Origins, goals and effects of EU law and policy in the online music sector

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Table of contents

This project is funded by the European Union's Horizon Europe Framework Programme, under the Grant Agreement no: 101095088

List of Figures

List of Tables

This project is funded by the European Union's Horizon Europe Framework Programme, under the Grant Agreement no: 101095088

List of abbreviations:

- AI: Artificial Intelligence
- B2B: Business to Business
- CCS: Cultural and Creative Sectors
- CCSI: Cultural and Creative Sectors and Industries
- CDSMD: Copyright in the Digital Single Market Directive
- CMO: Collective Management Organization
- CRM: Collective Rights Management
- CRMD: Collective Rights Management Directive
- DMA: Digital Markets Act
- DSA: Digital Services Act
- EEC: European Economic Community
- EU: European Union
- GATT: General Agreement on Tariffs and Trade
- OCSSP: Online Content-sharing Service Providers
- SWD: Staff Working Documents
- TEC: Treaty establishing the European Community
- TEEC: Treaty establishing the European Economic Community
- TFEU: Treaty on the Functioning of the European Union
- TVWF: Television without Frontiers Directive
- UGC: User-generated Content
- UNESCO: United Nations Educational, Scientific and Cultural Organization
- WIPO: World Intellectual Property Organisation

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Executive summary

As the pursuit of ‘fairness’ has become a central concern for a variety of actors and stakeholders in the music industry, a key challenge is to understand what ‘fairness’ means for the EU institutions and to explore the distinct ways in which ‘fairness’ has been diachronically conceptualised as a term in the EU policy related to the music sector in light of other key EU concepts and principles. This report provides a thorough analysis of a large corpus of EU legislative and policy documents related to the music sector. The aim is to understand the emergence and evolution of ‘fairness’, against the backdrop of the governance of digitisation and online platforms in Europe and the latter’s implications for the music sector as a whole. Such an analysis is strongly needed to explore the origins, nature, breadth and degree of policy changes towards the music industry and the policy conditions that have driven the emergence and incorporation of ‘fairness’ in the EU policy related to the music sector. The main research questions that guide our work can thus be summarised as follows: (i) In what ways do EU legislative and policy instruments define and deal with ‘fairness’ in EU policymaking related to music and how has the notion of ‘fairness’ evolved over the years? (ii) How have digitisation, the ‘platformisation’ process and the COVID-19 crisis influenced the notion of ‘fairness’ in EU governance related to the music sector?

To answer these questions, this study engages in an in-depth diachronic textual analysis of the EU institutions’ legislative acts and policy instruments related to the EU policy on the music sector since the early 1990s. The analysis carried out is based on documents covering a period of more than 30 years, dealing with a corpus of 121 documents issued by the European Commission (the Commission), the European Parliament, the Council of the European Union (the Council), as well as the European Parliament and the Council as co-legislators. Given the large corpus of documents and the long historical period under study, the research questions that guide the analysis are approached from various perspectives. The study combines mutually enhancing quantitative and qualitative methods of textual analysis. While the quantitative analysis allows a large number of documents to be studied, the qualitative analysis permits an in-depth study of the diachronic framings, conceptualisations and operationalisations of ‘fairness’ in the EU music industry policy.

The quantitative coding and mapping performed in section 2 are intended to identify diachronic developments and trends in EU policy related to the music sector. They are also designed to understand the ways in which ‘fairness’, as a term, has evolved with respect to other key terms, concepts and principles in EU music governance. The first part of the quantitative textual analysis breaks the dataset down into three historical periods, so as to provide an initial diachronic overview of important developments in EU music policymaking. The second part is based on institutional analysis looking at each EU institution. The final stage of the analysis involves a comprehensive comparison among historical periods and EU institutions, and it provides some concluding remarks from the quantitative textual mapping. The historical textual mapping shows that over the course of the period analysed, technological transformations and digitisation concerns have steadily grown in importance, ultimately taking centre stage as the prime focus in the most recent period. As such, the trend of platformisation has heightened concerns about the effects of platforms’ activities and practices on ‘accessibility’, ‘transparency’, ‘availability’, ‘cultural diversity’ and ‘remuneration’, hence opening the debate on how to define ‘fairness’ and deal with it in a

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highly evolving technological architecture. The concept of ‘fairness’ has emerged in the EU discourse and has slowly been embraced by the EU institutions since the early 2000s, as the crisis in the music industry and the rise of platforms as the dominant economic and industrial infrastructure in the European music ecosystem led to the concerns about ‘fairness’ becoming more prominent within the EU political agenda. The institutional textual mapping reveals that the promotion of ‘fairness’ as a political issue in the European music sector requires political entrepreneurs. In the EU institutional architecture, the European Parliament has played the role of political entrepreneur towards ‘fairness’, seeking to move the debate forward on the importance of focusing on the ways in which the EU can define ‘fairness’ and deal with it in a European platform-dominated economy. As such, ‘fairness’ has become an integral part of a multifaceted policy approach towards the European music sector, primarily promoted by the European Parliament, and followed by the Council and the Commission.

The qualitative analysis performed in section 3 examines major legislative instruments and policy documents on copyright, the internal market and culture which directly or indirectly address the music industry, as well as the streaming of music and the challenges brought by the rapid emergence of the online platforms for the music sector. EU secondary legislation mostly consists of legislative instruments on copyright and related rights since the 1990s and some acts targeting cultural funding. Relevant acts are about or touch upon Europe’s music environment: some of them have been clearly adopted against the backdrop of music streaming and the challenges posed by the rise of digital platforms. These acts cover a span of 30 years, from 1992 up to 2022, in line with the progression of EU action in the field of interest. Considering the evaluation carried out in the report, three main dimensions accompanying and permeating the notion of ‘fairness’ can be identified in the relevant EU law: a) enhancement of copyright protection for the benefit of rightholders; b) equitable or fair remuneration for rightholders; and c) balancing different rights and interests to achieve a fairer music sector. While the first two manifestations of fairness are intrinsically connected, the third one is the most intricate and multi-faceted.

With regard to the policy documents under study, the report aims to explore the diachronic conceptualisations and operationalisations of ‘fairness’ within the EU policy related to the European music sector plus the broader cultural and creative sectors. This analysis is conducted on the basis of policy documents issued by the EU institutions – the Commission, the European Parliament and the Council – from the early 1990s to 2023. It focuses on documents that have been selected on the basis of how often (occurrences) they cite the term ‘fairness’, as well as chronological criteria covering a historical period of more than 30 years, plus key issue-areas of the study, such as copyright, the music sector and the EU programme ‘Music Moves Europe’, the COVID-19 pandemic, and the regulation of digital platforms.

First, the Commission’s notion of ‘fairness’ has certainly not been excluded from its agenda for the creative and music ecosystems. The analysis highlights the integration of ‘fairness’ considerations into the Commission’s policy discourse and to the evolution in the understanding of ‘fairness’, in light of technological developments and their potential to reconfigure established modes of creative production and distribution. While the Commission has commonly approached fairness as a principle to achieve economic objectives related to encouraging investment and ensuring competitiveness in the common market, more recently it has linked fairness to other dimensions such as fair remuneration for rightholders and fair working conditions in platform work. Secondly, three major

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dimensions accompanying the concept of 'fairness' are identified in the policy documents of the European Parliament: fair remuneration for rightholders; fair competition in the digital market and fairness as a broad policy principle and as a condition to achieve public objectives. Thirdly, the Council's notion of 'fairness' has become central in its agenda since the mid-2000s. In particular, the Council has developed a distinctive approach, highlighting 'fairness' in relation to three key dimensions: fair remuneration of creators, the relation between 'fairness' and transparency in a platform-dominated market, and 'fairness' as a broad policy principle of action.

Overall, this report reveals that the issue of 'fairness' in the regulatory framework of copyright, and especially the 'fair' remuneration of rightholders, have been predominant topics of discussion over time. However, due to the process of platformisation, copyright regulation – and the debate around the economic and cultural sets of values that should underpin it – progressively became part of a broader legal and policy framework dealing with the governance of digital platforms. From this perspective, what platformisation did was to make EU policy for the music sector *go beyond* copyright, and the legal and policy debate that surrounds it. The music sector was placed in a wider context – that of platform governance, and the dominance of digital platforms sharpened the need for balancing distinct values and interests and establishing a new equilibrium, which increased the importance of the concept of 'fairness'.

In this sense, EU governance of digital platforms dynamically deals with (and continues to do so today) issues regarding transparency, cultural diversity, abuse of monopolies, accountability, etc. in the music sector and the music ecosystem more broadly. The recent fine imposed by the European Commission on Apple, with reference to the Digital Markets Act, testifies to this.

In short, this report illustrates that digital platforms have revolutionised policymaking for music. The EU institutions have not only addressed copyright concerns within a broader legislative and policy framework; they have also expanded and deepened EU policy related to the music sector, by linking this policy to a more complex set of principles and notions – from fairness and diversity, to accessibility, availability, transparency and accountability.

The European Parliament's Resolution on 'Cultural Diversity and the Conditions for authors in the European music streaming market' takes significant steps in this direction. It also underscores the emergence and progressive consolidation of an EU multifaceted policy approach towards the European music sector. By contrast with the view that music is exclusively 'content' that generates data and traffic, this multifaceted approach recognises the cultural/artistic relevance and social value of music in a platform-dominated economy.

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1. Introduction

This report highlights the growing emphasis on 'fairness' within EU policies concerning the music sector over recent years. The pursuit of 'fairness' has become a central concern for a variety of stakeholders, whilst this focus has emerged against the backdrop of significant shifts in the music industry, including the rapid digitisation of technologies, the rise of online platforms and the challenges posed by the COVID-19 pandemic (Paramythiotis 2021, Hesmondhalgh 2021, Mazziotti & Ranaivoson 2024). In early March 2024, the European Commission (2024) fined Apple over €1.8 billion for abusing its dominant position on the EU music market for the distribution of music streaming apps to iPhone and iPad users through its App Store. The Commission explicitly mentioned the fine was related to 'unfair' trade practices, by pointing out that Apple's provisions 'amount to unfair trading conditions, in breach of Article 102(a) of the Treaty on the Functioning of the European Union (TFEU)'.

In a similar vein, in late January 2024, the European Parliament adopted a Resolution on 'Cultural diversity and the conditions of authors in the European music streaming market' with an overwhelming majority. In its press release (European Parliament 2024), the Parliament explicitly 'called for EU rules to ensure the music streaming sector is fair'. Clearly then, there is an increased policy interest in ensuring that the music sector and practices of the actors involved are fairer (Ferraro 2021). At the same time, several stakeholders involved in the music sector may have distinct concerns that require different fairness considerations (Dinnissen & Bauer 2022).

A key challenge is thus to understand what 'fairness' means for the EU institutions and to explore the distinct ways in which 'fairness' has been conceptualised diachronically as a policy concept compared to other key terms, concepts and principles in EU policy, with due note taken of major changes in the music industry (Rogers 2013, Eriksoon et al. 2019). The goal of this report is therefore to probe and critically assess the ways in which EU law and policy related to the music sector have sought to deal with 'fairness' and reach a better understanding of the values underpinning the policy instruments introduced and the objectives pursued. Exploring legal and policy dynamics on 'fairness' basically means exploring the development of the EU's policy related to the music sector over an extended period of time, rather than a specific moment. This will provide a comprehensive analysis of different EU initiatives that relate to the music sector.

Despite a series of thoughtful studies on EU cultural and media policies (Psychogiopoulou & Schoenmaekers 2024, Calligaro & Vlassis 2017, Sarikakis 2007), there has so far been no attempt to examine and critically understand the ways in which EU policy related to the cultural and music sectors has diachronically sought to cope with 'fairness'. In addition, while a rich scientific literature has explored key developments in EU cultural policy and provided insightful studies on various cultural and creative sectors (De Smaele 2004, Littoz-Monnet 2007, Donders et al. 2014), EU music policy has to date received little attention (Laing 1999).

By seeking to fill this gap, this report provides a thorough analysis of a large corpus of EU legislative and policy documents related to the music sector. The goal is to understand the emergence and evolution of 'fairness' in light of other key EU concepts and principles, against the backdrop of the governance of digitisation and online platforms in Europe and the latter's implications for the music ecosystem as a whole. Such an analysis is urgently

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needed to understand the origins, nature, breadth and degree of policy changes towards the music sector and the policy conditions that have driven the emergence and incorporation of 'fairness' in the EU policy related to the music sector. This study asks questions, e.g. what kind of change in the EU policy related to the music sector can be observed? What are the drivers of this change and how does the change in turn affect the ways in which the EU defines 'fairness' and deals with it in the music sector?

'Fairness' has been a key driver for rethinking the music sector-specific objectives of EU policy initiatives, so it is crucial to explore the role of policymaking over the past few decades and to highlight the evolution of this field and how – and when – fairness became a priority. Therefore, the policy analysis aims to study the development of EU initiatives in the field and it focuses on the ways EU governance has sought to cope with the challenges brought by the COVID-19 crisis, the digitisation of technologies and the platformisation process to 'fairness' in the music sector. Against this background, the main research questions that guide our work can be summarised as follows: *(i)* In which ways do EU legislative and policy instruments define and deal with 'fairness' in the EU music market and how has the notion of 'fairness' evolved over the years? *(ii)* How have digitisation, the platformisation process and the COVID-19 crisis influenced the notion of 'fairness' in EU governance related to the music sector?

This report calls on a diachronic analysis, by following the historic development and evolution of EU policy to highlight the ways in which considerations of 'fairness' have accompanied and characterised the European institutions' policy discourse, regulatory action and funding rationale for the music sector. As a complex area that European public policy approaches as both a cultural marker of collective identities and an economic factor in growth and innovation (Psychogiopoulou 2014, Vlassis 2023a), the music sector lends itself to an exploration of the diachronic definitions and operationalisations of 'fairness' in EU policymaking. In this context, key developments in the music industry –e.g. the increasing digitisation of technologies, the rise of platforms as the dominant economic and industrial infrastructure in the music ecosystem, and the COVID-19 pandemic and its multiple effects– form the background against which this report explores the ways in which the EU institutions have been confronted with the concept of 'fairness' when addressing the European music sector, and how their treatment of 'fairness' and emphasis on it may have changed overtime. How have questions pertaining to 'fairness' been approached regarding the music sector? And have the approaches and stances taken by the European institutions changed over time? If so, how have they changed?

To answer these questions, this study engages in an in-depth diachronic textual analysis of the EU institutions' legislative acts and policy instruments related to EU policy on the music sector since the early 1990s. The analysis carried out is based on documents covering a period of more than 30 years, dealing with a corpus of 121 documents issued by the European Commission (the Commission), the European Parliament, the Council of the European Union (the Council), as well as the European Parliament and the Council as co-legislators. More concretely, our database incorporates binding legal acts of the Union in

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the form of Regulations,[1] Directives[2] and Decisions.[3] It also includes Green Papers,[4] Communications[5] and Recommendations[6] issued by the Commission, as well as Commission Staff Working Documents (SWDs)[7], which are separately studied; Resolutions[8] and Recommendations issued by the European Parliament or the Council; and Council Conclusions.[9]

Given the large corpus of documents and the long historical period under study, the research questions that guide the analysis are approached from various perspectives. The study combines mutually enhancing quantitative and qualitative methods of textual analysis. While the quantitative analysis allows a large number of documents to be studied, the qualitative analysis permits an in-depth study of the diachronic framings, conceptualisations and operationalisations of 'fairness' in the EU's music industry policy.

The combination of qualitative and quantitative textual analysis provides a broad and flexible approach to the research questions. We chose to conduct mixed methods research related to the textual mapping, because this offers three main advantages: (i) results using data collected through different methods can be triangulated and corroborated; (ii) intersecting but different aspects of the diachronic development of EU action regarding the music sector can be examined; and (iii) the breadth and range of the study can be extended to capture variations in approaches to the concepts examined (DeCuir-Gunby & Schutz 2016).

The quantitative and qualitative findings are then presented separately in this report. Section 2 discusses key findings stemming from the quantitative textual mapping conducted on the

[1] Regulations are binding in their entirety, they have general application, and they are directly applicable in all Member States.

[2] Directives are binding on each of the Member States to which they are addressed (usually all of them) as to the result to be achieved. However, the choice of form and methods is left to national authorities, which are free to implement them in any way they see fit in order to achieve the goals set.

[3] A decision is a legally binding act in its entirety. Unless explicitly stated otherwise, a decision is binding on the EU. Decisions can address specific legal entities, in which case a decision is binding only on them.

[4] Green papers are documents published by the Commission to stimulate discussion on given topics at EU level. They invite the relevant parties (bodies or individuals) to participate in a consultation process and to debate on the basis of the proposals they put forward. Green papers may give rise to legislative developments that are then outlined in white papers.

[5] The Commission issues a wide variety of Communications. Communications may include policy evaluations, commentary on – or explanations of – action-programmes, or brief outlines of future policies or arrangements concerning the details of current policy. Policy proposals will never be put forward by means of a Communication.

[6] Recommendations are a form of non-binding EU act cited in Article 288 TFEU (the other form of non-binding EU acts being opinions). Although Recommendations do not have legal consequences, they may offer guidance on the interpretation or content of EU law.

[7] Staff Working Documents are internal documents that assist the Commission in drafting its official documents. They are not endorsed by the Commission as a whole, but they come from specific Commission services.

[8] Council or Parliament Resolutions usually set out future work foreseen in a specific policy area. They have no legal effect and commonly serve: i. to invite a Member State or another EU institution to act on a specific issue; ii. to ask the Commission to prepare a proposal on a specific topic; and iii. to express a political position.

[9] Conclusions of the Council are used to identify specific issues of concern for the EU and outline actions to take or goals to reach. Council Conclusions can also set a deadline for reaching agreement on a particular item or for the presentation of a legislative proposal. They therefore allow the Council to influence and guide the EU's policy agenda.

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entire corpus of documents identified, while section 3 is based on a qualitative analysis of a smaller number of documents issued by the EU institutions.

More concretely, section 2 employs a diachronic textual analysis approach using a lexicometric method. Rather than manually coding the documents to reveal diachronic developments related to key terms, concepts and principles embedded in EU rule- and policymaking relevant for the music sector, the quantitative textual analysis is facilitated by NVivo, a computer-assisted data analysis program. NVivo is a methodologically rigorous textual tool that allows documents to be quantitatively mapped and coded by generating numerical data relating to the coverage and occurrences of specific keywords (Hilal and Alabri 2013). The results are subsequently presented in terms of a relevance rating generated by NVivo and expressed as percentages. In all, 162 relevant keywords were chosen to break the text materials into small chunks of information; targeted textual research was then conducted across the entire dataset, resulting in each keyword being assigned numerical data (see section 2).

Section 3 is based on an in-depth qualitative textual analysis of the usage of the term ‘fairness’ in a number of legal acts and policy documents. The first sub-section examines 15 major legislative acts related to EU copyright, the internal market, and culture law. These legally binding acts, consisting of two from the Council and 13 jointly issued by the European Parliament and the Council, address directly or indirectly several challenges facing the music industry, including in relation to music streaming and the rise of online platforms.

Spanning a 30-year period, from 1992 to 2022, these legislative acts –which include 13 regulatory ones and two acts on funding – have played a crucial role in shaping EU legislation in the field of interest. The analysis continues with a focus on policy documents issued by the Commission, the European Parliament and the Council. In all, 20 policy documents were selected: these include six documents from the Commission, eight documents from the Parliament, and six documents from the Council. The aim was to analyse thoroughly the ways in which ‘fairness’ has been promoted by each institutional body.

The selection of the policy documents took into account these criteria: the number of occurrences of the term 'fairness' or ‘fair’ (see Annex 7.3) and other similar terms such as ‘equitable’ and ‘appropriate’; the chronological dimension, in order to cover a historical period of more than 30 years; and the link of the documents to some key issue-areas of the study, e.g. the copyright angle, the music sector and the EU programme ‘Music Moves Europe’, the COVID-19 pandemic, and the regulation of digital platforms.

Finally, section 4 highlights key findings on ‘fairness’ in EU law and policy related to the music sector. The section also comparatively discusses the various understandings of this term and the broader implications for EU music governance in the digital age.

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2. Highlighting key diachronic developments in EU policy related to the music sector: quantitative textual mapping

2.1. Quantitative data analysis: aims and means

The quantitative coding and mapping were intended to identify diachronic developments and trends in EU policy related to the music sector and to understand the ways in which 'fairness', as a term, has evolved by comparison with other key terms, concepts and principles in EU music governance.

The first part of the quantitative textual analysis is based on historical criteria and divides the dataset into three historical periods –early 1990s-2001, 2002-2014, 2015-2023 – to provide an initial diachronic overview of important developments in EU music policymaking. The periods are designed around two turning points in the EU policy related to the music sector. They also coincide with key moments in the music industry's digital transition, e.g. the boom in free-music file-sharing forums or the upturn in commercial music streaming (Dolata 2020):

- 2001: an initial pivotal moment occurs in 2001, marking the adoption of **Directive 2001/29/EC** of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society. The 'Information Society Directive' was adopted "after several years of enquiry and discussions at the EU on the challenges from the emergence of the digital networked environment' (De Prato & Simon 2014: 78). The Directive harmonised major rights provided to authors and neighbouring rightholders (e.g. the reproduction right, the right of communication to the public, the distribution right, etc.), as well as some exceptions and limitations to those rights (see also section 3.1).

- 2014: the next turning point comes with the adoption of the **Directive 2014/26/EU** of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. The goal of the Directive was to promote greater transparency and governance of collecting rights management companies (De Prato & Simon 2014: 79). It laid down key requirements to protect the proper functioning of the management of these rights by collective management organisations (CMOs), while also regulating the multi-territorial licensing by the CMOs of authors' rights in musical works for online use in the internal market (see also section 3.1).

The second part is based on institutional analysis. The dataset is divided into the five distinct categories listed in Table 1: documents of the European Commission, the European

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Parliament, the Council of the European Union, the European legislator (i.e. legislative acts of the Council; of the Council and the European Parliament), as well as Staff Working Documents (SWDs) of the European Commission. This approach allows overarching trends in institutional preferences *on* European music governance to be identified. It also facilitates a comparative assessment of the positioning of the EU institutions on 'fairness' as well as other key concepts and terms in EU policymaking related to the music sector.

The final stage of the analysis involves a comprehensive comparison among historical periods and institutions. It also provides some concluding remarks from the quantitative textual mapping. This sub-section offers a nuanced perspective on how each historical period and each institution evolve over time, while also capturing the differences and similarities in their respective approaches to EU policy related to the music sector. This analytical process is crucial for providing a comparative overview of how priorities, principles, and concepts, in particular 'fairness', have evolved in EU political discourse over time and across different institutions.

Table 1: Database summary

Sample	Target	Size (in pages)
European Commission	Green Papers, Communications and Recommendations	467 p.
European Commission Staff Working Documents (SWDs)	Preparatory documents of the European Commission	612 p.
European Parliament	Resolutions and Recommendations	251 p.
Council of European Union	Resolutions, Recommendations and Conclusions	85 p.
European legislator	Decisions, Directives and Regulations	510 p.
Period 1	All documents (apart from SWDs) adopted from early 1990s to 2001	152 p.
Period 2	All documents (apart from SWDs) adopted between 2002 and 2014	460 p.
Period 3	All documents (apart from SWDs) adopted between 2015 and 2023	701 p.

Table 1: Database summary

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2.2. Diachronic textual analysis – an overview of the historical periods

2.2.1. Early internet concerns and EU copyright regulation prior to 2002

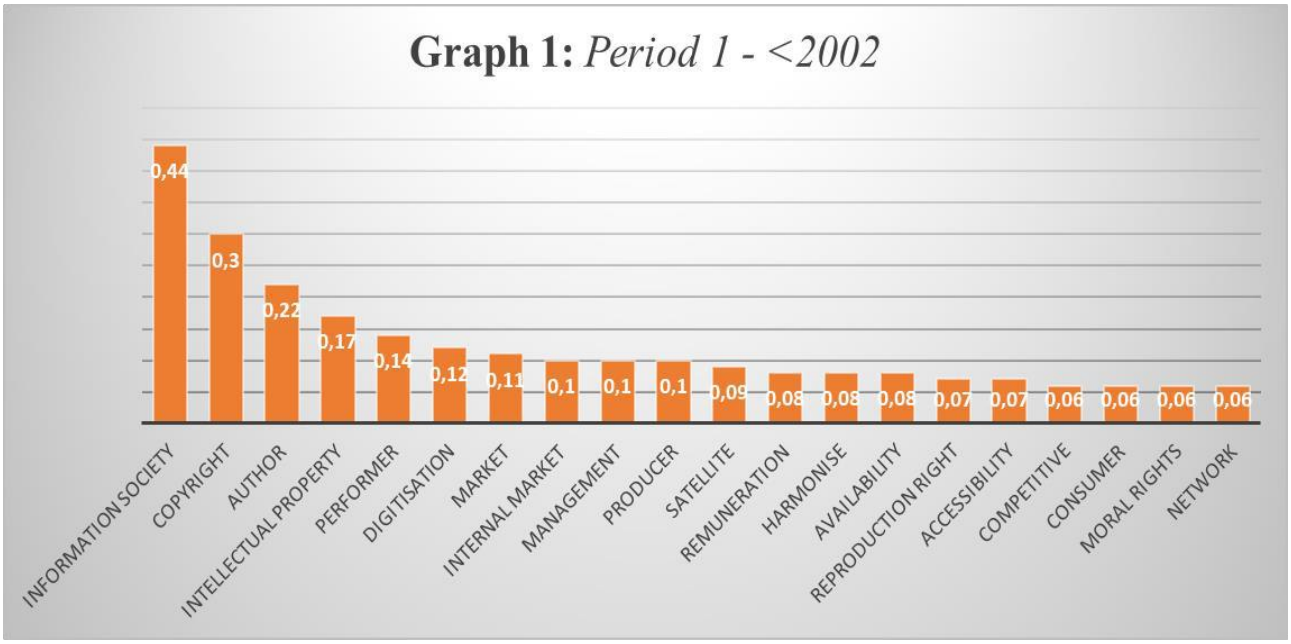

Figure 1: Period 1 - <2002

Graph 1 illustrates two intertwined sets of concerns in EU decision-making prior to 2002: traditional copyright concerns and Internet-related issues. The pivotal juncture for these concerns was the adaptation of the EU's approach to copyright in response to new technologies and 'digitisation'. The focus on 'intellectual property', 'reproduction rights', and 'management', 'remuneration', and 'author' directly links to copyright, but also to professional and societal concerns. In addition, Graph 1 illustrates the significant scores achieved by 'author,' 'performer,' and 'producer' (the highest recorded in any period): because, since the early 1990s, the emergence of new methods for music production had led to challenges regarding the definition of music ownership, with new participants entering the music production landscape (Frith 1988). It is notable that 'fairness' and connected terms, e.g. 'fair', were rarely used during this period (see 2.2.4).

Graph 1 highlights significant trends in copyright issues. Firstly, European music governance in this period embraced a key trend that had begun in the United States and the United Kingdom. There, the term 'information society' had become commonplace with the growth and spread of digital communication technologies and with the rise of 'information' as a defining feature and dominant resource in the modern cultural and music economy (Webster 1994, Moore 1997). Secondly, focusing on terms like 'satellite,' 'digitisation,' 'harmonise,' and 'internal market', the policy debate from the 1990s onwards shifted towards updating the legal framework to a changing technological landscape (Cammaerts 2011). New technologies facilitated (and reinforced) the cross-border dimension of the music industry, accentuating the policy concerns about an EU approach to 'harmonise' state copyright regimes and about establishing the 'internal market'. 'Harmonisation' was also related to economic concerns, as the need for a 'competitive' cultural industry, including the

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music industry, emerged as a driving feature during period 1 and 2 (see also Graph 2). Finally, even though cultural considerations were not central to European music policy before 2002, these concerns were somehow represented by the terms ‘accessibility’ and ‘availability’.

2.2.2. EU policy in the wake of the crisis in the music industry

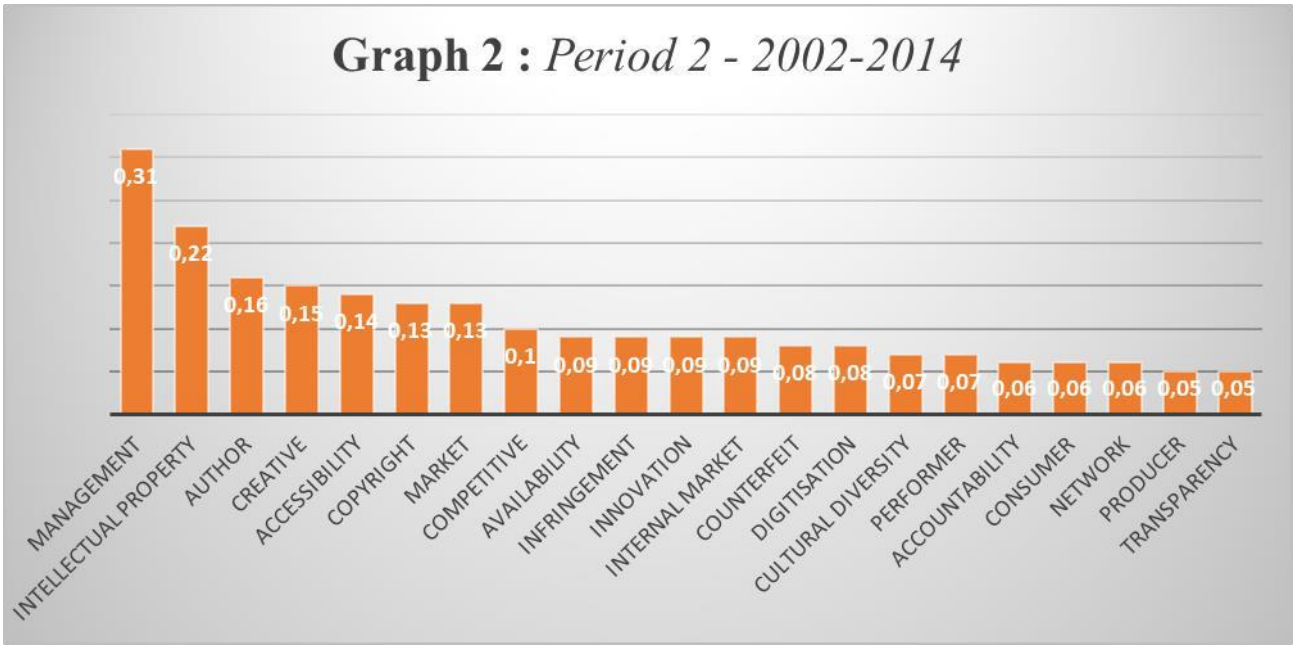

Figure 2: Period 2 - 2002-2014

The second period of analysis revealed that the primary objective in EU policy related to the music sector was the ‘management’ of ‘copyright’, as copyright and contract practices had played a key role in defining monetary rewards. The high coverage of the term ‘management’ could also be attributed to the increasing consideration of the role of collective ‘management’ organisations (CMOs) in the EU governance of the music sector. This suggests that the EU’s approach, in a context where music was at the forefront of the digitisation of culture, significantly focused on intermediaries of music production and rightholders, e.g. the CMOs (Hesmondhalgh 2021, Street et al. 2018, Phillips and Street 2015).

In this context, ‘accountability’ and ‘transparency’ of CMOs and other intermediaries also lay at the core of EU policymaking. At the same time, the debate on ‘management’ of ‘copyright’ took place against the background of economic concerns. This is shown by the terms ‘market’ and ‘competitive’, which were prominent in European policymaking, while ‘harmonisation’ was no longer a key issue. Notably, ‘information society’ was revealed as a key developmental trend in the industrial transformation of the European media and music ecosystems in the 1990s; however, it completely disappeared from the top 20 lists in the periods that followed (Graphs 2 and 3).

Moreover, whereas in the 1990s digitisation was initially perceived as a novel market force that necessitated copyright adaptation, the surge of copyright ‘infringements’ during this period underscored the importance of addressing the disruptive impact of digital technologies on ‘intellectual property’. In this sense, digital technologies also had “a

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deterritorialising effect, leading to the emergence of new patterns of music consumption, based on freely sharing digital content online, which have undermined the copyright and intellectual property regime" (Cammaerts 2011: 491-493).

