
FEMR - FORENINGEN FOR ENTERTAINMENT – & MEDIERET

CISAC, CELAS, PAECOL, P.E.D.L. & Co. The Future of Music Rights Licensing – Which Way to go?

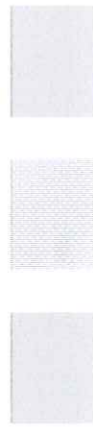
Sophienberg Conference 24 April 2009

Dr. Christian Hauptmann

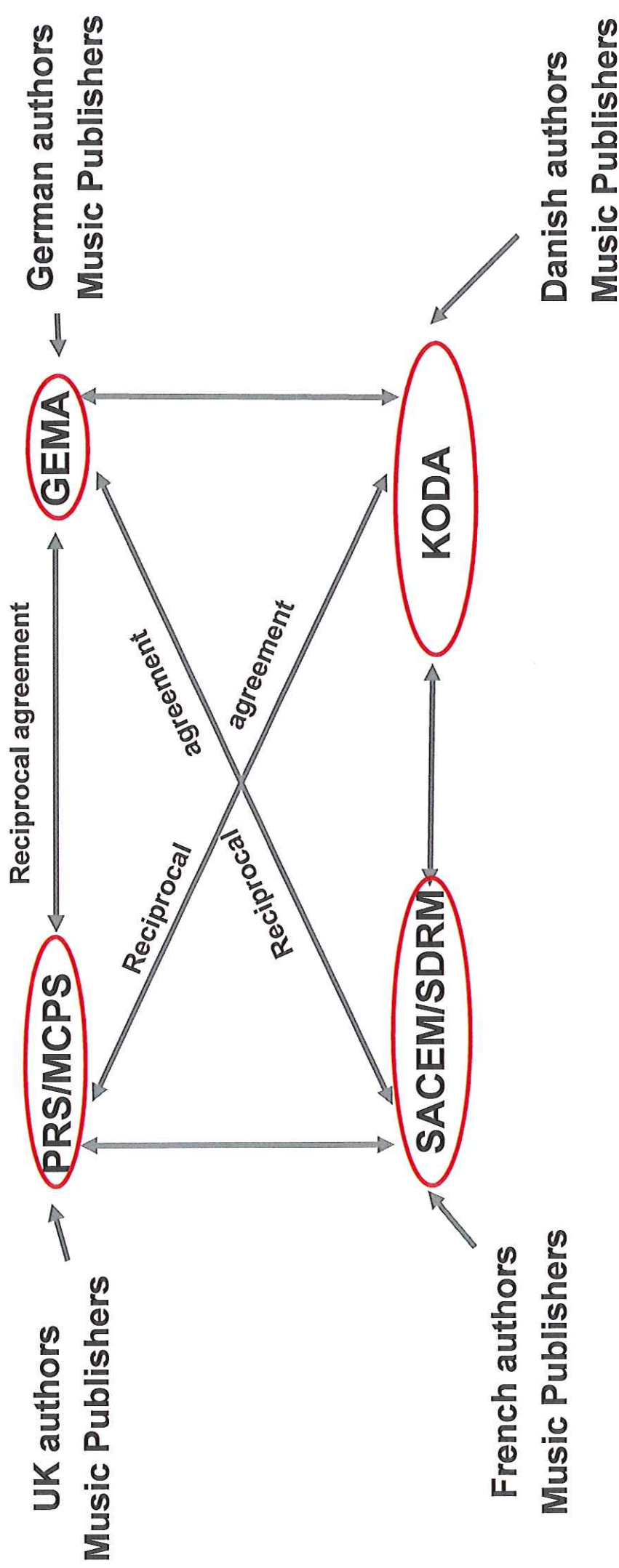
Christian.hauptmann@rtlgroup.com

