to predict a position of the Court of Justice of the European Union ("CJEU") on the matter, since it is currently required to provide an interpretation of Article 18 CDSMD.

Other important but subordinate issues, such as the amount of remuneration, the demonetization, and the protectability in some particular cases, such as AI-generated works and elaborations, are left to other studies. Further inquiries could also try to apply the key concepts to other industries, such as scientific publishing.

2. The fair remuneration principle and the linux clause

One fundamental idea of European copyright law is that authors should fairly participate in the success or unsuccess of their works. This fair remuneration principle comes from a personalist approach and finds basis in human and fundamental rights.[22] It can be extended also to performers, who face similar conditions.

Recently, this principle has been conceptualized within contractual means in Article 18 CDSMD.[23] This provision entitles authors and performers to receive appropriate and proportionate remuneration when certain conditions are met: (i) the existence of a work protected by copyright law or other subject matter; (ii) a license or transfer of exclusive rights; iii) an exploitation purpose. This provision is general in scope and applies both to the digital and analog environment. The obliged party is not indicated and should be defined by Member States (*e.g.*, the contractual counterpart or others).

Member States implemented this broad-level principle differently. Many transposed Article 18 CDSMD verbatim or through minor amendments to their legislation.[24] Others used innovative mechanisms to enhance effectiveness. For example, Belgium introduced two new residual remuneration rights in relation to certain platforms.[25] Italy deemed null the agreements contrary to this principle.[26] These additions sparked debate over their necessity, strengthening the case for the empirical inquiry that follows.

In some circumstances, also the absence of remuneration is admissible. In particular, pursuant to Recital 82 CDSMD (here referred to also as the "Linux clause"),

> "*Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or other subject matter for free, including through non-exclusive free licences for the benefit of any users*".

[20] Giuseppe Mazziotti, 'Remuneration of content creators in the digital space: challenges, obstacles and a common language to foster economic sustainability and cultural diversity' (2019) 10 https://doi.org/10.2139/ssrn.4616133: "*These platforms have given rise to a 'lose-lose' situation for content creators, in particular for individual authors and performers and small-size content producers*"; João Pedro Quintais, Giovanni De Gregorio and João C. Magalhães, 'How platforms govern users' copyright-protected content: Exploring the power of private ordering and its implications' (2023) CLSR, 22 https://doi.org/10.1016/j.clsr.2023.105792: "[Platforms] *are further free, from the perspective of copyright law, to determine how their monetisation programs function, which users-creators are eligible, and how they are remunerated, not just as a matter of contractual rules (in their TOS) but also as a matter of how such monetisation is managed by their algorithms, e.g. as regards visibility and demonetization*".

[21] See, *e.g.*, in Italy, SIAE v. Meta, reported by Vincenzo Iaia, 'The SIAE and Meta tug-of-war: an Italian affair of European relevance' (2023) https://copyrightblog.kluweriplaw.com/2023/04/18/the-siae-and-meta-tug-of-war-an-italian-affair-of-european-relevance/ and Susanna Lopopolo, 'The Abuse of Economic Dependence in Digital Markets – Remarks Upon the Italian Case *Meta v. SIAE*' (2025) 74(4) 320-330 https://doi.org/10.1093/grurint/ikaf021; at international level, UMG v. ByteDance (https://www.universalmusic.com/an-open-letter-to-the-artist-and-songwriter-community-why-we-must-call-time-out-on-tiktok/ and https://newsroom.tiktok.com/en-us/tiktok-statement-in-response-to-universal-music-group; https://newsroom.tiktok.com/en-us/universal-music-group-and-tiktok-announce-new-licensing-agreement).

[22] See, *e.g.*, Art. 15(1)(c) International Covenant on Economic, Social and Cultural Rights (ICESCR). In this sense, Christophe Geiger, 'Elaborating a Human Rights-Friendly Copyright Framework for Generative AI' (2024) 55 IIC, 1135-1136 https://doi.org/10.1007/s40319-024-01481-5: "*The author must be fairly remunerated in the event of the commercial use of his work in the absence of justification to do so that derive from competing human rights*"; Christophe Geiger, 'Building an ethical framework for intellectual property in the EU: time to revise the Charter of Fundamental Rights', in Gustavo Ghidini and Valeria Falce (eds), *Reforming intellectual property law* (EE 2022) 90-91 https://doi.org/10.4337/9781803922256.00011: "[The right for creators to be remunerated for the commercial exploitation of their work] *should be understood as a fundamental and binding principle of copyright law deriving from fundamental rights and from copyright's social function*".

[23] See, *ex multis*, for a general comment of Articles 18-23 CDSMD, Raquel Xalabarder, 'The equitable remuneration of audiovisual authors: a proposal of unwaivable remuneration rights under collective management' (2018) RIDA, 129-162 https://rida-ca2.ideesculture.fr/index.php/Detail/objects/255-D1_EN; ECS, 'Comment of the European Copyright Society Addressing Selected Aspects of the Implementation of Articles 18 to 22 of the Directive (EU) 2019/790 on Copyright in the Digital Single Market' (2020) 11 JIPITEC, 132-148 https://doi.org/10.2139/ssrn.3695935; Séverine Dusollier, 'The 2019 Directive on Copyright in the Digital Single Market: Some progress, a few bad choices, and an overall failed ambition' (2020) 57(4) CML Rev., 979-1030 https://doi.org/10.54648/cola2020714; Giulia Priora, 'Catching Sight of a Glimmer of Light: Fair Remuneration and the Emerging Distributive Rationale in the Reform of EU Copyright Law' (2020) 10(3) JIPITEC, 330-343 https://ssrn.com/abstract=3521277; Eleonora Rosati, 'Copyright in the Digital Single Market. Article-by-Article Commentary to the Provisions of Directive 2019/790' (OUP 2021) 360-408 https://doi.org/10.1093/oso/9780198858591.001.0001; Yannos Paramythiotis, 'Fairness in Copyright Contract Law: Remuneration for Authors and Performers Under the Copyright in the Digital Single Market Directive', in Tatiana-Eleni Synodinou and others (eds), *EU Internet Law in the Digital Single Market* (Springer 2021) 77-98 https://doi.org/10.1007/978-3-030-69583-5_4; Ludovico Bossi, 'An Interpretation of Articles 18-23 of Directive (EU) 2019/790: Open Issues in Contractual Copyright and Related Rights Law' (2022) 72(6) GRUR Int., 527-537 https://doi.org/10.1093/grurint/ikad005. See also Frank Gotzen, 'The Direct Remuenration Right for Authors and Artist: Germany as an Example for Belgium?', in Florent Thouvernin et al (eds), *Kreation Innovation Märkte - Creation Innovation Markets* (Springer 2024) 210: "[with Art. 18 CDSMD] *we find a new example of what Adolf Dietz once described as "quasi-constitutional provisions" guaranteeing the raison d'être of copyright*".

[24] European Parliament, 'Resolution of 21 November 2023 with recommendations to the Commission on an EU framework for the social and professional situation of artists and workers in the cultural and creative sector (2020/2261 (INI))' (2021) para. 15 https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430_EN.pdf: "[The European Parliament regrets that] *only a few Member States have seized the opportunity provided by Article 18 to implement appropriate remuneration mechanisms; urges the Member States to translate Article 18 of Directive (EU) 2019/790 into effective remuneration mechanisms*". See also, for a first report on the implementation, Amélie Lacourt, Justine Radel-Cormann and Sophie Valais, 'Fair remuneration for audiovisual authors and performers in licensing agreements' (2023) IRIS Plus, European Audiovisual Observatory, 39 ff. https://rm.coe.int/iris-plus-2023-03en/1680adec3c.

[25] Articles XI.228/4, on online content-sharing service providers, and XI.228/11, on streaming service providers, Belgian Code of Economic Law.

[26] Article 107(2), second sentence, Italian Copyright Act.

The scope of this Recital should be carefully defined in order not to neutralize Article 18 CDSMD.[27]

This Recital originates in the last phases of the negotiations of the CDSMD. Indeed, the directive proposal did not include the principle of appropriate and proportionate remuneration.[28] The JURI Committee of the European Parliament proposed including this principle in a new article. In its original formulation, Member States could expressly achieve this principle also through statutory remuneration mechanisms. Moreover, this principle did not apply where the author or performer granted "a non-exclusive usage right for the benefit of all users free of charge".[29] The European Parliament adopted this amendment at first reading.[30] Interestingly, a similar but non-adopted amendment cited Creative Commons and Copyleft as examples of such licenses.[31] The informal meetings between the representatives of the institutions ("trilogues") moved the Linux clause to the recitals and consolidated its final wording.[32]

"*Non-exclusive free licenses for the benefit of any user*" (here referred to as "open licenses")[33] are expressly admitted. This articulated wording seems coming from Germany. Already in 2002, the German legislature introduced several protective measures in favor of authors, similar to those of the CDSMD, including a principle of equitable remuneration.[34]

On the initiative of the Institute for Legal Issues of Free and Open Source Software ("ifrOOS"),[35] also the so-called "Linux clauses" were included.[36] According to these, authors are expressly allowed to grant to the general public an unremunerated non-exclusive right of use. This is generally done through standard agreements (*e.g.*, Creative Commons Licenses; GNU General Public License ("GPL"); FreeBSD License). In such case, the introduced protective measures do not apply.

The main rationale was to prevent legal uncertainty in relation to free and open source software.[37] The absence of remuneration was justified by the fact that with open licenses there is no contractual imbalance between the general public and the author.[38] On the contrary, these agreements could bring several benefits, such as fostering the circulation of works and performances and avoiding the development of monopolies.