This was a logical conclusion, because in the 2000s and early 2010s, copyright systems were discussed among scholars and civil society organisations as being ill-equipped to face infringements enabled by 'digitisation' (Phillips & Street 2015, Negus 2018). At the same time, the music industry was considered to be in persistent economic crisis, as the period was characterised by the boom in free music-file-sharing forums on the internet, marked mostly by the rise of Napster and the global recorded revenues significantly decreased between 2001 and 2013 (Dolata 2020). The context of the crisis in the music industry further pushed the EU to adopt more active copyright regulation encompassing the roles and responsibilities of key stakeholders, e.g. the CMOs. Notably, during this period, the term 'fairness'/'fair' started to slowly emerge in the EU discourse (see 2.2.4).

The music crisis scenario enabled the integration of new considerations into what EU policy related to the music industry should encompass. Whereas 'accessibility' and 'availability' remained central terms in EU policymaking, the terms 'creative' economy and 'creative' industries became prominent in European policy from 2002 onwards. The EU embraced a policy initiative that began in Australia and the United Kingdom and was widely popularised by Richard Florida's *The Rise of the Creative Class* (2002). This initiative established the 'creative' industries as both a dominant resource and a 'competitive' advantage in a post-industrial economy, which was strongly linked to policy agendas centred on 'innovation' policy and going beyond the traditional ideas of the subsidised arts (Vlassis & De Beukelaer 2019, De Beukelaer & Vlassis 2019).

In addition, putting emphasis on 'cultural diversity' was indicative of the EU's need to promote a reform of the copyright system, encompassing cultural considerations and the role of intermediary institutions in promoting creativity and cultural diversity in the music industry (Street et al. 2018). The high score of 'cultural diversity' in the 2002-2014 period could also be explained by the international debates on the adoption of the 2005 UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions. It is worth noting that the EU ratified the 2005 UNESCO Convention in 2006, and that this was the first instance of the bloc participating in an international culture-oriented agreement (Vlassis 2016, Psychogiopoulou 2014).

Overall, during this period, legal technicalities related to the copyright reform during the profound crisis in the music industry coincided with technological, cultural and professional considerations. This trend revealed the slow emergence of a multifaceted approach to EU music policy, which would later be further strengthened in a platform-dominated market (see 2.2.3 and 2.2.4).

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2.2.3. The platform shift: complexification of the EU policy framework

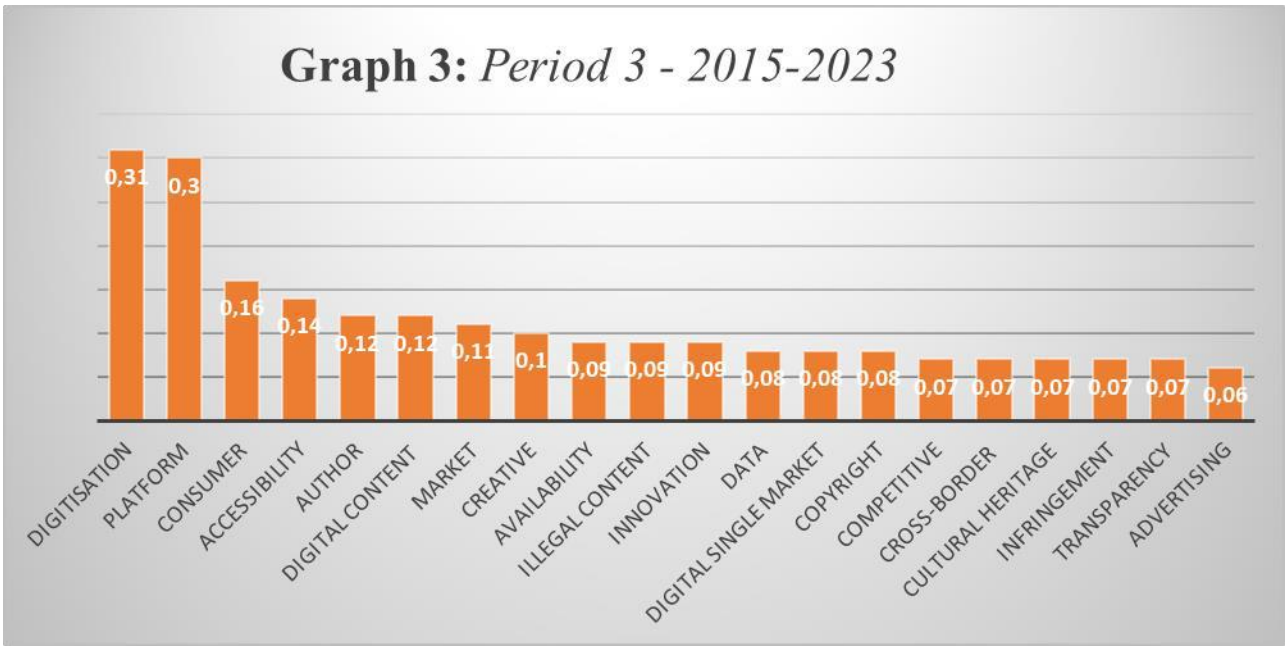

Figure 3: Period 3 - 2015-2023

The most recent period can be labelled a period of technological concerns, according to Graph 3. With terms such as 'platform', 'digital content', 'digitisation', 'innovation', and 'data' taking the lead, EU policy related to the music sector had shifted its focus to new technological transformations and the policy adaptations these require. The use of these terms, including the notion of 'fairness' (see 2.2.4), was strongly linked to the recent proliferation of EU legislative acts, such as the Digital Services Act and Digital Markets Act, focused on the regulation of the digital economy and dealing with various digital aspects of the music industry in a platform-dominated European economy.

More specifically, 'platforms' were at the core of the EU policy agenda after 2014 (see Graph 3), and correlated with 'innovation', which became a central policy imperative in the cultural and music industries. This is explained by the fact that, since the early 2010s, streaming music services and social-media platforms have driven tremendous changes in the music and cultural sectors, impacting how music goods and services have been accessed, produced, and consumed, entailing the rise of 'platforms' as the dominant infrastructural and economic model in the music sector (Morris 2020, Vlassis 2021).

As a result, since the consolidation and relative stabilisation of music/cultural production and consumption around social media and streaming platforms (Hesmondhalgh, 2021), the focus was no longer solely on regulating copyright in a context of digitisation; the focus has expanded to ensuring proper platform governance to facilitate the effective and 'competitive' functioning of the music economy in the framework of establishing a 'Digital Single Market'. This shift was primarily driven by the response to yet another profound crisis in the music industry, through streaming platforms such as Apple Music or Spotify (Rogers and Preston 2016). These platforms generated a wholly new music market beyond the reach of regulation (Thelen 2018) and they serve as new key intermediaries in the music sector, generating revenue through consumer subscriptions and advertising, and redistributing part

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of it to rightholders. Consequently, this raises regulatory concerns, as platforms became key stakeholders whose 'accountability' and 'transparency' practices have not yet been defined (Evens et al. 2020). Furthermore, the power acquired through the gatekeeping practices of platforms has prompted the EU to deal with broader dimensions of digital environments. These environments were at the same time considered in relation to the music sector, e.g. 'data', 'digital content' and the inclusion of the music industry into technological concerns and economic integration considerations outlined in the 'Digital Single Market' (Mazziotti 2021).

At the same time, 'accessibility' and 'availability' also remained top concerns, particularly in the context of the ongoing platformisation process and of consumers' progressive transition from 'illegal' to legal consumption practices. In addition, even though 'cultural diversity' lost some ground and no longer ranked in the top 20, 'creative' remains a prominent term and the emergence of 'cultural heritage' confirms the increasing diversification of EU policy related to the music sector. Furthermore, given the persistence of the terms 'author' and 'copyright', professional concerns were at the core of EU policymaking. The third period also continues to exemplify the transversal aspects of EU music policy. Indeed, the prominence of platforms also resulted in a strong politicisation of the music sector – as the surprisingly long negotiations on the 2019 'Copyright in the Digital Single Market Directive' also revealed (Bonnamy & Dupont 2023) – and enabled EU policy related to the music sector to combine the 'copyright' debate with a more complex and wider set of principles and notions, as depicted in Graph 3.

2.2.4. From early internet concerns to platform governance: an overview of EU music industry regulation across periods

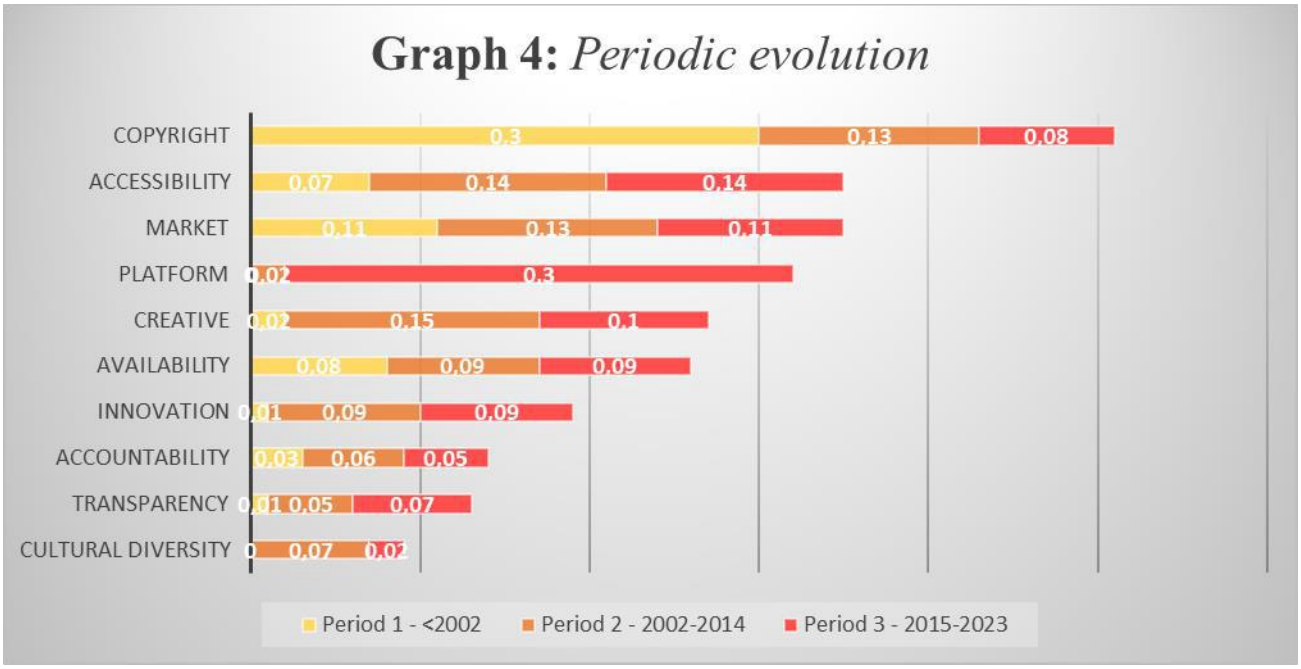

Figure 4: Periodic evolution

Graph 4 summarises five periodic trends discovered through the period overview.

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Firstly, over the course of the period analysed, technological transformations and ‘digitisation’ concerns have steadily grown in importance; they have ultimately been the prime focus in the most recent period. Starting in the early 2000s, ‘innovation’ and ‘platforms’ have continued to rise in prominence and have numbered among the top priorities in EU policy related to the music sector from 2010s to the present.

Notably, during period 1, the term ‘platform’ was completely absent. At that time, the main focus was on adapting the music sector to emerging digital opportunities, rather than advocating for fundamental changes due to the disruptive effects of digital technologies. ‘Digital content’ has also emerged as a key term, as music streaming platforms and social media have created enormous disruption in the streams of the music value chain: production, distribution, and consumption. So technological developments reshaped the dynamics, positioning platforms as pivotal stakeholders in music value chains and musicians have found themselves redefined as content providers rather than as creators (Mazziotti 2024). In addition, ‘data’ has taken central stage since the 2010s, as extracting and using ‘data’ derived from the production, circulation and use of music/cultural works has become a defining feature and dominant resource in a platform-dominated market (Negus 2018: 369-381).

Secondly, the regulatory framework of copyright has been a major topic of discussion over time within EU policy related to the music sector. However, as the scope of the EU’s actions has evolved, copyright regulation has gradually co-existed with other key issues in EU decision-making. Initially, during the first period, copyright was the main lens through which the music industry and its regulation was viewed; copyright was considered the primary means to ensure its efficient functioning. In the second period, copyright remained highly responsive, with reform efforts aimed at adapting to the evolving digital landscape. From 2015 to 2023, there was a noticeable shift in policy interest towards platform governance and the focus on copyright has co-evolved in a broader policy framework. The third period therefore emphasised the growing importance of the platformisation process, in reshaping both the music industry landscape and regulatory priorities.

Thirdly, ‘transparency’ and ‘accountability’ exhibit similar periodic trends: both are often linked to the responsibility of intermediaries within the system. In period 1, both terms were minimally represented, as EU policy had not yet put special emphasis on stakeholders’ practices, which should be transparent and accountable. Instead, there was a shift in periods 2 and 3, as the crisis in the music industry prompted consideration of various stakeholders within the European music ecosystem. The EU began to address numerous intermediaries such as CMOs, music streaming and social media platforms, recognising them as key players, which are required to meet standards of transparency and accountability.

Fourthly, the integration of cultural and creative concerns into EU policy related to the music sector has become evident since the 2000s. The notion of ‘cultural diversity’ surged strongly in the period 2002-2014. Moreover, the terms ‘creative’ industries/‘creative’ economy have been a widely used concept in EU political discourse since the early 2000s. ‘Accessibility’ and ‘availability’ have also been a growing focus throughout all the studied periods. Ensuring that cultural and music goods are available and accessible to consumers became a key feature in EU policymaking. In period 2, the crisis in the music industry did not alter this logic, as copyright ‘infringement’ sparked strong debates about the meaning of ‘accessibility’ and ‘availability’ (Bostoen 2018, Marshall 2015, Hesmondhalgh 2020).

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Fifthly, the historical overview suggests the impact of digitisation and the platform shift continue strongly to be debated, but less as a radical break with the past and more as a historical continuity (Negus 2018). This shows that technological transformations have continuously and historically interplayed with socio-cultural elements and economic considerations. In this context, the concept of 'fairness' has emerged in the EU discourse and was slowly embraced by the EU institutions. As depicted in Graphs 5 and 6, while the mentions of 'fair' and 'fairness' are extremely low in period 1 and the results of these terms are relatively low compared to other considerations in EU policy, from the early 2000s to 2023, EU policy started to put emphasis on 'fairness' in the European music sector. Since the 2000s, 'fairness' has gained prominence in the EU political agenda, due to the crisis in the music industry and the rise of platforms as the dominant economic and industrial infrastructure in the European music and cultural ecosystems.

Clearly, the platform shift has centralised global music competition within a handful of streaming and social media platforms (Bostoen 2018, Hesmondhalgh 2020). This key trend has heightened concerns about the effects of platforms' activities and practices on 'accessibility', 'transparency', 'availability', 'cultural diversity', and 'remuneration', hence opening the debate on how to define 'fairness' and how to deal with it in a highly evolving technological architecture. It is assumed that the dominance of platforms has progressively fostered the development of EU policy related to the music sector, by embedding policy in a combined framework of co-evolution with technological, economic, cultural, and societal concerns and starting to deal with the promotion of 'fairness' in the European music sector. So the progressive inclusion of 'fairness' – alongside the dynamic presence of 'creativity', 'accessibility', 'cultural diversity', 'availability', 'transparency' – highlight the establishment of a multifaceted approach from the EU institutions (see sub-section 4.3).

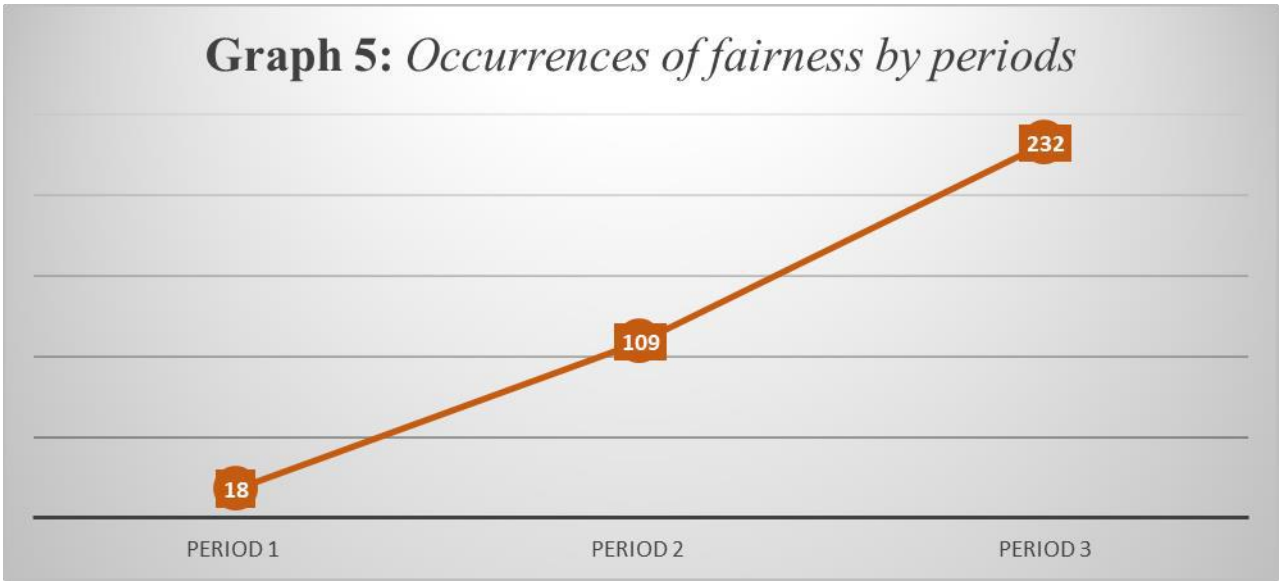

Figure 5: Occurrences of fairness by periods

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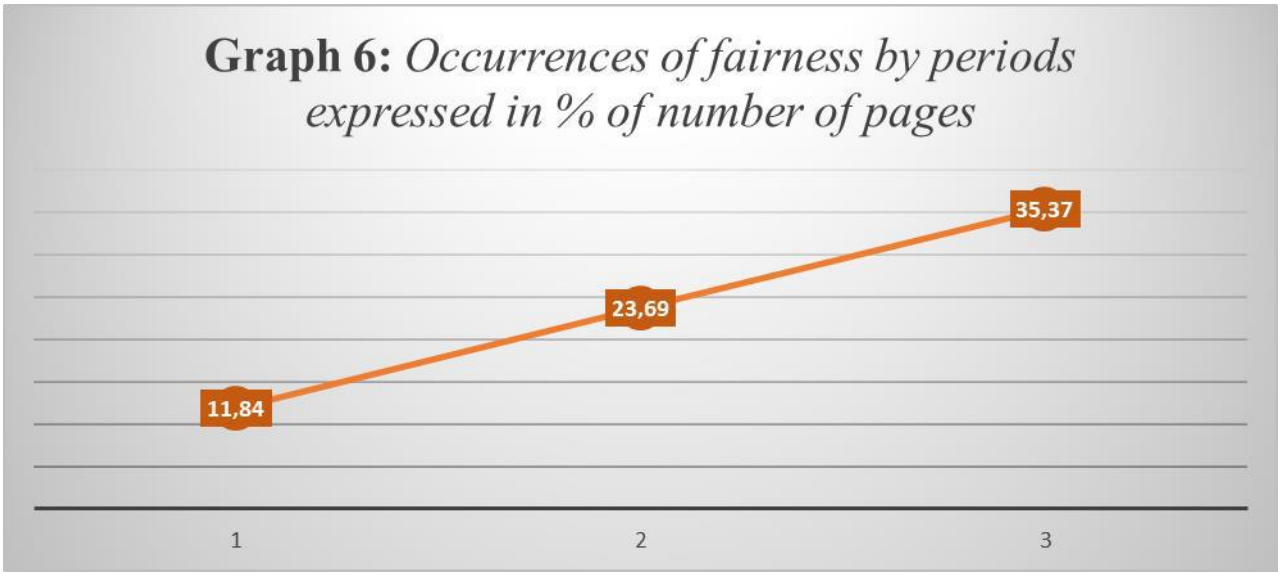

Figure 6: Occurrences of fairness by periods expressed in % of number of pages

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2.2.5. European Commission

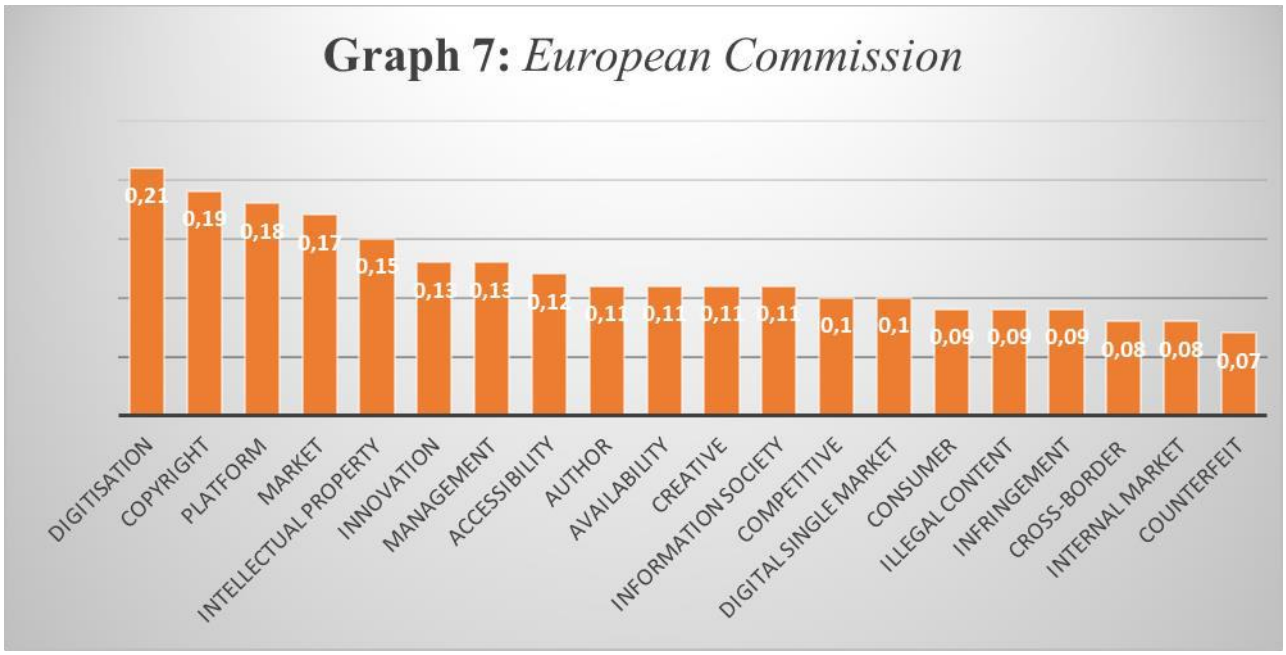

Figure 7: European Commission

The European Commission's framing towards the music industry appears consistent with the historical overview: 'digitisation', 'copyright', and 'platform' score the highest. A similar observation can be made for terms/words such as 'intellectual property', 'management', 'accessibility', 'availability', and 'innovation'. Graph 7 indicates three findings that should be scrutinised.

Firstly, the Commission's focus on adapting copyright frameworks and rights 'management' to the new digital reality is evident, since a key and growing policy concern has been enabling the management of rights to operate more effectively in the digital economy in which "national borders no longer assume the role they did in the analogue era" (Street et al. 2018: 380). On the one hand, 'harmonisation' of national copyright policy was clearly at the core of the Commission's framing of the music industry during the first period. On the other hand, the platform shift is noticeable in the Commission's discourse. As 'platform' reached the top position in the third period, the focus on 'copyright' dropped, confirming that platform governance issues extend beyond the copyright reform in the European music sector.[10] At the same time, Graph 7 demonstrates the trend in which the governance of music/cultural ecosystems has progressively been incorporated into broader concerns developed around the 'Digital Single Market', which is seen as an integral part of regulating online platforms.

Secondly, the Commission's focus on 'illegal content', 'infringement', and 'counterfeit' is noteworthy. These terms gained salience during period 2, with the fight against online piracy and against a backdrop of the profound crisis in the music industry. Their prominence in Graph 7 suggests that these concerns have been guiding principles of the Commission's agenda. The Commission itself highlighted disruptive market effects as key features of what

[10] See the table at the Annex 2, including all the results on the EU institutions and the three historical periods.

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'digitisation' and 'platform' disruption should entail. This trend could be interpreted through the Commission's central role in safeguarding the single market and ensuring fair competition conditions.

Thirdly, the European Commission tends to prioritise a market-oriented framing of its agenda: it emphasises wording such as 'market,' 'innovation,' 'digital single market,' 'competitive' and 'consumer'. So the Commission is one of the institutions dealing with the music industry in terms of economic competitiveness: the Commission is also further integrating 'cross-border' rights management issues as an integral part of its policy. However, while market concerns seem to be in line with the results from the historical overview, the Commission is insufficiently concerned about the cultural role of various sets of stakeholders, e.g. CMOs, streaming and social media platforms. The absence of any consideration of 'cultural diversity' or 'cultural heritage' is noteworthy. Even during period 2 (see Annex 7.2), the Commission failed to take into account 'cultural diversity' in its top priorities.

2.2.6. Staff Working Documents

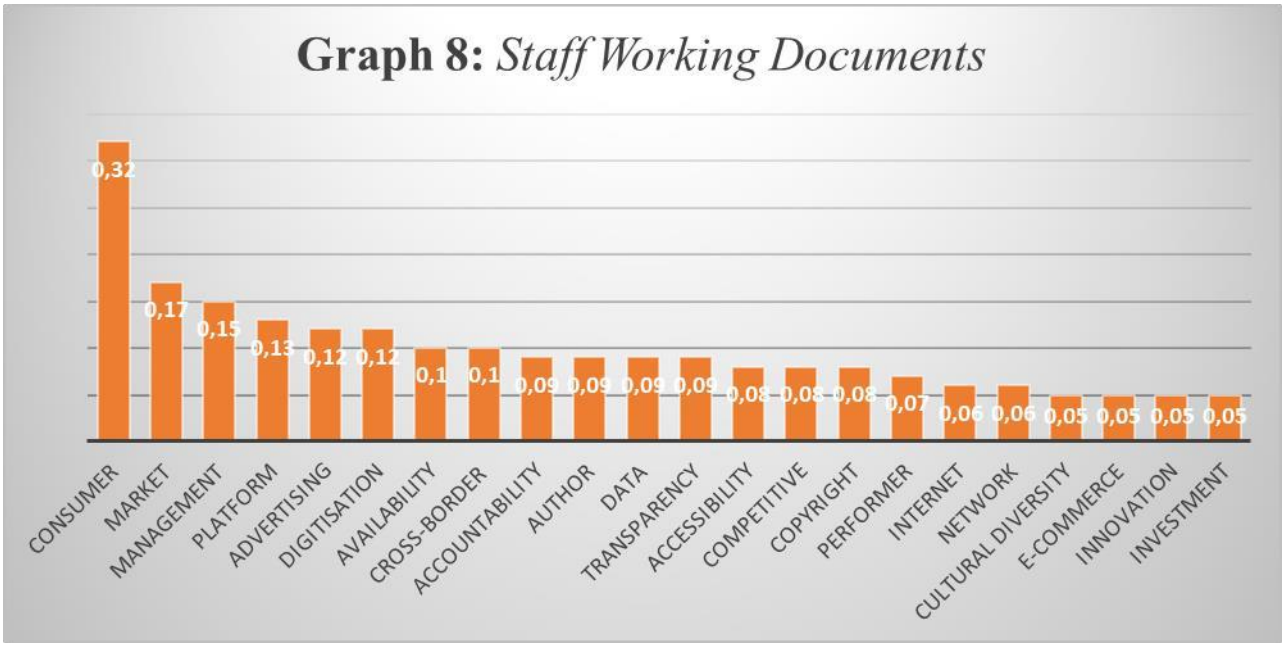

Figure 8: Staff Working Documents

Few studies examine the positioning of the Commission's staff within the EU policy framework (Bradford 2020). Staff Working Documents (SWDs) assist the Commission in drafting its official documents. Their goal is to highlight the stakes of a political decision, taking a more technical stance than the Commission does in its final draft. This enables the Commission to be informed about the background of its decisions. However, SWDs tend to be longer than the Commission's official documents, which are a selection of points considered the most important. Therefore, studying SWDs can throw light on the origins of Commission decisions, but also brings out any elements that were presented but remain unaddressed due to their political sensitivity or the Commission's reluctance to prioritise them. Graph 9 offers significant insights on this issue and its findings can be summarised in three key points.

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Firstly, the wording in the Commission's policy documents and in SWDs is quite similar. Graph 8 also highlights the ways in which the SWDs shape the Commission's understanding of the EU policy landscape. The framing in terms of 'author,' 'copyright', 'platform', 'digitisation', 'management', 'accessibility', and 'availability' is consistent across the samples that we assessed of the Commission and the SWDs. Moreover, the SWDs seem to reinforce a focus on technological transformations and a market-oriented approach, showing similar trends to those identified by the Commission and a relative reluctance to include creative and cultural considerations.

Secondly, the SWDs adopt a more consumer-centric approach to EU policy related to the music sector. Notably, during period 3, while the Commission highlights 'platform' governance as the main issue, the SWDs place a greater emphasis on promoting a consumer-oriented approach. This indicates that both samples share a market-oriented approach, but they slightly diverge in their focal points. In addition, SWDs tend to be more technical, incorporating a focus on 'data' as a top priority, while the Commission emphasises broader market integration issues and the regulation of disruptive market practices.

Thirdly, the SWDs also encompass terms that are not fully addressed in the Commission's policy documents, e.g. 'accountability' and 'transparency'. This may also suggest that the SWDs adopt a different approach, delving into topics with greater technicality than Commission policy documents. However, this statement should be qualified, as the SWDs tend to be longer and inherently more comprehensive than policy documents. It should be noted that while the Commission highlights "creative" industries and "creative" economy, the SWDs focus on the term "cultural diversity".

2.2.7. European Parliament

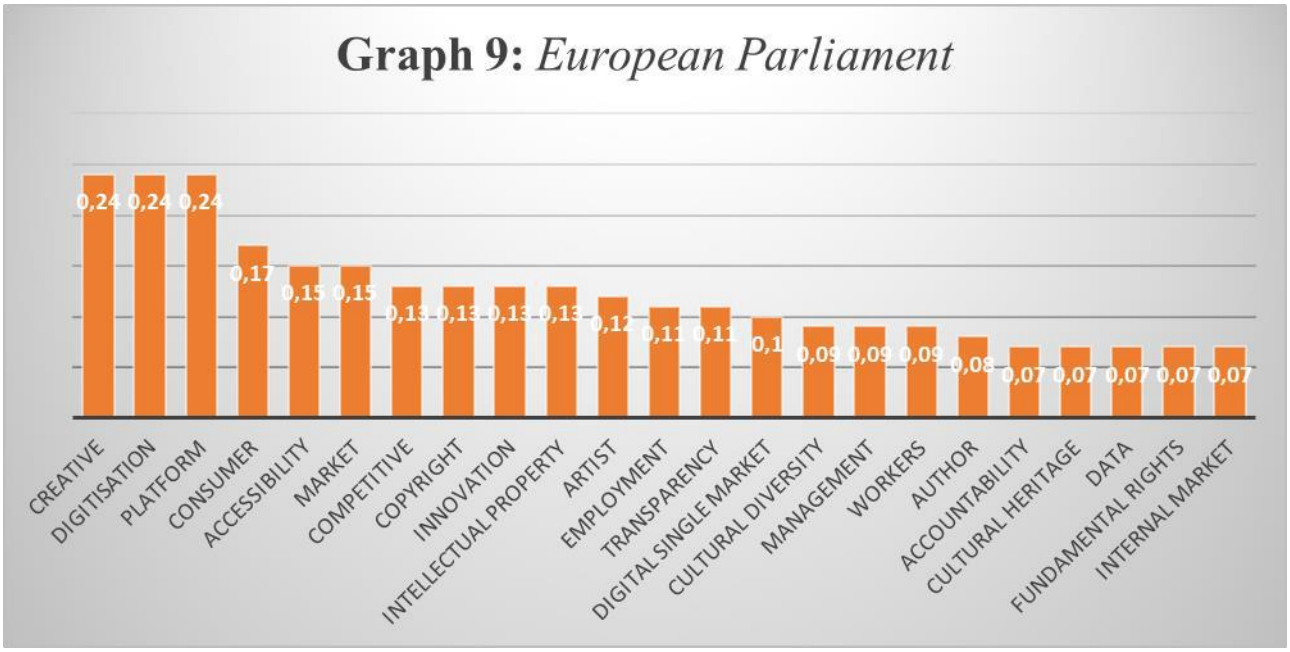

Figure 9: European Parliament

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Graph 9 depicts the European Parliament's approach to framing policy priorities related to the European music sector. As also indicated by the overview on historical periods, 'digitisation', 'platform', 'consumer', and 'copyright' are identified as crucial components of the Parliament's approach. Similarly, there are resemblances between Parliament's priorities and the historical analysis of the terms 'management', 'accessibility', 'transparency', and 'accountability'.