Deputy General Counsel

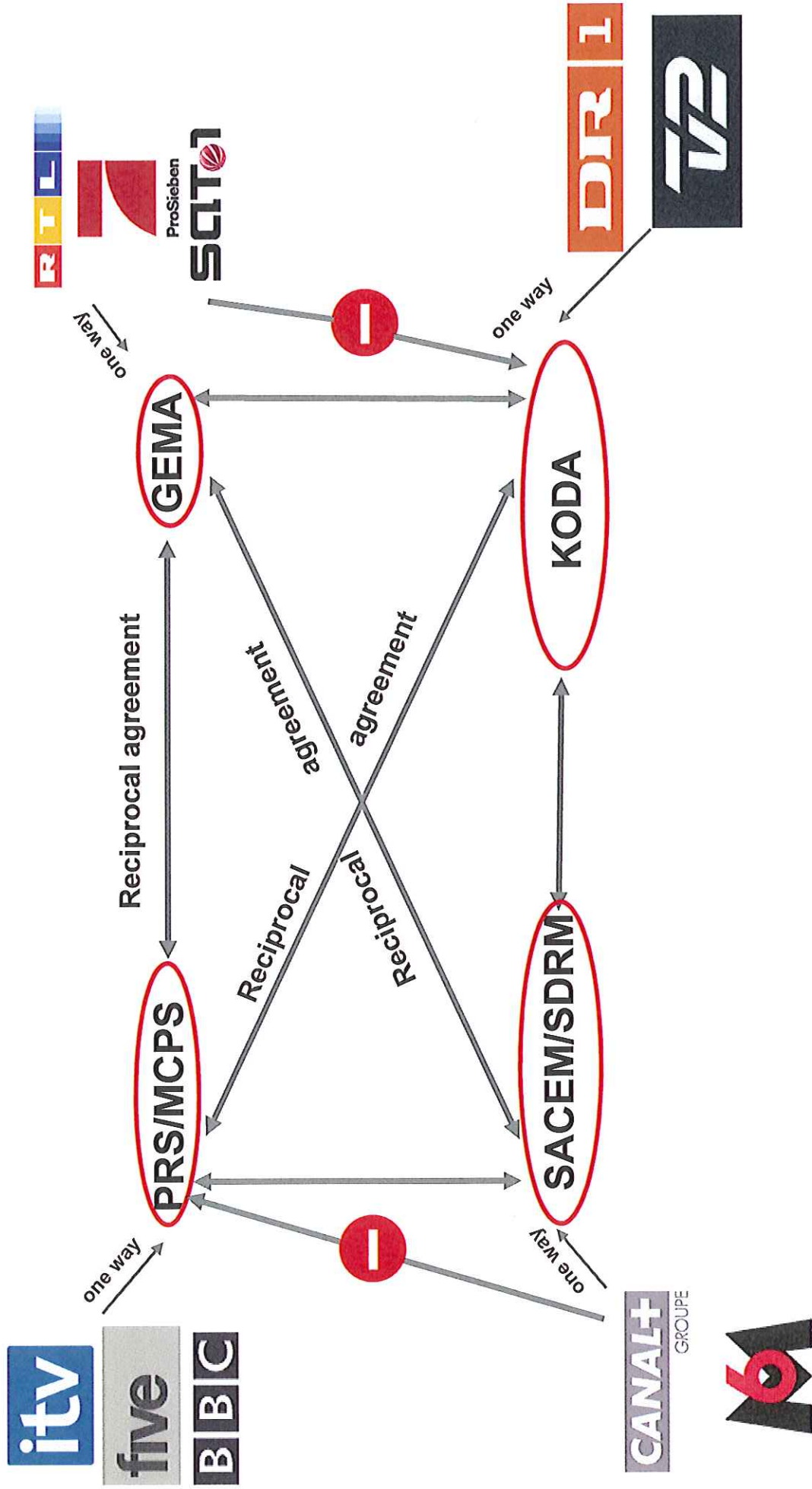
RTL Group



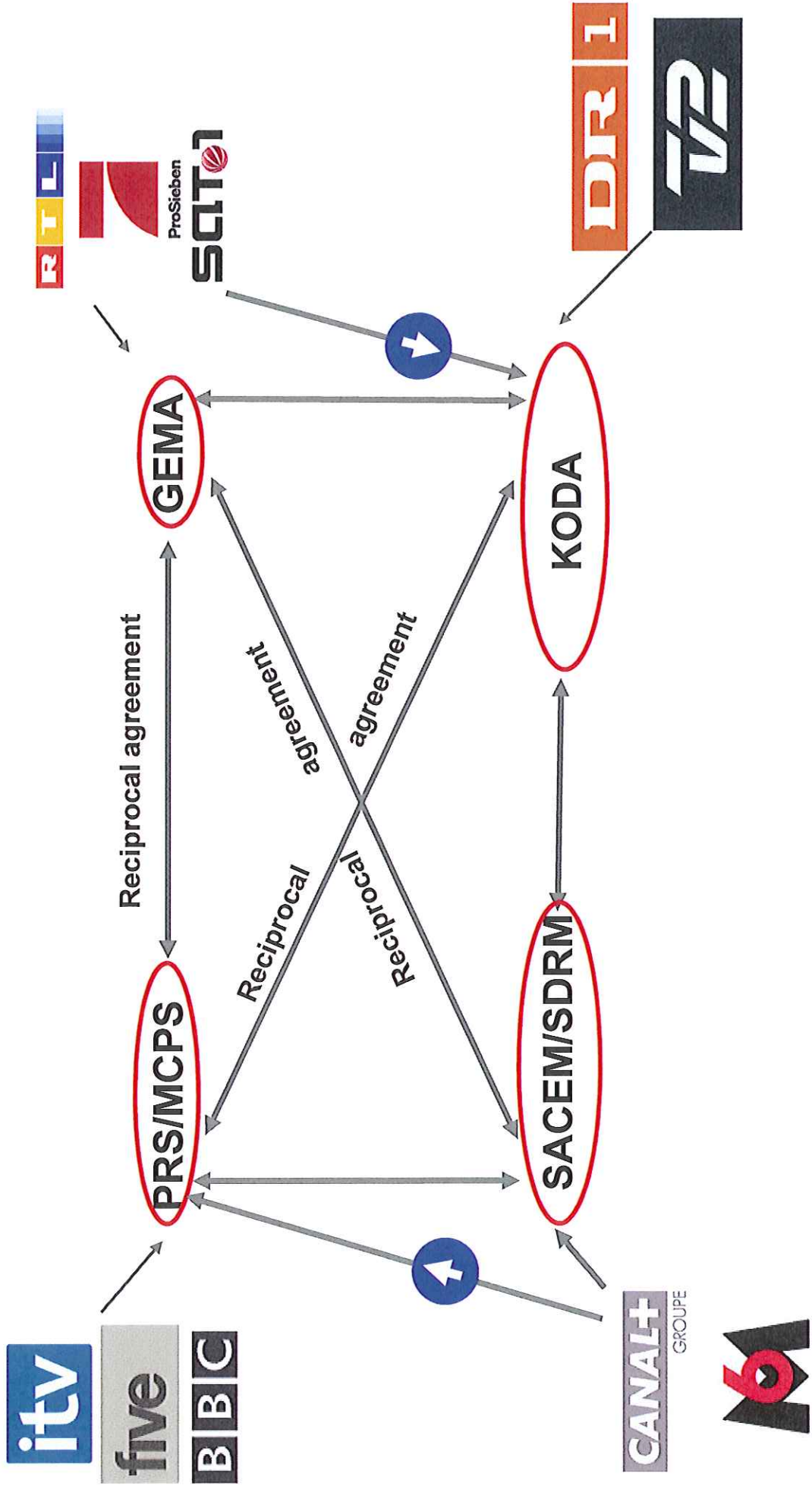
How do rights flow to and between collecting societies?