The renunciation of eventual profits constitutes the very nature of an open license. The reliance that licensees place on such waiver would be

[27] ECS (n 23) 132: "*Member States should ensure that any of the permissible derogations for computer programs, employment contracts, contracts by CMOs, open access licences, do not circumvent the protection that the Directive provides for authors/performers*". This paragraph further develops some concepts outlined in Bossi (n 23) 529.

[28] European Commission, 'Proposal for a directive on copyright in the Digital Single Market', 14 September 2016, COM/2016/0593 final - 2016/0280 (COD) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016PC0593.

[29] European Parliament, 'Report on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market', 29 June 2018, A8-0245/2018, amendments 46 and, especially, 80: "[…] *2. Paragraph 1 shall not apply where an author or performer grants a non-exclusive usage right for the benefit of all users free of charge* […]" https://www.europarl.europa.eu/doceo/document/A-8-2018-0245_EN.html. The ITRE and CULT Committees of the European Parliament directly proposed an unwaivable remuneration right retained by authors and performers after the license or transfer of their making available right. See European Parliament, 'Report on the proposal for a directive of the European Parliament and of the Council on copyright in the Digital Single Market', 29 June 2018, A8-0245/2018, amendments 37, 38, 56 and 92 https://www.europarl.europa.eu/doceo/document/A-8-2018-0245_EN.html.

[30] European Parliament, 'Amendments adopted by the European Parliament on 12 September 2018 on the proposal', 12 September 2018, P8_TA(2018)0337, amendments 46 and, especially, 80 https://www.europarl.europa.eu/doceo/document/TA-8-2018-0337_EN.html.

[31] European Parliament, 'Amendments', 05 September 2018, A8-0245/2018, amendment 129 https://www.europarl.europa.eu/doceo/document/A-8-2018-0245_EN.html: "*Article 16a. Exceptions. The provisions laid down in Chapter 3 shall not apply where an author or performer grants a free non-exclusive right for the benefit of all users for the use of his or her work, such as the Creative Commons, Copyleft or any other non-exclusive licenses for intellectual property*".

[32] European Council, 'Note, preparation for the trilogue, 4-column document', 26 September 2018, 12513/18 https://data.consilium.europa.eu/doc/document/ST-12513-2018-INIT/en/pdf, summarizing the positions of the institutions; European Council, 'Note - Update of negotiating mandate', 30 November 2018, 15057/18 https://data.consilium.europa.eu/doc/document/ST-15057-2018-INIT/en/pdf and European Council, 'Working document - Presidency questions and compromise suggestions on selected issues', 27 November 2018, WK 14640/2018 INIT https://data.consilium.europa.eu/doc/document/WK-14640-2018-INIT/en/pdf, mentioning the necessity of further discussion at political level; European Council, 'Note - update of negotiating mandate', 10 December 2018, 15248/18 https://data.consilium.europa.eu/doc/document/ST-15248-2018-INIT/en/pdf, mentioning that the principle of fair and appropriate remuneration was crucial for the European Parliament; European Council, 'Note, update of negotiating mandate', 17 January 2019, 5138/19 https://data.consilium.europa.eu/doc/document/ST-5138-2019-INIT/en/pdf, deleting the Linux clause in the new article and announcing the agreement on "*a general/horizontal recital clarifying that free licences/creative commons are not affected*" with the following wording: "*Nothing in this Directive should be interpreted as preventing holders of exclusive rights under Union copyright law from authorising the use of their works or other subject-matter for free, including through free licences, when they consider it appropriate*"; European Council, 'Note, update of negotiating mandate', 04 February 2019, 5893/19 https://data.consilium.europa.eu/doc/document/ST-5893-2019-INIT/en/pdf and European Council, 'Note, update of negotiation mandate', 07 February 2019, 5893/19 ADD 1 https://data.consilium.europa.eu/doc/document/ST-5893-2019-ADD-1/en/pdf, where the recital reached its final wording after a technical meeting.

[33] The expression "open license" is also used in Recital 44, sixth and seventh sentences, Directive (EU) 2019/1024 ("PSI"). ECS (n 23) 136-137, used "open access license", as also in Recital 10, third sentence, CDSMD. However, this expression is commonly associated with scientific publishing. For the purpose of this article, it was preferred to remain more general to avoid misunderstandings.

[34] Section 32 German Copyright Act.

[35] ifrOSS, 'Stellungnahme des ifrOSS zu den Vorschlägen für eine Regelung des Urhebervertragsrechts' (2001) https://web.archive.org/web/20070630115606/http://www.ifross.de/ifross_html/urhebervertragsrecht.pdf (archived version 30 June 2007).

[36] Sections 31a(1), 32(3), 32a(3) and 32c(3) German Copyright Act.

[37] ifrOSS (n 35) 3. See also, in the field of software, on the distinction between "free/libre software" and "open source software", Richard Stallman, 'Why Open Source Misses the Point of Free Software' (2021) https://www.gnu.org/philosophy/open-source-misses-the-point.html.

[38] German Draft Law 14/6433 of 26 June 2001, 15 https://dserver.bundestag.de/btd/14/064/1406433.pdf.

undermined if the licensor could make remuneration claims at a later date.[39] Consequently, even if the licensee generated substantial revenues through the exploitation of the work or performance, also the CDSMD's protective measures may not apply: (i) Article 18 CDSMD may be interpreted differently in this context ;[40] (ii) Article 19 CDSMD ("transparency obligation") is expressly excluded by Recital 74 CDSMD, since in this case there is no need for information; (iii) similarly it seems reasonable to exclude the application of Article 20 CDSMD ("contract adjustment"); (iv) Article 22 CDSMD ("right of revocation") does not apply to non-exclusive licenses.

The question remains whether a waiver of remuneration outside an open license is permissible. According to the wording of Recital 82 CDSMD, which employs the expression "*authorising the use*", a transfer of rights – in jurisdictions where it is permitted – without remuneration does not seem covered. Given the similarities with a transfer, also an exclusive free license for a particularly long period should be excluded.

It remains to consider a free license for the benefit of specific licensees (here referred to as "gratuitous licenses"). Prohibiting these agreements might be too extreme. Indeed, if remuneration has to be assessed with reference to all the circumstances of the case, circumstances that do not justify it are also conceivable. This may be the case, for example, where rights are licensed in the context of a non-profit activity and where the author, due to the voluntary commitment, does not expect any remuneration.[41]

However, there is a fundamental difference. While abuses by the contractual counterparts cannot occur in the case of open licenses, gratuitous licenses are exposed to this risk. Indeed, the beneficiaries could take advantage of a stronger position[42] and impose to authors and performers these terms to reduce costs. Consequently, the application of the CDSMD's protective measures should not be automatically excluded. In support of this, one of the purposes of the EU legislature's intervention was to remedy to "take it or leave it" and "buy-out" situations for creator.[43] These can occur not only with unfair remuneration, but also with no remuneration at all.

The admissibility of gratuitous licenses should be assessed on a case-by-case basis and be strongly justified. To this purpose, several criteria could be considered.[44] However, particular attention should be paid to whether the choice of the author or performer is truly genuine, as in volunteering.

3. The social media terms of service

Social media terms of service are unilaterally determined by the providers. They are generally fragmented into an intricate set of web pages and integrated by policies and guidelines. In addition, they are subject to frequent updates and the various linguistic versions are not always identical. For example, a previous version of the German terms of service of TikTok left intact claims for equitable remuneration under Sections 32 and 32a German Copyright Act.[45] All this makes their consultation and the reconstruction of their evolution over time particularly difficult.

This inquiry considers the general terms of service of Instagram,[46] Facebook (Meta),[47] TikTok,[48] YouTube,[49] LinkedIn[50] and X.[51] These services are recognized among the most popular in Europe, which enable communication to the public particularly of images, texts, and short videos. In 2022, the European Commission designated most of them as "core platform services" provided by "gatekeepers" under the DMA.[52] The terms of service were last accessed on 27 October 2025 and a static version was archived online.[53] The appendix provides relevant excerpts.

These contracts have some constants. They recognize that uploaded content may be protected by IPRs and that ownership remains to the user.[54] Nevertheless, a worldwide, transferable, sub-licensable, non-exclusive, and royalty-free license is granted to the provider. This license is particularly broad, including the right to reproduce, adapt or make derivative works, perform, and communicate to the public. In some cases, also the training of AI models is expressly included.[55] In addition, rights clearance is required. The agreement lasts until the removal of the content. However, some exceptions apply, such as in the case of re-dissemination by other users.[56]

In some cases, a separate license is also granted to the other users of the service.[57] This reciprocal license between users has a more limited scope than the one issued to the provider. It covers access, modification, and communication only using features of the platform.

Some general terms of service have specific dispositions on monetization. X expressly states that no remuneration is due and that the use of the service constitutes a sufficient consideration.[58] YouTube and LinkedIn expressly grant the provider the right to monetize the works and

[39] See, *e.g.*, Creative Commons, 'Frequently asked questions' https://creativecommons.org/faq/#what-if-i-change-my-mind-about-using-a-cc-license, according to which Creative Commons licenses are not revocable.

[40] ECS (n 23) 136: "*the exemption of open access licences from Articles 18-22 should not lead exploiters of works and performances to impose upon creators and performers obligations to authorise the use of their creations under such free licences, notably to circumvent the protective provisions of the Directive*", and n 14: "*Producers or publishers should not be allowed to avoid the application of the protection of art.18-22, merely by imposing open access licensing to creators and performers as the recital 82 refers to "non exclusive licences for the benefit of any users"*".