Graph 9 also underscores three distinct policy framings in the European Parliament. The Parliament appears to align with the Commission's framing under a market-oriented logic, emphasising terms such as 'competitive', 'innovation', 'digital single market', and even 'internal market'. At the same time, in contrast to the Commission's strong focus on economic matters, the Parliament seems to lean towards framing EU policy from a cultural standpoint as well. The Parliament places significant emphasis on the 'creative' economy and 'creative' industries as a top priority, while also highlighting the importance of 'cultural diversity', and 'cultural heritage' in its framing of EU policy related to the music sector. This implies that the market logic has been tempered to incorporate cultural considerations. Furthermore, the Parliament underscores that 'artists' and 'workers' are key stakeholders, thus underlining the need to consider societal and professional issues such as 'employment'. So the Parliament's framing appears to be more comprehensive, integrating market logic alongside cultural and social considerations that should be taken into account in the EU market. These findings resonate with the analysis that will be presented in section 2.3, which shows that the Parliament has been the key institutional instigator of the term 'fairness' in EU policy related to the music sector.

The European Parliament clearly takes a multifaceted approach. It addresses technological transformations, market considerations, as well cultural and societal concerns as top priorities – with relatively little variation among these issues over time. This multifaceted approach recognises music's cultural/artistic relevance and its social value in a platform-dominated economy: this is in opposition to an approach adopted by various stakeholders (e.g. digital conglomerates), which perceive music exclusively as 'content' that generates data and traffic (Negus 2019: 376). In addition, this finding is in line with the conclusions of Dietz (2014), who argued that the European Parliament has shown 'much more interest in the cultural impact of copyright than has the Commission' during the negotiations on the 2014 Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market. Consequently, the Parliament has traditionally been at the forefront of advocating for the recognition of cultural and societal considerations, which would legitimise greater economic reward for creators in a platform-dominated market. Therefore, as analysed in section 2.3, the Parliament's Resolution on 'Cultural Diversity and the Conditions for Authors in the European Music Streaming Market', adopted in January 2024, ensures this institutional continuity in terms of Parliament's policy agenda.

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2.2.8. Council of the European Union

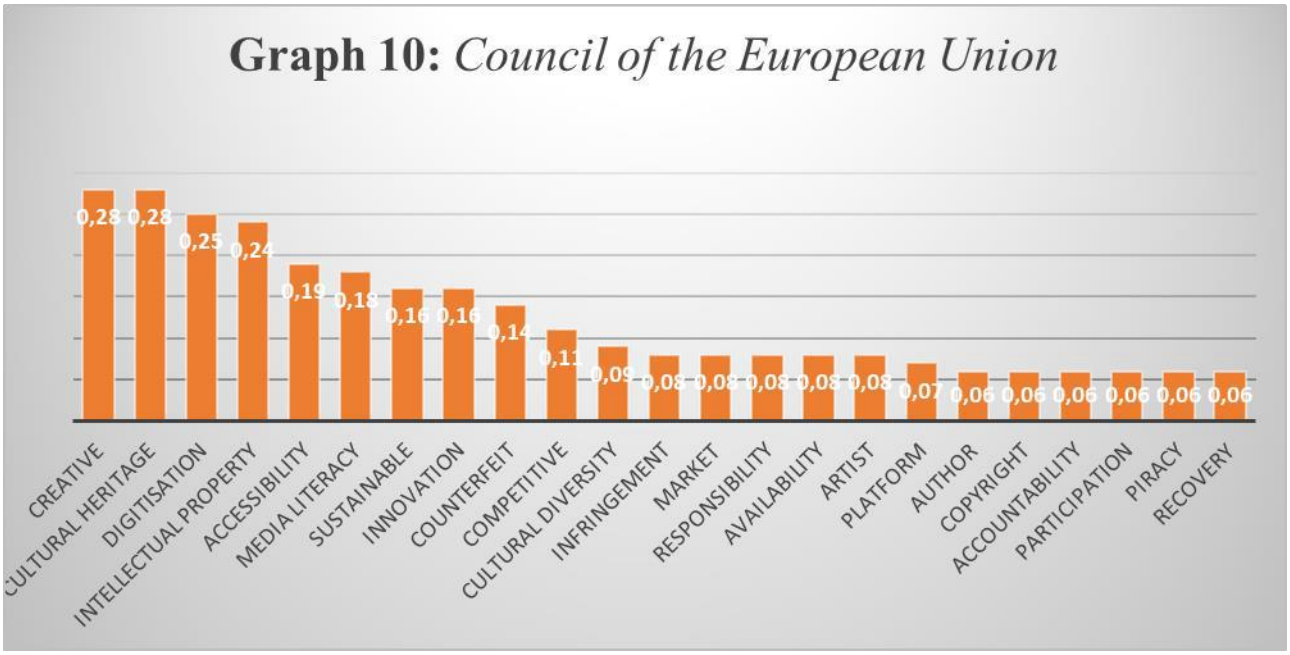

Figure 10: Council of the European Union

Graph 10 provides an overview of the Council's stance on EU policy related to the music sector over time. Notably, the Council's priorities diverge from the key trends identified in our historical overview, as there is less emphasis on the technical debate on copyright reform. In addition, while the Parliament and Council focus on the 'creative' economy and 'creative' industries, the Council notably incorporates topics around 'cultural heritage'. This particular focus may be linked to the Council's decision-making process, which is grounded in an intergovernmental framework and concentrates notably on national heritage concerns.

Like other EU institutions, the Council is also concerned about the 'accessibility' and 'availability' of European cultural-music goods and services, as well as about the 'transparency' and 'accountability' of stakeholders' practices. However, given the intergovernmental nature of this institution, 'intellectual property' in the broad sense remains a key focal point. Yet the Council does not seek to focus extensively on technical issues linked to copyright reform, the role of intermediaries and the related 'management' issues. At the same time, the Council introduces new concerns about media literacy, indicating it has a broader focus on the music industry as an integral part of European cultural and media ecosystems.

Notably, the Council appears to emphasise market disruptions such as 'piracy', 'counterfeit', and 'infringement', as well as technological developments, with a special focus on 'innovation', and 'digitisation'. However, it proposes a reframing of EU policy related to the music sector, to be based on cultural and societal considerations, e.g. around the terms 'artist', 'participation', 'cultural heritage', and 'cultural diversity'. Overall, whether the concerns are technological, economic, professional, or cultural, or concerns related to access, they all appear to rank equally high as a priority in the Council's agenda. So we can conclude that the Council takes a clear stance in favour of a multifaceted approach to European policy related to the music sector.

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2.2.9. European legislator

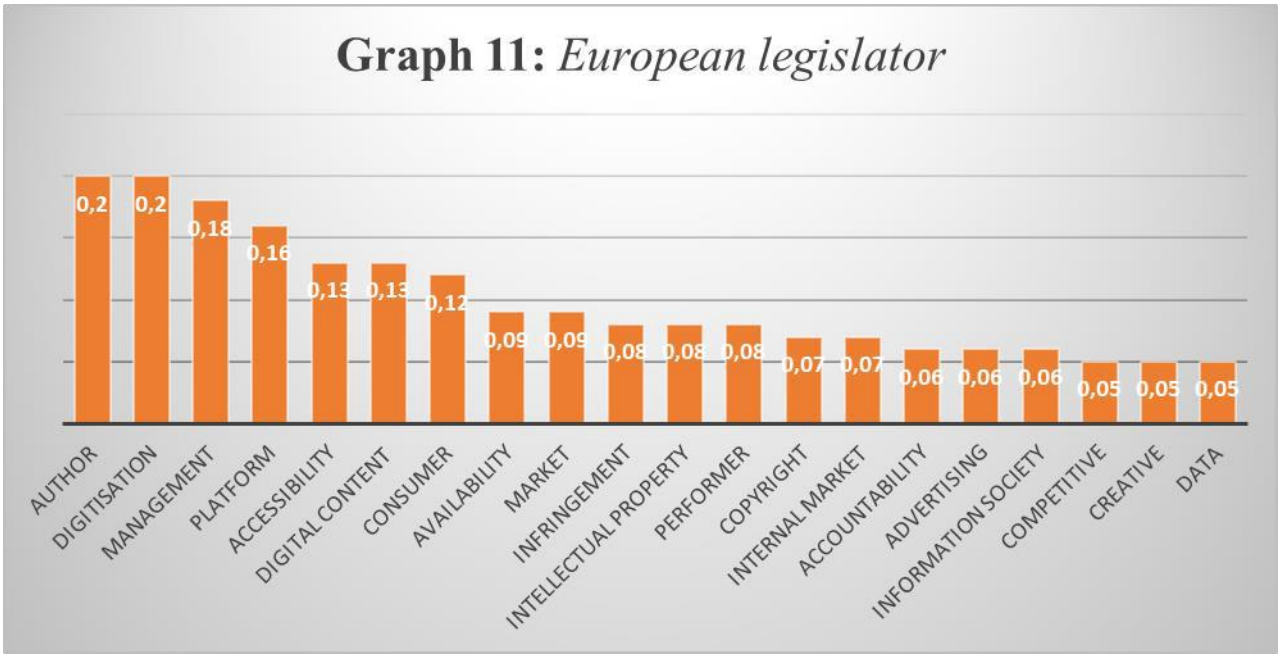

Figure 11: European legislator

Now that the EU's institutional preferences have been laid out, this sub-section delves into the content of legislative acts to identify which of those preferences are most salient in EU legislation. Graph 10 underscores the European legislator's approach to framing priorities within EU policy related to the music industry. The data suggest that professional and economic concerns, as well as technological advances, rank highest in the classifications. The European legislator encompasses these aspects already highlighted in the historical overview and aligns closely with the platform shift observed in historical and institutional trends, with a special focus on terms such as 'author', 'digitisation'; 'copyright', 'management', 'competitive', 'digital content', 'data', and 'platform'. EU legislative action thus effectively captures core concerns surrounding the 'copyright' reform and 'authorship' debate in response to the crisis in the music industry; this action refers to several key issues and stakeholders such as 'infringement', 'performers', 'producers' and it addresses 'internal market' concerns.

In addition, 'accessibility' and 'availability' feature highly in the top 10 and the inclusion of 'consumer' underscores the EU's commitment to enhancing consumer access to available 'digital content'. Instead, even though cultural concerns are included in the policy documents from the Parliament and the Council, there is a relative oversight of the cultural dimension within legislative frameworks: 'cultural diversity' or 'cultural heritage' do not feature in the top 20 and the term 'creative' is not a key priority. This could suggest that the European legislator echoes more the Commission's policy framing of EU policy on the music sector, translating the Commission's policy guidelines on economic and technological issues. It also suggests the European legislator does not fully embrace a multifaceted approach in EU governance related to the music-cultural sector.

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2.2.10. Comparison of institutional framing

In conclusion, this institutional overview can be summarised as four main trends, illustrated in Graph 12.

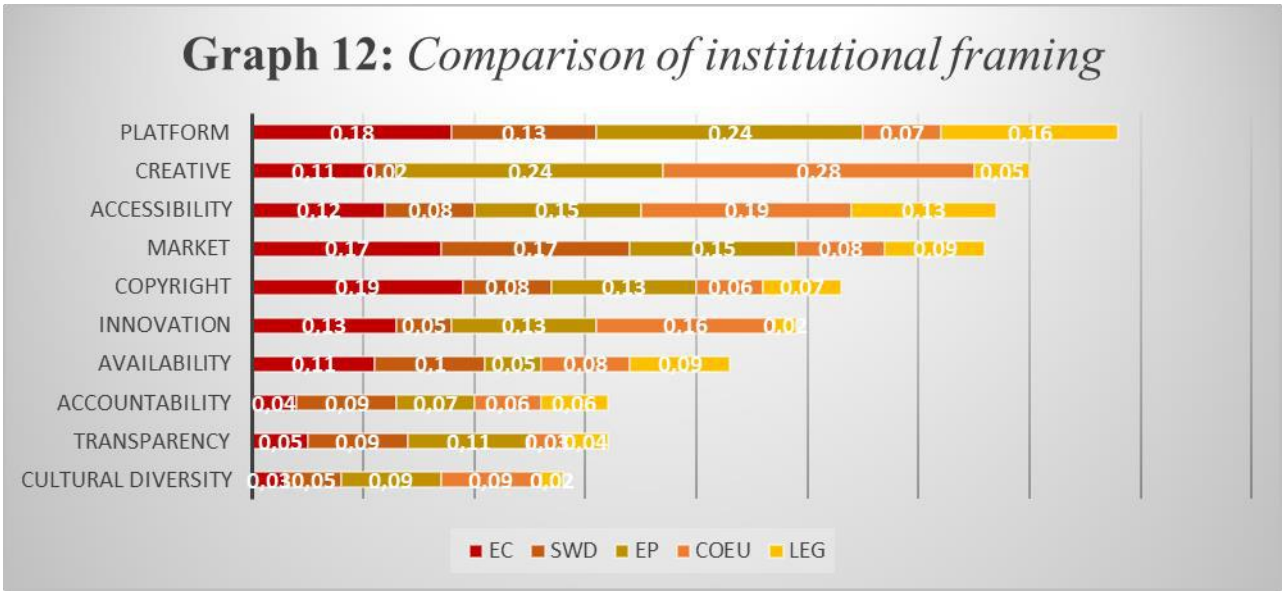

Figure 12: Comparison of institutional framing

Firstly, 'accessibility' and 'availability' – and all related concerns about the role of intermediaries in the European digital and music ecosystems – are a consistent preference across all the institutions. It is notable that the EU institutions are slightly more focused on 'accessibility' issues, which diachronically achieve high scores: this makes accessibility the most stable focal point in EU policy related to the music sector. In addition, the European Parliament pays particular attention to 'transparency' issues while the Commission and European legislator put special emphasis on 'availability' concerns. However, the Commission's SWDs favour a broader perspective and all the above-mentioned terms hold salient positions in the SWDs.

Secondly, the regulatory framework of copyright has been a prominent topic of discussion across all the institutions, in EU policy related to the music sector. However, as the scope of the EU's actions has evolved, copyright has progressively co-existed with other key issues in EU policymaking. Thus, 'platform', 'digitisation', and 'innovation' have dynamically been addressed, since EU policy related to the music sector has strongly responded to technological developments. Notably, while these terms are of interest to the Commission, the Parliament and the European legislator, the Resolutions, Recommendations and Conclusions produced by the Council of the EU do not put special emphasis on 'copyright' and 'management' issues: this is due probably to the intergovernmental nature of the Council.

Thirdly, a market-oriented logic is prominent overall. This logic is broadly shared by the European Commission and its SWDs, as the Commission tends to approach the European music sector through economic considerations and a consumer-oriented perspective. The Commission's policy priorities are set in terms of 'competitiveness', 'innovation', and addressing disruptive practices that hinder the effective functioning of the internal market.

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In this sense, the Commission is more interested in matters of competition and internal market considerations, with a focus on the European economy as a whole.

Fourthly, cultural concerns – and creative concerns, in a broader sense –are well represented through the Parliament and the Council. Both institutions stand out by prioritising 'cultural diversity', while the Council maintains a strong focus on 'cultural heritage'. Both the Parliament and Council remain at the forefront of advocating for cultural considerations and they actively contribute to the diversification of the EU's approach to the music sector.

As argued by Mansell and Raboy (2014: 4), policymaking can be 'regarded as a process of persuasion and argumentation that takes place within a complex system of actors and institutions'. Graphs 13 and 14 reveal that the promotion of 'fairness' as a political issue in the European music sector requires political entrepreneurs (Avant et al., 2010). In the EU institutional architecture, the European Parliament played the role of political entrepreneur for 'fairness', seeking to move the debate forward regarding the importance of focusing on the ways in which the EU is expected to define 'fairness' and to deal with it in a European platform-dominated economy. Thus, 'fairness' is an integral part of the multifaceted policy approach towards the European music sector, as primarily promoted by the European Parliament, and followed mostly by the Council. Importantly, as adopted in January 2024, the Parliament's resolution on 'Cultural Diversity and the Conditions for authors in the European music streaming market' confirms this multifaceted approach in the EU policy related to the music sector. This approach encompasses technological developments, and economic and professional concerns, as well as cultural and societal considerations (see sub-section 4.3).

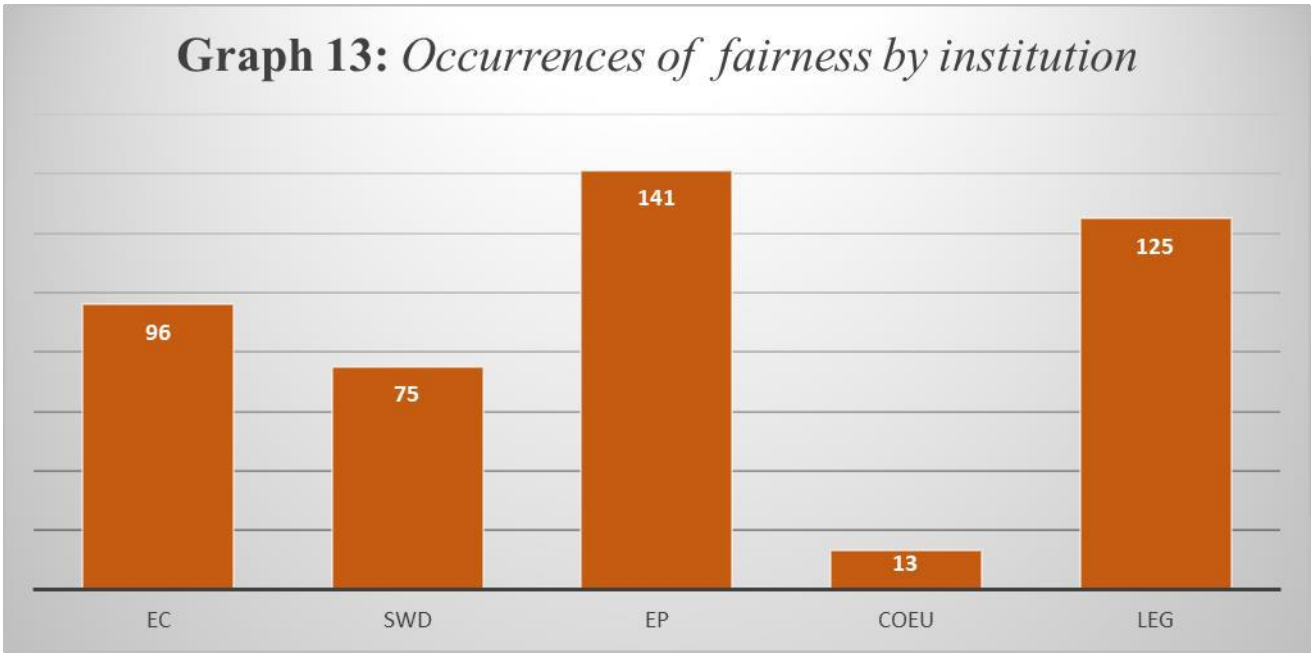

Figure 13: Occurrences of fairness by institution

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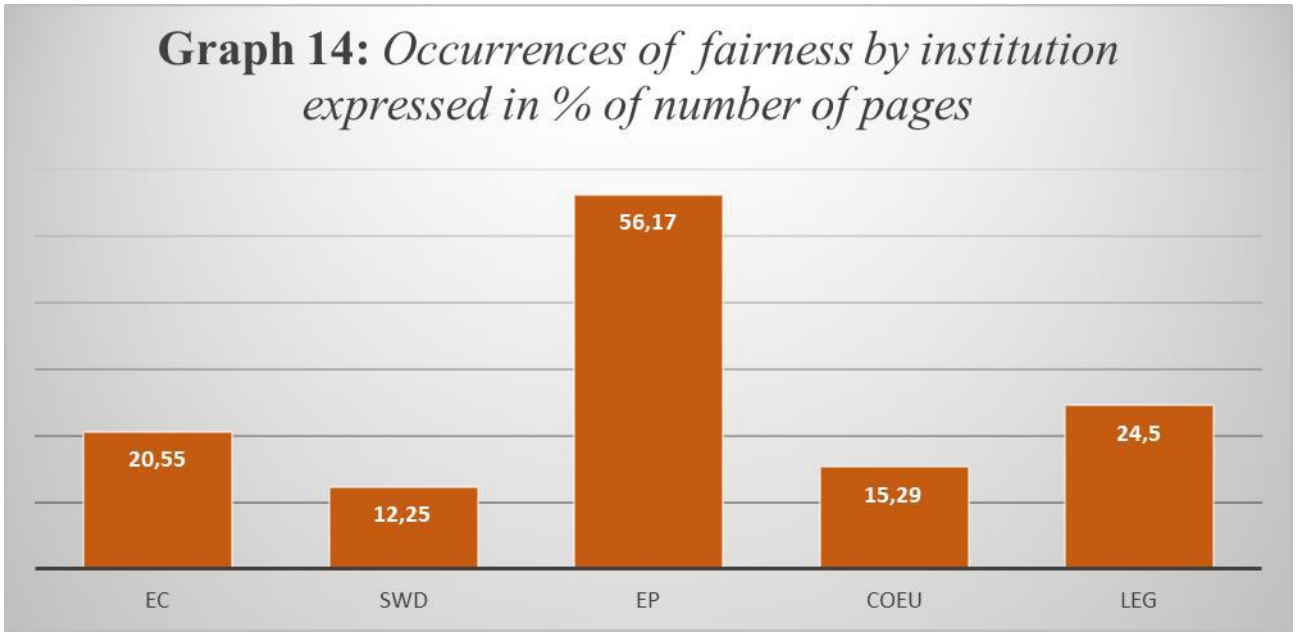

Figure 14: Occurrences of fairness by institution expressed in % of number of pages

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3. Unravelling fairness in the EU law and policy related to the music sector: a qualitative mapping

3.1. The concept of 'fairness' in light of the evolving EU legislation

3.1.1. Brief presentation of the legal instruments under review

This sub-section employs a textual analysis, from a systematic and historical perspective, in order to map understandings and operationalisations of the concept of 'fairness' in relation to EU music governance. The focus is on major legislative instruments of EU copyright, internal market and culture law. These instruments directly or indirectly address the music industry, as well as the streaming of music and the challenges brought by the rapid emergence of online platforms for the music sector. From the outset, it must be pointed out that today's EU law on copyright and related rights, law that has largely drawn on the internal market legal bases of the EU Treaties and which also has an important cultural dimension, has been gradually formulated through a long-term process of harmonisation, stemming from several consecutive directives.

The following regulatory – and some funding – acts, adopted by the European legislator over thirty years, from 1992 to 2022, are considered significant in the course of evolving EU legislation in this field. Our analysis presents the key developments in this regard, in chronological order:

- *The 1992 Council Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property*: The 'rental right and lending rights Directive' was adopted in 1992 by the Council,[11] regulating certain rights related to copyright in the field of intellectual property. Addressed to the then 12 Member States of the European Economic Community (EEC), the 1992 Directive was adopted on the basis of (what were) Articles 57(2) [coordination on non-wage earning activities], 66 [application of what were Articles 55 to 58 on the freedom of establishment to the freedom of services] and 100a [approximation of laws for the common market] of the Treaty establishing the EEC (TEEC). It is considered the first EEC legislative act dealing with authors' rights in the frame of the common market, while implementing a horizontal approach, harmonising certain rights granted to the rightholders of the creative chain (Nérisson 2021).

- *The 1993 Council Directive on harmonising the term of protection of copyright and certain related rights*: the 'Copyright Duration Directive',[12] having regard to (what were) Articles 57(2), 66 and 100a TEEC, ensured the harmonisation of the single

[11] Council Directive 92/100/EEC of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, OJ L 346, 27.11.1992, p. 61-66.

[12] Council Directive 93/98/EEC of 29 October 1993 harmonising the term of protection of copyright and certain related rights, OJ L 290, 24.11.1993, pp. 9-13.

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duration for copyright and related rights at Community level, as regards, *inter alia*, the term of protection of the rights of authors, performers, producers of phonograms, etc.

- *The 2000 Directive on certain legal aspects of information society services, in particular electronic commerce, in the internal market:* the 'Directive on electronic commerce', commonly referred as the 'e-Commerce Directive', was adopted at the beginning of the 21st century by the European Parliament and the Council.[13] This is the foundational legal framework for online services in the context of the EU's internal market, aimed at removing obstacles to cross-border online services. Thus Directive 2000/31/EC is not a legal instrument for copyright as such. Although there have been major technological advancements since its adoption in the field of its regulation, the e-Commerce Directive is still in force and it remains a core component of digital regulation at the EU level, though largely revised. The legal basis of the Directive was (what were) Articles 47(2) [coordination on self-employed persons' activities], 55 [application of what were Articles 45 to 48 on the freedom of establishment to the freedom of services] and 95 [general internal market legal basis] of the Treaty establishing the European Community (TEC).

- *The 2001 Directive on the harmonisation of certain aspects of copyright and related rights in the information society:* it is no coincidence that, just a year after the 'e-Commerce Directive', a key Directive on the harmonisation of certain aspects of copyright and related rights in the information society (hereafter: the 'InfoSoc Directive') was adopted by the European Parliament and the Council.[14] The InfoSoc Directive harmonised major rights provided to authors and neighbouring rightholders (e.g. the reproduction right, the right of communication to the public, the distribution right, etc.), as well as some exceptions and limitations to those rights. It also harmonised the safeguarding of technological measures and of rights management information, sanctions and remedies. The legal basis of the Directive was in particular (what were) Articles 47(2), 55 and 95 TEC.

- *The 2006 Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property:* the 1992 'rental right and lending rights Directive' was amended at the end of 2006,[15] thus leading, in the same spirit as its predecessor, the Member States to apply laws that provide the right to authorise or prohibit the rental and lending of originals and copies of copyright works, etc.

[13] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), OJ L 178, 17.7.2000, pp. 1-16.

[14] Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, OJ L 167, 22.6.2001, pp. 10-19.

[15] Directive 2006/115/EC of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which amends Council Directive 92/100/EEC, OJ L 376, 27.12.2006, p. 28-35.

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- *The 2006 Directive on the term of protection of copyright and certain related rights*: the 2006 'Copyright Term Directive',[16] which was adopted by the European Parliament and the Council, is a consolidated version of the former Council Directive 93/98/EEC, harmonising the term of protection of copyright and certain related rights, including all other amendments that had been made by 2006, and replacing the text of the 1993 Directive in the interests of clarity and rationality. Here too, the legal basis of the Directive was (what were) Articles 47(2), 55 and 95 TEC.

- *The 2011 Directive on the term of protection of copyright and certain related rights:* the 2006 'Copyright Term Directive' was amended in 2011, when a new Directive was adopted by the European Parliament and the Council.[17] It harmonised the term of protection in respect of musical compositions in all Member States, overcoming obstacles to the free movement of goods and services, and extending the term of protection for recordings from 50 to 70 years. The legal basis of the Directive was Articles 53(1) [coordination on self-employed persons' activities], 62 [application of Articles 51 to 54 on the freedom of establishment to the freedom of services] and 114 [general internal market legal basis] of the Treaty on the Functioning of the European Union (TFEU).

- *The 2012 Directive on certain permitted uses of orphan works*: the 'Orphan Works Directive', adopted by the European Parliament and the Council in 2012,[18] concerns certain uses of the so-called orphan works by publicly accessible libraries, educational establishments and museums, as well as by archives, film or audio heritage institutions and public-service broadcasting organisations, which are established in the EU Member States, for the accomplishment of goals that are related to their public-interest operations. The legal basis of the Directive was Articles 53(1), 62 and 114 TFEU.

- *The 2013 Regulation establishing the Creative Europe Programme (2014 to 2020)*: this 2013 Regulation of the European Parliament and of the Council was a funding instrument of fundamental importance, establishing the 'Creative Europe Programme', from 2014 to 2020: its main goal was to offer economic support to the European cultural and creative sectors, including the music sector.[19] More than a hundred music projects (e.g. cooperation projects, platforms and networks) acquired financial support under that programme, with a total budget of almost a

[16] Directive 2006/116/EC of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, OJ L 372, 27.12.2006, p. 12-18.

[17] Directive 2011/77/EU of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights, OJ L 265, 11.10.2011, p. 1-5.

[18] Directive 2012/28/EU of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, OJ L 299, 27.10.2012, p. 5-12.

[19] Regulation (EU) 1295/2013 of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, OJ L 347, 20.12.2013, p. 221-237.

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hundred million euro.[20] The legal basis of the Regulation was Article 166(4) TFEU [EU's competence on vocational training], in conjunction with the first indent of Article 167(5) [EU's competence on culture] and Article 173(3) TFEU [EU's industry mandate]. Along with 'Music Moves Europe', i.e. the framework for the European Commission's initiatives and actions in support of the European music sector in particular, the EU institutions aimed at safeguarding that the interests of this particular sector constitute a priority.[21]

- *The 2014 Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market*: building on the pre-existing acquis in EU copyright and related rights law (i.e. the Directives that had already been adopted with a view to enhancing the conditions of creativity, ensuring a high degree of protection for rightholders and thus providing a framework in which the exploitation of content protected by those rights could take place), the European Parliament and the Council adopted the 'Collective Rights Management Directive' (CRMD) in 2014. It laid down the necessary requirements to protect the proper functioning of the management of these rights by collective management organisations (CMOs) and regulated the multi-territorial licensing by the CMOs of authors' rights in musical works for online use in the internal market.[22] The legal basis of the Directive was Articles 50(1), 53(1) and 62 TFEU.

- *The 2017 Regulation on cross-border portability of online content services in the internal market:* the principal aim of the 2017 Regulation, adopted by the European Parliament and the Council,[23] is to harmonise the legal regime on copyright and related rights as well as to specify a common approach to the provision of online content services to subscribers temporarily present in an EU Member State other than their Member State of residence, by removing barriers to cross-border portability of online content services that offer access to copyright-protected content such as music, and which are legitimately provided in the framework of the smooth functioning of the internal market. The legal basis of the Regulation was Article 114 TFEU.

- *The 2019 Directive on copyright and related rights in the Digital Single Market:* in 2019, the 'Copyright in the Digital Single Market Directive' (CDSMD) was adopted by the European Parliament and the Council,[24] amending previous Directives that regulated copyright and related rights issues in the EU. Over the previous two

[20] See 'Music Moves Europe'; further information available at: https://culture.ec.europa.eu/cultural-and-creative-sectors/music/music-moves-europe

[21] Ibid.

[22] Directive 2014/26/EU of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, OJ L 84, 20.3.2014, p. 72-98.

[23] Regulation (EU) 2017/1128 of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, OJ L 168, 30.6.2017, p. 1-11.

[24] Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, OJ L 130, 17.5.2019, p. 92-125.

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decades, “EU copyright law has developed from a fragmented collection of vertical harmonisation directives to a more comprehensive system with significant horizontal elements” (Jütte 2021: 3). This was a decisive step towards modernising the copyright rules in the digital landscape, in order to achieve significant policy objectives (e.g. to address the uneven distribution of profits between the big platforms and the content creators), leading to more cross-border access to online content in an enhanced copyright marketplace. The legal basis of the Directive was Articles 53(1), 62 and 114 TFEU.

- *The 2021 Regulation establishing the Creative Europe Programme (2021 to 2027):* this Regulation,[25] which was adopted by the European Parliament and the Council under Article 167(5) TFEU, in conjunction with Article 173(3) TFEU, established the second Creative Europe Programme for a period of seven years, from 2021 to 2027, for safeguarding, enhancing and promoting Europe’s cultural and linguistic diversity and heritage, whilst increasing the competitiveness and the economic prospects of its cultural and creative sectors, including the music sector.

- *The 2022 Regulation on contestable and fair markets in the digital sector (Digital Markets Act):* the ‘Digital Markets Act’ (DMA) of the European Parliament and of the Council seeks to promote fairness, competitiveness and openness in a regulated digital market at EU level.[26] Its legal basis was Article 114 TFEU. The DMA mainly affects the large online platforms, the designated ‘gatekeepers’ under this Act, which are systemic online companies (i.e. with a strong economic position and influence on the internal market) that will no longer be able to apply unfair practices, such as Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft. The DMA builds a digital level playing field with well-defined rights and rules for those gatekeepers, guaranteeing that they do not abuse their powers in the digital sector.