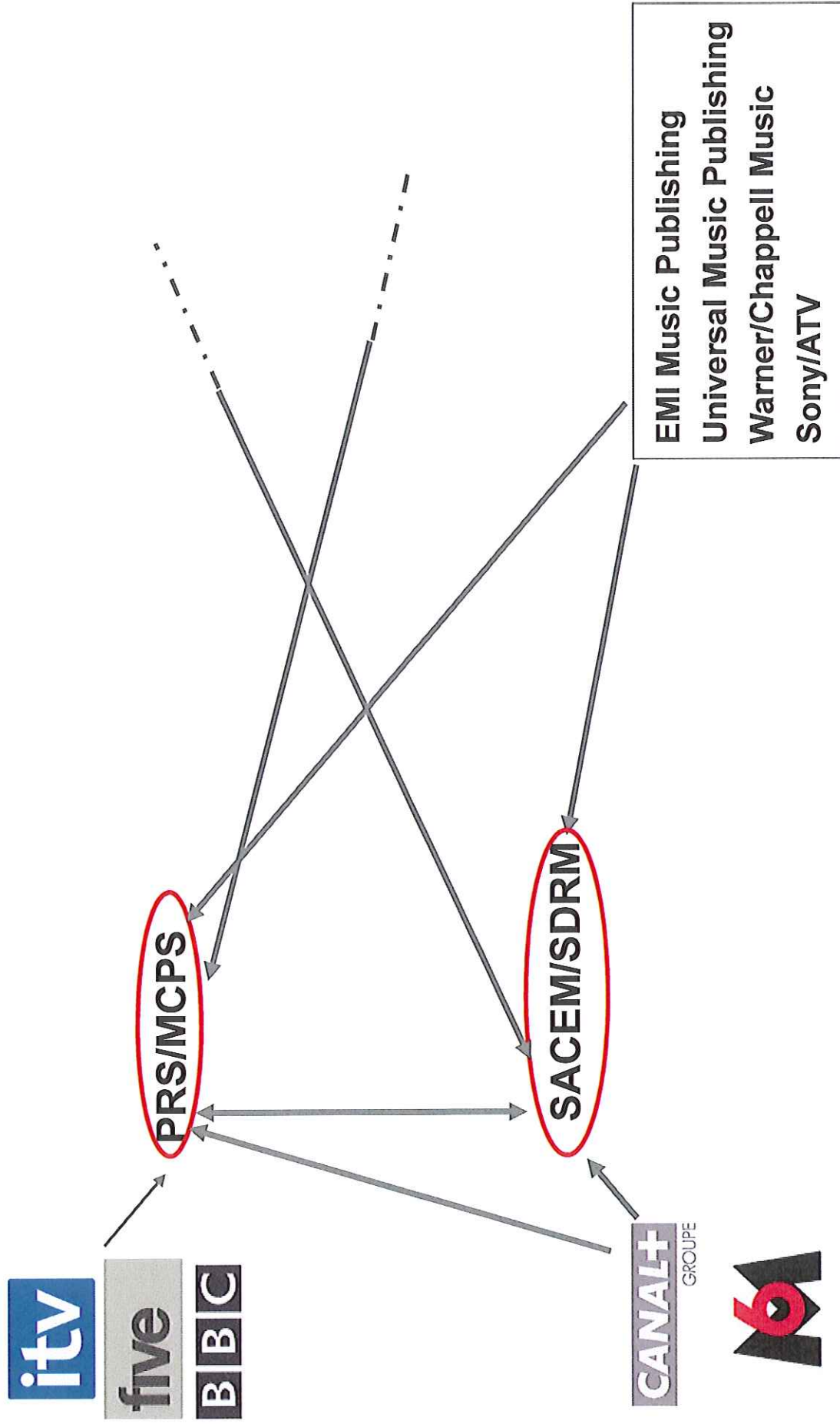
Licensing by societies before CISAC- decision