[41] Report of the German Committee on Legal Affairs 14/8058 of 23 January 2002, 18 https://dserver.bundestag.de/btd/14/080/1408058.pdf.

[42] Recital 72, first sentence, CDSMD.

[43] European Commission, 'Impact assessment on the modernization of EU copyright rules' (2016) SWD(2016) 301 final, 175 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52016SC0301.

[44] Cf., with reference to Section 32 German Copyright Act, Sverre Klemp, 'Die Angemessenheit der Vergütung nach § 32 UrhG für wissenschaftliche Werke im STM-Bereich' (2016) 31-37 https://www.econstor.eu/bitstream/10419/128638/1/848622340.pdf.

[45] This example was provided by Adams and Ruse-Khan (n 17) 351-354. This clause was deleted on 29 July 2020. However, a copy achieved on 19 July 2020 is available at https://web.archive.org/web/20200710013739/https://www.tiktok.com/legal/terms-of-use?lang=de: "*Ihr Recht auf eine Pflichtvergütung nach §§ 32, 32a Urheberrechtsgesetz („UrhG") bleibt unberührt*".

[46] Instagram's terms of service https://help.instagram.com/581066165581870.

[47] Article 3(3)(1) Meta's terms of service https://www.facebook.com/terms.php.

[48] Article 4(9) TikTok's terms of service https://www.tiktok.com/legal/page/eea/terms-of-service/en.

[49] YouTube's terms of service https://youtube.com/static?template=terms.

[50] Article 3.1 LinkedIn's terms of service https://www.linkedin.com/legal/user-agreement.

[51] X's terms of service https://x.com/en/tos.

[52] European Commission, 'Digital Markets Act: Commission designates six gatekeepers', 6 September 2023, https://ec.europa.eu/commission/presscorner/api/files/document/print/en/ip_23_4328/IP_23_4328_EN.pdf. The European Commission explicitly considered X not to be a core platform service provided by a gatekeeper. See, on this, European Commission, 'Commission Implementing Decision', C(2024) 6950 final, 16 October 2024 https://ec.europa.eu/competition/digital_markets_act/cases/202540/DMA_100041_659.pdf. Nevertheless, this analysis also includes X for its relevant size and its similarity to the other services. This inquiry could be further extended to include smaller platforms or platforms focused on other works or performances, such as longer or live videos, audios, or video game features.

[53] Internet Archive https://archive.org/; Perma.cc https://perma.cc/. The links to the static versions are in the appendix alongside the original ones.

[54] Appendix 1, para. 1: Instagram, Meta, TikTok, YouTube, LinkedIn, X.

[55] Appendix 1, para. 2: Instagram, Meta, TikTok, YouTube, LinkedIn, X.

[56] Appendix 1, para. 3: Instagram, Meta, TikTok, YouTube, LinkedIn, X.

[57] Appendix 1, para. 4: TikTok, YouTube.

[58] Appendix 1, para. 5: X.

performances, and this does not entitle the user to any payment.[59] Interestingly, YouTube states that "*Starting June 1, 2021, any payments you may be entitled to receive from YouTube under any other agreement between you and YouTube* [...] *will be treated as royalties*".[60] Considering the timeframe, this is probably a reaction to the CDSMD.

Notwithstanding the general terms of service, providers adopted certain revenue-sharing approaches based on different criteria, such as the number of views received. However, many of these initiatives were limited in time (*e.g.*, some programs ceased, others started recently, others are tested or only announced), in space (*e.g.*, these monetization initiatives often does not include the EU or are limited to certain Member States), to certain types of works and performances (*e.g.*, videos with a minimum length) or subject to other conditions (*e.g.*, age requirements; minimum number of followers and views; invitation from the provider; payment of a subscription; compliance with platform's policies).[61] In other words, these initiatives – where available – appear partial.

All this considered, despite a few exceptions, many authors and performers have not received for a considerable period and/or do not currently receive, in at least some EU Member States, any payment from social media service providers in relation to certain works or performances.

4. A possible violation of the fair remuneration principle

The requirements of Article 18 CDSMD seem satisfied in the case of social media. First, at least part of what is uploaded on social media is copyright-protected. Second, there is a license in the terms of service. On this point, the concept of "contract" pursuant to the CDSMD is very broad.[62] Third, there is a purpose of exploitation. Indeed, Article 17(1) CDSMD specifies that an online content-sharing service provider performs an act of communication to the public when it gives the public access to copyright-protected works or performances uploaded by its users. Moreover, the providers extract directly or indirectly economic value from the licensed rights.[63]

It remains to assess the Linux clause. Interpreting Recital 82 CDSMD broadly, some scholars questioned the applicability of Articles 18–23 CDSMD to social media.[64] This approach would create unjustified differentiations and neutralize the effect of the protective measures. The social media licenses are not open licenses to the general public, which are expressly permitted. They are gratuitous licenses to the only benefit of the provider and, therefore, require strict scrutiny.

It is doubtful that these agreements are the result of a free choice of authors and performers. As recognized by the EU legislature, in cultural industries contractual freedom alone does not lead to socially acceptable results.[65] Social media service providers have a strong dominant position, profit from massive network effects, and have deep market penetration.[66] Given this prominent role and the absence of alternatives, authors and performers need these few major platforms to access the market and reach the public. As the terms of service are take-it-or-leave-it contracts, they could be forced to accept, and continue to accept, unfair conditions.[67]

This issue has also been addressed in parallel areas. Concerning privacy protection, the dominant position was considered important in determining whether the consent given by the users to the social media service provider to process personal data was freely given and valid.[68] Moreover, it has been recognized an increasing dependence of business users on online intermediation services, which enables them to act unilaterally in ways that can be contrary to good faith and fair dealing.[69] The same issue is at the basis of the latest legislative interventions in competition law. Interestingly, the European Commission shall assess whether the general conditions of access for business users to online

[59] Appendix 1, para. 5: YouTube, LinkedIn.

[60] Appendix 1, para. 5: YouTube.

[61] Appendix 2 provides an overview of some monetization initiatives. The analysis does not consider direct payments from the public to authors and performers through the intermediation of the platform, given their independent and different nature. See also Frithjof Michaelsen and others, 'The impact of influencers on advertising and consumer protection in the Single Market' (2022) 39 https://doi.org/10.2861/854390: "*Influencers must meet specific platform-mandated conditions, some of which have been heavily critiqued based on their potential for discrimination and precarious nature*".

[62] CJEU 6 March 2025, C-575/23, EU:C:2025:141, para. 91, according to which "*the concept of 'contract' used in those articles must be understood in a broad sense, as referring to any licensing of exploitation or transfer of exclusive right, Articles 18, 19 and 22 of Directive 2019/790 expressly referring, moreover, to the licensing or transfer of right*".

[63] Users provide their data and watch advertisements to access works and performances. The licensed rights ground the subsequent revenues of the providers. Cf., for a definition of "exploitation" in a comparative perspective, WTO Panel on United States–Section 110(5) of the US Copyright Act of 15 June 2000, para. 6.165, according to which "exploitation" can be interpreted as "*the activity by which copyright owners employ the exclusive rights conferred on them to extract economic value from their rights to* [musical] *works*".

[64] Ginsburg (n 12) 787: "*the author-protective mandatory remuneration rules of the DSM Directive do not seem to apply to platform licenses*". See also Ginsburg (n 17): "*Platform Term of Services do not appear to be subject to the obligations of Articles 18-22 of the DSM Directive because the Article 18 principle of fair remuneration applies only to transfers of exclusive rights*".

[65] Recital 72, first sentence, CDSMD. See also Adams and Ruse-Khan (n 17) 331: "*the intellectual property (IP) regime, in combination with a usually generous deference to freedom of contract, effectively enables firms to enclose and appropriate the products of those activities either 'for free' or with little remuneration*".

[66] Cf. Vincenzo Iaia, 'The remodelled intersection between copyright and antitrust law to straighten the bargaining power asymmetries in the digital platform economy' (2021) 29(3) IJLIT, 169-203 https://doi.org/10.1093/ijlit/eaab006.

[67] Niva Elkin-Koren, 'Governing access to user-generated content: The changing nature of private ordering in digital networks', in Eric Brousseau, Meryem Marzouki and Cécile Méadel (eds), *Governance, Regulations and Powers on the Internet* (CUP 2012) 19 https://doi.org/10.1017/cbo9781139004145.020: "*what rightholders call "contracts" are simply unilateral provisions which are held enforceable against third parties. In the absence of meaningful consent there is no reason to assume that these arrangements are efficient*"; Luca Belli and Cristiana Sappa, 'The Intermediary Conundrum: Cyber-Regulators, Cyber-Police or Both' (2017) 8(3) JIPITEC 185 https://ssrn.com/abstract=3727905, arguing that the possibility to switch to another intermediary can be severely limited. See also Phalguni Mahaptra and Anindya Sircar, 'The interface of contract law and copyright law. Examining the problem of contractual overridability', in Christophe Geiger (ed), *The Interface of Intellectual Property Law with other Legal Disciplines* (EE 2025) 171-182 https://doi.org/10.4337/9781035340934.00020.

[68] CJEU 4 July 2023, C-252/21, EU:C:2023:537, paras. 140-154; EDPB, 'Opinion 08/2024 on Valid Consent in the Context of Consent or Pay Models Implemented by Large Online Platforms' (2024) https://www.edpb.europa.eu/system/files/2024-04/edpb_opinion_202408_consentorpay_en.pdf; EDPB, 'Guidelines 05/2020 on consent under Regulation 2016/679' (2020) https://www.edpb.europa.eu/sites/default/files/files/file1/edpb_guidelines_202005_consent_en.pdf. See also Adams and Ruse-Khan (n 17) 330: "*as digital platforms such as YouTube, Facebook and Instagram have come to monopolize an ever-greater share of public attention, individuals have become increasingly reliant on those platforms to find an outlet for their creative work, and potentially, to earn an income*".