- *The 2022 Regulation on a Single Market for Digital Services (Digital Services Act):* the ‘Digital Services Act’ (DSA) of the European Parliament and of the Council sets the updated regulatory framework for the activity of online content service providers, marketplaces, social media, app stores, and other online intermediaries, precluding illegal activities online and the spread of disinformation, while guaranteeing fundamental rights, user safety, and a fair and open online platform ecosystem.[27] The EU legislator employed the catch-all internal market legal basis of Article 114 TFEU.

[25] Regulation (EU) 2021/818 of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) 1295/2013, OJ L 189, 28.5.2021, p. 34-60.

[26] Regulation (EU) 2022/1925 of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), OJ L 265, 12.10.2022, p. 1-66.

[27] Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, pp. 1-102.

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EU legislative act	Official Journal of the EU	Type & number of the act
The 1992 Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property	OJ L 346 27.11.1992	**Directive 92/100/EEC**
The 1993 Directive on harmonising the term of protection of copyright and certain related rights	OJ L 290 24.11.1993	**Directive 93/98/EEC**
The 2000 Directive on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market	OJ L 178 17.7.2000	**Directive 2000/31/EC**
The 2001 Directive on the harmonisation of certain aspects of copyright and related rights in the information society	OJ L 167 22.6.2001	**Directive 2001/29/EC**
The 2006 Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which amends Council Directive 92/100/EEC	OJ L 376 27.12.2006	**Directive 2006/115/EC**
The 2006 Directive on the term of protection of copyright and certain related rights	OJ L 372 27.12.2006	**Directive 2006/116/EC**
The 2011 Directive on the term of protection of copyright and certain related rights	OJ L 265 11.10.2011	**Directive 2011/77/EU**
The 2012 Directive on certain permitted uses of orphan works	OJ L 299 27.10.2012	**Directive 2012/28/EU**
The 2013 Regulation establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC	OJ L 347 20.12.2013	**Regulation (EU) 1295/2013**
The 2014 Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market	OJ L 84 20.3.2014	**Directive 2014/26/EU**
The 2017 Regulation on cross-border portability of online content services in the internal market	OJ L 168 30.6.2017	**Regulation 2017/1128**
The 2019 Directive on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC	OJ L 130 17.5.2019	**Directive 2019/790**

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The 2021 Regulation establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) 1295/2013	OJ L 189 28.5.2021	**Regulation 2021/818**
The 2022 Regulation on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act)	OJ L 265 12.10.2022	**Regulation 2022/1925**
The 2022 Regulation on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act)	OJ L 277 27.10.2022	**Regulation 2022/2065**

Table 2: List of selected EU legislative acts under study

3.1.2. Chronological analysis of the key EU legal acts

The 1992 Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property

Besides rental and lending rights, the 1992 Council Directive dealt with particular rights related to copyright in the field of intellectual property. The Directive included no explicit mention of the wording of 'fair/fairness'. Nonetheless, its main aim was the achievement of harmonisation in copyright law of the time, setting high standards of protection (Nérisson 2021). As underlined by the Directive's preamble, it was vital for the EEC's economic and cultural development to ensure the adequate protection of the copyright works and subject matter of related rights protection by rental and lending rights, along with the protection of the subject matter of related rights protection by the fixation right, reproduction right, distribution right, the right to broadcast and communication to the public.[28] The protection of these rights had to adapt to new economic developments, in particular new forms of exploitation.[29] Most importantly, as mentioned in the preamble, "the creative and artistic work of authors and performers necessitate[d] an adequate income as a basis for further creative and artistic work, and the investments required particularly for the production of phonograms and films are especially high and risky",[30] while the safeguarding of those incomes and investments requires an adequate legal protection of the rightholders concerned. Under this Directive, it was necessary to introduce arrangements that would safeguard an unwaivable equitable remuneration for authors and performers, maintaining their ability to entrust the administration of the right to equitable remuneration to collecting societies that represent them.[31] The Directive also explained how this equitable remuneration could be paid,[32] taking into account the value of the contribution of the authors and performers concerned by the phonogram or film.[33]

[28] Directive 92/100/EEC, Recital 5.

[29] Ibid, Recital 6.

[30] Ibid, Recital 7.

[31] Ibid, Recital 15.

[32] Ibid, Recital 16.

[33] Ibid, Recital 17.

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The concept of fairness in the music sector was not emphasised explicitly in the 1992 Directive. However, the provisions of the Directive were in line with the calls at the time for suitable and adequate legal protection of copyright works, in other words some standards of music fairness linked to the protection of the related rights of performers, phonogram and film producers and broadcasting organisations. For instance, Article 4 of the Directive provided for an unwaivable right to equitable remuneration. Pursuant to Article 4(1) of the Directive, where an author or performer has transferred or assigned his rental right concerning a phonogram or an original or copy of a film to a phonogram or film producer, that author or performer shall retain the right to obtain an equitable remuneration for the rental. This right could not be waived by authors or performers[34] and its administration could be entrusted to collecting societies,[35] whilst Member States could regulate to what extent this administration could be imposed.[36] Furthermore, Article 8(2) of the Directive, on the broadcasting and communication to the public, stated that Member States would ensure that a single equitable remuneration is paid by the user, if a phonogram published for commercial purposes, or a reproduction of such phonogram, is used for broadcasting by wireless means or for any communication to the public: this guaranteed that this remuneration would be shared between the relevant performers and phonogram producers. Article 13(3) of the Directive also stipulated that, regarding the rental or lending of digital recordings, Member States could provide an adequate remuneration for the rightholders.

The 1993 Directive on harmonising the term of protection of copyright and certain related rights

The 1993 'Copyright Duration Directive' sought to make the term of protection of copyright and certain related rights identical across the Community, having regard to the existing international legal environment. This environment included the Berne Convention for the protection of literary and artistic works, and the International ('Rome') Convention for the protection of performers, producers of phonograms and broadcasting organisations. These two conventions simply laid down minimum terms of protection for certain rights,[37] whilst taking into account the fact that there were significant differences between the national laws of the Member States in that field.[38]

The wording of 'fairness' cannot be found in the 1993 Council Directive. Nevertheless, its preamble noted that the term of protection for producers of phonograms should be 50 years following first publication, according to the Community position adopted for the Uruguay Round negotiations under the General Agreement on Tariffs and Trade (GATT).[39] It was also stressed that even though the 50-year 'post mortem auctoris' term stipulated in the Berne Convention, i.e. lasting for the life of the author and 50 years after his death, was to provide protection for the author and the first two generations of his descendants, the average lifespan in the Member States had already increased, thus this term was no longer enough in order to cover two generations.[40] According to Article 1(1) of the 1993 Directive,

[34] Ibid, Article 4(2).

[35] Ibid, Article 4(3).

[36] Ibid, Article 4(4).

[37] Directive 93/98/EEC, Recital 1.

[38] Ibid, Recital 2.

[39] Ibid, Recital 8.

[40] Ibid, Recital 5.

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the duration of authors' rights would run 70 years post mortem, irrespective of when the work was first lawfully published to the public. If the author was anonymous or pseudonymous, the duration would be 70 years from the date of the first lawful publication [Article 1(3)]. As regards the duration of related rights, the rights of performers would expire 50 years after the performance had taken place [Article 3(1)] and the rights of producers of phonograms would expire 50 years after the fixation was made [Article 3(2)]. It was also stipulated in Article 10(1) that where a Member State protected any work or subject matter for a longer time period, when the 1993 Directive was enacted, the copyright term of protection would not be shortened in that particular Member State.

The 2000 Directive on certain legal aspects of information society services, in particular electronic commerce, in the internal market

The e-Commerce Directive is centrally concerned with the development of information society services within the Union's internal market, and the elimination of existing barriers to online services, whilst also stimulating the competitiveness of European industry.[41] Bearing in mind that in 2000 the online platforms were only in their early stages, whereas a significant amount of today's technologies and applications did not exist yet, the e-Commerce Directive's scope is rather broad: it covers any service provided at a distance by electronic means at the individual request of a recipient (de Streel & Husovec 2020: 8).

Although the concept of fairness in the music sector is not particularly obvious in this Directive, it includes harmonisation rules on issues like transparency and information requirements for online service providers, commercial communications, electronic contracts and limitations of liability of intermediary service providers, as well as provisions for the development of administrative cooperation between Member States, and the enhancement of self-regulation. The e-Commerce Directive's preamble emphasised the significance of the Directive on the harmonisation of certain aspects of copyright and related rights in the information society (which was to be adopted a year later) and noted that the e-Commerce Directive would be implemented within a similar time scale, so that a clear framework of rules could be established on the liability of intermediaries for copyright and related rights infringements at EU level.[42]

In accordance with Article 14 of the e-Commerce Directive, there was a hosting liability exception, i.e. where an information society service was provided that consisted of the storage of information provided by a recipient of the service, Member States had to ensure that the service provider would not be liable for the information stored at the request of a recipient of the service, under certain conditions laid down in that Article (see also Article 15 about the prohibition on general monitoring obligations).[43] At the time, the Directive promoted a 'hands-off approach' to the liability of digital intermediaries for third-party illegal content (when users committed unlawful acts) facilitated through their services – including content in breach of copyright. This enabled the rapid emergence of digital intermediaries in the internal market.

[41] Directive 2000/31/EC, Recitals 1 and 2.

[42] Ibid, Recital 50.

[43] For a period of over two decades, the 2000/31/EC Directive (Chapter II on 'Principles', Section 4 on the 'Liability of intermediary service providers') covered fundamental principles of whether and when internet intermediaries were considered liable for illegal information or content provided by third parties.

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It should be also underlined that Article 14 of the Directive simply concerned the 'intermediary service providers' that provided hosting services; their definition was problematic, due to the lack of a clear legal definition in the Directive. This kind of protection afforded by the aforementioned provision was 'activity based', i.e. one service provider could be exempt from liability in relation to (some) hosting services but still be liable for others (Batura 2020: 7). In short, the 'safe harbour' framework for internet intermediaries, which was provided by the e-Commerce Directive, had been a fundamental pillar of EU internet regulation for many years. The adoption of the harmonised conditional liability exemptions for mere conduit (Article 12), caching (Article 13) and hosting activities (Article 14) shielded information society services from any potential strict liability and advanced the internal market goals of the time: this ensured legal certainty and enforced e-commerce, promoting mainly the rights of internet users in relation to their freedom of information and ideas. However, questions were arising about the precise scope of the Directive's provisions and marginal cases (Hoboken et al. 2019: 6). The provisions of the e-Commerce Directive on the liability of providers of intermediary services were eventually replaced by Articles 4 to 10 of the DSA: the DSA introduced more due diligence obligations imposed on digital intermediaries – indicating a fairer distribution of duties.

The 2001 Directive on the harmonisation of certain aspects of copyright and related rights in the information society

The main aim of the 2001 Directive was to adapt the legislation on copyright and related rights to the emerging technological developments, thus ensuring a high level of protection of intellectual property.

The InfoSoc Directive's preamble noted that *a fair balance of rights and interests* had to be ensured between the *different categories of rightholders* and *between the different categories of rightholders and users* of protected subject-matter.[44] At the same time, any exceptions and limitations to these rights had to be reassessed and defined more harmoniously for the new electronic environment and the proper functioning of the internal market.[45] This was one of the first mentions of the EU institutions' aim to strike a fair balance – through EU copyright law – between distinct rights and interests of rightholders, and between the rights of artists, etc. (intellectual property rights) and the rights of users (e.g. freedom of expression and freedom of information), given that the recognition of copyright and other related rights safeguards the interests of rightholders, while establishing exceptions and limitations to these rights protects the interests of users.

The Directive also referred to the 1996 treaties adopted by the World Intellectual Property Organisation (WIPO), namely the 'WIPO Copyright Treaty' and the 'WIPO Performances and Phonograms Treaty', which respectively covered the protection of authors and the protection of performers and phonogram producers, in order to regulate the online distribution of works.[46] At the international level, these treaties ensured that the traditional copyright rules, i.e. the right of reproduction and the right of communication to the public, continued to apply effectively in the online environment, thus improving the means to fight piracy world-wide. These treaties were eventually implemented at the EU level by the InfoSoc Directive.

[44] Directive 2001/29/EC, Recital 31.

[45] Ibid.

[46] Ibid, Recital 15.

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Further to the codification of the aforementioned WIPO treaties in EU law, the InfoSoc Directive introduced a 'triple test', which allowed Member States to derogate from it by establishing exceptions and limitations to copyright as long as three conditions were respected: "the exceptions have to affect only specific cases, they can't infringe on the normal exploitation of the work and they can't cause unjustified damage to the authors' legit interests" (Schröder 2015: 24). For instance, according to Article 5(3)(d), Member States may provide for exceptions or limitations – to the reproduction right and the right of communication to the public – for quotations (e.g. for reasons of criticism), under certain conditions.

It was additionally noted in the InfoSoc Directive's preamble that authors or performers needed an appropriate reward for the use of their creative and artistic work, as was the case for producers. The aim was to be able to finance considerably this kind of work and to produce phonograms or other multimedia products, while the adequate legal protection of intellectual property rights could guarantee the availability of such a reward and provide the opportunity for satisfactory returns on that investments.[47] The notion of fair compensation is also evident in Article 5 of the Directive (on exceptions and limitations).[48/49] Pursuant to Article 5(2)(b), Member States may provide for exceptions/limitations to the reproduction right[50] in respect of reproductions on any medium made by a natural person for private use and for ends that are neither directly nor indirectly commercial, on condition that the rightholders received fair compensation. Article 5(2)(e) further states that exceptions/limitations may be provided for reproductions of broadcasts made by social institutions practising non-commercial purposes, e.g. hospitals or prisons, provided that the rightholders were given a fair compensation.

The EU legal status of copyright content moderation by online platforms was mainly set in Article 3 (the right of communication to the public of works and the right of making available to the public other subject-matter) and Article 8 (sanctions and remedies in respect of infringements of the rights and obligations set out)[51] of the InfoSoc Directive on the direct liability regime for communication to the public and injunctions against intermediaries whose services are used to infringe a copyright or related right,[52] as well as in Articles 14 and 15 of the e-Commerce Directive (Quintais, Katzenbach, Schwemer, et al. 2024).

The 2006 Directive on rental right and lending right and on certain rights related to copyright in the field of intellectual property

[47] Ibid, Recital 10.

[48] Some exceptions and limitations would require the rightholders to receive fair and adequate compensation for the use of their protected works or other subject-matter, on the basis of the particular circumstances of each case, and considering the level of use of technological protection measures referred in the InfoSoc Directive; if the prejudice to the rightholder were minimal, no obligation for payment would arise (see Recital 35 of the InfoSoc Directive).

[49] The Member States could also specify fair compensation for rightholders when applying the optional provisions on exceptions or limitations which did not require such compensation (see Recital 36 of the InfoSoc Directive). The notion of fair compensation in relation to exceptions or limitations was mentioned again in recitals 38, 45, 52 of the Directive.

[50] Ibid, see Article 2 of the Directive.

[51] Ibid, see also Recital 58.

[52] Ibid, see Article 8(3).

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Directive 2006/115/EC, which amended Council Directive 92/100/EEC, harmonises the legal regime on rental and lending rights and certain related rights. This ensured a high level of protection for literary and artistic property, while determining the rightholders and setting out certain procedures for the exercise of these rights.

Once again, there is no explicit mention of the wording of 'fair/fairness' in the 2006 version of the 'rental right and lending rights Directive'. Nevertheless, the concept can be traced indirectly. For instance, it is stressed that the adequate protection of copyright works and subject matter of related rights protection by rental and lending rights – as well as the protection of the subject matter of related rights protection by the fixation right, distribution right, right to broadcast and communication to the public – could be considered very important for the EU's economic and cultural development.[53] In addition, an adequate income is necessary for the creative and artistic work of authors and performers as a source of further creative and artistic work, and the investments required predominantly for the production of phonograms and films are especially high and uncertain; only the adequate legal protection of the rightholders concerned can guarantee that income while recouping that investment can be successfully secured.[54]

The need was also stressed to introduce arrangements on an unwaivable equitable remuneration obtained by authors and performers, who must remain able to entrust the administration of this right to collecting societies representing them.[55] The equitable remuneration shall be paid on the basis of one or several payments at any time on or after the conclusion of the contract, according to the importance of the contribution of the authors and performers concerned by the phonogram or film.[56] Consequently, it can be stated that fairness is approached from the perspective of rightholders' protection, having both economic and cultural facets.

Article 5 of the 2006 version of the rental right and lending rights Directive grants performers an unwaivable right to equitable remuneration for the rental of, *inter alia*, phonograms. However, fairness can also be demonstrated through sharing remuneration; in particular, Article 8(2) states the conditions for an equitable remuneration for the use of a phonogram for broadcasting by wireless means or for any communication to the public, ensuring that this remuneration is shared between the relevant performers and phonogram producers. It is also worth noting that Article 11(3) of the Directive stipulates that Member States may provide that rightholders shall have a right to obtain an adequate remuneration for the rental or lending of a digital recording.

[53] Directive 2006/115/EC, Recital 3.

[54] Ibid, Recital 5.

[55] Ibid, Recital 12.

[56] Ibid, Recital 13.

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The 2006 Directive on the term of protection of copyright and certain related rights

Directive 2006/116/EC was intended to preserve and promote a legal landscape of harmonisation on the term of protection for copyright and certain related rights, by replacing the text of the previous Council Directive 93/98/EEC: it served as its consolidated version, by incorporating all relevant amendments in that field until 2006 for the sake of clarity and consistency.

There is no explicit mention of the wording 'fair/fairness' in the 2006 Directive. However, the Directive's preamble mentions that the level of protection of copyright and related rights should be high, since those rights are vital to intellectual creation, thus guaranteeing the advancement of creativity in the interest of authors, cultural industries, consumers and society all together.[57] In that spirit, it was stressed that – due to the establishment of the necessary protection that is suitable for the internal market and the needs of a legal environment conducive to the harmonious development of literary and artistic creation in the EU – 'the term of protection for copyright should be harmonised at 70 years after the death of the author or 70 years after the work is lawfully made available to the public, and for related rights at 50 years after the event which sets the term running'.[58]

Article 1(1) of the Directive, on the duration of authors' rights, stipulates that the rights of an author of a literary or artistic work, in the context of the Berne Convention, run for the life of the author and for 70 years after his death, regardless of the date when the work is lawfully made available to the public. Then, Article 2(2) states that the term of protection of cinematographic or audiovisual works expires 70 years after the death of the last of certain persons to survive, including the composer of music specifically created for use in the cinematographic or audiovisual work, irrespective of whether these persons are designated as co-authors. Article 3(1), on the duration of related rights, stipulates that the rights of performers expire 50 years after the date of the performance, but if a fixation of the performance is lawfully published or lawfully communicated to the public within this period, the rights expire 50 years from the date of the first such publication or the first such communication to the public, whichever is the earlier. Article 3(2) further states that the rights of producers of phonograms shall expire 50 years after the fixation is made, once again with certain exceptions provided.

The 2011 Directive on the term of protection of copyright and certain related rights

Directive 2011/77/EU, amending Directive 2006/116/EC, sought to enhance the welfare of performers and record labels by extending the period that they can be remunerated for their sound recordings and performances. In particular, this period was extended from 50 years to 70 years following publication.

As mentioned in the 2011 Directive's preamble, the revenue from the exclusive rights of reproduction and making available, as provided for in the 2001 InfoSoc Directive, as well as fair compensation for reproductions for private use within the meaning of that Directive, and from the exclusive rights of distribution and rental within the meaning of Directive 2006/115/EC, should be available to performers for at least their lifetime.[59] Therefore, the term of protection for fixations of performances and for phonograms needed to be extended

[57] Directive 2006/116/EC, Recital 11.

[58] Ibid, Recital 12.

[59] Directive 2011/77/EU, Recital 6.

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to a time period of 70 years after the relevant event.[60] Even more importantly, for the purposes of covering performers who tend to transfer or assign their exclusive rights to phonogram producers, in order to really benefit from the term extension, some accompanying measures had to be introduced.[61] Hence, the Directive sought to guarantee that performers also benefit from the extension of the period of protection for producers. A supporting measure would be the imposition on phonogram producers of an obligation to set aside, at least once annually, a sum of 20% of the revenue from the exclusive rights of distribution, reproduction and making available of phonograms.[62]

Nonetheless, Article 5 of Directive 2006/115/EC had provided performers an unwaivable right to equitable remuneration for the rental of, among other things, phonograms, while, similarly, in contractual practice performers did not usually transfer or assign to phonogram producers their rights to claim a single equitable remuneration for broadcasting and communication to the public under Article 8(2) of the 2006 rental right and lending rights Directive and to fair compensation for reproductions for private use under Article 5(2)(b) of the 2001 InfoSoc Directive.[63] Thus, in the calculation of the overall amount to be dedicated by a phonogram producer to payments of the supplementary remuneration, no account should be taken of revenue that the phonogram producer has derived from the rental of phonograms, of the single equitable remuneration received for broadcasting and communication to the public or of the fair compensation received for private copying.[64]

According to new Article 1(7) of the 2011 Directive, the term of protection of a musical composition with words expires 70 years after the death of the last of the following persons to survive, whether or not those persons are designated as co-authors: the author of the lyrics and the composer of the musical composition, given that both contributions were particularly made for the relevant musical composition with words. There were also many relevant amendments and additions to the paragraphs of Article 3 of the Directive.

The 2012 Directive on certain permitted uses of orphan works

Directive 2012/28/EU aims to promote the digitisation of and legitimate online access to ‘orphan works’ at EU level, which form part of collections of organisations, e.g. libraries, museums, archives, other establishments, audiovisual heritage institutions and public service broadcasting organisations, that do not demand licensing fees and do not establish time limitations for the use of these works.

The 2012 Directive, addressing the orphan work status and its repercussions for the permitted users (i.e. publicly accessible libraries, educational establishments, museums etc.) and permitted uses of phonograms and other works that are in fact orphan works, states in its preamble that the creation of a legal regime to enable the digitisation and dissemination of works and other subject-matter that are protected by copyright or related rights – and for which no rightholder is identified or located – is a principal action of the European Digital Agenda.[65] However, it is noted that the rightholders should be able to end the orphan work status, if they claim their rights in the work or other protected subject-matter,

[60] Ibid, Recital 7.

[61] Ibid, Recital 10.

[62] Ibid, Recital 11. See also Recital 12.

[63] Ibid, Recital 13.

[64] Ibid.

[65] Directive 2012/28/EU, Recital 3.

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while also receiving fair compensation for the use that has been made so far of their works.[66] To determine the amount of the fair compensation, appropriate consideration should be given, *inter alia*, to national cultural promotion goals, the non-commercial nature of the use made by the organisations in question to achieve aims related to their public-interest operations, i.e. the promotion of learning and disseminating culture, and to the potential harm to rightholders.[67] In the event that a phonogram or other work has been erroneously identified as an orphan work, after a search of the aforementioned organisations that was not diligent (see Article 3 of the Directive), the remedies for copyright infringement in national legislation, provided by Member States' provisions and EU law, stay put.[68]

In particular, Article 6 of the 2012 Directive, on permitted uses of orphan works, stipulates, in paragraph 5, that Member States will provide a fair compensation to those rightholders that put an end to the orphan work status of their works or other protected subject-matter for the use that has been made by the above mentioned organisations. Meanwhile, Member States can determine the conditions under which the payment and the level of such compensation may be organised by the national law, within the limits of EU law. Also, it is worthwhile mentioning that, in a 2021 study commissioned by the European Commission, it was stressed that the notion of fair compensation could become even more clear with an EU-wide system established in the Directive (McGuin et al. 2021: 18).

The 2013 Regulation establishing the Creative Europe Programme (2014 to 2020)

Regulation (EU) 1295/2013, establishing the first Creative Europe Programme, had the following general objectives: to protect, develop and support Europe's cultural and linguistic diversity and cultural heritage, and to reinforce the competitiveness of its cultural and creative sectors (CCS), with a focus on the audiovisual sector, in order to promote smart, sustainable and inclusive growth.[69]

The 2013 Regulation also pursued a fairness rationale; in particular, it was noted that, in the context of the massive impact caused by the digital shift in cultural and creative goods and services, a need had emerged to find a new balance between the increasing accessibility of cultural and creative works, fair remuneration of artists and creators and the emergence of new business models.[70] At the same time, it would be important for the CCS to acquire new skills and to improve access to finance, so that they could utilise new production and distribution methods and adapt their business models.[71]

The 2014 Directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market

In the context of Directive 2014/26/EU, which managed to set EU-wide patterns of transparency and governance in the music sector, it was acknowledged that the dissemination of content which is protected by copyright and related rights, *inter alia*, recorded music, needs the licensing of rights by different holders of these rights, e.g.

[66] Ibid, Recital 18.

[67] Ibid.

[68] Ibid, Recital 19.

[69] Regulation (EU) 1295/2013, see Recital 36 and Article 3.

[70] Ibid, Recital 13.

[71] Ibid.

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authors, performers, producers and publishers. Meanwhile, collective management organisations (CMOs) support rightholders in order to be remunerated for uses that they would not be able to control or enforce themselves, in domestic and non-domestic markets.[72]

The demand to advance the functioning of CMOs had already been recognised in a 2005 Commission Recommendation,[73] which introduced several principles, i.e. the freedom of rightholders to decide on their CMOs, equal treatment of categories of rightholders and equitable distribution of royalties.[74] It is also worth highlighting that the CRMD does not alter the possibility for Member States to provide by law rightholders' fair compensation for exceptions or limitations to the reproduction right provided for in previous EU Directives on copyright.[75] It is further noted in the CRMD that CMOs have to act in the best collective interests of the rightholders they represent. So if some organisations have different categories of members, which may represent different types of rightholders, the representation of the various categories of members in the decision-making process should be fair and balanced.[76] Moreover, to the benefit of users' interests, it is stressed that fair and non-discriminatory commercial terms in licensing are vital to guarantee that users are able to gain licences for works that a CMO represents rights, thus preserving the appropriate remuneration of the rightholders.[77]

Regarding some of the specific measures taken, Article 6(3) of the CRMD states that the representation of the different categories of members of the CMOs in the decision-making process has to be fair and balanced. Article 8(9) of the Directive stipulates that restrictions may be allowed on the right of the members of CMOs to participate in, and to exercise voting rights at, the general assembly of members, on the basis of certain criteria (duration of membership, amounts received or due to a member), provided that these criteria are determined and applied in a fair and proportionate manner.[78] Article 9(2) of the CRMD addresses the fair and balanced representation of the different categories of members of the collective management organisation in the body exercising the supervisory function. On relations with users, Article 16(1) states that CMOs and users shall conduct negotiations in good faith for the licensing of rights. Moreover, pursuant to Article 16(2), licensing terms shall be based on objective, non-discriminatory criteria, while rightholders shall receive appropriate remuneration for the use of their rights. Article 36(3) further states that, for the purposes of compliance with the provisions of the national law adopted in implementation of this Directive, the competent authorities must have the power to impose appropriate sanctions or measures that are effective, proportionate and dissuasive.

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[72] Directive 2014/26/EU, Recital 2.

[73] Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services, OJ L 276, 21.10.2005, p. 54-57.

[74] Directive 2014/26/EU, Recital 6.

[75] Ibid, Recital 13.

[76] Ibid, Recital 22.

[77] Ibid, Recital 31.

[78] In the CRMD's preamble, it is also mentioned that every member of the CMOs must be allowed to participate and vote in the general assembly of members, while the exercise of these rights can only be subject to fair and proportionate restrictions (Recital 23). Moreover, the CMOs must not discriminate directly or indirectly between rightholders based on their nationality, place of residence or establishment (Recital 18), whilst ensuring that the amounts due to rightholders are appropriately and effectively distributed (Recital 29).

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The 2017 Regulation on cross-border portability of online content services in the internal market

Regulation (EU) 2017/1128 addressed the fact that there were several barriers, in the framework of the internal market, hindering the provision of online content services to consumers temporarily present in an EU Member State other than their Member State of residence. Moreover, the notion of fairness was being approached from the perspective of rightholders. For instance, the Regulation noted that a rightholder in the content of an online content service must have the ability to exercise contractual freedom to authorise such content to be provided, accessed and used under this Regulation with no verification of the Member State of residence. This is particularly relevant in the music sector: every rightholder should be allowed to freely decide on this when entering into contracts with providers of online content services, etc.[79]

The 2019 Directive on copyright and related rights in the Digital Single Market

One year before the outbreak of the COVID-19 pandemic, Directive (EU) 2019/790 served as an ambitious piece of legislation to modernise the European copyright framework for the evolving digital music landscape. This landscape is inextricably linked to the contemporary function of platforms and algorithms, which have a huge impact on the creation and consumption of music content. For the background of the CDSMD, it is notable that, over the previous decade, the EU had already moved digitisation to the core of its political agenda. Swift technological developments – as well as new business models and actors – have also continued to emerge and shape the way works were created, produced, distributed and exploited.

In particular, after the launch of the 'Europe 2020' strategy, which involved the flagship initiative 'A Digital Agenda for Europe', the goal was to establish and develop a Digital Single Market (DSM). The aim was that this transition would bring many advantages for the EU as a global competitor and for the Member States themselves, thanks to their cooperation in the Union's framework (Ferri 2021). So it was time for the EU legislator to step in with regulation to aid the functioning of the online content market, which had become more complicated over the years.

The CDSMD revised the copyright rules – 18 years after the 2001 InfoSoc Directive – to adapt them to the evolution of digital technologies (Jütte 2021: 3). Indeed, the growth of digital services, which provided users the chance to upload autonomously copyright-protected content, along with the determination at EU level to include the platforms in the copyright enforcement process in a much more meaningful way, led the competent EU institutions to adjust the legal framework for large content-hosting platforms, i.e. the 'online content-sharing service providers' (OCSSPs).[80] The goal was to assume ever more filter obligations in this regard (Geiger & Jütte 2021).

The conception of the CDSMD was sustained by multiple rationales. These included ensuring a high degree of protection, streamlining rights clearance, creating a level playing field for the exploitation of protected content, remedying interpretative uncertainties, and ensuring a proper functioning and fair marketplace for protected content (Rosati 2021). The CDSMD imposed greater responsibilities for online platforms, including additional liability and commitment to the content that they host and the services they provide, along with an

[79] Regulation (EU) 2017/1128, Recital 29.

[80] The OCSSPs are defined in Article 2(6) of Directive (EU) 2019/790. See also Recital 62 of the Directive.

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enhanced role of fundamental rights (particularly of users) in the legal context (Quintais, Katzenbach, Schwemer, et al. 2024).

Although the digital environment has created more possibilities for individuals and media to exercise the right to freedom of expression and free access to online information, several problems had emerged in the context of keeping a fair balance between conflicting fundamental rights and interests. It is argued that "there is a delicate balance between user's and platform's fundamental rights, like user's freedom of expression, platform's freedom to conduct a business and on the other hand, creative market's intellectual property rights" (Guzel 2021: 205).

Additionally, in 2021, the European Commission released its guidance on the application of Article 17 of the Directive on use of protected content by OCSSPs,[81] which possibly entails the most discussed provisions in the CDSMD, by striving to guarantee the commercial value of copyright works (particularly recorded music) by constituting the OCSSPs directly liable for works which their users make available. That policy change reflected a shift from the legal principle of 'platform neutrality', which the Union's legislator preserved for almost 20 years in order to motivate the development of a robust internet infrastructure. This is because the enactment of the CDSMD signified that certain requirements to OCSSPs would be implemented, e.g. to obtain licences and to implement content identification technologies that can either restrict access to unauthorised works or help music rightholders to be remunerated for the online exploitation of their works (Mazziotti & Ranaivoson 2024). Thus, Article 17 aimed at setting a new benchmark of copyright liability applicable to online platforms, moving away from the lightest approach embodied in the e-Commerce Directive and characterised by notable liability exemptions.

The concept of fairness is quite clear in the CDSMD. As mentioned in its preamble, to achieve a well-functioning and fair marketplace for copyright, rules are needed. These rules must for example cover the use of works or other subject matter by OCSSPs that store and give access to user-uploaded content, as well as rules on the transparency of authors' and performers' contracts, on authors' and performers' remuneration, as well as a mechanism for the revocation of rights that authors and performers have transferred on an exclusive basis.[82] Furthermore, it is stressed that the exceptions and limitations provided for in the CDSMD aim to guarantee a fair balance between the rights and interests of authors and other rightholders, on the one hand, and those of users on the other.[83/84] Furthermore, Member States can provide that rightholders receive fair compensation for the digital uses of their works or other subject matter with any exception or limitation laid down in the CDSMD, e.g. illustration for teaching.[85]

As the OCSSPs providing access to a large amount of copyright-protected cultural and creative content uploaded by their users became a main source of access to content online,

[81] Communication from the Commission to the European Parliament and the Council, Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market, COM (2021) 288 final, 4.6.2021.