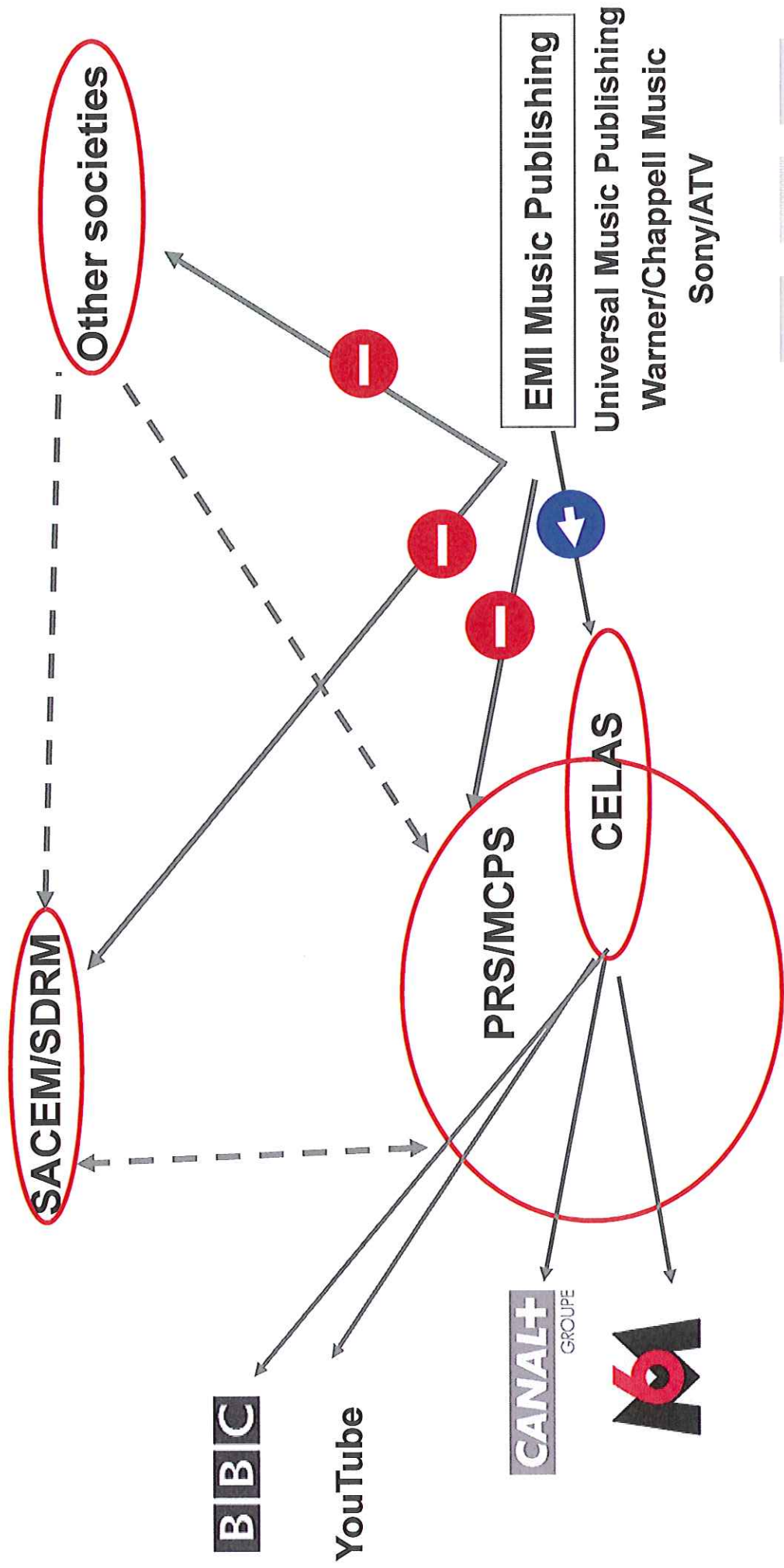
Licensing by societies post CISAC- decision?



Effect of Mono Repertoire Model (the EMI-Repertoire etc.)



**Effect of Mono Repertoire Model
Reciprocal Agreements are emptied of content (Withdrawal of Rights)**



Option 3 structures to date

Major music publisher	structure	announced	enabled/ run by
EMI Music Publishing	CELAS	Jan. 2006	GEMA + PRS
Warner/Chappell Publishing	P.E.D.L.	Jan. 2008	PRS, STIM, SACEM, BUMA, SGAE
Universal Music Publishing	D.E.A.L.	Jan. 2008	SACEM
Sony/ATV Music	PAECOL	June 2008	GEMA

WITHDRAWAL OF ANGLO-AMERICAN MECHANICAL RIGHTS



Common features of Option 3 structures

Participating societies

- **accept to act as agents on behalf of major music publisher**
Society loses autonomy to freely negotiate license agreements (the KODA-TDC Play-Agreement)
(Partial) hand-over of decision making power to major publisher
- **grant access to their (membership financed) infrastructure outside membership agreement to major music publishers**
- **grant preferential treatment to majors music publishers**
(conditions undisclosed, however: cap on administrative cost; no social/cultural deductions; accounting and reporting improved; more frequent cash payments etc.)

**MAJOR MUSIC PUBLISHERS GET A BETTER DEAL
AS COMPARED TO MEMBERSHIP AGREEMENT**

Option 3 structure ...

Benefits:

- **exclusively anglo-american repertoire (essentially US and UK)**
- **primarily international music publishers (the « majors »)**

Note: in the US, mechanical rights are subject to statutory licensing (section 115 US copyright law),
i.e. major music publishers have no recourse to Option 3 structures

Disadvantages:

- **continental European repertoire (excluded)**
- **authors (excluded ; cannot transfer rights to Option 3 structure because of prior assignment of rights to collecting society)**
- **independent / local music publishers not holding anglo-american repertoire (excluded – do not hold / own any rights)**

**DISRUPTS THE SOLIDARITY-PRINCIPLE BETWEEN RIGHT HOLDERS WITHIN
COLLECTING SOCIETIES**

How Option 3 affects users

- **National collecting societies no longer able to license worldwide repertoire**
- **Fragmentation of repertoire forces users to deal with multiple shops**
- **Higher administrative costs**
- **Higher prices for attractive repertoire**
- **Increased complexity to re-assemble worldwide repertoire (Who licenses what?)**
- **Unable to identify rights holders (increased by split copyrights)**
- **Clearance of smaller and niche repertoire may prove too cumbersome**
- **Cultural diversity undermined**