[69] Recital 2 Regulation (EU) 2019/1150 ("P2B"). See also Recital 11, first sentence, P2B, according to which online social media services are considered online intermediation services pursuant to Article 2(1)(2) P2B. Terms and conditions are explicitly regulated by this text, but not with regard to the remuneration of copyright licenses. See also, in a consumer protection perspective, Loos and Luzak (n 14) 41: "[such license] *disturbs the balance between the parties' rights and obligations under the contract*".

social networking services of gatekeepers are fair, reasonable, and non-discriminatory.[70] These licenses could even fall under the abuse of economic dependence, in those jurisdictions where it is recognized.[71]

Other elements, such as the use of the service, the chances of public exposure, the initial absence of financial motivations or the narrowness of incomes cannot justify the absence of remuneration. These arguments will be considered individually.

First, the provision of the social media service cannot be considered a remuneration for the license, although it may be qualified as such in some agreements. Indeed, the service is already remunerated by the payment of the subscription or the provision of data and the vision of personalized advertisements, as it happens for any passive user.[72] The free license results in a double payment from authors and performers and an enrichment without cause for the providers.

Second, neither a hypothetical public exposure of authors and performers should be considered a remuneration for the license. Indeed, such exposition is eventual and indeterminate. The functioning of the algorithms that select works and performances for the public is not transparent. The provider assumes no obligation to promote, as in a sponsorship agreement. On the contrary, authors and performers can generally pay the provider to effectively sponsor their works and performances as all other advertisers do. In any case, an increased notoriety would only reverberate on other monetized goods or services, which may not even exist.[73] In other terms, only one party seems bound to provide something to the other.

Third, creative activities, particularly on the internet, can be performed not preponderantly for profit, but reflecting a wide range of human interests. However, the mere fact that the author or performer is not initially or entirely driven by financial motivations is not sufficient to deny remuneration, particularly when other subjects, taking advantage of such drivers, gain considerable revenue through economies of scale.[74]

Fourth, it could be argued that the remuneration would be insignificant given the large number of uploads. However, first, the amount of individual remuneration is difficult to predict in advance. Indeed, it is necessary to determine a fair share and exclude all those who are not entitled. Second, it is dangerous to argue that authors' rights should be protected only when they generate a significant amount of money. Third, the incomes generated, collectively considered, are particularly significant for the providers. If some authors and performers are truly not interested in receiving payments, or if some of these were really close to zero, better redistribution systems could be imagined, eventually to the benefit of the authors and performers' community at large.[75]

All this considered, as authors and performers should not be forced to renounce ex ante to remuneration, social media licenses could be contrary to EU law.[76] This perspective seems confirmed also by the European Commission, according to which Article 18 CDSMD should apply to all uses of works and performances, including by online services.[77]

5. Some initiatives for securing fair remuneration

Despite reaching similar conclusions, some scholars raised doubts about the concrete enforceability of Articles 18–23 CDSMD by authors and performers that use social media.[78] On the contrary, several paths appear viable in light of the CDSMD's transposition and beyond.

First, the nullity of the license: Some Member States implemented Article 18 CDSMD by explicitly providing for the nullity of the agreement in the absence of appropriate and proportionate remuneration.[79] Consequently, social media licenses could be deemed null and void,

[70] Recitals 2-4 and 62 DMA. Pursuant to Article 6(12) DMA, "*The gatekeeper shall apply fair, reasonable, and non-discriminatory general conditions of access for business users to its* […] *online social networking services* […]. *The Commission shall assess whether the published general conditions of access comply with this paragraph*".

[71] See, *e.g.*, Article IV.2/1 Belgian Code of Economic Law; Article L420-2(2) French Commercial Code; Section 20 German Competition Act; Article 9 Italian Law 18 June 1998, No 192. See also, in Italy, Italian Competition Authority ("AGCM") No. 30606 of 20 April 2023 https://www.agcm.it/dotcmsCustom/getDominoAttach?urlStr=192.168.14.10:8080/41256297003874BD/0/13F23EF9FDD2C43DC125899B004882AA/$File/p30606.pdf, and Italian Administrative Regional Tribunal ("TAR") for Latium, 11 October 2023, n. 16069/2023, recognizing the economic dependence of SIAE (*i.e.*, an Italian CMO) on Meta.

[72] See para. 1. See also Loos and Luzak (n 14) 41; Jacopo Ciani Sciolla, 'Contaminations between data protection law and copyright: understanding personal data protection rights as a Doppelrecht', in Christophe Geiger (ed) *The Interface of Intellectual Property Law with other Legal Disciplines* (EE 2025) 183-197 https://doi.org/10.4337/9781035340934.00021, with further references and also underlining that Article 3(1) Directive (EU) 2019/770 ("Digital Content and Services Directive") allows the provision of (personal) data as payment for the supply of digital services.

[73] Cf. Mazziotti (n 20) 10-11: "*the condition of gratuity in publishing creative works across platforms is not necessarily justified and made easier to accept by the remarkable exposure opportunities offered by the largest services.* […] *the only content creators who can view uncompensated uses or viewings of their works as a way to boost their live performance businesses are performing artists*". See also Ricolfi (n 6) 157: "*being discovered is of little or no monetary value, if parallel, for-price transactions are dominated by few powerful intermediaries*".

[74] Cf. Corinne Tan, 'Regulating Content on Social Media. Copyright, Terms of Service and Technological Features' (UCL 2018) 19 https://doi.org/10.2307/j.ctt2250v4k: "*amateur users often evolve into professionals after an initial phase of non-commercial activity. Indeed, commercial interests can coexist with altruistic motivations behind the production of content on social media*".

[75] Cf., on the community of authors, Adolf Dietz, 'A modern concept for the right of the community of authors (domaine public payant)' (1990) 24(4) Copyright Bulletin, 13-24 https://unesdoc.unesco.org/ark:/48223/pf0000088520.

[76] Cf., in a comparative perspective, Mihajlo Babovic, 'The Emperor's New Digital Clothes: The Illusion of Copyright Rights in Social Media' (2015) 6(1) Cybaris, 188-189 https://open.mitchellhamline.edu/cybaris/vol6/iss1/6.

[77] Question for written answer E-002618/2021 to the Commission from Alexis Georgoulis (The Left) of 12 May 2021 https://www.europarl.europa.eu/doceo/document/E-9-2021-002618_EN.html. Answer given by Mr Breton on behalf of the European Commission of 17 August 2021 https://www.europarl.europa.eu/doceo/document/E-9-2021-002618-ASW_EN.html.

[78] Adams and Ruse-Khan (n 17) 358: "*creators are so dispersed, and their interests so diverse, that they are unlikely to form a sufficiently large, homogeneous, group to impose a credible threat to the platform. In such a context, moreover, as our discussion shows, simply introducing mandatory rights for an adequate remuneration will not solve the issue—unless effective enforcement mechanisms are included*"; Senftleben, Quintais and Meiring (n 6): "[Article 18 CDSMD] *is too broadly defined to effectively constraint a platform's remuneration and monetization policies towards users*"; Quintais, De Gregorio and Magalhães (n 20) 10: "[Article 18 CDSMD] *could in theory provide a boon for the remuneration of user-creators and avoid abusive remuneration practices by OCSSPs. But it remains unclear how it can be operationalised in practice for online platforms.* […] *the regime on fair remuneration in exploitation contracts of creators only marginally limits the discretion of platforms in defining their private ordering regimes vis-à-vis user-creators*"; Aurelija Lukoseviciene, 'Protection of platform authors in the context of the EU DSM Directive: The invisible "Gig Authorship"?', in Johannes Buchheim and others (eds), *Plattformen. Grundlagen und Neuordnung des Rechts digitaler Plattformen* (Nomos 2024) 30 https://doi.org/10.5771/9783748919919-11: "*articles 18-23 of the recent DSM Directive do not fully address the complexities and power dynamics observed on three large content creator platforms, namely, YouTube, Roblox, and Instagram*".

[79] See, *e.g.*, in Italy, Article 107(2) Italian Copyright Act.

leaving the possibility of claiming damages intact.[80]

However, enforcing the nullity could be particularly impactful and difficult for authors and performers. It would entail the removal of all works and performances from the platform and the abandonment of the related social capital acquired over time. On the contrary, as long as limited cases are concerned, the providers would not be dramatically affected. In the absence of legislative or regulatory intervention, eventually imposing penalties,[81] this mandatory protection alone might not be particularly practical.