[82] Directive (EU) 2019/790, Recital 3.

[83] Ibid, Recital 6.

[84] It should be recalled that even the 2001 InfoSoc Directive's preamble (Recital 31) stressed that a fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users, had to be protected. Any existing exceptions and limitations set out to the rights had to be reconsidered in the context of the modern electronic environment.

[85] Directive (EU) 2019/790, Recital 24. See also Article 5(4) of the CDSMD.

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facilitating diversity and easy access to content, they also cause legal uncertainty and disputes if copyright-protected content is uploaded without prior authorisation from rightholders.[86] It is noted that this kind of uncertainty has an effect on the ability of rightholders to control whether and how their works are used and on their ability to get appropriate remuneration for these uses.[87] Therefore, the point made is that there should be fair licensing agreements between rightholders and OCSSPs, while keeping a reasonable balance between both parties (which is a major challenge), with rightholders receiving appropriate remuneration for the use of their works or other subject matter; at the same time, their contractual freedom should not be affected.[88] It is further stated that 'appropriate safeguards' should be available for all rightholders to protect their legitimate interests,[89] that rightholders must be 'adequately protected',[90] while the 'appropriate and proportionate remuneration' of authors and performers to the actual or potential economic value of the licensed or transferred rights should be ensured. This should be done by considering their contribution to the overall work and other factors, e.g. market practices or the real exploitation of the work.[91]

Although the legal framework of the e-Commerce Directive provided for relatively broad 'safe harbours', i.e. liability exclusions for information society service providers if they complied with the respective conditions, the sectoral framework under Article 17 CDSMD redesigned liability exemptions for OCSSPs as a specific class of intermediaries. Nevertheless, Article 17 of the CDSMD established a system on the basis of cooperation between rightholders and users: this system even contains some features of the e-Commerce Directive framework, with certain liability exemptions provided for OCSSPs (Geiger & Jütte 2021). According to Article 17(1), OCSSPs perform an act of communication or an act of making available to the public, when they give the public access to copyright-protected works or other protected subject matter uploaded by their users. Therefore, the growth of the licensing market signifies that the OCSSPs should obtain an authorisation to communicate the user-generated content (UGC) that is stored on their platforms, e.g. existing digitalised works like music, music videos, etc.

To dodge any direct liability, the platforms have to obtain licences for a variety of works. (Guzel 2021: 212). Pursuant to Article 17(4), in the absence of an authorisation, OCSSPs are liable for unauthorised acts of communication to the public of copyright-protected works. But there are a few liability exceptions, e.g. if the OCSSPs demonstrate that they have made 'best efforts' to obtain authorisation from the relevant rightholders, etc. Indeed, the CDSMD tries to create a fair balance between a range of interests and fundamental rights concerned. Regarding the protection of a user's rights, Article 17(7), states that users of OCSSPs will not be prevented from uploading and making available lawful content and, especially, from taking advantage of particular exceptions and limitations, for the purposes of quotation, criticism, review, caricature, parody or pastiche.

Moreover, there are some very strong references to the concept of fairness in Chapter 3 of the CDSMD (entitled 'fair remuneration in exploitation contracts of authors and performers'),

[86] Ibid, Recital 61.

[87] Ibid.

[88] Ibid.

[89] Ibid, Recitals 35 and 48.

[90] Ibid, Recital 42.

[91] Ibid, Recital 73.

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and especially in Article 18, where the 'principle of appropriate and proportionate remuneration' for authors and performers is codified. This principle is particularly important for online music exploitations. Article 19 of the Directive sets out the 'transparency obligation', i.e. the right granted to authors and performers to regularly receive up-to-date, relevant and complete information on modes of exploitation of their works and performances, as well as any kind of revenues generated and any remuneration due.

Article 20 of the Directive also establishes a 'contract adjustment mechanism', in the context of which it should be ensured that rightholders are entitled to claim 'additional, appropriate and fair remuneration' from the party with whom they entered into a contract for the exploitation of their rights, if the remuneration originally agreed is in fact disproportionately low compared to all the subsequent relevant revenues derived from this kind of exploitation.[92] All the aforementioned provisions could enforce the bargaining power of individual rightholders and their respective collecting societies in a more fair digital ecosystem. In particular, the legal tools introduced by Articles 18 and 20 of the CDSMD attempt to prevent unfair agreements on the remuneration of authors and performers, regarding the contractual exploitation of their work. However, it has been argued that these provisions of the Directive allow for various interpretative approaches (Paramythiotis 2021: 77). In combination with the national legislative discretion, these provisions constitute their implementation in the national legal orders a demanding endeavour.

The 2021 regulation establishing the Creative Europe Programme (2021 to 2027)

Regulation (EU) 2021/818 established a second Creative Europe Programme. This was adapted to the structural challenges of Europe's CCS, in order to help artists, beneficiaries, and other participants to overcome the difficulties and uncertainties that exacerbated from the spread of COVID-19. This EU funding programme (along with other relevant programmes) helps the short-term recovery of the CCS, increases their longer-term resilience and competitiveness to confront potential major emergencies in the future and complements their ecological and digital transition.[93] In the context of the aforementioned programme, a sector-specific supporting action was introduced on music, to boost diversity, creativity and innovation in this area, with a focus on the distribution of a musical repertoire in Europe and abroad. This support also covers training actions, audience development for a European repertoire and data gathering plus analysis of the field. All these actions will build on and enhance the experiences and expertise acquired within the initiative 'Music Moves Europe'.[94]

The 2021 Regulation's preamble emphasises that the Culture strand of the programme has to give consideration to the music sector, because any form or expression of music, and in particular contemporary and live music, is a major component of the cultural, artistic and economic environment of the EU and its heritage, as well as an ingredient of social cohesion and an important tool to its economic and cultural enhancement.[95] It is also stressed that the Creative Europe Programme should promote, in every way, gender mainstreaming and the

[92] See also Articles 21 and 22 of the CDSMD.

[93] Regulation (EU) 2021/818, Recital 44.

[94] Ibid, see Annex I: Section 1: Culture Strand.

[95] Ibid, Recital 13.

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mainstreaming of non-discrimination goals. It should also, where applicable, state proper gender-balance criteria, in order to support female talent in the CCS.[96]

The Regulation further notes that EU intervention is necessary in the audiovisual sector to accompany the EU's DSM policies. This applies particularly for the modernisation of the Union's copyright and audiovisual legal framework, in order to reinforce the capacity of Europe's audiovisual operators to make, finance, produce and disseminate works that are significantly displayed on various media that are available and attractive to audiences in a more open and competitive market, both within Europe and abroad.[97] This legal framework aims to accomplish a proper functioning market place for creators and rightholders, particularly for online platforms, and to guarantee fair remuneration of authors and performers.[98] The support should take into account the robust position of global platforms of distribution, by contrast with national broadcasters that usually make investments in the production of European works.[99] Consequently, the concept of fairness is expressed in this Regulation through the notion of fair remuneration for rightholders and in particular by targeted support for the music sector, in order to promote diversity, creativity, innovation, economic and cultural development.

The 2022 regulation on contestable and fair markets in the digital sector (Digital Markets Act)

Digital services and online platforms play a vital role in today's internal market, by enabling businesses to reach users in all Member States, by facilitating cross-border trade and by opening entirely new business opportunities to many companies in the EU to the benefit of consumers.[100] The DMA was adopted to address regulatory fragmentation in the EU, in an era of exponential growth of large social media and streaming services, and of complex algorithms and data infrastructures that shape the digital economy and the music ecosystem.

The notion of fairness is emphasised in the DMA, in relation to the general obligations of digital platforms (and the guarantee that their unfair practices cannot be used towards businesses and end-users), This fairness is also interlinked with the notion of contestability. The DMA underlines that big platform services have certain characteristics (e.g. extreme-scale economies, robust network effects, data driven-advantages, etc.) that could be exploited by the undertakings providing them.[101] Those characteristics, along with unfair practices by undertakings providing the core platform services, could greatly undermine the contestability of the core platform services. They could also affect the fairness of the commercial relationship between undertakings that provide such services and their business users and end-users.[102] This situation could lead to fast and possibly far-reaching reductions in business users' and end-users' choices, as well as to the detriment of prices, quality, fair competition and innovation in the digital sector. This would grant the provider of those

[96] Ibid, Recital 26. See also Article 16(4) for the criteria to achieve gender equality on the grants awarded under the programme.

[97] Ibid, Recital 16.

[98] Ibid.

[99] Ibid.

[100] Regulation (EU) 2022/1925, Recital 1.

[101] Ibid, Recital 2.

[102] Ibid.

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services the position of a gatekeeper.[103] It is noted in the DMA that in order to ensure the contestability and fairness of core platform services provided by gatekeepers, two concepts that are closely intertwined,[104] there should be a clear and unambiguous regulation.[105]

In general, it is emphasised numerous times in the 2022 Regulation that fairness, transparency and contestability should be enhanced in various ways.[106] The notion of contestable and fair markets in the digital sector across the EU, where gatekeepers are present, to the benefit of business users and end-users, is already stated in Article 1 of the DMA. However, the concept of fairness appears in many provisions of the Regulation.[107] For example, it is stated in Article 6(5) that the gatekeepers shall not treat more advantageously their services/products than similar services/products offered by a third party, so they should apply transparent, fair and non-discriminatory conditions in ranking and related indexing and crawling. Pursuant to Article 6(11), the gatekeeper shall make available to any third-party undertaking offering online search engines, at its request, access to "fair, reasonable and non-discriminatory terms to ranking, query, click and view data in relation to free and paid search generated by end-users on its online search engines". Article 6(12) further states that the gatekeeper shall apply "fair, reasonable, and non-discriminatory general conditions of access for business users to its software application stores, online search engines and online social networking services (…)".

The 2022 regulation on a Single Market for Digital Services (Digital Services Act)

The DSA contributes to the proper functioning of the Union's internal market for intermediary services through harmonisation for a safer, more foreseeable and trusted online environment that boosts innovation and preserves fundamental rights, covering consumer protection. Consequently, several targeted, uniform, effective and proportionate mandatory EU rules had to be set out.[108] According to Article 1(2) of the DSA, a basis is established for the conditional exemption from liability of providers of intermediary services, rules on certain due diligence obligations fitted to specific categories of providers of intermediary services, as well as rules on the framework's application.

The DSA employs the notion of fairness in various ways, whether referring to a fair balance between conflicting rights or stressing the need for fair results in relation to the internal handling of complaints and other disputes, or even access to data to protect legitimate interests, etc. For instance, the Regulation's preamble notes that the recipients of services should have the ability to easily and effectively contest certain decisions of providers of online platforms regarding the illegality of content or its incompatibility with the terms and conditions that negatively affect them.[109] This means that providers should establish internal complaint-handling systems, which are easily accessible and lead to swift, non-discriminatory, non-arbitrary and fair outcomes, and are subject to human review where automated means are used (see Article 20 on 'internal complaint-handling system').[110] It is

[103] Ibid. See also Recitals 4-8, 11, 25, 28.

[104] Ibid, Recital 34.

[105] Ibid, Recital 31.

[106] Ibid, see Recitals 42, 52, 58, 62, 67, 69, 73, 75, 105, 107.

[107] Ibid, see also Articles 9(4) and 10(5), as well as Articles 12, 18(2), 19(1), 40(7), 41(4) and 53.

[108] Regulation (EU) 2022/2065, Recital 4.

[109] Ibid, Recital 58.

[110] Ibid.

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further mentioned that there should be a possibility to engage in an out-of-court dispute settlement,[111] by certified bodies that have the requisite independence, means and expertise to carry out their actions in a fair, rapid and cost-effective way (see Article 21 on 'out-of-court dispute settlement').[112]

Moreover, the DSA provides a framework for compelling access to data from very large online platforms and very large online search engines (see Article 40 on 'data access and scrutiny') to researchers (and possibly civil society organisations) that are conducting scientific research to support their public interest mission, while any requests for access to data have to be proportionate and appropriate for the protection of rights and legitimate interests.[113] The DSA also states that it respects EU fundamental rights and that the competent public authorities have to achieve, if there is a conflict of these rights, a fair balance between the rights concerned, in line with the principle of proportionality.[114]

The DSA generally reflects a shift in the Union's regulation, by overhauling the rules of the e-Commerce Directive on the role and responsibilities of internet intermediaries. Nowadays, there is certainly a greater role for internet intermediaries in the governance of online information, while the online platforms use various content moderation and content recommendation methods that include automation and algorithmic solutions that are meant to detect and moderate many types of content, e.g. content in breach of intellectual property (particularly copyright), hate speech, misinformation and other harmful content (Schwemer 2022).

As noted in the DSA's preamble, the legal certainty provided by the horizontal framework of conditional exemptions from liability for providers of intermediary services, as laid down in the e-Commerce Directive, has allowed many novel services to emerge and scale up across the internal market; hence, that framework should be preserved.[115] However, given the divergences in its transposition and application at national level, and for reasons of clarity and coherence, that framework should be incorporated in the DSA, so as to clarify some of its elements, with regard to the Union's case-law.[116]

In any event, the DSA was an attempt to redefine platform regulation in a revised framework, with economically more powerful gatekeeper platforms now sharing a higher burden of responsibility (an approach already foreshowed in 2019, by the provisions of the CDSMD).[117] This represented a move away from the non-interventionist regulatory methods of high tolerance, to a more proactive model. It therefore differentiated smaller and larger prominent platforms[118] in relation to the special power and influence that the latter seem to have in the market (Savin 2021). Put simply, the DSA's graduation – in the scope and level of obligations for digital intermediaries, hosting providers, online platforms and very large

[111] See also Article 21 of the DSA.

[112] Ibid, Recital 59.

[113] Ibid, Recital 97.

[114] Ibid, Recital 153.

[115] Ibid, Recital 16.

[116] Ibid.

[117] For example, see Article 17(6) of the CDSMD.

[118] For instance, see Articles 19 and 33 of the DSA.

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online platforms – seems to be linked to the notion of fairness, as it sets a fairer distribution of responsibilities.

Notwithstanding the enactment of the DSA and the DMA, which have enhanced the responsiveness, internal risk assessment, and accountability of very large online platforms and gatekeepers, and despite the broad efforts to introduce due diligence obligations for digital intermediaries, the most significant form of regulation targeted at facilitating rightholders of the music sector to exercise their rights in the online environment is still Article 17 of the CDSMD (Mazziotti & Ranaivoson 2024). Nevertheless, in this context, new EU legislation milestones in the digital transformation journey, such as the 'Data Act'[119] and the 'A.I. Act'[120] will possibly be useful, as they will regulate further aspects that apply, *inter alia*, to online music governance.

[119] Regulation (EU) 2023/2854 of the European Parliament and of the Council of 13 December 2023 on harmonised rules on fair access to and use of data and amending Regulation (EU) 2017/2394 and Directive (EU) 2020/1828 (Data Act), OJ L, 2023/2854, 22.12.2023.

[120] The Union's Artificial Intelligence Act is the first-ever legal framework on the risks of AI, with the EU aspiring to play a leading role in that field globally. See: https://digital-strategy.ec.europa.eu/en/policies/regulatory-framework-ai

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3.2. The concept of ‘fairness’ in the EU policy documents for the music industry

This section aims to explore the diachronic conceptualisations and operationalisations of ‘fairness’ within the EU policy related to the European music industry as well as the broader cultural and creative sectors. This analysis is conducted on the basis of policy documents issued by the EU institutions, namely the European Commission (Commission), the European Parliament and the Council of the EU (Council). It focuses on documents chosen for their significance for understanding the EU’s evolving approach to the music sector, and is presented chronologically to highlight trends and developments.

The reviewed documents have been selected on the basis of the frequency of occurrence of the term 'fairness' (see Annex 3) and close terms, such as ‘equitable’ and ‘appropriate’, through chronological criteria covering a historical period of more than 30 years. The review also covered key issue-areas of the study, e.g. the copyright angle, the music sector and the EU programme ‘Music Moves Europe’, the COVID-19 pandemic, and the regulation of digital platforms. The reviewed policy documents are:

- *The 1991 Council Conclusions on Copyright and Neighbouring Rights*. The Council Conclusions discussed the Commission’s initiative to harmonise copyright frameworks within the single market. The Council stated that cultural goods and services cannot be addressed in what was then the European Community (EC), without taking into account their specific nature. It acknowledged that the harmonisation of copyright and neighbouring rights opens up real opportunities in the field of completing the single market, but it highlighted the necessity to deal with the specificities of the cultural industries.

- *The 1995 Commission Green Paper on Copyright and Related Rights in the Information Society.* The Green Paper built on earlier steps taken by the EC to deal with the challenges for the system of copyright and related rights, posed by the development of new technologies and digitisation. It was a document that discussed the need for legal reforms and further harmonisation in the protection of copyright and related rights, so as to support the functioning of the internal market.

- *The 1997 Council Conclusions on Music in Europe.* The Council Conclusions followed the publication of the study ‘Music in Europe’ produced by the European Music Office in 1996 and it discussed the importance of music in European countries, considering music both as a fundamental part of cultures and history and as a mode of individual and collective artistic expression. The document dealt with the musical creation process, better access to music repertoires, as well as the institutional ways through which the EU can promote the European music sector.

- *The 2004 Commission Communication - The Management of Copyright and Related Rights in the Internal Market.* The Communication focused on the issue of rights management, concluding a long consultation process that was initiated in 1995 with the publication of the Green Paper on Copyright and Related Rights in the Information Society. The Communication argued that although substantive

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progress in the harmonisation of substantive copyright law had been made, the lack of common rules on the management of copyright was hindering the functioning of the internal market, particularly in the digital environment.

- *The 2007 Commission Communication on Creative Content Online in the Single Market.* The Communication built on initiatives undertaken in the context of the i2010 strategy[121] and was motivated by the economic and cultural importance of creative content. Its aim was to launch a number of actions to support the development of innovative business models and to encourage the cross-border delivery of diverse online creative content. This included audiovisual media online (film, television, music and radio), games online, online publishing, educational content and user-generated content.

- *The 2007 European Parliament Resolution on Cross-border Collective Copyright Management*. This Resolution reflected the Parliament's position regarding cross-border management of copyright and related rights for the legitimate online music industry. The Resolution advocated for a flexible Directive to govern the collective management of copyright and related rights concerning cross-border online music services. It also highlighted the absence of consultation by the Commission with both the music industry and institutional partners.

- *The 2008 European Parliament Resolution on Cultural Industries in Europe*. The Resolution outlined the Parliament's perspective on the needs of cultural industries and the necessary safeguard measures. While it acknowledged the readiness of the Commission and the Council to recognise the pivotal role of culture and creativity in fostering European citizenship, it emphasised the importance of clarifying the definitions of culture, creativity, and innovation. Building on its 2007 Resolution on Cross-border Collective Copyright Management, the Parliament called on the Commission to address the impact of the digital era on the music industry, with a specific emphasis on combating piracy.

- The *2008 Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment.* The 2008 Council Conclusions focused on the development of a legal online offer and preventing and combating piracy. The Conclusions noted that there was considerable potential for developing the range of cultural and creative content available legally online in Europe. They also sought to provide the EU with guidelines on fighting piracy and the digitisation of cultural industries. The Council requested that Member States help with the development of a legal online offer and help to fight piracy. It also called on the Commission to improve the EU's knowledge of the digital cultural economy, emphasising that both the Member States and the Commission should do so by keeping in mind cultural diversity.

- *The 2009 Commission Communication on enhancing the enforcement of intellectual property rights in the internal market.* The Communication, intended to

[121] Commission Communication of 1 June 2005, 'i2010 - A European Information Society for growth and employment', COM (2005) 229. Commission Communication of 16 April 2004 on the management of copyright and related rights in the internal market, COM (2004) 261.

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complement the extant legal framework, aimed at improving the enforcement of intellectual property rights, in particular the IPR Enforcement Directive.[122] It put forward a series of initiatives that sought to address the effects of counterfeiting and piracy on the EU economy, based on the premise that fighting counterfeiting and piracy was in the interest not only of rights owners but also of business and European citizens.

- *The 2014 European Parliament Resolution on Private Copying Levies*. The Resolution aimed to reform private copying regulations in the digital era. The Parliament called on the Commission to propose legislative amendments to Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society, which had harmonised copyright laws, focusing on the need for greater harmonisation of exceptions and limitations concerning private copying. Additionally, the Parliament urged the Member States to simplify procedures for setting levies, while ensuring clearer consumer information and more efficient reimbursement processes. It stressed the importance of transparent revenue allocation, addressing technical protection measures and licences. Consistent with the 2007 Resolution on Cross-border Collective Copyright Management, the 2014 Resolution advocated for the development of new business models for rights' management in the digital environment.

- *The 2015 European Parliament Resolution on Harmonisation of Certain Aspects of Copyright and Related Rights*. The Resolution expressed the Parliament's position on the implementation of Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society. The Parliament welcomed the Commission's consultation on copyright and its commitment to further developing the EU digital agenda. It reiterated its concerns about the weaknesses of the current framework, which should be taken into account in any reform of the copyright framework. Regarding exclusive rights, the Parliament emphasised the importance of legal protection for authors and performers, with a particular focus on their remuneration. The Parliament also expressed its views on exceptions and limitations to copyright and related rights, which should be integrated into a renewed framework, notably concerning private copying levies as well as specific exceptions for small and medium-sized enterprises. The Parliament called for the reform of the copyright system to be technology-neutral, in order to ensure the system's efficiency in the evolving digital landscape.

- *The 2016 Commission Communication on Online Platforms and the Digital Single Market. Opportunities and Challenges for Europe.* The Communication presented the Commission's proposals on future action regarding the regulatory environment for online platforms, based on consultations held with stakeholders and workshops in the context of the Digital Single Market (DSM) Strategy. The Communication considered platforms as covering a wide range of activities, including online advertising platforms, marketplaces, search engines, social media and creative content outlets, application distribution platforms,

[122] Directive 2004/48/EC of 29.4.2004; OJ L157, 30.4.2004, p. 16.

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communications services, payment systems, and platforms for the collaborative economy. Underlying the important role that platforms play in creating digital value, the Communication called for the adoption of a "balanced regulatory framework" that is based on a problem-driven approach which begins with an assessment of whether the existing framework is still appropriate.

- *The 2018 European Parliament Resolution on a New European Agenda for Culture.* The Resolution aimed to provide the Commission with guidelines for implementing the new European agenda for culture. It emphasised that cultural diversity should remain a cross-cutting priority. The Parliament welcomed the New European Agenda for Culture, the Commission's intention to present an action plan for cultural heritage as well as the launch of 'Music Moves Europe'. It considered the latter as a significant first step in stimulating creativity, diversity and innovation in Europe's music sector and the sectoral action on music in the context of the Creative Europe programme. Addressing the social dimension of the agenda, it emphasised cultural heritage, while also dealing with the economic dimension by requesting specific grants and funding to support the cultural sector. In particular regarding the horizontal stand of Creative Europe Digital4Culture, it highlighted the impact of the digital revolution and urged the Commission to address platforms and their impact on remuneration.

- The 2018 *Council Conclusions on the Strengthening of European Content in the Digital Economy*. The 2018 Conclusions recognised that the content-producing and content-distributing sectors, which include content and works from the media (with audiovisual, print and online content) as well as other cultural and creative sectors, are essential pillars of Europe's social and economic development. They also noted that the quality and diversity of European content are inherent to European identity and essential for democracy and social inclusion, as well as for vibrant and competitive European media, cultural and creative industries. The Conclusions established priorities to enhance European content in the evolving digital landscape. In particular, the Council urged the Commission and Member States to promote diversity, visibility, and innovation. It advised Member States and the Commission to achieve this through support for competitive European platforms and the establishment of a level playing field between online platforms and other stakeholders in the European content sectors. The Council also invited the Commission to take into consideration the specific sizes and types of platforms. Lastly, it called on the Commission and Member States to enhance European skills and competences, with a special focus on media literacy.

- *The 2018 Council Conclusions on the Work Plan for Culture 2019-2022*. The Council agreed to establish, with due regard for the principles of subsidiarity and proportionality, a Work Plan for Culture for the years 2019 to 2022. The Council selected the following priorities in view of their contribution to cultural diversity, their European added value and the need for joint action: sustainability in cultural heritage; cohesion and well-being; an ecosystem supporting artists, cultural and creative professionals and European content; gender equality; and international cultural relations. Regarding these priorities, the Work Plan also focused on 'Diversity and competitiveness of the music sector' as a topic for future actions. It stated that the digital shift, notably the appearance of music streaming – and the increased competition from global players – had led to fundamental changes in

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the way music is created, produced, performed, distributed, consumed and monetised. The Conclusions proposed the exchange of information on public policies in Member States through the framework of 'Music Moves Europe'.

- *The 2021 Commission's Communication on Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work.* The Communication was part of a package of measures proposed by the Commission in 2021 to improve the working conditions in platform work, while supporting the sustainable growth of digital labour platforms in a COVID-19 pandemic context. Besides the Communication, the package included a proposal for a Directive on improving working conditions in platform work[123] and draft Guidelines clarifying the application of EU competition law to collective agreements of solo self-employed people. In the European music sector, digital labour platforms are mostly active in the music business, e.g. live music labour markets. Key examples of digital labour platforms are Encore, Alive Network, Linkaband or Last-Minute Musicians: these are digitised agents, facilitating direct on-platform interaction between musicians and clients and they do the work of traditional agents in the music industry in modified form (Azzellini et al. 2022).

- *The 2021 European Parliament Resolution on Artificial Intelligence in Education, Culture, and the Audiovisual Sector.* The Resolution was the first policy document issued by the EU institutions to address AI regulation, with a strong emphasis on the specific areas of education, culture and the audiovisual sector. Regarding the cultural and creative sectors and industries (CCSI), the Parliament acknowledged that AI has already entered 'the creative value chain at the level of creation, production, dissemination and consumption and is therefore having an immense impact on the CCSI, including music'.[124] At the same time, the Parliament expressed regret that culture was not among the priorities outlined in policy options and recommendations on AI at the Union level. It emphasised the necessity for creative artists and cultural workers to have digital skills, and called on the Commission and Member States to promote the opportunities offered using AI in CCSI. Additionally, it underscored the importance of limitations and exceptions to copyright in the production of cultural and creative output.

- *The 2021 European Parliament Resolution on Fair Working Conditions, Rights, and Social Protection for Platform Workers - New Forms of Employment linked to Digital Development.* In a COVID-19 pandemic context, the Resolution began by providing the Parliament's definitions of platform workers, digital labour platforms, and platform work. The Resolution underscored that the current European policy framework was ill-equipped, as it did not cover many platform workers due to their misclassification. It also emphasised the lack of harmonisation among Member States regarding the definition of 'self-employed'. Ultimately, it provided recommendations regarding the establishment of a healthy and safe working environment guided by an adequate and transparent social protection system, as well as ensuring representation and collective bargaining rights.

[123] Proposal for a Directive on Proposal for a Directive on improving working conditions in platform work, COM/2021/762 final. A provisional deal on the proposal (Platform work Directive) between the Council was reached in December 2023 (https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6586).
[124] European Parliament resolution (2021)0238, par. 67.

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- *The 2021 European Parliament Resolution on the situation of artists and the cultural recovery in the EU.* The Resolution aimed to articulate the Parliament's position on the situation of artists amidst the cultural recovery following the COVID-19 pandemic. The Resolution acknowledged that COVID-19 had profoundly impacted the cultural sector, exposing pre-existing vulnerabilities within the CCSI. It recognised that the CCSI experienced losses in turnover of over 30% for 2020, "with the music and performing arts sectors experiencing losses of 75% and 90% respectively".[125] The Resolution therefore called for a consolidation of the industrial policy framework for the CCSI ecosystem and criticised the inadequate implementation of Commission Directive 2019/790 on copyright and related rights in the Digital Single Market. Furthermore, the Resolution highlighted that the pandemic had underscored the importance of the digital sphere and heightened the dependence of artists and users on dominant digital platforms. While advocating for funding and support for the CCSI, the Resolution emphasised that such assistance should not solely focus on economic recovery objectives but also encompass an improvement of the working conditions of artists and cultural professionals.

- *The 2021 Council Conclusions on the recovery, resilience, and sustainability of the cultural and creative sectors.* The Conclusions established six EU priorities for enhancing the resilience of European cultural industries, in response to the COVID-19 pandemic. The Conclusions underlined that the Cultural and Creative Sector (CCS) had been among the most severely impacted by the pandemic. They called on Member States and the Commission to: a. Improve access to funding; b. Enhance the resilience of CCS professionals; c. Strengthen mobility and cooperation; d. Expedite digital and green transitions; e. Improve knowledge and preparedness for future challenges; and f. Take cultural scenes and local communities into account.

EU Policy Documents	Identifier of Document
European Commission	
1995 Green Paper on Copyright and Related Rights in the Information Society	COM(95) 382
2004 Commission Communication - The Management of Copyright and Related Rights in the Internal Market	COM(2004) 261

[125] European Parliament resolution (2021)0430, Recital K.

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2007 Communication on Creative Content Online in the Single Market	COM(2007) 836
2009 Communication on Enhancing the Enforcement of Intellectual Property Rights in the Internal Market	COM(2009) 467
2016 Communication on Online Platforms and the Digital Single Market: Opportunities and Challenges for Europe	COM(2016) 288
2021 Communication on Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work	COM(2021) 761
European Parliament	
2007 Resolution on cross-border collective copyright management	P6_TA(2007)0064
2008 Resolution on Cultural industries in Europe	P6_TA(2008)0123
2014 Resolution on Private copying levies	P7_TA(2014)0179
2015 Resolution on Harmonisation of certain aspects of copyright and related rights	P8_TA(2015)0273
2018 Resolution on New European agenda for culture	P8_TA(2018)0499
2021 Resolution on Artificial Intelligence in education, culture and the audiovisual sector	P9_TA(2021)0238
2021 Resolution on Fair working conditions, rights and social protection for platform workers - New forms of employment linked to digital development	P9_TA(2021)0385

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2021 Resolution on the situation of artists and the cultural recovery in the EU	P9_TA(2021)0430
Council of the European Union	
1991 Council Conclusions on copyright and neighbouring rights	*OJ C 188, 19.07.1991*
1997 Council Conclusions on Music in Europe	*OJ C 1, 03.01.1998*
2008 Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment	*OJ L 201, 25.07.2006*
2018 Council Conclusions on the strengthening of European content in the digital economy	*OJ C 457, 19.12.2018*
2018 Council Conclusions on the Work Plan for culture 2019-2022	OJ C 460/12, 2018/C 460/10
2021 Council Conclusions on the recovery, resilience and sustainability of the cultural and creative sectors	*OJ C 209, 02.06.2021*

Table 3: List of selected EU policy documents under study

3.2.1. European Commission

The 1995 Green Paper on Copyright and Related Rights in the Information Society

In discussing areas of priority for future action in copyright and related rights in order to take into account the development of the information society, the *1995 Commission Green Paper on Copyright and Related Rights in the Information Society* made explicit mention of the notion of 'fairness' at two instances.

The first such mention was made in the Green Paper's first chapter, which discussed the then legal position of copyright and related rights as well as the potential impacts of the emergence of the information society on them. More specifically, the Green Paper listed 'fair use' among other concepts and legal principles whose nature was not expected to be affected by the development of new technologies, but which were most likely to take up new characteristics. It also acknowledged that the concept of 'fair use' or 'private use' existed in most systems of legislation, "allowing a number of acts done in the private sphere for

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personal use to be exempted from copyright".[126] Then, it referred to the opinions raised at a hearing on the protection of intellectual property in the information society held in 1994, noting that "interested parties often feel that there is a need for a precise demarcation between communication to the public and private communication".[127]

Indeed, the Green Paper went on to devote an entire section to the right of 'communication to the public' where the argument put forward was that a harmonised definition of the concept of the "public", in order to take greater account of private communication of the works over networks, would be necessary. The aim of such a definition would be to ensure the functioning in the internal market and to guarantee the protection of the holders of copyright and related rights. At the same time, the Green Paper noted that defining "public", for the purposes of the right of communication to the public, would ultimately have a bearing on the scope offered to users as well as on public perceptions of the information society. It noted that "if it [the definition of the 'public'] is too broad, rightholders will hesitate to allow their works to be used on the networks. If it is too narrow the public may well stay away from the information superhighway in disappointment" [128]. Thus, the Green Paper acknowledged that the definition of the concept of "communication to the public", along with the exceptions granted to it, should aim to strike a fair balance between providing incentives to rightholders to make their work available on the networks and encouraging access to those works.