RIGHTS LICENSING AMOUNTS TO CHAOS

How Option 3 affects non-participating collecting societies

- **Loss of revenue for online and mobile (extension to other forms of exploitation?)**
- **Obligation to prove title of each and every licensed song (“positive” list)**
- **Increase of cost level (« fixed cost business »)**
- **Less money to members (authors, independent publishers)**
- **Decrease of service levels?**

JOINT POSITION OF 21 COLLECTING SOCIETIES

JUNE 2007

**TRADE ASSOCIATIONS GESAC AND CISAC: MUTE
- NO CONSENSUS BETWEEN BIG AND SMALL SOCIETIES**

How Option 3 affects authors and independent publishers

- **Increase of administrative cost of local societies**
- **Less money for distribution**
- **Non main-stream repertoire not played or not paid?**
- **Pia Raug: EU Observer Conference October 2008**
- **CIAM - Bendik Hofseth: Speech at WIPO Conference in November 2008**
- **ECSA - David Ferguson: Speech at MIDEM 2009**

AUTHORS OPENLY CRITICIZE PARTICIPATING SOCIETIES AND MAJORS

Bendik Hofseth: International Council of Creators of Music (CIAM)

« A potentially dangerous development that we are seeing right now, is the situation in Europe where rights are moving into clusters ending up in the big societies. Many of the smaller societies feel uncertainty as to whether or not the world repertoire is at their disposal in the time to come. If we wipe out these small societies now and empty them of people with online competencies, I doubt that we will have anyone to monitor, monetize, licence and give service and information on a local level to users and to consumers in the near future. I can think of no greater incentive, no better recipe for a prolongation of the era of piracy! »

CISAC-Decision 16th July 2008

- **Territorial restrictions (strict segmentation of the market on a national basis) are not « objectively necessary » when it is possible to manage rights on a cross border basis**
- **Parallel delimitation of territories in a « network » of agreements constitutes a concerted practice**
- **Reciprocal agreements among EU/EEA collecting societies found to be « concerted practice »**
- **Areas: Satellite, Cable Retransmission, Internet**
- **Establishment of a general principle: « Distant monitoring »**

COLLECTING SOCIETIES TO FIND NEW LICENSING MODELS

DEADLINE: 15 MARCH 2009

CISAC-Decision 16th July 2008

- **Allows collecting societies to maintain their current system of bilateral agreements**
- **Allows collecting societies to keep their right to set levels of royalty payments due within their domestic territory (= « no race to the bottom »)**
- **Allows authors to choose which collecting society manages their copyright (e.g. on the basis of quality of service, efficiency of collection and level of management fees deducted)**
- **Makes it easier for users to obtain licenses for broadcasting music over the internet, by cable and by satellite in several countries from a single collecting society of their choice**

SOURCE: EC COMMISSION PRESS RELEASE 16 JULY 2008

Brake-up of Solidarity ...

- **Major music publishers withdraw anglo-american repertoire (mechanical rights) from societies but continue to rely on collection through societies for other forms of exploitation**
 - “take the best of two worlds”
- **Discrimination between anglo-american and continental european works**
- **Presumption to represent global repertoire (“GEMA”-Vermutung) falls apart**
- **Societies and its members left alone to sort out the new problems and support additional costs**
- **Negative impact on cultural diversity**
- **Etc.**

IS NOT THE ANSWER TO A CHANGING MARKET PLACE

Way forward: Time for a New Deal in Solidarity

- **Members of collecting societies to stand up and call on CEOs and board members to respect fiduciary duties and mission :**
 - obligation to serve the collectivity of interest of authors
 - maintain solidarity amongst members as governing principle

- **Challenge: convince major music publishers to go back into system of reciprocals where necessity for collective licensing of global repertoire**
 - Conditio sine qua non: Renegotiation of distribution of revenues?**
 - Differential pricing? Degressive administrative costs?**

- **Agree on binding quality standards for all EU/EEA collecting societies**
(Transparency, reporting; distribution etc.)

- **Ensure interoperability of collecting societies' databases**

- **Etc.**

When is what license needed?