Second, the adjustment of the contract: The *ex-post* contractual measures pursuant to Articles 19–22 CDSMD would apply. In particular, pursuant to Article 20 CDSMD, authors and performers or their representatives would be entitled to claim additional, appropriate, and fair remuneration from the service providers, alleging that the remuneration originally agreed (*i.e.*, no remuneration) turned out to be disproportionately low compared to all the subsequent relevant revenues derived from the exploitation of the work or performance.[82] All benefits obtained by the providers should be taken into account.[83] A claim could also be filed collectively, such as through a class action,[84] and could be simplified by the formation of collectives of authors and performers also in relation to social media.[85]

For this purpose, pursuant to Article 19 CDSMD, providers should disclose relevant and comprehensive information on the exploitation, including the modes of exploitation, all revenues generated, and remuneration due.[86] The resulting administrative burden would hardly be disproportionate,[87] considering that a wide range of data is already gathered and communicated to users. At the same time, this information obligation could not be circumvented arguing that a single contribution of an author or performer is not significant.[88] Such circumstance cannot be assessed by reference to the totality of the works exploited by a subject, but only by reference to an individual work in the eventuality of multiple contributions. Market practices in cases where some authors and performers have been remunerated could be taken into account as benchmarks for determining the amount of remuneration, as long as they are deemed appropriate and proportionate.[89]

Third, the application of remuneration rights: Some Member States, such as Belgium[90] and Germany,[91] transposed Article 18 CDSMD introducing residual remuneration rights[92] for the communication to the public by online content sharing service providers. Others provided for residual remuneration rights with variable scope.[93] In the presence of a residual remuneration right, a minimum remuneration entitlement is retained by authors and performers even when the exclusive rights are transferred or licensed.[94] Residual remuneration rights ensure widespread enforcement, remunerating all exploitations irrespective of individual legal actions.

The related debate mainly concerned "traditional" works, in particular songs and movies. However, residual remuneration rights could apply to every kind of work and performance, including those published on social media. Consequently, a statutory remuneration may be due despite the free license, and eventually administered by a collective management organization ("CMO").[95] A limitation-based remuneration right for works and performances published on social media could also

[80] This would be in line with some French rulings (TGI Paris No. 14/07300 of 7 August 2018 and CA Paris No. 19/09244 of 14 April 2023, on Twitter; TGI Paris No. 14/07224 of 12 February 2019, on Google+; TGI Paris No. 14/07298 of 9 April 2019 on Facebook) according to which social media terms of service were considered invalid from a consumer protection law perspective. Cf. Recommendation No. 2014-02 of the French unfair terms Commission on contracts offered by social media service providers, 10 https://www.economie.gouv.fr/files/files/directions_services/dgccrf/boccrf/2014/14_10/recommandation_CAA_2014_02.pdf. Cf. Steven Hetcher, 'User-Generated Content and the Future of Copyright: Part Two - Agreements Between Users and Mega-Sites' (2008) 24 Santa Clara High Tech. L.J., 832 https://www.digitalcommons.law.scu.edu/chtlj/vol24/iss4/3: "*millions upon millions of such agreements-particularly those between UGC mega-sites and minors-are unconscionable and therefore invalid on their terms*".

[81] Cf. Adams and Ruse-Khan (n 17) 358: "*in the context of the statutory minimum wage: only by providing both a contractual right to be paid a minimum sum, and imposing effective (criminal) penalties on employers who failed to pay such sums, have mandatory rights to minimum remuneration been even remotely effective*".

[82] See, in this sense, the previous version of the German terms of service of TikTok at n 45. Cf., in this sense, Martin Senftleben and Elena Izyumenko, 'Author remuneration in the streaming age – exploitation rights and fair remuneration rules in the EU' (2025) JIPLP, 10 https://doi.org/10.1093/jiplp/jpaf071.

[83] See, in this sense, Recital 78, third sentence, CDSMD.

[84] Bernt Hugenholtz, 'Regulating creator's contracts under the DSM Directive. What we can learn from the Dutch' (2022) 4 NIR, 472 https://www.ivir.nl/publicaties/download/NIR2022nr4_13-Hugenholtz.pdf: "*According to Art. 20 (1), a disproportionality claim can be brought not only by authors and performers, but also by their "representatives"*. [...] *This suggests that the DSM Directive permits class actions or similar dispute resolution procedures, where creators are collectively and anonymously represented. Such collective proceedings might mitigate the danger of blacklisting*".

[85] Ginsburg (n 12) 795: "*One solution may be to allow and encourage creators to form collectives to bargain, free of antitrust constraints, with the platforms over the terms of service, and to introduce methods of remuneration*". See, *e.g.*, in USA, Internet Creators Guild https://web.archive.org/web/20190719172942/https://internetcreatorsguild.com/what-we-do (archived version 19 July 2019); in Germany, YouTubers Union https://www.youtubersunion.org/content/spark.

[86] Recital 74 CDSMD seems to exclude the need of information only when the author or performer granted an open license. See also Bonadio, Lucchi and Mazziotti (n 17) 1186.

[87] Article 19(3) CDSMD.

[88] Article 19(4) CDSMD.

[89] Recital 73, first sentence, CDSMD. See, *e.g.*, YouTube, 'YouTube Shorts monetization policies' https://support.google.com/youtube/answer/12504220?hl=en, according to which creators keep 45% of the total advertising revenue minus the cost of music licensing.

[90] Article XI.228/4 Belgian Code of Economic Law.

[91] Section 4(3) and (4) German Act on the Copyright Liability of Online Content Sharing Service Providers ("OCSSPs Act"). See also Section 12 German OCSSPs Act.

[92] For a classification of remuneration rights, Christophe Geiger and Oleksandr Bulayenko, 'Creating Statutory Remuneration Rights in Copyright Law: What Policy Options under the International Legal Framework?', in Henning Grosse Ruse-Khan and Axel Metzger (eds), *Intellectual Property Ordering beyond Borders* (CUP 2022) https://doi.org/10.1017/9781009071338.019.

[93] See, *e.g.*, Articles 46-bis(2) and 84 Italian Copyright Act; Articles 88, 90(4), (6) and (7), 108(3) and (6) Spanish Copyright Act; Article 20b(2) German Copyright Act; Article 70(3) Polish Copyright Act.

[94] Silke von Lewinski, 'Collectivism and its Role in the Frame of Individual Contracts', in Jan Rosén (ed), *Individualism and Collectiveness in Intellectual Property Law* (EE 2012) 121 https://doi.org/10.4337/9780857939616.00014 on the origin and operation of this model (also called the "Lewinski model") applied to the rental right pursuant to Article 5 Directive 2006/115/EC ("RLD").

[95] Cf. Alessandro Cogo, 'Le regole del contratto tra social network e utente sull'uso della proprietà intellettuale del gestore, dell'utente e degli altri utenti' (2011) AIDA, 340 https://hdl.handle.net/2318/90288, noting that maximum dissemination of works and performances could coexist with the application of inalienable rights to fair remuneration.

be considered in parallel.[96]

Developing new solutions may entail some difficulties. Providers and producers have filed legal actions and even threatened to withdraw from national markets in response to new protective measures in favor of authors and performers.[97] International coordination – if not unification – would be necessary to overcome these difficulties. In the EU, the introduction of residual remuneration rights could be grounded in the obligation to ensure the effectiveness of Article 18 CDSMD.[98]

Fourth, the safeguard of the free choice of authors or performers: Some platforms (*e.g.*, YouTube)[99] give to authors and performers the possibility to opt for open licenses when uploading their works and performances, instead of the standard licenses provided by the terms of service. Providers could consider developing this option in order to preserve the free will of authors and performers. If open licenses are adopted, the absence of remuneration would seem better justified.

In this sense, the reciprocal licenses granted to other platform users under certain terms of service do not appear to be sufficient. These licenses do not have the same openness effect as they are considerably limited. Indeed, as observed, they do not cover the general public, but only users of the platform using the platform's features.[100]

6. Temporal and territorial aspects

Regardless of the chosen approach, it is important to determine the scope of the providers' remuneration obligation. Several complications subsist. Indeed, these services have been available for years, frequently changing policies, and are provided simultaneously in different territories.

From a temporal perspective, the remuneration obligation could cover also past exploitations of works and performances. Pursuant to Article 26 CDSMD, Articles 18–23 CDSMD apply in respect of all copyright-protected works and performances on or after 7 June 2021, without prejudice to any act concluded and rights acquired before. In other terms, if the CDSMD's measures apply, all exploitations that occurred at least after 7 June 2021 should be considered.[101]

From a territorial perspective, revenues coming from the exploitation in any territory should be taken into account in determining the remuneration. For the EU, Irish law and courts are generally chosen in the terms of service.[102] These exclusive choice-of-court[103] and of-law[104] agreements could dissuade authors and performers from acting against the providers. Indeed, even if they point to an EU Member State, there could be practical difficulties and costs related to the distance. Consequently, it should be examined whether alternatives are possible.

It could be argued that authors and performers on social media qualify as consumers[105] or employees,[106] differentiating them on the basis of the characteristics and size of their activities. This would entail the application of protections concerning jurisdiction[107] and applicable law.[108] In particular, a claim could be filed in the more accessible forum actoris.

On the contrary, at present, authors and performers claiming remuneration will likely be qualified as self-employed business users. However, even in this case, the protection of their interests may require the application of international private law rules more favorable than the general ones.[109] Indeed, authors and performers would be in a weaker position similar to that of consumers and employees.[110] In this perspective, some Member States introduced specific provisions in protection of authors and performers.[111] Ultimately, these agreements could be deemed ineffective.[112] In any case, a further specification of

[96] Christophe Geiger, 'Challenges for the Enforcement of Copyright in the Online World: Time for a New Approach', in Paul Torremans (ed), *Research Handbook on Cross-border Enforcement of Intellectual Property* (EE 2014) https://doi.org/10.4337/9781781955802.00027; Martin Senftleben, 'User generated content: towards a new use privilege in EU copyright law', in Tanya Aplin (ed), *Research Handbook on Intellectual Property and Digital Technologies* (EE 2020) 136-162 https://doi.org/10.4337/9781785368349.00014; Jean-Paul Triaille and others, 'Study on the Application of Directive 2001/29/EC on Copyright and Related Rights in the Information Society' (2013) 455-457 https://doi.org/10.2780/90141.