The Green Paper also referred to 'fairness' in the section dealing with the issue of the governance of the exploitation of rights, particularly in relation to the acquisition and management of rights. The Green Paper took as a starting point that digital technology multiplied the possibilities of creating combined and multimedia works, which use, for instance, music and other creative content, thus creating new challenges for the management of rights – the legal implications of which had not been fully dealt with by the legal instruments present at the time (for a discussion, see Fabbroni, 2009).

One such challenge was associated with the difficulty faced by users in identifying the (multiple) rightholders from which they need to obtain a licence. At the same time, it was emphasised that rights holders "have a great interest in seeing their works and other protected matter used as much as possible, since their own income and the return on their investments depend on it. Generally speaking, therefore, it is to their advantage that potential users should not encounter unreasonable difficulty in identifying the source which can grant or refuse them a licence. In any event difficulty in identifying a rightholder cannot be invoked to justify a reduction in protection."[129]

Therefore, the Communication argued that it was imperative to ensure that "those who exploit the rights must be able to easily identify those who have rights over the works and other protected matter in order to be able to negotiate fair terms for their use".[130] 'Fairness' was therefore associated with procedural elements of rights management, i.e. the need for such procedures for rights clearance that would allow easy ownership identification. The Green Paper also noted that easy identification would be possible if collecting societies and other rights managers would create, on a voluntary basis, centralised management

[126] European Commission Green Paper COM(95)0382, p. 24.
[127] Ibid, p. 24.
[128] Ibid, p. 54.
[129] Ibid, p. 72.
[130] Ibid, p. 37.

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structures for the administration of the rights over all works, performances and other protected matter in the form of 'one-stop' shops. Finally, it was acknowledged that management by collecting societies played a particularly important role in the music industry, though management practices by collecting societies varied from one Member State to another.[131]

The 2004 Commission Communication - The Management of Copyright and Related Rights in the Internal Market

In discussing the objectives of a reform for the harmonization of the management of rights in the digital environment, the *Communication on the Management of Copyright and Related Rights in the Internal Market* focused on the lack of common rules on collective management. According to the Communication, it was on collective rights management, namely "the system under which a collecting society, as trustee, jointly administers rights and monitors, collects, and distributes the payment of royalties on behalf of several rightholders"[132] where relevant rules and conditions were found to exhibit significant divergence across the Member States. Indeed, acknowledging the crucial role played by collecting societies in the administration of rights and the enforcement of copyright provisions, the Communication was concerned with the concept of 'fairness' insofar as it called for ensuring "efficiency, transparency and a level playing field on certain features of collective management".[133]

Elements of 'fairness' were more clearly alluded to in the Communication's announcement of a future legislative proposal. The proposal would aim at "safeguarding the functioning of the internal market for all players in respect of collective management"[134] and achieving a level playing field. It would focus on common rules on four specific features of collective rights management. The first feature concerned issues of establishment and statute with a view to ensuring that the establishment of a collecting society would become "subject to similar conditions in all Member States".[135] The second one was about the relationship between collecting societies and users. The aim was to address the imbalance of power usually present between collecting societies and users and to safeguard users' access to protected works and other subject matter. Suggested measures included placing on collecting societies the obligation to publish tariffs, grant licences on "reasonable conditions"[136] and offer users instruments to contest the tariffs. The third feature focused on addressing imbalances in the relationship between collecting societies and rightholders by placing on the former the obligation to respect the principles of good governance, non-discrimination, transparency and accountability in all aspects of their activities. The last feature to be addressed by future legislation would be that of external control of collecting societies, establishing a common ground on their competences, composition and the nature of their decisions.

The 2007 Communication on Creative Content Online in the Single Market

[131] Ibid, p. 71.
[132] European Commission Communication COM(2004) 261, p.4
[133] Ibid, p. 19.
[134] Ibid, p.18.
[135] Ibid.
[136] Ibid.

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The Communication referred to 'fairness' in relation to competition on the market for rights management at EU level. More specifically, the Communication posited that the lack of multi-territory copyright licences at the time made it difficult for content service providers to make cultural works available online across the single European market and to benefit from economies of scale. Thus, the Communication stated that there was "a need to improve on existing licensing mechanisms to allow for the development of multi-territory licensing mechanisms, for instance, by promoting fair competition on the market for rights management".[137]

'Fairness' was therefore about ensuring equal competitive conditions over rights management across the EU and targeting barriers to the availability of creative works. The Communication then highlighted that multi-territorial licensing is relevant to the music sector, by referring to its 2005 Recommendation on the implementation of a multi-territory licensing system specifically for online use of musical works.[138]

The 2009 Commission Communication on enhancing the enforcement of intellectual property rights

The *2009 Commission Communication on enhancing the enforcement of intellectual property rights in the internal market* referred to 'fairness' at two instances. The first one was right at the opening paragraph, which set the stage on the importance of promoting the enforcement of intellectual property rights in the knowledge society. The opening sentence stated that "intellectual property rights are vital business assets, encouraging innovation and creativity by ensuring a fair return on investment. Intellectual property rights play an increasingly important role, fostering economic growth by protecting and enabling inventors, designers and artists to benefit from the commercial value of their creations".[139] Thus, the reference to 'fairness' had economic undertones and it was clearly directed towards the creative industry and its ability to sustain itself and spur growth.

'Fairness' was then also invoked in the Communication's call to stakeholders to cooperate in developing standards and procedures for combating counterfeiting and piracy through voluntary arrangements. The Communication emphasised that such voluntary arrangements should be built on dialogue, "focusing on concrete problems and workable and practical solutions, which must be realistic, balanced, proportionate and fair for all concerned".[140] 'Fairness' was, therefore, clearly linked to the idea of balancing the (possibly conflicting) interests of all the stakeholders. These stakeholders were identified earlier in the Communication as comprising rights owners, importers, trade fair organisers and retailers, including e-commerce platforms as well as European citizens.[141] The link between 'fairness' and balancing was spelled out a couple of lines below, where the Commission offered to act as a facilitator for such stakeholder dialogues on concrete topics "by safeguarding, where

[137] European Commission communication COM(2007)836, p.5.

[138] Commission Recommendation 2005/737/EC of 18 May 2005 on collective cross-border management of copyright and related rights for legitimate online music services (Official Journal L 276 of 21 October 2005, p. 54-57).

[139] European Commission Communication COM(2009) 467, p.3

[140] Ibid, p. 10.

[141] Ibid, p. 9.

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necessary, a fair balance between all the different interests at stake, including the legitimate rights and expectations of EU citizens".[142]

The 2016 Commission Communication on Online Platforms and the Digital Single Market. Opportunities and Challenges for Europe

In elaborating future action on issues related to online platforms and the principles that should guide such action, the 2016 *Commission Communication on Online Platforms and the Digital Single Market. Opportunities and Challenges for Europe* made several mentions of the notion of 'fairness'.

The Communication made explicit reference to the notion of 'fairness' in relation to copyright, when discussing the implementation of the principle of "responsible behaviour of online platforms to protect core values".[143] The Communication confirmed that the Commission planned on maintaining the intermediary liability regime for online platforms, as the one set out in the e-Commerce Directive.[144] At the same time, it acknowledged that issues relating to illegal and harmful content and activities online needed to be addressed through targeted instruments. Ensuring that the value generated by new forms of online content distribution is "fairly shared between distributors and rights holders"[145] was singled out as one such issue. The Communication explained that the Commission intended to deal with this issue through sector-specific regulation in the area of copyright as well as to address "the issue of fair remuneration of creators in their relations with other parties using their content, including online platforms".[146] This came as a response to concerns voiced by rights holders in creative sectors, including in music, that their content was being used by some online platforms "without authorisation or through licensing agreements that, in their view, contain unfair terms".[147] Thus, the use of the notion of 'fairness' was linked with the need to address contractual imbalances pertaining to both the remuneration of creators and the use of their content by online service providers, but without specifying what the latter would precisely entail. Yet the Communication pledged that the next Copyright Package, which was set to be adopted in the autumn of 2016, aimed at "achieving a fairer allocation of value generated by the online distribution of copyright-protected content by online platforms providing access to such content".[148]

Reference to fairness was also made with regard to implementing the principle of "fostering trust, transparency and ensuring fairness".[149] 'Fairness' was here mentioned in conjunction with 'transparency' as one of the main principles of EU consumer legislation, particularly in the Unfair Commercial Practices Directive, and of business-to-business (B2B) relations between platforms and suppliers. As for B2B relations, the Communication listed specific

[142] Ibid, p. 10.
[143] European Commission Communication COM(2016) 288, p. 8.
[144] Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'). OJ L 178, 17.7.2000, p. 1-16.
[145] European Commission Communication COM(2016) 288, p. 8.
[146] Ibid, p. 8.
[147] Ibid, p. 7.
[148] Ibid, p. 9.
[149] Ibid.

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concerns about "unfair trading practices"[150] from online platforms, as raised by stakeholders. These concerns included for instance unfair terms and conditions for access to important user bases or databases, refusing market access, unfair 'parity' clauses[151] and lack of transparency on platform tariffs, use of data and search results. Thus, 'fairness' was here too associated with the idea of power imbalances caused by digital platforms.

The 2021 Commission Communication on Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work

The 2021 Communication was addressed to Member States, digital labour platforms and the social partners, calling for them to work together to reinforce the proposed directive and guidelines and, thus "foster fairness in platform work" without "stifling innovation and job creation".[152] This Communication was relevant for creative platform labour and live music platform labour, in particular.

'Fairness' emerged as a key notion in the Communication in two ways. First, 'fairness' was associated with a person enjoying the workers' rights that they are entitled to. The Communication stressed that misclassification of employment status is one of the challenges associated with platform work. It identified the risk that platform workers would be classified as self-employed, while in reality they would be subject to control and supervision and should actually be considered as workers. This was deemed to lead "to situations where some people are unfairly deprived of access to the rights and protections associated with the worker status".[153] This misclassification was deemed "unfair for the workers affected".[154]

Second, 'fairness' was associated with unbiased and transparent processes of decision-making in platform work management. The Communication noted that "algorithmic management", which is inherent in the business models of digital labour platforms, affects working conditions in platform work in important aspects in ways that are transparent and may carry bias. Thus, the Communication underscored the measures included in the proposed Directive that would increase transparency and grant platform workers new or more specific rights with respect to algorithmic management, so that they would "no longer fear unfair decisions taken or supported by means of automated systems".[155]

[150] Ibid, p.12.

[151] Parity clauses require businesses to offer on online platforms a price that is equal to, or lower than, offered through other (online) sales channels. For a discussion on parity clauses and fairness in EU law and policy, see Twigg-Flesner (2018).

[152] European Commission Communication COM(2021) 761, p. 3.

[153] Ibid, p. 1.

[154] Ibid, p. 6.

[155] Ibid, p. 15.

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3.2.2. European Parliament

The 2007 European Parliament Resolution on cross-border collective copyright management

In the *2007 European Parliament Resolution on cross-border collective copyright management*, 'fairness' was referenced in four distinct contexts. Firstly, the Parliament called on the Commission to propose a Directive enabling "fair and controlled competition" among all categories of the rightholders,[156] stressing that music is not a commodity. The Parliament addressed collective rights managers (CRMs) through the lens of 'fairness'. It emphasised the collective management of copyright and related rights in the online music sector can be beneficial to all parties and support cultural diversity, "provided that it is fair and transparent".[157] Consequently, the Parliament considered the promotion of 'fairness' and 'transparency' as key conditions for safeguarding 'cultural diversity' in the online music sector.

Secondly, the term 'fair' was employed in a broader sense, particularly with regard to potential abuses of monopolies. The Parliament stressed the necessity for enhancing the governance of some CRMs through "improved solidarity, transparency, non-discrimination, fair and balanced representation of each category of right-holders, and accountability rules, combined with appropriate control mechanisms in Member States". Additionally, dealing with 'fairness' as a principle of action, it suggested that the CRMs should provide their services on three key principles: "efficiency, fairness and transparency".[158]

Thirdly, the Parliament highlighted the importance of fair remuneration. It called on the Commission to ensure legal certainty for providers of online services other than the online sale of music and to enable such other users to "duly pay equitable royalties to all categories of right-holders on fair, reasonable, and non-discriminatory terms".[159] Throughout the Resolution, this issue of fair remuneration was addressed by the terms "fair treatment", "fair share of royalties", "equitable treatment", and an "appropriate level of royalties".

Finally, the Parliament focused on the streamlined online economy, by stressing that its development should not generate threats to fair competition in the European music sector. So it urged the Commission to take into account the requirements of cultural diversity when establishing a fair and transparent competitive system concerning rights management. More concretely, when addressing cross-border copyright management, the Parliament called for a framework that "adequately satisfies the future needs of a streamlined online market without posing any threat to fair competition and cultural diversity, or to the value of music".[160]

The 2008 Resolution on Cultural industries in Europe

Similarly, the 2008 *European Parliament Resolution on Cultural Industries in Europe* addressed fairness by primarily focusing on remuneration issues. The Resolution mentioned that cultural industries included "traditional industries such as the film, music and publishing

[156] European Parliament Resolution (2007)0064, par. 6
[157] Ibid, Recital K.
[158] Ibid, Recital R.
[159] Ibid, Recital N.
[160] Ibid, par 6.

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industries, the media and industries in the creative sector, tourism, arts and information industries".[161] The Parliament emphasised the appropriate protection of copyright and related rights was indispensable to the survival of cultural industries and to the fair remuneration of creators within the context of the commercial exploitation of their works.[162] So, according to the Parliament's Resolution, a well-organised collective cross-border management of copyright and related rights would help to "secure fair remuneration to all categories of right-holders" and to guarantee "real choice for consumers and cultural diversity".[163]

Additionally, the Parliament focused on the new forms of production, distribution and consumption, which were emerging in the digital technology society, and on the importance of ensuring in this context the specific nature and diversity of products with cultural content and of granting fair remuneration to all categories of rightholders.[164] In this sense, the Parliament's Resolution emphasised that traditional ways of using cultural products and services had changed due to the Internet and that it was necessary to ensure "unimpeded access to online cultural content and to the diversity of cultural expressions", as well as fair remuneration for all categories of rightholders.[165] Clearly, the Parliament prioritised 'fairness', which was strongly linked to proper remuneration for rightholders, the notions of 'cultural diversity', 'accessibility', and preserving the specific nature of cultural industries, including the music industry, in the new context of the Internet and of digitisation.

The 2014 Resolution on private copying levies

In the *2014 European Parliament Resolution on private copying levies*, terms such as 'fairness,' 'fairly,' 'appropriate,' and 'equitable' were employed with the aim of addressing the compensation and remuneration of artists. More specifically, the Parliament established an explicit link between the digital market and 'fairness', by stressing that "the European digital market has still not delivered on the promises of effective distribution, fair remuneration for creators and fair and effective distribution of income within the cultural sector in general".[166] In this context, the Parliament acknowledged that the private copying system was "a virtuous system that balances the exception for copying for private use with the right to fair remuneration for rightholders".[167] The Parliament thus invited Member States and the Commission to conduct a study on the essential elements of private copying, exploring the concept of "fair compensation" and establishing a common definition,[168] as "fair compensation" was not explicitly regulated by Directive 2001/29/EC on the harmonisation of certain aspects of copyright and related rights in the information society.

Additionally, the Resolution highlighted the concept of 'harm' to creators resulting from the "unauthorised reproduction of a rightholder's work for private use".[169] In this sense, the Parliament considered that the private copying levy should apply to all material and media

[161] European Parliament Resolution (2008)0123, Recital C.
[162] Ibid, par 20
[163] Ibid, par. 17.
[164] Ibid, Recital G.
[165] Ibid, Par. 20.
[166] European Parliament Resolution (2014)0179, Recital B.
[167] Ibid, par. 6.
[168] Ibid, par. 8.
[169] Ibid.

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used for private recording and storage capacity and it called on Member States, in consultation with stakeholders, to "simplify procedures for setting the levies to ensure fairness and objectivity".[170]

The 2015 Resolution on Harmonisation of certain aspects of copyright and related rights

In the *2015 European Parliament Resolution on Harmonisation of certain aspects of copyright and related rights*, 'fairness' was mostly used in relation to ensuring fair and appropriate remuneration. Indeed, by mentioning that the dissemination of culture was in the public interest, the Parliament acknowledged "the necessity for authors and performers to be provided with legal protection for their creative and artistic work and the need for fair and appropriate remuneration for all categories of rightholders".[171] In addition, the Parliament called for safeguarding of the "fair remuneration principle"[172] within the framework of the cultural policy of each Member State. It also explicitly stressed the need to reconcile the public interest for access to cultural goods and knowledge[173] with the objective that "authors and performers must receive fair remuneration in the digital environment and in the analogue world alike".[174]

'Fairness' was also understood as a key feature of balancing interests. In particular, the Parliament called on the European legislator to remain faithful to the objective stated in Directive 2001/29/EC of "providing adequate protection for copyright and neighbouring rights as one of the main ways of ensuring European cultural creativity, and of safeguarding a fair balance between the different categories of rightholders and users of protected subject-matter, as well as between the different categories of rightholders".[175]

Finally, in the 2015 Resolution, the term 'appropriate' was widely used and it covered a broader sense of 'fairness'. In this sense, by recognising the role of publishers and producers in bringing the works to the market, the Resolution stressed the need to ensure "appropriate remuneration of all categories of rightholders".[176] However, the Resolution focused on two conditions in order to foster creativity and the further development of online platforms: the importance of "bringing more clarity and transparency to the copyright regime for copyright users, in particular with regard to user-generated content and copyright levies" and at the same time of ensuring "appropriate remuneration of copyright holders".[177]

The 2018 Resolution on the New European Agenda for Culture

The 2018 *European Parliament Resolution on the New European Agenda for Culture* mainly sought to provide key guidelines for the elaboration of a new European framework for cultural ecosystems, in a context where the digital revolution was posing "great challenges to the already strained working conditions of artists and creators and threatening their

[170] Ibid, par. 15
[171] European Parliament Resolution (2015)0273, par. 25
[172] Idid, par. 7
[173] Ibid, par. 42
[174] Ibid, par. 27
[175] Ibid, par. 33
[176] Ibid, par. 25
[177] Ibid, par. 60

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economic survival".[178] So the Parliament called for "a guarantee of the right of creative and artistic workers to fair remuneration, contractual agreements and working conditions".[179] At the same time, the Parliament explicitly emphasised the link between digital technologies and 'fairness', by stressing the importance of establishing a "fair digital marketplace where creators are fairly compensated".[180] In other words, while compensation remained the central topic, the need to create a "fair digital marketplace" suggested that 'fairness' should have broader policy implications within the new digital reality, alongside the compensation issue.

Similarly, the Parliament called on the Commission and the Member States to ensure that "digital platforms involved in distributing, promoting, and monetising copyright-protected content have a clear obligation to obtain licences from rights holders and to fairly remunerate artists, authors, news publishers, producers, journalists, and creators for the digital use of their work".[181] So the 2018 Resolution revealed that while 'fairness' remained predominantly associated with remuneration issues, it was also crucial to deal with the responsibility of online platforms within a constantly evolving technological architecture.

The 2021 Resolution on Artificial Intelligence in education, culture and the audiovisual sector

The *2021 European Parliament Resolution on Artificial intelligence in education, culture and the audiovisual sector* used the concept of 'fairness' in two ways.

Firstly, the Parliament emphasised once again the need for fair remuneration. In this regard, it asked the Commission "to assess the impact of IPR on the research and development of AI and related technologies, as well as on the CCSI with particular regard to authorship, fair remuneration of authors and related questions".[182] In addition, mirroring the 2007 Resolution on cross-border collective copyright management, 'fairness' was integrated into the logic of ensuring fair competition. Consequently, the Parliament stressed the importance of making AI widely accessible to the CCSI across Europe "to maintain a level playing field and fair competition for all stakeholders and actors in Europe".[183] Thus, 'fairness' was used as a relevant principle, insofar as in a platform-dominated market, the business models of several stakeholders have been under high pressure (Vlassis 2023b).

Secondly, 'fairness' was used as a broad principle guiding EU actions when addressing AI for the CCSI. For instance, the Parliament highlighted that "the development, deployment, and use of AI, including the software, algorithms, and data utilised and produced by it, should be governed by ethical principles such as transparency, explainability, fairness, accountability, and responsibility".[184] Similarly, it emphasised that an ethical AI should encompass "high-quality, trustworthy, fair, transparent, reliable, secure and compatible data",[185] thus showing the importance of including 'fairness' as a policy principle. Notably,

[178] European Parliament Resolution (2018)0499, par. 50
[179] Ibid, par. 25
[180] Ibid, par. 52
[181] Ibid, par. 53
[182] European Parliament Resolution (2021)0238, par. 73
[183] Ibid, par. 21
[184] Ibid, recital B.
[185] Ibid, recital D.

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'fairness' was used as a broad principle not only for the CCSI, but also for the broader audiovisual sector and the education sector. For instance, when addressing AI use for disinformation, the Parliament recalled that the guiding driving forces of online freedom of expression were: "accuracy, independence, fairness, confidentiality, humanity, accountability and transparency".[186] In the same vein, when the Parliament called for the Commission to assess the risk related to AI for education, it explicitly mentioned that AI should be "subject to stricter requirements on safety, transparency, fairness and accountability".[187]

The 2021 Parliament Resolution on Fair working conditions, rights, and social protection for platform workers - New forms of employment linked to digital development

A similar analysis prevailed in the *2021 European Parliament Resolution on Fair working conditions, rights, and social protection for platform workers - New forms of employment linked to digital development*. As the focus was on platform workers' conditions, the Parliament referred to "fair distribution of profit"[188] rather than to fair remuneration. The focus on fair competition remained central, as the Parliament stressed that "the potential efficiency advantages of online labour platforms over the traditional labour market should be grounded in fair competition".[189] The Parliament explicitly mentioned that platform work raised "concerns related to unfair competition";[190] but, while condemning legal difficulties in collective representation, it called for the Commission to "guarantee a better balance in bargaining power and a fairer internal market"[191].

In addition, the Resolution mostly addressed 'fairness' as a broad policy principle guiding EU efforts to ensure fair working conditions. So the Parliament stated that "new forms of work should remain sustainable and fair, and platform work should be guided by the values of the Union, ethics, and a human-centric approach, where digital technology remains a tool",[192] suggesting that fairness as a principle for an ethical approach applies to both AI and platforms. While welcoming the Commission's intention for a legislative proposal to improve the working conditions of platform workers, the Parliament emphasised the need "to address the specificities of platform work to ensure fair and transparent working conditions".[193] At the same time, fairness was applied to other aspects of platform workers such as "fair mobility rules"[194] and "fair terms and conditions", when the platform workers negotiate with online platforms.[195]

In this sense, as in the *2021 European Parliament Resolution on Artificial intelligence in education, culture and the audiovisual sector,* the Resolution on platform workers portrayed the concept of 'fairness' as a fundamental principle guiding the EU's actions in its

[186] Ibid, par. 89.
[187] Ibid, par. 42
[188] European Parliament Resolution (2021)0385, par. 40
[189] Ibid, par. 31
[190] Ibid, recital H.
[191] Ibid, par 20
[192] Ibid, recital B.
[193] Ibid, par. 8
[194] Ibid, par. 32
[195] Ibid, par. 18

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endeavours to adapt politically and legally to a new digital reality, be it AI systems or online platforms.

The 2021 Resolution on the situation of artists and the cultural recovery in the EU

The *2021 European Parliament Resolution on the situation of artists and the cultural recovery in the EU* aimed at addressing the needs of the CCSI in the context of the COVID-19 pandemic. The topic of fair remuneration held a central place in the Resolution. Indeed, the European Parliament calls on the Member States to transpose Directive (EU) 2019/790 on copyright into the digital single market, "with a strong focus on the protection of cultural and creative works and those creating them, particularly to guarantee fair, appropriate, and proportionate remuneration for authors and performers".[196] Notably, the Parliament considered the terms 'fair', 'appropriate' and 'proportionate' as principles, since it explicitly mentioned that the Commission should "closely monitor the effective implementation of these key principles".[197] In the same vein, the Parliament "recalled that revenue from copyright represents not only the core of the fair remuneration of artists and creators, but also of many small players in the CCSI".[198] According to the Parliament, the promotion of collective rights management in the legal initiatives of the EU was therefore a condition to ensure "the fair remuneration of creators and wide access to cultural and creative works for the public".[199]

In addition, the Parliament used the term 'fair' with reference to the business model and practices of dominant streaming platforms in the music and cultural ecosystems. So the Parliament stated that "in this new business model, many artists and creators cannot achieve the same amount of revenue as the practice by dominant or large streaming platforms of imposing buy-out clauses deprives authors of their royalties and hinders adequate and proportionate remuneration for creators". However, it explicitly emphasised the need to protect creators and artists from "unfair practices of large and dominant media and streaming platform companies".[200] As a result, the Parliament called the Commission to take measures to ensure that "revenues are duly and fairly distributed to all creators, artists and rights holders".[201]

The Resolution also addressed the link between 'fairness', working conditions and employment, by highlighting the key importance of enforcing a "fair and sustainable labour market"[202] and of providing "fair and structured support" to all, especially the most vulnerable actors.[203] Finally, 'fairness' was also mentioned in relation to other aspects. For instance, when discussing culture as an ecosystem that does not only generate high economic value, the Parliament underscored the "substantial social impact of culture, contributing to democratic, sustainable, free, fair, and inclusive societies".[204]

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196 European Parliament Resolution (2021)0430, par. 13
197 Ibid, par. 14.
198 Ibid.
199 Ibid.
200 Ibid, recital AC.
201 Ibid, par. 22.
202 Ibid, par. 30
203 Ibid, par. 38
204 Ibid recital L

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3.2.3. Council of the European Union

The 1991 Council Conclusions on copyright and neighbouring rights

Back in 1991, the *Council Conclusions on copyright and neighbouring rights* hardly made use of the terms 'fair' or 'fairness'. Instead, the Council expressed its satisfaction that the Commission had clearly demonstrated its willingness to seek – when dealing with the single market – a "high level of protection for authors, artists, and producers in the whole Community".[205] So even the Council did not use the term 'fairness', the idea of an appropriate framework for creators with a view to establishing the single market was present as early as 1991. In addition, even though 'fairness' had not yet been mentioned, the Council showed a clear stance towards professional and cultural concerns, which would also be at the core of the Council's agenda in the next few decades. It pointed out that the free movement of goods should not detract from "moral rights and the rights to beneficial economic use associated with the different forms of presentation of works to the public",[206] by adding that "the cultural content of copyright and neighbouring rights should be taken into account".[207]

The 1997 Council Conclusions on Music in Europe

The *1997 Council Conclusions on Music in Europe* did not focus explicitly on the term of 'fairness', but it was the only policy document from the Council that dealt exclusively with the music sector in Europe. The 1997 Council Conclusions highlighted the social role and cultural value of music in Europe, as well as the importance of understanding the musical creation process and the specific needs of professionals. The Council Conclusions acknowledged that the musical creation process "cannot be separated from its eminently social role nor from the importance of the economic sector it reflects, which in Europe covers the infinite range of talents, know-how and professions and thus constitutes a source of employment to be taken into account in particular in the case of young people".[208] In addition, the Council emphasised the issues of diversity and accessibility, by underlining the importance of "ensuring that the public can have access throughout the territory of the Member States, to repertoires and to music performances, in all their diversity and richness".[209]

Finally, the Council highlighted two additional aspects. Firstly, it pointed out the significant relationship between young people and accessibility to music, by saying that "better access to repertoires will make it possible to develop, among the younger generation, an interest in and taste for music and to promote the dissemination of different musical cultures".[210] Secondly, the Council dealt twice with the international promotion of Europe's music sector. It emphasised that it was important "to ensure that European music in the world is highlighted"[211] and expressed "its determination to promote the European music sector, in particular by encouraging the emergence of an environment conductive to the circulation,

[205] European Council Conclusion 91/C 188/04, par. 11
[206] Ibid, par. 13
[207] Ibid, par. 17.
[208] European Council Conclusions 98/C 1/6, par. 3
[209] Ibid, par. 4
[210] Ibid, par. 5
[211] Ibid, par. 4

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exchange and dissemination of repertoires, performances and artists in Europe and in the world".[212]

The 2008 Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment

The *2008 Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment* offered valuable findings. By prioritising the fight against piracy, the Council emphasised its key concern about appropriate remuneration. It notably mentioned that "online piracy, which in some cultural and creative sectors is reaching a critical threshold, is likely to do lasting harm to the appropriate remuneration of copyrightholders and holders of related rights".[213] Thus, in 2008, the Council's use of a close term to 'fair', such as 'appropriate', was explicitly related to remuneration issues in the context of the economic crisis in the music industry. Moreover, the Council aimed to establish a link between fair remuneration and cultural diversity, by highlighting that "it is indispensable for rights holders to be guaranteed appropriate remuneration if creation and cultural diversity are to be fostered".[214]

In addition, the Council used 'fairness' in a broader way. Regarding the efforts of combating piracy in the digital environment, the Council highlighted the need to ensure "a fair balance between the various fundamental rights"[215] and to seek "solutions in compliance with the general principles of Community law, particularly the principle of proportionality".[216] The Council also twice focused on the link between 'fairness' and 'legal online offers' in a crucial context of economic crisis in the music industry. Firstly, it invited Member States to launch, as soon as possible, approaches by the stakeholders designed to "find concrete, effective, fair, and proportionate solutions promoting the development of legal online offers and the prevention and combating of piracy".[217] Secondly, the Council invited the parties concerned to launch consultations with a view to finding "'concrete, effective, and fair solutions promoting the development of legal online offers and the prevention and combating of piracy".[218]

The 2018 Council Conclusions on the strengthening of European content in the digital economy

In the 2018 *Council conclusions on the strengthening of European content in the digital economy*, digital platforms are considered to be particularly important when addressing European content in the digital economy. The digital technologies and platforms were mostly framed as an opportunity to foster a new era of European creativity.[219] They were expected to provide the possibility of increasing access to European cultural content and to preserve,

[212] Ibid, par. 9
[213] European Council Conclusion 2008/C 319/06, par. 3
[214] Ibid, par. 4.
[215] Ibid, par. 5
[216] Idem
[217] Ibid, par. 6
[218] Ibid, par. 9
[219] European Council decision 2018/C 457/ 02, par. 2

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promote, and disseminate European cultural heritage. In this context, the 2018 Council Conclusions were marked by various considerations towards 'fairness'.

Firstly, the Council explicitly mentioned the need to improve "gender equality with regard to employment, fair remuneration and visibility" and to encourage "equitable remuneration throughout the digital value chain".[220] The term 'fair' and close terms were used when dealing with remuneration issues, with a clear emphasis on gender aspects in the digital economy.

Secondly, the issue of establishing a level playing field was also addressed through the term of 'fairness'. The Council here called on the Commission to continue its efforts to ensure a level playing field in the European content sectors where online platforms are active, taking the specific sizes and types of platforms into consideration.[221] Consequently, it called for a taxation system ensuring "that all companies pay their fair share of taxes and that there is a global level-playing field"[222] in order to meet the challenges arising from the digital transformation of the economy.

Thirdly, the use of 'fairness' as a broader policy principle remained significant when it came to addressing how to regulate the activities and practices of digital platforms. The Council invited the Member States and the Commission to "promote fairness by ensuring that online platforms are transparent in their terms and conditions, their performance information with regard to works that they distribute, their listing parameters, their ranking practices, and their advertising practices which are embedded within their service, without infringing on trade secrecy".[223] With this in mind, the Council called for an "appropriate definition of online markets and the consideration of new, potentially relevant competitive factors such as big data, algorithms and artificial intelligence".[224]

The 2018 Council Conclusions on the Work Plan for Culture 2019-2022

In the 2018 *Council Conclusions on the Work Plan for Culture 2019-2022,* 'fairness' and close terms, such as 'appropriate', failed to be addressed in a significant way. The Council focused on the term of 'fairness' when it dealt with the policy priority on promoting an ecosystem supporting artists, cultural and creative professionals and European content. So the Council pointed out the key features of the cultural and creative sectors in Europe, which are characterised "by self-employment, small- and micro-enterprises, and cultural and linguistic diversity".[225] Consequently, according to the Council, "artists and cultural and creative professionals tend to have project-based careers and a high degree of mobility, while they often have an irregular and unpredictable income and combine several jobs to earn a living".[226] In this context, the Council pointed out that "the mobility of artists and cultural and creative professionals, the circulation and translation of European content, training and talent development, fair pay and working conditions, access to finance and cross-border cooperation are issues of specific interest for research and exchange at

[220] Ibid, par. 29
[221] Ibid, par. 31
[222] Ibid, par. 22
[223] Ibid, par. 28
[224] Ibid, par. 23
[225] European Council Conclusions 2018/C 460/10, chapter II. Priority – pt C
[226] Ibid.