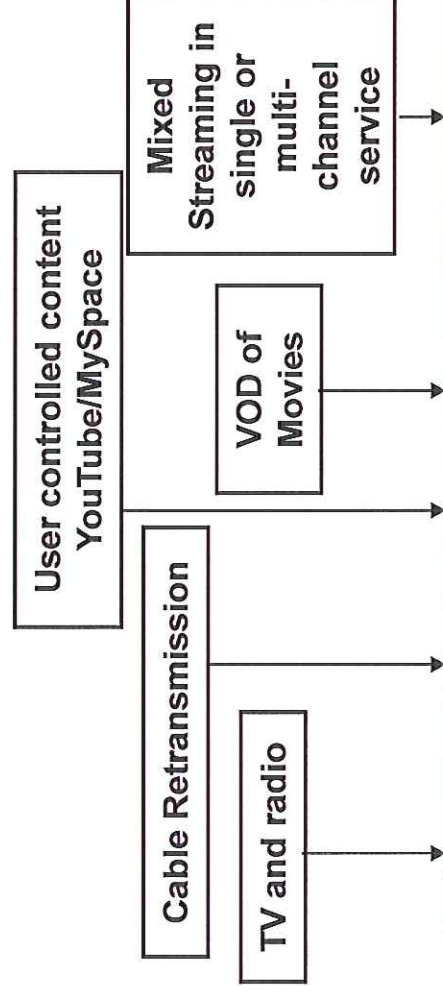
Collective Licensing of Global Repertoire

Global Repertoire is a *necessity* for these services
 No exclusive exercise of rights by publisher/author
 No injunctive relief / sufficient remedy

No competition in underlying rates (copyright
 Tribunals or agreed arbitration to set local
 rates for the global repertoire)

But model must ensure competitive service
 offering in management services (representing
 ca 30% of value of licenses)

Equal treatment of all members ? (“solidarity”)



Individual Licensing of Repertoire

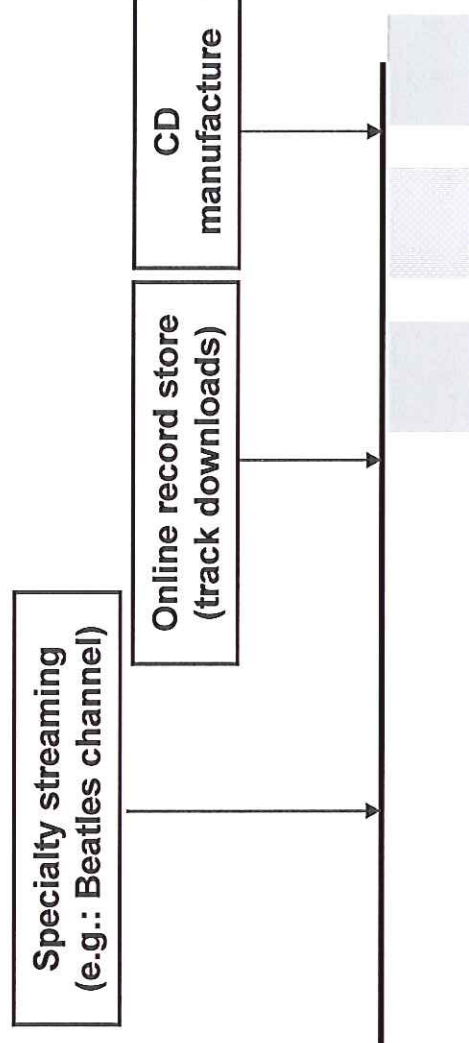
Single Repertoire licensing feasible, but inconvenient
 Exclusive exercise of rights
 Injunctive relief where rights are not cleared

Right holder has exclusive right to set the rates

No issue of competition in respect of same rights as
 single source or agency relationships (PEDL/CELAS)

Licensing via PEDL/CELAS is not “collective licensing” /
 not based on *membership* of society

No equality of treatment of rightholders by the society.



What the market needs

Models for the individual licensing of repertoire are being developed by music publishers

Movement is required for the collective licensing of global repertoire

The market needs:

- A new legal blanket licensing model for the global repertoire
- Applying to services where cross-border licensing is feasible
- Involving multiple one-stop-shops
- And to protect the rights, it should be based on the tariff and law of the country of exploitation of the copyright

Failure to find a workable solution ?

**CALL FOR THE INTRODUCTION OF LEGAL LICENSES
AT NATIONAL AND AT COMMUNITY LEVEL**