[97] See, *e.g.*, Alessandro Cerri, 'Spotify to cease operations in Uruguay over copyright laws' (2023) TheIPKat https://ipkitten.blogspot.com/2023/12/spotify-to-cease-operations-in-uruguay.html, reporting that Spotify announced the immediate cessation of its activities in Uruguay following proposed legislative amendments relating to the remuneration of performers. See also Belgian Constitutional Court of 26 September 2024, Case No 98/2024, ECLI:BE:GHCC:2024:ARR.098, para. A.43.1, second part, according to which some claimants mentioned the eventuality of making their services inaccessible from Belgium if the new residual remuneration rights were deemed valid.

[98] Cf. Christophe Geiger, Silvia Scalzini and Ludovico Bossi 'Time to (Finally) Reinstall the Author in EU Copyright Law: From Contractual Protection to Remuneration Rights' (2025) 56(10) IIC https://doi.org/10.1007/s40319-025-01647-9: "*a wider use of statutory remuneration rights does not seem to be only an option. On the contrary, it appears to be one of the best ways, next to those devised so far, which could really achieve the effectiveness of the principle of appropriate and proportionate remuneration of authors and performers*".

[99] YouTube, 'Creative Commons' https://support.google.com/youtube/answer/2797468?hl=en: "YouT*ube allows creators to mark their videos with a Creative Commons CC BY license.* […] *The standard YouTube license remains the default setting for all uploads. To review the terms of the standard YouTube license, refer to our Terms of Service*".

[100] See para. 2 and Appendix 1, para. 4: TikTok, YouTube.

[101] See CJEU 6 March 2025, C-575/23, EU:C:2025:141, paras. 67-80. Cf. Opinion AG Szpunar of 12 December 2018, C-476/17, EU:C:2018:1002, paras. 21-24; Opinion AG Hogan of 16 May 2019, C-484/18, EU:C:2019:423, paras. 24-25.

[102] Appendix 1, para. 6: Instagram; Facebook; TikTok; LinkedIn; X. On the contrary, YouTube, courts and law of the user's country of residence.

[103] Article 25 Regulation (EU) No 1215/2012 ("Bruxelles I bis").

[104] Article 3 Regulation (EU) No 593/2008 ("Rome I").

[105] Cf. CJEU 25 January 2018, Case C-498/16, EU:C:2018:37, paras. 25-41; in France, CA Paris No. 2016-58 of 12 February 2016, on Facebook. See also Camilla Signoretta, 'Consumer-Alike Remedies in EU Copyright Contract Law: Authors as (or Beyond) Consumers? (2023) 45(7) EIPR, 412: "*Also in hybrid cases, the consumer-status should be maintained in order not to frustrate parties' reliance*".

[106] Cf. M. Six Silberman and others, 'Content marketplaces as digital labour platforms: toward accountable algorithmic management and decent work for content creators' (2023) Proceedings of the 8th Conference on Regulating for Decent Work, International Labour Office, Geneva, 9 https://ssrn.com/abstract=4501081: "*while a cogent argument could therefore be made that YouTube and other content marketplaces do in fact fall within the definition of 'digital labour platform' set out in the PWD* [Directive (EU) 2024/2831]*, the definition does not provide the wished-for level of legal certainty with respect to these platforms*".

[107] Articles 17-23 Regulation Bruxelles I bis.

[108] Articles 6 and 8 Regulation Rome I.

[109] Cf. Recital 18 Regulation Bruxelles I bis; Recital 23 Regulation Rome I.

[110] Jane C. Ginsburg and Pierre Sirinelli, 'Private International Law Aspects of Authors' Contracts: The Dutch and French Examples' (2015) 30(2) Columbia Journal of Law & the Arts, 171 https://doi.org/10.7916/D82R3S37; Signoretta (n 105) 417: "*authors and performers are in some respects in a worse position than consumers*".

[111] See, *e.g.*, Section 32b German Copyright Act; Article 25h Dutch Copyright Act; Article 114-bis(2) Italian Copyright Act; Article L132-24 French Intellectual Property Code.

[112] Cf. Lydia Lundstedt, 'DSM Contract Rules in a Cross Border Context: A Swedish Perspective' (2025) IIC 13-17 https://doi.org/10.1007/s40319-025-01581-w, arguing in particular that, taking a Swedish perspective, a choice of court agreement may be ineffective depending on individual circumstances of the case, such as the substantial cost of litigating in a distant country incurred by authors and performers, and underlining the uncertainty of not knowing whether the clause will be effective until a litigation.

private international law rules with regard to the peculiar position of authors and performers, preferably at the international level, might be desirable.[113]

7. Conclusion

Preliminarily, this article reaffirms the need for terminological clarity. The majority of "creators" are authors and performers. The majority of "content" is copyright-protected works and performances. Indeed, these concepts are much broader than commonly thought. According to EU law, authors and performers should fairly participate in the revenues resulting from their works and performances. Users of social media that are also authors and performers, often mislabeled as "content creators", should not be discriminated. The risk of this misclassification is disregarding their moral and economic interests and treating intellectual works as nothing more than data. This premise clarifies the relevance of the analysis that follows.

Subsequently, this article illustrates how the Linux Clause of Recital 82 CDMSD implies a distinction between free licenses for all ("open licenses") and free licenses for some ("gratuitous licenses"). Open licenses are expressly safeguarded. Gratuitous licenses should be admissible only exceptionally in the presence of a genuine choice of authors and performers. In short, "voluntary openness for all" is different from "given for free to some, but not freely used".

Social media terms of service impose the absence of remuneration, distorting the justification of the Linux clause of Recital 82 CDSMD. Indeed, it is difficult to conceive volunteering for multinational companies. The use of gratuitous licenses exposes social media providers to the risks of "Article 18 CDSMD claims". A revenue-share model appears to be not only a strategic business choice for providers, but a legal obligation that could be enforced in several ways.

The compatibility of the Belgian residual remuneration rights with EU law is currently challenged before the Belgian Constitutional Court. The CJEU is requested to interpret Article 18 CDSMD.[114] The outcome of this proceeding appears particularly crucial for the development of authors' rights in Europe. Among the rest, several inputs could also be provided on social media. First, the Court may clarify that the residual remuneration rights at stake cover all works and performances, including those on social media. Second, it may seize the opportunity to specify that a free license to the benefit of specific licensees, in the absence of a real choice, does not preclude the application of the CDSMD's protective measures. Third, it may conclude that the obligation to ensure the effectiveness of Article 18 CDSMD requires Member States to intervene (*e.g.*, providing remuneration rights), particularly where the appropriate and proportionate remuneration of all authors and performers is structurally unachieved, as in the case of social media.

Many online services have been built on the work of authors and performers without sharing value with them. This helped consolidate their enormous market position.[115] However, a situation of mutual dependence exists. Authors and performers need to publish, and providers need quality works and performances to attract consumers. Insidiously benefiting from the fruits of others' creations without justification is not sustainable and raises problems of justice, even before economic ones.[116] In this framework, the fair remuneration principle could lead to the development of more collaborative systems,[117] ultimately improving trust in the online platform economy. This would benefit all parties, including providers.

Declaration of competing interest

The authors declare that they have no known competing financial interests or personal relationships that could have appeared to influence the work reported in this paper.

Acknowledgements

A previous version of this article won one of the 4iP Council Research Awards 2024. It was presented at the 2025 EPIP Conference (European Policy for Intellectual Property) in Antwerp, Belgium. Many thanks to Christophe Geiger, Maurizio Borghi, Marco Ricolfi for guidance, Cristiana Sappa, Jacopo Ciani Sciolla for continuous reviews, Bernd Justin Jütte, Orit Fischman-Afori for encouraging me to be provocative, Eleonora Rosati, Alessandro Cogo, Giuseppe Mazziotti, Martin Senftleben, Alexander Peukert, Séverine Dusollier, Péter Mezei, Thomas Margoni, Caterina Sganga for their time listening to my arguments, Mattia Angeleri, Andrea Mennella, and many other authors for sharing their experiences. All errors are my own.

Appendix 1. Excerpts from Social Media Terms of Service

Websites surveyed (last accessed 27 October 2025)

Instagram: https://help.instagram.com/581066165581870

Internet Archive: https://web.archive.org/web/20251011201902/https://help.instagram.com/581066165581870/

Perma.cc: https://perma.cc/YU99-GAQH

Facebook (Meta): https://www.facebook.com/terms.php

Internet Archive: https://web.archive.org/web/20251023201821/https://www.facebook.com/terms.php

Perma.cc: https://perma.cc/9ADY-TB38

TikTok: https://www.tiktok.com/legal/page/eea/terms-of-service/en

Internet Archive: https://web.archive.org/web/20250924151344/h

[113] Cf., in this sense, Ginsburg and Sirinelli (n 110); Lundstedt (n 112) 18; Madalina Nunu and others, 'Study on contractual practices affecting the transfer of copyright and related rights and the ability of creators and producers to exploit their rights' (2025) European Commission, 213-233 https://data.europa.eu/doi/10.2759/7915120. The only provision concerning private international law in the CDSMD is Recital 81 which merely recalls that, pursuant Article 3(4) Regulation Rome I, where all other elements relevant to the situation are located in one or more Member States, the parties' choice of applicable law other than that of a Member State does not prejudice the application of the provisions regarding transparency, contract adjustment mechanisms and alternative dispute resolution procedures.

[114] Belgian Constitutional Court of 26 September 2024, No 98/2024, ECLI:BE:GHCC:2024:ARR.098, and CJEU referral C-663/24, Streamz and Others, filed on 9 October 2024.