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European level."[227] The Council thus emphasised the importance of highlighting 'fair' remuneration in connection with other key aspects of European cultural and creative ecosystems, e.g. mobility, circulation of European content, training, working conditions, and cooperation.

The 2021 Conclusions on the recovery, resilience and sustainability of the cultural and creative sectors

The 2021 *Council Conclusions on the recovery, resilience and sustainability of the cultural and creative sectors* addressed fairness in two different ways.

Firstly, the Council stated that "it is essential to strengthen the cultural and creative sectors, in particular the sectors most affected by the current crisis, by addressing their vulnerabilities and promoting fairness and equality for all, giving special attention to the situation of female artists and cultural professionals".[228] The Council therefore emphasised 'fairness' as a broad policy principle that goes hand in hand with "equality for all" and it aimed to establish a link between 'fairness' and the situation of female artists and cultural professionals in the cultural and creative sectors.

Secondly, the Council reiterated its interest to enhance the resilience of professionals in the cultural and creative sectors and, hence, its concern about the establishment of a fair labour environment. In this context, it invited Member States to "promote, within the appropriate frameworks, the further development of a fair and sustainable labour market, including social protection for the professionals of the cultural and creative sectors, that takes into account the characteristics of cultural and creative activities, in close dialogue with the sectors".[229] In the Council's framing, promoting 'fairness' in the labour market primarily falls within the competences of the Member States, which indicates that the promotion of 'fairness' should be considered both by the Member States and by the EU on its own.

[227] Ibid.

[228] European Council Conclusions 2021/C 209/03, par. 13

[229] Ibid, par. 29

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4. Fairness in EU law and policy for the music sector: towards a multifaceted approach

4.1. Approaches to fairness in EU law related to copyright and music governance

This section seeks to take stock and reflect on the diverse approaches to the notion of 'fairness', as embodied and employed in the array of legal acts under study. Significantly, of the nine directives analysed as part of EU copyright law and governance (see section 3.1), four of them (i.e. Council Directives 92/100/EEC and 93/98/EEC, Directive 2006/115/EC and Directive 2006/116/EC) do not explicitly refer to 'fairness', although fairness is approached indirectly through the use of other terms, as was shown in the preceding analysis.

In light of the analysis carried out, three main dimensions accompanying and permeating the concept of 'fairness' can be identified in the legal acts that were presented: a) enhancement of copyright protection for the benefit of rightholders; b) equitable or fair remuneration for rightholders; and c) balancing different rights and interests to achieve a fairer music industry. The first two manifestations of fairness, understandably, are intrinsically connected, while the third one is the most intricate and multi-faceted.

First, concerning the enhancement of copyright protection, several Directives made arrangements for bolstering the rights of creators and cultural professionals. In the early 1990s, Directive 92/100/EEC was the first legal instrument which sought to ensure an adequate protection of copyright works and subject matter of related rights protection, by focusing on rental and lending rights along with the protection of the subject matter of related rights protection by the fixation right, reproduction right, distribution right, the right to broadcast and communication to the public. After 14 years, the 1992 Directive was amended by Directive 2006/115/EC, requiring Member States to transpose more provisions providing for the right to authorise or prohibit the rental and lending of originals and copies of copyright works.

Meanwhile, Directive 93/98/EEC had harmonised the duration of copyright and related rights protection, regarding the term of protection of the rights of authors, performers, producers of phonograms, etc. The 1993 Directive was eventually replaced by Directive 2006/116/EC, where the goal was to increase the duration and the level of protection of copyright and related rights, since these rights are important to intellectual creation and creativity in the interest of authors, the cultural industries, consumers and society more broadly. Directive 2006/116/EC was later amended by Directive 2011/77/EU, which harmonised the extended term of protection specifically in respect of musical compositions in the Union, allowing musicians and performers to derive economic benefits from their works over a longer period of time.

Radical changes occurred in 2001. Directive 2001/29/EC harmonised key rights provided to authors and other rightholders, like the reproduction right, the right of communication to the

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public, the distribution right, etc., placing them in the context of the information society and adapting EU law to technological progress, while sheltering copyright-protected works against unauthorised use or exploitation. Thereafter, Directive 2014/26/EU sought to facilitate the online licensing of music across EU Member States and improve more broadly the management of copyright and related rights by collective management organisations, setting out vital patterns of transparency and governance.

Other than the critical aspects of collective management of copyright and related rights that one can notice (e.g. granting licences to users, auditing users, monitoring the use of rights, enforcing copyright, collecting rights revenue derived from the exploitation of rights, distributing the amounts due to rightholders and so on), the notion of fairness has also been reflected in the efforts made to ensure the balanced representation of the different categories of members of the CMOs in their decision-making processes.

Directive (EU) 2019/790, which has been the major legislative development in recent years, sought to adapt EU copyright rules to the rapid evolution of platforms and new digital technologies. The 2019 Directive served as a radical step for modernising copyright law in the Digital Single Market and confronting, among other issues, the asymmetrical distribution of revenue between large online platforms (providing access to vast amounts of copyright-protected user-generated content) and music rightholders for the use of their content. It therefore took steps to establish a fairer landscape for the creation and consumption of music.

The 2019 Directive imposes certain obligations towards OCSSPs, in order to better protect rightholders, e.g. the licensing of all copyright-protected content uploaded by their users, together with the use of content identification technologies. On the basis of the above, the last few decades of the EU legislator's continuous efforts to strengthen the regime on copyright, and related rights at EU level, reflect a progressive process. This process was designed to establish a better system of music governance and to guarantee a fairer position for the rightholders, so that they can carry out their creative work satisfactorily, with proper and decent prospects, in a highly competitive (and at times unjust) environment. Legislative intervention in the early days primarily sought to make the position of the rightholders less vulnerable, with the introduction of copyright rules being the main asset for the music sector to ensure its equitable functioning. However, recent regulatory efforts point towards the evolving digital scene, the challenges brought about by the platformisation of the music sector and platform governance.

Secondly, regarding rightholders' equitable/fair remuneration, attention should be drawn to Directives 92/100/EEC and 2006/115/EC, which, along with other rights, enshrined an unwaivable right to equitable remuneration for authors and performers, retaining their power to entrust the administration of this right to collecting societies. Additionally, Directives 93/98/EEC, 2006/116/EC and 2011/77/EU – which harmonised the term of protection of copyright and certain related rights – sought to improve in practice the financial position of creators, performers and record labels by securing and then extending the period of their remuneration. Directive 2001/29/EC, not unexpectedly, referred to the notion of fair compensation and to appropriate rewards for the use of rightholders' works. It proudly proclaimed that the adequate legal protection of copyright aims to ensure the availability of such rewards and to create good opportunities for investments. Moreover, Directive 2012/28/EU made it possible for rightholders to end the 'orphan work' status and to obtain

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fair compensation for the use made of their works. Even more importantly, through Directive 2014/26/EU, CMOs have been required to support rightholders in order for them to be remunerated for uses that they would not be able to control or enforce themselves, including in non-domestic markets. Lastly, in Directive (EU) 2019/790, the notion of fairness was unfolded in the context of its Chapter 3 titled "fair remuneration in exploitation contracts of authors and performers", and most notably in Article 18, which codifies the "principle of appropriate and proportionate remuneration" for authors and performers.

Thirdly, in terms of the delicate balance of conflicting rights and interests that the EU legislator seeks to strike in EU copyright law and policy, it is useful to point out the following: as previously explained, EU law provides for certain derogations to copyright protection to ensure a fair balance between the interests of rightholders (creators, performers, etc.) and the interests of users. Indeed, the EU legislator has sought to strike a fair balance, with the recognition of copyright and other related rights safeguarding the interests of rightholders, and the introduction of exceptions and limitations to these rights protecting the interests of users.

Relevant exceptions/limitations render lawful certain uses of copyrighted works, such as uses for educational purposes, research, parody and others, without having to obtain the rightholders' permission. For example, Directive 2001/29/EC set up guarantees of a fair balance first, between the rights and interests of the different categories of rightholders by harmonising rights provided to authors and others and, second, between the rights and interests of rightholders and users by recognising exceptions and limitations to copyright. In a similar vein, Directive 2012/28/EU set out common rules on the permitted uses of orphan works, encouraging the digitisation of and legitimate online access to these works in libraries, museums, archives and other relevant organisations. At the same time, it provided rightholders with the ability to put an end to the orphan work status and to claim their rights, as noted above.

In the context of Directive 2014/26/EU, promoting users' interests went hand in hand with guaranteeing fair commercial terms in licensing, so that users can gain licences for works represented by CMOs, with rightholders' appropriate remuneration concurrently being secured. Similarly, Directive 2019/790, which is inextricably linked to the modern function of online content platforms, provides for some exceptions and limitations that secure a fair balance between the rights and interests of rightholders on the one hand and users' rights and interests on the other. For instance, regarding the protection of users' rights, the 2019 Directive provides that users of OCSSPs can upload lawful content and take advantage of particular exceptions and limitations for purposes like quotation, criticism, satire, etc., which become mandatory.

It is noteworthy, as was already analysed (see section 3.1), that Directive 2000/31/EC had originally established broad "safe harbours" of liability exclusions for information society service providers (see Articles 12 to 14 of the Directive), contingent upon meeting certain conditions. For many years, the 2000 e-Commerce Directive thus shaped the liability of digital intermediaries (whereas, nowadays, the DSA aims to update and modernise this framework, imposing due diligence obligations on digital intermediaries, which suggests a more equitable sharing of responsibilities). For example, in accordance with EU case law,[230]

[230] See Joined Cases C-682/18 and C-683/18 *YouTube and Cyando* [2021] ECLI:EU:C:2021:503.

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online platforms would have had to be aware of specific illegal acts by users to lose the liability exemption under Article 14 of the e-Commerce Directive. This judicial interpretation aligned with the e-Commerce Directive's wording and the balance it aimed to strike between various rights and interests, including freedom of expression. Digital intermediaries had to promptly remove or disable illegal content upon becoming aware of it, although this obligation only applied to specific content to comply with free speech requirements (Psychogiopoulou 2023: 28).

In contrast, Article 17 of Directive 2019/790 tailored these liability exemptions specifically for OCSSPs as a sub-set of hosting service providers, deviating from the liability framework of the e-Commerce Directive, in order to bring online platforms into the equation when it comes to balancing distinct rights and interests. The 2019 Directive established that OCSSPs pursue themselves an act of communication to the public, when their users upload user-generated content and are therefore directly liable for copyright infringement by their users. The OCSSPs were thus required to obtain authorisation from the rightholders, which is a very important element from the perspective of protecting creators' rights, i.e. rendering online platforms responsible. Article 17 still incorporates aspects of the e-Commerce Directive's framework, and it continues to offer some liability exemptions for OCSSPs, with the CJEU having affirmed that the liability regime for OCSSPs balances users' freedom of expression and information with intellectual property rights effectively (Quintais 2022, Psychogiopoulou 2023: 29-30).

Therefore, while the evolution of the EU copyright framework contributes without a doubt to the notion of fairness by recognising the real value of creative music works, it also carefully considers the broader implications for the rights and interests of users within the music industry. This has also had an important fundamental rights dimension. Indeed, whereas the exclusive rights laid down for authors and other members of the creative community reflect their interests in protecting their fundamental right to intellectual property, which is safeguarded under Article 17(2) CFR, the exceptions and limitations foreseen reflect the interests of users in the protection of their fundamental rights, particularly freedom of expression, freedom of information, freedom of the arts and science, the right to education and the right to respect for private life, which are also enshrined in the CFR. Achieving the right balance in this elaborated coexistence of rightholders and users is essential to ensuring that copyright law promotes a fair protection and remuneration for creativity, while fostering access to creative content and enjoyment of it without excessive barriers.

Overall, in the context of the major directives of EU copyright reform and related management issues that are relevant to the music industry, the stepwise occurrences and utilisations of 'fairness' point to an emerging and multifaceted concept. This concept underpins the delicate balance between the rights of creators and other rightholders, the interests of users, as well as broader societal goals linked more recently to fairness in the governance of online platforms. From EU legal acts recognising rights for the creative community and addressing equitable remuneration and the duration of rights, to acts delving into the intricacies of the platformisation process, relevant legal instruments collectively seek to promote fairness across various dimensions of the creative music ecosystem. The EU legislator seeks to ensure that creators and performers receive fair compensation for their works and performances, that cultural production is profitable, that users enjoy reasonable access to music content, that the responsibilities of online operators are not sidelined and that the functioning of the market does not hamper but secures the integrity of creative

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expression. Seen from this perspective, in the new digital age that is reshaping the music industry and regulatory concerns, EU law in the field of copyright and related rights – despite its unavoidable imperfections and shortcomings – strives to create a level playing field. One where creativity is capable of flourishing in fairer and more transparent ways. In this 'symphony' of EU legal provisions, fairness has been evolving as a concept, confronting major challenges and weaving together the distinct goals, aspirations and interests of a vibrant European music landscape up to the current era of large platforms' dominance.

4.2. Approaches to fairness in the EU policy documents related to copyright and music governance

This section aims to reflect on the diverse approaches to the term of 'fairness', as employed in the array of policy documents under study issued by the European Commission, the European Parliament and the Council of the EU.

4.2.1. European Commission

The notion of 'fairness' has not been foreign to the Commission's agenda to shaping the creative and music sectors. Indeed, our analysis of selected policy documents attests to the integration of 'fairness' considerations into the Commission's policy discourse and to an evolution in its understanding of 'fairness' since the mid-1990s in light of technological developments and their potential to reconfigure established modes of creative production and distribution.

In the field of copyright and related rights, the Commission has linked the notion of 'fairness' to economic considerations, with regard to ensuring and maintaining an adequate and balanced copyright system that encourages creativity and provides a basis for investment in new services whilst enhancing the dissemination of creative works. This approach is certainly evident in the *1995 Green Paper on Copyright and Related Rights in the Information Society*, a paper that was prompted by internal market concerns, coupled with concerns about the competitiveness and appropriateness of the EU copyright regime. In proposing the harmonisation of the right of communication to the public, along with the exceptions granted to it in order to cover online exploitations, the Commission acknowledged the need to reconcile the economic interests of rightholders with public access to creative works in the information society.

The link between 'fairness' and economic considerations has also been present in Commission documents dealing with the challenges brought to intellectual property rights, due to the rise of counterfeiting and piracy in the late 2000s. The *2009 Commission Communication on enhancing the enforcement of intellectual property rights in the internal market* discussed the need to enforce intellectual property rights in a fair and proportionate way, so as to reconcile the economic interests of rights owners with those of other stakeholders. The categories of stakeholders had meanwhile increased to include e-commerce platforms, thus broadening the range of interests against which the economic interests of rightholders had to be assessed.

In the mid-2010s, the Commission's discourse on fair rewards for rightholders in the creative industries turned to addressing the power and contractual imbalances that had emerged in the relationships between rightholders and online platforms in the digital single market. In

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its Communication *on Online Platforms and the Digital Single Market. Opportunities and Challenges for Europe*, the Commission discussed the central role that digital markets and platforms had come to occupy with respect to access to information and creative content. This Communication expressed concerns as to whether the value generated by these new forms of online distribution of copyright-protected content was being shared fairly with rightholders.

Furthermore, the notion of 'fairness' was invoked in the Commission's documents that dealt with the management of copyright and related rights and the need for harmonization. Relevant references focused on three main aspects. The first aspect concerned the relationship between collecting societies and users. The *2004 Communication on the Management of copyright and related rights* mentioned 'fairness' alongside 'transparency' and 'efficiency' when discussing the need to address the imbalance of power between collecting societies and users, so as to safeguard the latter's access to protected works and other subject matter. The second aspect, present in the same Communication, was about addressing imbalances in the relationship between collecting societies and rightholders. The third aspect in that Communication focused on competition-related considerations, proposing the harmonisation of rules related to the establishment and status of collecting societies with a view to achieving a level playing field. 'Fairness' was also evident in the *Communication on Creative Content Online in the Single Market*, published in 2007, which called for the development of multi-territory licensing mechanisms with a view to promoting fair competition on the rights management market.

More recently, the concept of 'fairness' has also been invoked by the Commission to address other platform economy aspects that have repercussions for the music industry and in particular professional musicians, in so far as platform work may include live music booking services that mediate between clients and live musicians. In its *Communication on Better working conditions for a stronger social Europe*, published in 2021, the Commission called for ensuring 'fairness' in platform work, and focused on two aspects. The first one emphasised 'fairness' in employment contacts, calling on the Member States to adopt measures to ensure that workers are not misclassified. In other words, that they are not deprived of employee rights, including the ability to bargain over working conditions. The second aspect was about 'fairness' as an overarching principle that should guide decision-making in platform work management.

4.2.2. European Parliament

Three major dimensions accompanying the concept of 'fairness' can be identified in the policy documents from the European Parliament: fair remuneration for rightholders; fair competition in the digital market; and fairness as a broad policy principle and as a condition to achieve public objectives.

Firstly, the Parliament has consistently advocated for "fair remuneration" to rightholders across the majority of policy documents covered by the qualitative analysis. While the Parliament also addresses these issues under the framework of "appropriate" or "equitable' remuneration", the notion of 'fair' remains the most frequently used term concerning remuneration and compensation issues.

The need to ensure "fair remuneration" to rightholders is strongly related to the appropriate protection of copyright and related rights of creators, as well as a well-organised collective

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cross-border management of copyright that enables a “fair remuneration” to be secured for all categories of rightholders. However, the “fair remuneration” to rightholders becomes a key objective for the Parliament in a new technological context where digital technologies have emerged and consolidated new forms of production, distribution and consumption of cultural goods and the benefits from the digital shift seem “to be unevenly distributed” (Prato et al. 2014: 80).

Even though the Parliament also acknowledged the importance of fair remuneration in the analogue world, as in the *2015 Resolution on Harmonisation of certain aspects of copyright and related rights*, several of the policy documents we analysed from the Parliament established a clear link between promoting “fair remuneration” and the rise of an online economy. Therefore, according to the Parliament, the central position of providers of online services and goods in the cultural ecosystem should not generate threats to the “fair remuneration” to all categories of rightholders.

Notably, in *the 2014 Resolution on private copying levies*, the Parliament explicitly acknowledged that the European digital market had still not delivered on the promises of “fair remuneration”. In addition, in *the 2021 Resolution on the situation of artists and the cultural recovery in the EU*, the Parliament stressed that the business model and “unfair” practices of dominant online platforms in the cultural ecosystems endanger “fair remuneration” for creators. Overall, nearly all the Parliament documents we scrutinised have addressed the issue of “fair remuneration”, highlighting its significance for this institution over time.

Secondly, the Parliament has extensively dealt with ‘fair’ competition by addressing various issues such as the online market, the use of AI in cultural sectors or the labour market in light of digital platforms. In this regard, according to the *2021 Resolution on Artificial intelligence in education, culture and the audiovisual sector*, a widely accessible AI to the CCSI across Europe is expected to maintain a ‘fair’ competition for stakeholders involved in the cultural ecosystems and to ensure a level playing field for the actors involved. In *the 2007 Resolution on cross-border collective copyright management*, the Parliament explicitly stressed that the future development of the online market should not be accomplished to the detriment of ‘fair’ competition. The Parliament also focused on ‘unfair’ competition in terms of platform work, pointing to the legal difficulties and unbalanced bargaining power that platform workers risk suffering due to digital labour platforms. Here, the notion of ‘fair’ competition was developed in order to promote fair working conditions and fair terms, when the platform workers negotiate with platforms. In the music sector, this aspect can have impacts on professional musicians, when they include live music booking services in digitised agents that facilitate direct on-platform interaction between musicians and clients.

Thirdly, fairness has also been framed in the European Parliament’s discourse, as a principle guiding the EU’s approach to the cultural and music ecosystems and as a condition to achieve public objectives. In this regard, according to the Parliament, ‘fairness’ becomes intricately linked to cultural diversity, as both concepts are aimed at achieving the same goal: establishing cultural and creative industries that are both fair in the sense of embracing cultural diversity. In *the 2007 Resolution on cross-border collective copyright management*, establishing a fair competitive system for rights management should go hand in hand with the objective of promoting cultural diversity. In the *2008 Resolution on Cultural Industries in Europe*, the Parliament acknowledged that in the context of the digital technology society,

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securing “fair remuneration” to all categories of rightholders must be accompanied by efforts to ensure the specific nature of products with cultural content and to guarantee a diversity of cultural expressions and access to online cultural goods without obstacles.

Likewise, in *the 2015 Resolution on Harmonisation of certain aspects of copyright and related rights*, ensuring the fair remuneration of rightholders should be combined with clarity and transparency on the copyright regime. Finally, according to the Parliament, in a platform-dominated market and given the wide use of AI in the CCSI, ‘fairness’ should guide the ethical requirements of AI, alongside the guarantee of other key principles, e.g. transparency, accountability, humanity and sustainability in the labour market. More specifically, in the *2021 European Parliament Resolution on Artificial intelligence in education, culture and the audiovisual sector* ‘fairness’ emerged as a fundamental component of an ethical approach to AI, for both the CCSI and other related fields. Consequently, ‘fairness’ was understood as a necessary principle in the new digital reality; the Parliament explicitly underscored the importance of “fair access to digital technologies”[231] and the achievement of a “fair digital transformation, which will be beneficial to all”.[232] This highlighted that in addressing AI and digital technologies more broadly, ‘fairness’ should encompass a broader scope and should serve as a guiding principle of EU policy related to the music and cultural sectors.

4.2.3. Council of the European Union

Even though in the 1990s the Council focused on the protection for authors, producers and artists in the single market and it dealt with the social role and cultural value of music in Europe, the notion of ‘fairness’ has become central in its agenda since the mid-2000s. In this sense, the Council has developed a distinctive approach, highlighting ‘fairness’ in relation to three key dimensions: fair remuneration of creators, the relation between ‘fairness’ and transparency, and ‘fairness’ as a broad policy principle of action.

Firstly, the Council emphasised the issue of ‘fair remuneration’ in the context of preventing and combating piracy in the digital environment. Therefore, taking note of the economic crisis in the music industry, the Council linked the promotion of ‘fairness’ to the development of legal online offers and the prevention of piracy. In addition, in *the 2018 Conclusions on the strengthening of European content in the digital economy*, the Council highlighted the importance of ensuring ‘fair’ remuneration for creators throughout the digital value chain, as a condition to improve gender equality in the digital environment. In *the 2018 Conclusions on the Work Plan for Culture 2019-2022*, the need to promote ‘fair’ remuneration for creators was linked with other objectives, among them circulation of European content, working conditions and mobility for creators.

Secondly, in *the 2018 Conclusions on the strengthening of European content in the digital economy*, the term ‘fairness’ was explicitly linked to the fair functioning of digital markets and to the need to promote online platforms’ transparent behaviour on their practices – including information on the works that they distribute, their ranking practices or their advertising practices. Notably, while the Council suggested the importance of ensuring ‘transparency’ in a platform-dominated market as a key condition to promote ‘fairness’, it

[231] European Parliament Resolution (2021)0238, Ibid. recital W
[232] Ibid, recital U

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also highlighted that this promotion should not infringe “trade secrecy” as a fundamental industrial principle in the practices of online platforms.

Finally, the Council emphasised ‘fairness’ as a broad policy principle in EU action related to the music and cultural sectors. In the context of the COVID-19 pandemic, the Council underscored the importance of promoting fairness, sustainability in the labour market and equality for all, while giving specific attention to the situation of female artists and cultural professionals. However, in the *2008 Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment,* the Council highlighted a conditional connection between ‘fairness’ and cultural diversity: it did so because it believed that the promotion of ‘fairness’ should draw on fostering cultural diversity and creation.

4.3. From lexicometric mapping to qualitative analysis: an overall discussion on fairness in the EU policy related to music and cultural sectors

Clearly, the EU policy initiatives related to the music sector have experienced a period of continuous shift from the 1990s onwards, in line with a series of technological developments that either directly or indirectly had an influence on policy choices for the European music sector (Iosifidis 2011, Vlassis 2023a). In other words, EU policy related to the music sector has not been static but evolving. Moreover, as our quantitative and qualitative mapping has shown, the debate surrounding the definition and promotion of ‘fairness’ went hand in hand with technological transformations, as well as with professional concerns, market considerations and cultural values.

More specifically, since the end of the 2000s, digital platforms have brought unprecedented changes in the production, dissemination and consumption of music goods and services, becoming major enablers of the global flow of music content, with unparalleled gatekeeping powers (Nieborg and Poell 2018, Negus 2018). Furthermore, the shift to commercial music streaming was also seen as a response to the downward spiral in earnings and income in the music industry, as well as to the informal practices of music circulation as the global recorded revenues significantly decreased between 2001 and 2013 and the music industry was considered to be in persistent economic crisis due to the boom in free music-file-sharing forums on the Internet (Rogers 2013, Eriksson et al. 2019, Dolata 2020). In this context, over the course of the 2010s, while the platform shift has centralised global music competition within a handful of streaming and social media platforms (Hesmondalgh 2022), this key trend, as our quantitative and qualitative analysis showed, has heightened concerns about the effects of platforms’ activities and practices on ‘remuneration’, ‘transparency’, ‘cultural diversity’ and ‘fair competition’. This trend has widened the debate on how to define ‘fairness’ and secure it in a constantly evolving technological architecture.

The policy discussions about ‘fairness’ first emerged in the 2000s. This was a period when the increasing digitisation of technologies had disrupted the business models of the record companies and the equilibrium in copyright regulation; the music industry was facing substantial revenue losses in subsequent years; and the open access nature of the Internet had generated debates on remuneration, ownership and the very *raison d’être* of copyright. The policy discussions on ‘fairness’ intensified and expanded over the course of the 2010s

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and the early 2020s across the EU, as there was a significant shift in policy circles towards the regulation of digital platforms and online content (Flew & Gillett 2021). There was also growing concern about market dominance by a small number of transnational digital platforms and the impact of their practices over remuneration, competition rules, distribution and diversity of online cultural content.

The debate about how to promote 'fairness' in the music industry thus began to feature more prominently, for several reasons: (i) the increasing digitisation of technologies and then the platform shift turned upside down the carefully established equilibrium among the different actors involved in the music value chains, thus posing significant challenges for rightholders and legacy industry players; (ii) alongside enhanced consumer welfare resulting from the wider accessibility of cultural content (Nieborg & Poell 2018), the size and scale of the large digital platform companies generated capacity for market dominance, consumer data collection and citizens' cultural influence; and (iii) given the intensive platformisation of the music industry, the social and cultural status of digital platform companies should also be considered, in addition to their technological and economic aspects.

Our quantitative and qualitative analysis illustrated that the issue of 'fairness' in the regulatory framework of copyright and the 'fair' remuneration for rightholders have been predominant topics of discussion over time. As Céleste Bonnamy (2021) suitably noted, traditionally the regulation of copyright covered two sets of values: a cultural set, which considers copyright as a way to promote culture from the market forces through the protection of authors; and an economic set, which sees copyright as a way to regulate the market and ensure just competition. However, due to the platformisation process, copyright regulation and the debate around the economic and cultural sets of values that should underpin it have progressively become part of a broader legal and policy framework dealing with the governance of digital platforms. The negotiations around Article 17 of the 2019 Copyright Directive on the responsibility of digital platforms is a clear illustration of this: the negotiations were highly polarised and mobilised a wide range of actors, focusing on broad issues related to freedom of expression and fundamental rights on the Internet, the protection of European culture in a platform-based economy (Bonnamy 2021, Bonnamy & Dupont 2023) and so on.

From this perspective, what platformisation did was to make EU policy for the music sector *go beyond* copyright, and the legal and policy debate that surrounds it. The music sector was placed in a wider context – that of platform governance. The dominance of digital platforms also sharpened the need to balance distinct values and interests, and to establish a new equilibrium, and thus the concept of 'fairness' arose. In this sense, EU governance of digital platforms dynamically deals with issues regarding transparency, cultural diversity, abuse of monopolies, accountability, etc. in the music sector and the music ecosystem more broadly. This is underlined by the Commission's recent Apple decision with reference to the Digital Markets Act. In early March 2024, the Commission announced a €1.8 billion fine for Apple, for abuse of its dominant position in the digital music market (Tar 2024). The fine, which is related to access to Apple's music streaming services, is the EU's first ever against the company.

Clearly, the dominance of digital platforms – and the resulting disruptions for remuneration, competition, copyright protection, the diversity of online content, working conditions, etc. – has progressively required EU policy related to the music sector to evolve. This policy has

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increasingly become embedded in a broader legal and policy framework that includes various technological, economic, cultural and societal concerns. Moreover, EU policy has had to address dynamically the promotion of 'fairness' in the European cultural and music ecosystems.

In this context, the EU's evolving focus on 'fairness' in the music industry has been accompanied by the dynamic presence of principles, such as 'accessibility', 'cultural diversity', 'transparency' and 'accountability'. This highlights how 'fairness' is an integral part of a multifaceted policy approach to the European music sector, and one that has been adopted by the EU institutions. This multifaceted policy approach, which was first promoted by the European Parliament and then followed by the Council and the Commission, can be clearly seen in the Parliament's Resolution on 'Cultural Diversity and the Conditions for authors in the European music streaming market'. Here the Parliament, for the first time in a policy document from an EU institution, called on the Commission to reflect on the possibility of imposing measures, such as quotas for European musical works, on music streaming platforms. This is symbolically (and legally) significant.

Over the last 30 years, EU legislative instruments related to the European music sector have taken two approaches: either they dealt with copyright reform and related management issues; or they focused on the broad regulation of the digital economy, and thus addressed various aspects of the cultural and music ecosystems in a European platform-based economy. For the first time, with the aforementioned 2024 Parliament Resolution, an EU institution has called for policy measures, i.e. quotas for European music works on music streaming platforms: these quotas are explicitly related to the digital music economy and do not deal as such with copyright issues.

Crucially, the European Parliament's call comes 35 years after the adoption of the 1989 Television without Frontiers Directive (TVWF), which included European content quotas targeting the audiovisual industry. Developing and consolidating an EU policy for the music sector, in a strict sense, has clearly taken much time. It is obvious however that digital platforms' dominance has revolutionised policymaking for music. As shown in our quantitative and qualitative analysis, the EU institutions have not only addressed copyright concerns within a broader legislative and policy framework; they have also expanded and deepened EU policy related to the music sector by linking this policy to a wider and more complex set of principles and notions – from fairness and diversity, to accessibility, availability, transparency and accountability. This underscores the emergence and progressive consolidation of an EU multifaceted policy approach for the European music sector.

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5. Conclusion

The pursuit of 'fairness' has become a central concern for a variety of actors and stakeholders in the European music sector. This focus has also emerged against the backdrop of significant shifts in the music industry, including the rapid digitisation of technologies, the rise of online platforms and the challenges posed by the COVID-19 pandemic. This report called on a diachronic analysis, by following the historic development and evolution of EU policy to highlight the ways in which considerations of 'fairness' have accompanied and characterised the European institutions' policy discourse, regulatory action and funding rationale for the music sector. The study combined mutually enhancing quantitative and qualitative methods of textual analysis.

The quantitative coding and mapping were designed to identify diachronic developments and trends in EU policy related to the music sector as well as to understand the ways in which 'fairness', as a term, has evolved by comparison with other key terms, concepts and principles in EU music governance. The historical textual mapping showed that over the course of the period analysed, technological transformations and digitisation concerns have steadily grown in importance, ultimately taking centre stage nowadays as the prime focus. In addition, copyright regulation has been a leading topic of discussion over time, while the integration of cultural and creative concerns into EU policy related to the music sector has been manifest since the 2000s.

Finally, the concept of 'fairness' has emerged in the EU discourse and it has slowly been embraced by the EU institutions since the early 2000s. The crisis in the music industry, and the rise of platforms as the dominant economic and industrial infrastructure in the European music ecosystem, led to 'fairness' gaining prominence within the EU political agenda. Our institutional textual mapping reveals that promoting 'fairness', as a political issue in the European music sector, requires political entrepreneurs. In the EU institutional architecture, the European Parliament played the role of political entrepreneur on 'fairness'. It first sought to move the debate forward regarding the importance of and expectations around the EU's definition of 'fairness'. The Parliament then also drove the debate on ways to deal with and promote 'fairness' in a European platform-dominated economy.