[115] Cf. Jean-Michel Jarre and others, 'CISAC Open Letter to MEP Julia Reda' (2015) 2 https://www.cisac.org/Newsroom/news-releases/creators-react-mep-redas-draft-report-copyright-calling-fairer-digital: "*High profile Internet distributors have built their businesses upon a cynical exploitation of laws drafted when the Internet was in its early days. Many digital businesses have expanded at our expense, and regrettably existing laws have enabled them to do so*"; Ginsburg (n 12) 79: "*Platforms, unlike traditional publishers, do not invest in the creation of works of authorship, but they reap the fruits of others' risk-taking*". See also Marco Giraudo, 'On legal bubbles: some thoughts on legal shockwaves at the core of the digital economy' (2022) 18 Journal of Institutional Economics, 597-604 https://doi.org/10.1017/S1744137421000473.

[116] Cf. Elkin-Koren (n 67) 17: "*it was not just about money. It was also about justice, the wish to prevent others from benefiting from the fruits of her creation*".

[117] Ibid 21"*The discourse of disparities of power may have to make way for a more egalitarian view of partnership, where platform owners and users may have to collaborate to attain the optimal terms of use that will maximize the interests of all.* […] *We need to develop a framework that will help us conceptualize a social activity that is a commercial asset, a market commodity, and at the same time a community*". See also Ricolfi (n 6) 172, underling the necessity to "*avoid that the flourishing of network-driven cooperation ends up being sucked up by the exuberance – and belligerence – of platforms*".

ttps://www.tiktok.com/legal/page/eea/terms-of-service/en

Perma.cc: https://perma.cc/4GZE-SBRX

YouTube: https://youtube.com/static?template=terms

Internet Archive: https://web.archive.org/web/20251026162010/https://youtube.com/static?template=terms

Perma.cc: https://perma.cc/6CDV-TUX8

LinkedIn: https://www.linkedin.com/legal/user-agreement

Internet Archive: https://web.archive.org/web/20251027053633/https://www.linkedin.com/legal/user-agreement

Perma.cc: https://perma.cc/5A45-NFTX

X: https://x.com/en/tos

Internet Archive: https://web.archive.org/web/20251011202814/https://x.com/en/tos

Perma.cc: https://perma.cc/V5GC-8BKY

1. Ownership

1.1. Instagram

We do not claim ownership of your content, but you grant us a license to use it. Nothing is changing about your rights in your content. We do not claim ownership of your content that you post on or through the Service and you are free to share your content with anyone else, wherever you want.

1.2. Facebook (Meta)

Some content that you share or upload, such as photos or videos, may be protected by intellectual property laws. You retain ownership of the content that you create and share on Facebook and other Meta Company Products that you use, and nothing in these Terms takes away the rights you have to your own content. You are free to share your content with anyone else, wherever you want.

1.3. TikTok

We don’t own your content. If you are the owner of the intellectual property rights in the content you create or share on the Platform, nothing in these Terms changes that.

1.4. YouTube

Rights you Grant. You retain all of your ownership rights in your Content. In short, what belongs to you stays yours.

1.5. LinkedIn

Because you own your original content and we only have non-exclusive rights to it, you may choose to make it available to others, including under the terms of a Creative Commons license.

1.6. X

You retain your rights to any Content you submit, post or display on or through the Services. What’s yours is yours — you own your Content (and your incorporated audio, photos and videos are considered part of the Content).

2. License to the provider

2.1. Instagram

However, we need certain legal permissions from you (known as a “license”) to provide the Service. When you share, post, or upload content that is covered by intellectual property rights (like photos or videos) on or in connection with our Service, you hereby grant to us a non-exclusive, royalty-free, transferable, sub-licensable, worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate, and create derivative works of your content (consistent with your privacy and application settings).

2.2. Facebook (Meta)

However, to provide our services we need you to give us some legal permissions (known as a "license") to use this content. This is solely for the purposes of providing and improving our Products and services as described in Section 1 above. […] Specifically, when you share, post, or upload content that is covered by intellectual property rights on or in connection with our Products, you grant us a non-exclusive, transferable, sub-licensable, royalty-free and worldwide license to host, use, distribute, modify, run, copy, publicly perform or display, translate and create derivative works of your content (consistent with your privacy and application settings). This means, for example, that if you share a photo on Facebook, you give us permission to store, copy, and share it with others (again, consistent with your settings) such as Meta Products or service providers that support those products and services.

2.3. TikTok

To provide the Platform, we need certain rights from you (called a licence). The details of these licences are set out below. By creating, posting or otherwise making content available on the Platform, you grant to TikTok and our Affiliates a licence to use your content which is: non-exclusive (this means you can licence your content to others), royalty-free (this means we don’t pay you for this licence), transferable (which means we can give the rights you give us to someone else), sub-licensable (this means we can licence your content to others, *e.g.* to service providers that help us to provide the Platform or to trusted third parties that have entered into agreements with us to operate, develop and provide the Platform); and worldwide (this means the licence applies anywhere in the world). This licence to use your content allows us to reproduce (*e.g.* to copy), adapt or make derivative works (*e.g.* to translate and/or create captions), perform and communicate your content to the public (*e.g.* to display it), for the purposes of operating, developing and providing the Platform, subject to your Platform settings.

2.4. YouTube

However, we do require you to grant certain rights to YouTube and other users of the Service, as described below. Licence to YouTube. By providing Content to the Service, you grant to YouTube a worldwide, non-exclusive, royalty-free, transferable, sublicensable licence to use that Content (including to reproduce, distribute, modify, display and perform it) for the purpose of operating, promoting, and improving the Service.

2.5. LinkedIn

You grant LinkedIn and our affiliates the following non-exclusive license to the content and other information you provide (*e.g.*, share, post, upload, and/or otherwise submit) to our Services: A worldwide, transferable and sublicensable right to use, copy, modify, distribute, publicly perform and display, host, and process your content and other information without any further consent, notice and/or compensation to you or others.

2.6. X

By submitting, posting or displaying Content on or through the Services, you grant us a worldwide, non-exclusive, royalty-free license (with the right to sublicense) to use, copy, reproduce, process, adapt, modify, publish, transmit, display, upload, download, and distribute such Content in any and all media or distribution methods now known or later developed, for any purpose. For clarity, these rights include, for example, curating, transforming, and translating. This license authorizes us to make your Content available to the rest of the world and to let others do the same. However, if you have chosen via our features to limit the distribution of your Content to a restricted community, we will respect that choice. You also agree that this license includes the right to analyze text and other information you provide with the view to improve the Services. You agree that this license includes the right for us to (i) provide, promote, and improve the Services, including, for example, for use with and training of our machine learning and artificial intelligence models, whether generative or another type; and (ii) to make Content submitted to or through the Services available to other companies, organizations or individuals, including, for example, for improving the Services and the syndication, broadcast, distribution, repost, promotion or publication of such Content on other media and services, subject to our terms and conditions for such Content use.

3. Duration

3.1. Instagram

This license will end when your content is deleted from our systems. You can delete content individually or all at once by deleting your account.

3.2. Meta (Facebook)

This license will end when your content is deleted from our systems. […] You can delete individual content that you share, post and upload at

any time. In addition, all content posted to your personal account will be deleted if you delete your account.

3.3 TikTok

Your licences to TikTok, our Affiliates and to users end when you close your account or when you or we remove your content from the Platform in accordance with these Terms. However, due to the nature of the Platform and our legal obligations, the licence granted will continue after you have removed your content if: you have allowed other users of the Platform to use or reuse your content via your Platform settings (*e.g.* by using Duet, Stitch, download or share functionalities); or we are obliged to store or process your content for legal reasons.

3.4. YouTube

Duration of Licence. The licences granted by you continue until the Content is removed as described below. Once removed, the licences will terminate, except where the operation of the Service, use of Content permitted before your removal, or the law requires otherwise. For example, removal of Content by you does not require YouTube to: (a) recall Content that is being used by other users within any limited offline viewing functionality of the Service; or (b) delete copies we reasonably need to keep for legal purposes.

3.5. LinkedIn

These rights are limited in the following ways: You can end this license for specific content by deleting such content from the Services, or generally by closing your account, except (a) to the extent you (1) shared it with others as part of the Services and they copied, re-shared it or stored it, (2) we had already sublicensed others prior to your content removal or closing of your account, or (3) we are required by law to retain or share it with others, and (b) for the reasonable time it takes to remove from backup and other systems.

3.6. X

You may end your legal agreement with us at any time by deactivating your accounts and discontinuing your use of the Services.

4. License to other users

4.1. Instagram

Not in the general terms of service.

4.2. Facebook (Meta)

Not in the general terms of service.

4.3. TikTok

You also grant to each user of the Platform a non-exclusive, royalty-free, worldwide licence to access and use your content, including to reproduce (*e.g.* to copy, share or download), adapt or make derivative works (*e.g.* to include your content in their content), perform and communicate your content to the public (*e.g.* to display it) using the Platform for entertainment purposes, subject to your Platform settings.

4.4. YouTube

You also grant each other user of the Service a worldwide, non-exclusive, royalty-free licence to access your Content through the Service, and to use that Content (including to reproduce, distribute, modify, display, and perform it) only as enabled by a feature of the Service.

4.5. LinkedIn

Not in the general terms of service.

4.6. X

Not in the general terms of service.

5. Monetization

5.1. Instagram

Not in the general terms of service.

5.2. Facebook (Meta)

Not in the general terms of service.

5.3. TikTok

Not in the general terms of service.

5.4. YouTube

Right to Monetize. You grant to YouTube the right to monetize your Content on the Service (and such monetization may include displaying ads on or within Content or charging users a fee for access). This Agreement does not entitle you to any payments. Starting June 1, 2021, any payments you may be entitled to receive from YouTube under any other agreement between you and YouTube (including for example payments under the YouTube Partner Program, Channel memberships or Super Chat) will be treated as royalties. If required by law, Google will withhold taxes from such payments.

5.5. LinkedIn

We will not include your content in advertisements for the products and services of third parties to others without your separate consent (including sponsored content). However, without compensation to you or others, ads may be served near your content and other information, and your social actions may be visible and included with ads, as noted in the Privacy Policy. If you use a Service feature, we may mention that with your name or photo to promote that feature within our Services, subject to your settings.

5.6. X

Such additional uses by us, or other companies, organizations or individuals, is made with no compensation paid to you with respect to the Content that you submit, post, transmit or otherwise make available through the Services as the use of the Services by you is hereby agreed as being sufficient compensation for the Content and grant of rights herein.

6. Choice-of-court and of-law

6.1. Instagram

If a claim or dispute arises out of or relates to your use of the Service as a consumer, both you and us agree that you may resolve your individual claim or dispute against us, and we may resolve our claim or dispute against you, in any competent court in the country of your main residence that has jurisdiction over your claim or dispute, and the laws of that country will apply without regard to conflict of law provisions.

If a claim or dispute arises between us that relates to use of the Service in any other capacity, including, but not limited to, access or use of the Service for a business or commercial purpose, you agree that any such claim or dispute must be resolved in a competent court in Ireland and that Irish law will apply without regard to conflict of law provisions.

6.2. Facebook (Meta)

If a claim or dispute arises out of or relates to your use of the Meta Products as a consumer, both you and us agree that you may resolve your individual claim or dispute against us, and we may resolve our claim or dispute against you, in any competent court in the country of your main residence that has jurisdiction over your claim or dispute, and the laws of that country will apply without regard to conflict of law provisions.

If a claim or dispute arises between us that relates to use of the Meta Products in any other capacity, including, but not limited to, access or use of the Meta Products for a business or commercial purpose, or that an entity brings on your behalf, you agree that any such claim or dispute must be resolved in a competent court in Ireland and Irish law will apply to such claim or dispute without regard to conflict of law provisions.

6.3. TikTok

If we have a dispute, we will first try and resolve it with you amicably.

If you are a consumer, these Terms are governed by the law of the jurisdiction in which you live.

If either of us wants to bring a legal claim, you or we can go to your local courts. You can also go to: the courts of the Republic of Ireland (for disputes with TikTok Technology Limited); and the courts of England & Wales (for disputes with TikTok Information Technologies UK Limited).

If you are operating a business, please see our Business Terms for details of how we'll resolve disputes.

In short: We hope we do not get into a dispute but, if we do, there are a couple of ways we can try to resolve it.

6.4. YouTube

If you live in the European Economic Area, or Switzerland, this Agreement, and your relationship with YouTube under this Agreement, will be governed by the laws of your country of residence, and legal proceedings may be brought in your local courts.

6.5. LinkedIn

In the unlikely event we end up in a legal dispute, depending on

where you live, you and LinkedIn agree to resolve it in California courts using California law, Dublin, Ireland courts using Irish law, or as otherwise provided in this section.

If you live in the Designated Countries, the laws of Ireland govern all claims related to LinkedIn's provision of the Services, but this shall not deprive you of the mandatory consumer protections under the law of the country to which we direct your Services where you have habitual residence. With respect to jurisdiction, you and LinkedIn agree to choose the courts of the country to which we direct your Services where you have habitual residence for all disputes arising out of or relating to this User Agreement, or in the alternative, you may choose the responsible court in Ireland.

If you are a business user within the scope of Article 6(12) of the EU Digital Markets Act ("DMA") and have a dispute arising out of or in connection with Article 6(12) of the DMA, you may also utilize the alternative dispute resolution mechanism available in the Help Center.

6.6. X

To the extent permitted by law, all disputes related to these Terms or the Services, including without limitation disputes related to or arising from other users' and third parties' use of the Services and any Content made available by other users and third parties on the Services, will be brought exclusively before a competent court in Ireland without regard to conflict of law provisions and will be governed by Irish law, notwithstanding any other agreement between you and us to the contrary. Without prejudice to the foregoing, you agree that, in its sole discretion, X may bring any claim, cause of action, or dispute we have against you in any competent court in the country in which you reside that has jurisdiction and venue over the claim. To the extent permitted by law, you also waive the right to participate as a plaintiff or class member in any purported class action, collective action or representative action proceeding.

Appendix 2. Monetization initiatives

Websites surveyed (last accessed 27 October 2025)

1. Instagram

'About monetisation for ads in Instagram profile feed' https://help.instagram.com/5485466918184985 (https://perma.cc/2RDL-LKKN).

'Enable monetisation for ads in Instagram profile feed' https://help.instagram.com/427415519366046 (https://perma.cc/UC5W-PTRW).

'Bonuses on Instagram' https://help.instagram.com/543274486958120 (https://perma.cc/2GPR-YL28).

'Bonuses' https://creators.instagram.com/bonuses (https://perma.cc/ERW6-PYUR).

'Instagram Partner Monetisation Policies' https://help.instagram.com/512371932629820 (https://perma.cc/U48F-NM42).

'Instagram Content Monetisation Policies' https://help.instagram.com/2635536099905516 (https://perma.cc/B7PR-D7C3).

"*Monetizing ads in Instagram profile feed and Reels are currently being tested and are only available to a select group of accounts at this time*". The eligibility requirements include being located in certain countries that do not comprise Europe (see, *e.g.*, "*You must be located in the United States, Japan, South Korea or Canada*"), being at least 18 years old, and receiving an invitation from the provider.

2. Facebook (Meta)

'Monetize More Content with Facebook's New Streamlined Program', 2 October 2024 https://about.fb.com/news/2024/10/monetize-content-facebooks-new-streamlined-program (https://perma.cc/2K6W-C8PA).

'Get started with Facebook content monetization' https://www.facebook.com/business/help/1049081556813520 (https://perma.cc/5JXY-J46C).

'Partner Monetisation Policies' https://www.facebook.com/business/help/169845596919485 (https://perma.cc/W5F5–9WZH).

'Content Monetisation Policies' https://www.facebook.com/business/help/1348682518563619 (https://perma.cc/35AN-MYGD).

The current monetization initiative is called "Facebook content monetization". Notably, "*Facebook content monetisation is currently invitation-only*".

3. TikTok

NBC News, 'TikTok is ending its $2 billion creator fund', 7 November 2023 https://www.nbcnews.com/tech/tiktok-ending-2-billion-creator-fund-rcna123921 (https://perma.cc/QG4S-HMCV).

'Creator Rewards Program' https://www.tiktok.com/creator-academy/article/creator-rewards-program (https://perma.cc/4S83-WPSJ).

'Effect Creator Rewards' https://www.tiktok.com/creator-academy/en/article/effect-creator-rewards (https://perma.cc/FC27-ETPJ).

In 2023, TikTok ended its monetization initiative ("Creator Fund"). Apparently, this was due to complaints about low payouts. The current initiative is called "Creator Rewards Program". Notably, "*The program is currently open to creators in the United States, United Kingdom, Germany, Japan, South Korea, France, Mexico, and Brazil, so you must be based in one of these countries and have an account registered there*". In other terms, this initiative seems open in Europe only in Germany and France. Other eligibility requirements include being at least 18 years old, having at least 10.000 followers and 100.000 video views in the last 30 days, and the video must be over 1 min long and obtain at least 1.000 views on the "For You feed".

4. YouTube

'YouTube Partner Program overview & eligibility' https://support.google.com/youtube/answer/72851 (https://perma.cc/K8ZT-X7PG).

'YouTube channel monetization policies' https://support.google.com/youtube/answer/1311392 (https://perma.cc/S3AL-LPTQ).

'Shorts monetization policies' https://support.google.com/youtube/answer/12504220 (https://perma.cc/9EMC-59TG).

The eligibility requirements include getting 1.000 subscribers with 4.000 valid public watch hours in the last 12 months or getting 1.000 subscribers with 10 million valid public short videos ("Shorts") views in the last 90 days. Concerning Shorts, revenue from ads running between videos and from subscriptions is used to pay authors and performers and cover the costs of music licensing. In practice, if a video does not include music, all revenue goes into the "Creator Pool". If the video does include music, revenue is shared between the "Creator Pool" and music partners (if one track is used: 50 % Creator Pool and 50 % music partners; if two tracks are used: 33,3 % Creator Pool and 66,7 % music partners). Revenue in the Creator Pool is distributed to monetizing authors and performers based on the share of total views in each country. Monetizing authors and performers keep 45 % of the allocated revenues.

5. LinkedIn

'BrandLink' https://business.linkedin.com/marketing-solutions/native-advertising/brandlink (https://perma.cc/9A4H-VH4N).

The current monetization initiative is called "BrandLink". Notably, "*Linkedin is currently beta testing BrandLink*". This initiative seems including only pre-roll video ads and a limited number of authors and performers.

6. X

'Creator Revenue Sharing Terms' https://legal.x.com/en/creator-revenue-sharing-terms (https://perma.cc/H5EL-JP2J).

'X's Creator Monetization Standards' https://help.x.com/en/rules-and-policies/content-monetization-standards (https://perma.cc/4RWB-JTEN).

The eligibility requirements include having a paid "Premium" subscription, being at least 18 years old, being in good standing with X, and completing the identity verification. The payment is based on engagement from "Premium" paying users with works and performances.

Data availability

Links to static versions of the web pages consulted are listed in the appendix.