The qualitative analysis, performed in section 3, examined major legislative instruments and policy documents. These directly or indirectly addressed the music industry, as well as the streaming of music and the challenges brought for the music sector by the rapid emergence of online platforms.

With regard to the EU legislative instruments under study, the analysis shows that the concept of 'fairness' in copyright and music encompasses certain key dimensions. Firstly, it is possible to trace over the years a gradual strengthening of the protection of intellectual property rights: this has benefited rightholders by ensuring that their creations and performances are adequately safeguarded. Secondly, equitable/fair remuneration for all the different categories of rightholders seeks to ensure not only their financial stability, but also the promotion of a vibrant, just, and innovative cultural sector that enriches Europe's societies. Thirdly, balancing the various rights and interests is essential to cultivate a fairer music environment. The delicate balance sought by the EU legislator is evident in the major

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legal reforms addressing copyright and related management issues within the music industry, thanks to the adoption of key EU legislative acts such as Directives 2001/29/EC, 2014/26/EU and 2019/790.

The evolving notion of 'fairness' highlights the nuanced interplay between protecting the interests of various rightholders, users' reasonable access to music content, and broader societal objectives, which include the fair governance of music streaming platforms. This multi-layered approach to 'fairness' underscores the EU legislator's commitment to foster a progressive legal environment where creativity is able to thrive, whilst ensuring that the benefits are distributed more equitably among all rightholders, as well as taking into account access to culture concerns.

In addition, recent legal acts reflect a shift in EU regulation, which has updated and modernised the legal framework on digital platforms. The EU law has imposed due diligence obligations on digital intermediaries, which suggests a fairer sharing of responsibilities. In short, the relevant EU legal acts have collectively striven to promote fairness across multiple dimensions. This started in the early 1990s, with the EC/EU Directives introducing rights for the creative community and dealing with equitable remuneration and the duration of rights. That was followed by the Creative Europe programmes, which offer significant economic support to the European cultural and creative sectors, including the music sector. Lastly, recent Regulations, including the DMA and the DSA, have addressed the complexities of the platformisation process.

With regard to the EU institutions' policy documents, this report makes it clear that the notion of 'fairness' has not been excluded from the Commission's agenda to shape the creative and music ecosystems. Indeed, our analysis of selected policy documents highlights the integration of 'fairness' considerations into the Commission's policy discourse. There has also been an evolution in the Commission's understanding of 'fairness', in light of technological developments and their potential to reconfigure established modes of creative production and distribution.

The Commission has mainly approached fairness as a principle to achieve economic objectives for encouraging investment and ensuring competitiveness in the EU single market. However, it has more recently also linked this principle to other dimensions, some of which are well known in EU policy circles, such as fair remuneration for rightholders, while others derive from platformisation, including fair working conditions in platform work. In addition, three major dimensions accompanying the concept of 'fairness' were identified in the European Parliament's policy documents: fair remuneration for rightholders; fair competition in the digital market; and fairness as a broad policy principle and as a condition to achieve public objectives. Finally, for the Council, the notion of 'fairness' has become central in its agenda since the mid-2000s. In this sense, the Council has developed a distinctive approach, emphasising 'fairness' in relation to three key dimensions: fair remuneration of creators, the relation between 'fairness' and transparency in a platform-dominated market, and 'fairness' as a broad policy principle of action.

Overall, this report underlines that 'fairness' in EU copyright law and policy, and especially the 'fair' remuneration of rightholders, have been key topics over time. However, due to platformisation, copyright regulation plus the debate around the economic and cultural sets of values that should underpin fairness have progressively become part of a broader legal and policy framework that deals with the governance of digital platforms. From this

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perspective, platformisation has placed music in a wider context – that of platform governance. Moreover, the dominance of digital platforms has sharpened the need to balance distinct values and interests as well as to establish a new equilibrium: these have pushed the concept of 'fairness' to the forefront and increased its influence.

EU governance of digital platforms has therefore dynamically dealt with (and continues to do so today) with issues regarding transparency, cultural diversity, abuse of monopolies, accountability, etc. in the music sector and the music ecosystem more broadly. The recent fine imposed by the European Commission on Apple, with reference to the DMA, testifies to this.

It is evident then that digital platforms have revolutionised policymaking for music. The EU institutions have not only addressed copyright concerns within a broader legislative and policy framework directed at digital platforms. They have also expanded and deepened EU policy related to the music sector, by linking this policy to a more complex set of principles and notions – from fairness and diversity, to accessibility, availability, transparency and accountability. This underscores the emergence and progressive consolidation of an EU multifaceted policy approach for the European music sector, one that is now being promoted by all the EU institutions.

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7. Annex

7.1. Annex 1: Fairness under EU law and policy documents: database.

PART I:

PART I of the list contains **EU legally binding acts** for the diachronic analysis of 'fairness' under EU law.

Table No. 1

EU legally binding acts[233]

(*in chronological order*)

Year	*Type/Title*	*Link*
1992	Council **Directive 92/100/EEC** of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, *OJ L 346, 27.11.1992, pp. 61–66.*	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31992L0100
1993	Council **Directive 93/83/EEC** of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, *OJ L 248, 6.10.1993, pp. 15–21.*	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0083&from=EN
1996	**Directive 96/9/EC** of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, *OJ L 77, 27.3.1996, pp. 20–28.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31996L0009

[233] This table contains all the relevant EU legally binding acts (*Regulations, Directives, Decisions*).

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2000	**Directive 2000/31/EC** of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce'), *OJ L 178, 17.7.2000, pp. 1–16.*	https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000L0031
2001	**Directive 2001/29/EC** of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *OJ L 167, 22.6.2001, pp. 10–19.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029
2003	Council **Regulation (EC) 1383/2003** of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, *OJ L 196, 2.8.2003, pp. 7–14.*	https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003R1383
2004	**Corrigendum to Directive 2004/48/EC** of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004), *OJ L 195, 2.6.2004, pp. 16–25.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0048R%2801%29
2006	Council **Decision 2006/515/EC** of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, *OJ L 201, 25.7.2006, pp. 15–30.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0515
2006	**Directive 2006/116/EC** of the European Parliament and of the Council of 12 December 2006 on	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116

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	the term of protection of copyright and certain related rights, *OJ L 372, 27.12.2006, pp. 12–18.*	
2006	**Directive 2006/115/EC** of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which amends Council Directive 92/100/EEC, *OJ L 376, 27.12.2006, pp. 28–35.*	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0115
2007	**Directive 2007/65/EC** of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, *OJ L 332, 18.12.2007, pp. 27–45.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007L0065
2009	**Directive 2009/140/EC** of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services (Text with EEA relevance), *OJ L 337, 18.12.2009, p. 37–69.*	https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0140
2011	**Directive 2011/77/EU** of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0077

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	on the term of protection of copyright and certain related rights, *OJ L 265, 11.10.2011, p. 1–5.*	
2012	**Directive 2012/28/EU** of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works (Text with EEA relevance), *OJ L 299, 27.10.2012, pp. 5–12.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0028
2013	**Regulation (EU) 1295/2013** of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, *OJ L 347, 20.12.2013, pp. 221–237.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295
2014	**Directive 2014/26/EU** of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, *OJ L 84, 20.3.2014, pp. 72–98.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0026
2017	**Regulation (EU) 2017/1128** of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, *OJ L 168, 30.6.2017, pp. 1–11.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1128&qid=1679309918229
2019	**Directive (EU) 2019/790** of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC,	https://eur-lex.europa.eu/eli/dir/2019/790/oj

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	PE/51/2019/REV/1, OJ L 130, 17.5.2019, pp. 92–125.	
2019	**Directive (EU) 2019/789** of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, *PE/7/2019/REV/1, OJ L 130, 17.5.2019, pp. 82–91.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0789&qid=1679309918229
2019	**Directive (EU) 2019/770** of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services, *PE/26/2019/REV/1, OJ L 136, 22.5.2019, pp. 1–27.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770&qid=1679309918229
2019	**Regulation (EU) 2019/1150** of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services (Text with EEA relevance), *PE/56/2019/REV/1*, *OJ L 186, 11.7.2019, pp. 57–79.*	https://eur-lex.europa.eu/eli/reg/2019/1150/oj?locale=en
2021	**Regulation (EU) 2021/818** of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013, *PE/31/2021/INIT, OJ L 189, 28.5.2021, pp. 34–60.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818

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2022	**Regulation (EU) 2022/1925** of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act) (Text with EEA relevance), *PE/17/2022/REV/1, OJ L 265, 12.10.2022, pp. 1–66.*	https://eur-lex.europa.eu/eli/reg/2022/1925
2022	**Regulation (EU) 2022/2065** of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), *OJ L 277, 27.10.2022, pp. 1–102.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065

Table No. 2

Categorisation of the EU legally binding acts *by EU Institution*

(*in chronological order*)

Council of the EU		
Year	***Type/Title***	***Link***
1992	Council **Directive 92/100/EEC** of 19 November 1992 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, *OJ L 346, 27.11.1992, pp. 61–66.*	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:31992L0100

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1993	Council **Directive 93/83/EEC** of 27 September 1993 on the coordination of certain rules concerning copyright and rights related to copyright applicable to satellite broadcasting and cable retransmission, *OJ L 248, 6.10.1993, pp. 15–21.*	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31993L0083&from=EN
2003	Council **Regulation (EC) 1383/2003** of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights, *OJ L 196, 2.8.2003, pp. 7–14.*	https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32003R1383
2006	Council **Decision 2006/515/EC** of 18 May 2006 on the conclusion of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, *OJ L 201, 25.7.2006, pp. 15–30.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32006D0515

European Parliament & Council of the EU		
Year	***Type/Title***	***Link***
1996	**Directive 96/9/EC** of the European Parliament and of the Council of 11 March 1996 on the legal protection of databases, *OJ L 77, 27.3.1996, pp. 20–28.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A31996L0009
2000	**Directive 2000/31/EC** of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic	https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32000L0031

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	commerce, in the Internal Market ('Directive on electronic commerce'), *OJ L 178, 17.7.2000, pp. 1–16.*	
2001	**Directive 2001/29/EC** of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, *OJ L 167, 22.6.2001, pp. 10–19.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32001L0029
2004	**Corrigendum to Directive 2004/48/EC** of the European Parliament and of the Council of 29 April 2004 on the enforcement of intellectual property rights (OJ L 157, 30.4.2004), *OJ L 195, 2.6.2004, pp. 16–25.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32004L0048R%2801%29
2006	**Directive 2006/116/EC** of the European Parliament and of the Council of 12 December 2006 on the term of protection of copyright and certain related rights, *OJ L 372, 27.12.2006, pp. 12–18.*	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32006L0116
2006	**Directive 2006/115/EC** of the European Parliament and of the Council of 12 December 2006 on rental right and lending right and on certain rights related to copyright in the field of intellectual property, which amends Council Directive 92/100/EEC, *OJ L 376, 27.12.2006, pp. 28–35.*	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32006L0115
2007	**Directive 2007/65/EC** of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007L0065

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	concerning the pursuit of television broadcasting activities, *OJ L 332, 18.12.2007, pp. 27–45.*	
2009	**Directive 2009/140/EC** of the European Parliament and of the Council of 25 November 2009 amending Directives 2002/21/EC on a common regulatory framework for electronic communications networks and services, 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and 2002/20/EC on the authorisation of electronic communications networks and services, *OJ L 337, 18.12.2009, pp. 37–69.*	https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32009L0140
2011	**Directive 2011/77/EU** of the European Parliament and of the Council of 27 September 2011 amending Directive 2006/116/EC on the term of protection of copyright and certain related rights, *OJ L 265, 11.10.2011, pp. 1–5.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0077
2012	**Directive 2012/28/EU** of the European Parliament and of the Council of 25 October 2012 on certain permitted uses of orphan works, *OJ L 299, 27.10.2012, pp. 5–12.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0028
2013	**Regulation (EU) 1295/2013** of the European Parliament and of the Council of 11 December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC, *OJ L 347, 20.12.2013, pp. 221–237.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013R1295

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2014	**Directive 2014/26/EU** of the European Parliament and of the Council of 26 February 2014 on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online use in the internal market, *OJ L 84, 20.3.2014, pp. 72–98.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32014L0026
2017	**Regulation (EU) 2017/1128** of the European Parliament and of the Council of 14 June 2017 on cross-border portability of online content services in the internal market, *OJ L 168, 30.6.2017, pp. 1–11.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R1128&qid=1679309918229
2019	**Directive (EU) 2019/790** of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, *PE/51/2019/REV/1, OJ L 130, 17.5.2019, pp. 92–125.*	https://eur-lex.europa.eu/eli/dir/2019/790/oj
2019	**Directive (EU) 2019/789** of the European Parliament and of the Council of 17 April 2019 laying down rules on the exercise of copyright and related rights applicable to certain online transmissions of broadcasting organisations and retransmissions of television and radio programmes, and amending Council Directive 93/83/EEC, *PE/7/2019/REV/1, OJ L 130, 17.5.2019, pp. 82–91.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0789&qid=1679309918229
2019	**Directive (EU) 2019/770** of the European Parliament and of the Council of 20 May 2019 on certain aspects concerning contracts for the supply of digital content and digital services,	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0770&qid=1679309918229

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	PE/26/2019/REV/1, OJ L 136, 22.5.2019, pp. 1–27.	
2019	**Regulation (EU) 2019/1150** of the European Parliament and of the Council of 20 June 2019 on promoting fairness and transparency for business users of online intermediation services, *PE/56/2019/REV/1*, *OJ L 186, 11.7.2019, pp. 57–79.*	https://eur-lex.europa.eu/eli/reg/2019/1150/oj?locale=en
2021	**Regulation (EU) 2021/818** of the European Parliament and of the Council of 20 May 2021 establishing the Creative Europe Programme (2021 to 2027) and repealing Regulation (EU) No 1295/2013, *PE/31/2021/INIT, OJ L 189, 28.5.2021, pp. 34–60.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32021R0818
2022	**Regulation (EU) 2022/1925** of the European Parliament and of the Council of 14 September 2022 on contestable and fair markets in the digital sector and amending Directives (EU) 2019/1937 and (EU) 2020/1828 (Digital Markets Act), *PE/17/2022/REV/1, OJ L 265, 12.10.2022, pp. 1–66.*	https://eur-lex.europa.eu/eli/reg/2022/1925
2022	**Regulation (EU) 2022/2065** of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act), *OJ L 277, 27.10.2022, pp. 1–102.*	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R2065

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PART II

PART II of the list contains selected **policy & soft law** documents (e.g. non-legally binding acts such as Resolutions, Green Papers, Conclusions, etc.) from EU Institutions.

Table No. 3

Categorization of the policy & soft law documents *by EU Institution*

(*in chronological order*)

European Commission			
Year	***Type/Title***		***Link***
1995	COM(95) 382	Green Paper on Copyright and Related Rights in the information Society	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:51995DC0382
2004	COM(2004) 261	Commission Communication - The Management of Copyright and Related Rights in the Internal Market	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2004:0261:FIN:EN:PDF
2005	OJ L 276/54 - (2005/737/EC)	Commission Recommendation on collective cross-border management of copyright and related rights for legitimate online music services	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32005H0737&from=EN
2006	OJ L 236/28 - (2006/585/EC)	Commission Recommendation on the digitisation and online accessibility of cultural material and digital preservation	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006H0585
2007	COM(2007) 242	Commission Communication - on a European agenda for culture in a globalizing world	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0242:FIN:EN:PDF

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2007	COM(2007) 836	Commission Communication on Creative Content Online in the Single Market	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0836:FIN:en:PDF
2008	COM(2008) 465	Commission Communication - An Industrial Property Rights Strategy for Europe	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008DC0465
2008	COM(2008) 466	Green Paper on Copyright in the knowledge economy	https://op.europa.eu/en/publication-detail/-/publication/47dec4c0-34ca-421d-b1c3-e01f96669340/language-en
2009	COM(2009) 467	Commission Communication - Enhancing the enforcement of intellectual property rights in the internal market	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52009DC0467
2010	COM(2010) 183	Green Paper unlocking the potential of cultural and creative industries	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010DC0183&from=BG
2011	COM(2011) 427	Green Paper on the online distribution of audiovisual works in the European Union: opportunities and challenges towards a digital single market	https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52011DC0427
2011	COM(2011) 287	Communication from the Commission: A Single Market for Intellectual Property Rights Boosting creativity and innovation to provide economic growth, high quality jobs and first class products and services in Europe	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0287:FIN:en:PDF
2012	COM(2012) 537	Communication from the Commission: Promoting cultural and creative sectors for growth and jobs in the EU	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012DC0537
2015	COM(2015) 192	Communication from the Commission: A Digital Single Market Strategy for Europe	https://eur-lex.europa.eu/legal-

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			content/EN/TXT/PDF/?uri=CELEX:52015DC0192
2015	COM(2015) 626	Commission Communication - Towards a modern, more European copyright framework	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015DC0626
2016	COM(2016) 180	Commission Communication on: Digitising European Industry Reaping the full benefits of a Digital Single Market	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0180
2016	COM(2016) 288	Commission Communication on online Platforms and the Digital Single Market Opportunities and Challenges for Europe	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0288
2016	COM(2016) 320	Commission Communication on A comprehensive approach to stimulating cross-border e-Commerce for Europe's citizens and businesses	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0320
2016	COM(2016) 592	Commission Communication: Promoting a fair, efficient and competitive European copyright-based economy in the Digital Single Market	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016DC0592
2017	COM(2017) 555	Communication from the Commission: Tackling Illegal Content Online Towards an enhanced responsibility of online platforms	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017DC0555
2017	COM(2017) 707	Communication from the commission A balanced IP enforcement system responding to today's societal challenges	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017DC0707
2018	OJ L 63/50 - 2018/334	Commission Recommendation on measures to effectively tackle illegal content online	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018H0334

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2018b	COM(2018) 267	Commission Communication on A New European Agenda for Culture	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0267
2021	COM (2021) 288	EC Communication - Guidance on Article 17 of Directive 2019/790 on Copyright in the Digital Single Market	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0288
2021	COM(2021) 761	EC Communication - Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021DC0761
Commission Staff Working Documents			
Year	***Type/Title***		***Link***
2005	SEC(2005) 1254	Commission staff working document - Impact assessment reforming cross-border collective management of copyright and related rights for legitimate online music services	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005SC1254
2007	SEC(2007) 570	Commission staff working document accompanying Commission communication - on a European agenda for culture in a globalizing world	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52007SC0570
2012	SWD(2012) 204	Staff Working document accompanying Proposal for a directive on collective management of copyright and related rights and multi-territorial licensing of rights in musical works for online uses in the internal market	eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52012SC0204
2015	SWD(2015) 100	Staff Working document: A Digital Single Market Strategy for Europe - Analysis and Evidence (// COM(2015) 192)	eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52015SC0100&rid=1

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2016	SWD(2016) 110	Staff Working Document: Advancing the Internet of Things in Europe (// COM(2016) 180)	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0110
2016	SWD(2016) 172	Staff working document: Online platforms (// COM(2016) 288)	https://op.europa.eu/en/publication-detail/-/publication/7cedf705-2329-11e6-86d0-01aa75ed71a1
2016	SWD(2016) 163	Staff Working document: guidance on the implementation / Application of directive 2005/29/EC on unfair commercial practices (// COM(2016) 320	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016SC0163
European Parliament			
Year	***Type/Title***		***Link***
2003	P5_TA(2003) 0221	European Parliament Resolution on the protection of audio-visual performers	https://www.europarl.europa.eu/doceo/document/TA-5-2003-0221_EN.html
2003	P5_TA(2003) 0382	European Parliament Resolution on Cultural industries	https://www.europarl.europa.eu/doceo/document/TA-5-2003-0382_EN.html
2004	P5_TA(2004) 0036	European Parliament Resolution on European Parliament resolution on a Community framework for collective management societies in the field of copyright and neighbouring rights	https://www.europarl.europa.eu/doceo/document/TA-5-2004-0036_EN.html
2007	P6_TA(2007) 0064	European Parliament Resolution on cross-border collective copyright management	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52007IP0064&qid=1679309918229

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2007	P6_TA(2007) 0236	European Parliament Resolution on The social status of artists	https://www.europarl.europa.eu/doceo/document/TA-6-2007-0236_EN.html
2008	P6_TA(2008) 0123	European Parliament Resolution on Cultural industries in Europe	https://www.europarl.europa.eu/doceo/document/TA-6-2008-0123_EN.html
2008	P6_TA(2008) 0462	European Parliament Resolution on collective cross-border management of copyright and related rights for legitimate online music services	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52008IP0462&qid=1679309918229
2010	P7_TA(2010) 0340	European Parliament Resolution on Enforcement of intellectual property rights in the internal market	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52010IP0340
2012	P7_TA(2012) 0324	European Parliament Resolution on the online distribution of audiovisual works in the European Union	https://www.europarl.europa.eu/doceo/document/TA-7-2012-0324_EN.html
2013	P7_TA(2013) 0368	European Parliament Resolution on European cultural and creative sectors as sources of economic growth and jobs	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52013IP0368
2014	P7_TA(2014) 0179	European Parliament Resolution on private copying levies	https://www.europarl.europa.eu/doceo/document/TA-7-2014-0179_EN.html
2015	P8_TA(2015) 0273	European Parliament Resolution on Harmonisation of certain aspects of copyright and related rights	https://www.europarl.europa.eu/doceo/document/TA-8-2015-0273_EN.html
2016	P8_TA(2016) 0009	European Parliament Resolution Towards a Digital Single Market Act	https://www.europarl.europa.eu/doceo/document/TA-8-2016-0009_EN.html
2016	P8_TA(2016) 0486	European Parliament Resolution A coherent EU policy for cultural and creative industries	https://www.europarl.europa.eu/doceo/document/TA-8-2016-0486_EN.html

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2017	P8_TA(2017) 0272	European Parliament Resolution on Online platforms and the Digital Single Market	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017IP0272
2018	P8_TA(2018) 0499	European Parliament Resolution on New European Agenda for Culture	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52018IP0499&qid=1679309918229
2020	P9_TA(2020) 0239	European Parliament Resolution on the cultural recovery of Europe	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2021.385.01.0152.01.ENG
2020	P9_TA(2020) 0272	European Parliament Resolution - Digital Services Act: Improving the functioning of the Single Market	https://www.europarl.europa.eu/doceo/document/TA-9-2020-0272_EN.pdf
2021	P9_TA(2021) 0238	European Parliament Resolution on Artificial intelligence in education, culture and the audiovisual sector	https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021IP0238&qid=1679309918229
2021	P9_TA(2021) 0385	European Parliament Resolution on Fair working conditions, rights and social protection for platform workers - New forms of employment linked to digital development	https://www.europarl.europa.eu/doceo/document/TA-9-2021-0385_EN.pdf
2021	P9_TA(2021) 0430	European Parliament Resolution on the situation of artists and the cultural recovery in the EU	https://www.europarl.europa.eu/doceo/document/TA-9-2021-0430_EN.html
Council of the European Union			
Year	***Type/Title***		***Link***
1991	OJ C 188/4 - 91/C 188/04	Council Conclusions on copyright and neighbouring rights	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:41991X0719(03):EN:HTML

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1992	OJ C 138/1 - 92/C 138/01	Council Resolution on increased protection for copyright and neighbouring rights	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31992Y0528(01)
1997	OJ C 1/6 – 98/C 1/04	Council Conclusions on music in Europe	eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31998Y0103(03)&qid=1711442191832
2007	OJ C 311/7 - 2007/C 311/ 07	Council Conclusions of 24 May 2007 on the contribution of the cultural and creative sectors to the achievement of the Lisbon objectives	https://op.europa.eu/en/publication-detail/-/publication/a80e5812-9864-4817-8ff5-37ae5d65935a/language-en
2007	OJ C 287/1 - 2007/C 287/01	Resolution of the Council on an European Agenda for Culture	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007G1129(01)
2008	OJ C 140/8 - 2008/C 140/08	Council Conclusions of 22 May 2008 on a European approach to media literacy in the digital environment	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XG0606(01)
2008	OJ C 253/01 - 2008/C 253/01	Council Resolution on a comprehensive European anti-counterfeiting and anti-piracy plan	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32008G1004(01)
2008	OJ C 319/15 - 2008/C 19/06	Council Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment	https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/104198.pdf
2009	OJ C 301/12 - 2009/C 301/09	Council Conclusions of 27 November 2009 on media literacy in the digital environment	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:301:0012:0012:en:PDF
2010	OJ C 56/1 - 2010/C 56/01	Council Resolution on the enforcement of intellectual property rights in the internal market	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32010G0306(01)

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2012	OJ C 169/5 - 2012/C 169/02	Council Conclusions of 10 May 2012 on the digitisation and online accessibility of cultural material and digital preservation	https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/130120.pdf
2013	OJ C 80/1 - 2013/C 80/01	Council Resolution on the EU Customs Action Plan to combat IPR infringements for the years 2013 to 2017	https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:080:0001:0007:EN:PDF
2016	OJ C 212/9 - 2016/C212/06	Council Conclusions on the role of Europeana for the digital access, visibility and use of European cultural heritage	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016XG0614(02)
2017	OJ C 425/4 - 2017/C 435/03	Council Conclusions on promoting access to culture via digital means with a focus on audience development	https://op.europa.eu/en/publication-detail/-/publication/c05689d3-df1a-11e7-9749-01aa75ed71a1/language-en/format-PDF
2018	OJ C 457/2 - 2018/C 457/02	Council Conclusions on the strengthening of European content in the digital economy	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG1219(01)
2018	OJ C 460/12 - 2018/C 460/10	Council Conclusion on the Work Plan for culture 2019-2022	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XG1221(01)
2021	OJ C 209/3 - 2021/ C 209/3	Council Conclusions on the recovery, resilience and sustainability of the cultural and creative sectors	https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52021XG0602(01)&from=EN
2021	OJ C 210/1 - 2021/C 210/01	Council Conclusions on 'Europe's Media in the Digital Decade: An Action Plan to Support Recovery and Transformation'	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021XG0603(01)
2022	OJ C 160/13 - 2022/C 160/06	Council Conclusions on building a European Strategy for the Cultural and Creative Industries Ecosystem	https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52022XG0413(01)

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7.2. Annex 2: Results of the lexicometric mapping

600 - EC	610 - SWD	620 - EP	630 - COEU	640 - LEG	Keywords	650 - Period 1	660 - Period 2	670 - Period 3
0,12	0,08	0,15	0,19	0,13	accessibility	0,07	0,14	0,14
0,04	0,09	0,07	0,06	0,06	accountability	0,03	0,06	0,05
0,01	0,01	0,01	0,01	0	active citizenship	0	0,01	0,01
0,01	0,12	0,04	0,01	0,06	advertising	0,02	0,02	0,06
0,01	0,01	0,04	0,01	0,01	algorithm	0	0	0,03
0,01	0,01	0,01	0	0	American	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	archives	0,01	0,01	0,01
0,01	0,01	0,03	0,03	0	artificial intelligence	0	0	0,02
0,02	0,01	0,12	0,08	0,01	artist	0,03	0,04	0,03
0,01	0	0,01	0	0,01	artistic expression	0	0,01	0,01
0,11	0,09	0,08	0,06	0,2	author	0,22	0,16	0,12
0,11	0,1	0,05	0,08	0,09	availability	0,08	0,09	0,09
0,01	0,01	0,01	0,01	0	big data	0	0	0,01
0	0,01	0	0	0	broadband connection	0	0	0
0,01	0,01	0,01	0	0,01	business model	0	0,01	0,01
0,01	0,01	0,01	0,01	0	China	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	citizenship	0	0,01	0,01
0,01	0	0,01	0,02	0,01	climate change	0	0,01	0,01
0,01	0,01	0,01	0	0,01	cloud	0	0,01	0,01
0,01	0,01	0,02	0,03	0,01	cohesion	0	0,01	0,01
0,01	0	0,02	0	0,01	collective bargaining	0	0,01	0,01
0,01	0	0,01	0,01	0,01	common market	0,01	0,01	0,01
0,01	0,01	0,02	0,01	0,02	compensation	0,02	0,02	0,01

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0,1	0,08	0,13	0,11	0,05	competitive	0,06	0,1	0,07
0,09	0,32	0,17	0,04	0,12	consumer	0,06	0,06	0,16
0,01	0,01	0,01	0	0,01	consumer choice	0	0,01	0,01
0,02	0,03	0,06	0	0,02	consumer protection	0,01	0,01	0,04
0,01	0,01	0,01	0	0,01	convergence	0,01	0,01	0,01
0,19	0,08	0,13	0,06	0,07	copyright	0,3	0,13	0,08
0,07	0,01	0,03	0,14	0,01	counterfeit	0,01	0,08	0,02
0,01	0,02	0,01	0	0,01	country of origin	0,03	0,01	0,01
0,11	0,02	0,24	0,28	0,05	creative	0,02	0,15	0,1
0,01	0,01	0,02	0,06	0,01	creative content	0,01	0,01	0,01
0,01	0	0,01	0	0,01	cross-border portability	0	0	0,01
0,08	0,1	0,06	0,05	0,03	cross-border	0,02	0,04	0,07
0,01	0,01	0,01	0,01	0,01	cultural cooperation	0	0,01	0,01
0,03	0,05	0,09	0,09	0,02	cultural diversity	0	0,07	0,02
0,01	0,01	0,01	0,01	0,01	cultural goods	0,01	0,01	0,01
0,04	0,02	0,07	0,28	0,03	cultural heritage	0,02	0,03	0,07
0,01	0	0,01	0,01	0,01	cultural participation	0	0	0,01
0,01	0,01	0,01	0	0,01	cultural services	0,01	0,01	0,01
0,05	0,09	0,07	0,04	0,05	data	0,02	0,02	0,08
0,01	0,01	0	0,01	0,01	decline	0	0,01	0,01
0,01	0,01	0,01	0,02	0,01	democracy	0	0,01	0,01
0,01	0,02	0,01	0,01	0,01	democratic	0,01	0,01	0,01
0,02	0,01	0,02	0,01	0,13	digital content	0	0,01	0,12
0,01	0,01	0,01	0,01	0,01	digital market	0,01	0,01	0,01
0,1	0,04	0,1	0,03	0,01	digital single market	0	0,02	0,08
0,02	0,01	0,01	0,03	0,01	digital technologies	0	0,01	0,02
0,21	0,12	0,24	0,25	0,2	digitisation	0,12	0,08	0,31
0,03	0,01	0,02	0,01	0,02	disability	0,02	0,02	0,02
0,02	0,02	0,05	0,01	0,01	discrimination	0,01	0,01	0,02

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0,01	0,01	0,01	0,01	0,01	disruptive	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	distortion	0,01	0,01	0,01
0,01	0,02	0,01	0	0,01	domestic	0,01	0,01	0,01
0,01	0,03	0,01	0	0,01	download	0	0,01	0,01
0	0	0,01	0,01	0,01	dual nature	0,01	0,01	0,02
0,04	0,05	0,04	0	0,01	e-commerce	0	0,01	0,03
0,05	0,02	0,11	0,03	0,01	employment	0,02	0,02	0,05
0,01	0,01	0,01	0,02	0,01	European works	0	0,01	0,01
0,02	0,01	0,04	0,01	0,01	fair	0,01	0,02	0,02
0,01	0,01	0,01	0	0,01	fair compensation	0,02	0,01	0,01
0,01	0,01	0,02	0,01	0,01	fair remuneration	0	0,01	0,01
0,02	0,01	0,04	0,01	0,01	fairness	0,01	0,02	0,02
0	0	0	0,01	0,01	flow of information	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	free flow	0	0,01	0,01
0,01	0,01	0,02	0,01	0,01	free movement	0,04	0,01	0,01
0,01	0,01	0,03	0,03	0,02	freedom of expression	0,01	0,01	0,02
0	0,01	0,01	0	0,01	freedom of information	0	0,01	0,01
0,01	0	0	0	0,01	freedom of movement	0,01	0,01	0
0,02	0,01	0,07	0,01	0,03	fundamental rights	0,01	0,02	0,05
0,01	0,01	0,02	0,02	0,01	gender	0,01	0,01	0,01
0	0	0,02	0,03	0,01	gender equality	0	0,01	0,01
0,03	0,03	0,02	0,03	0,01	globalization	0,01	0,02	0,01
0,01	0,01	0,02	0,02	0,01	green transition	0	0	0,01
0,03	0,02	0,04	0,03	0,01	growth	0,01	0,02	0,02
0,02	0,01	0	0,01	0,01	harmonise	0,08	0,01	0,01
0,01	0,01	0,01	0	0,01	human rights	0,01	0,01	0,01
0,01	0,01	0,02	0,01	0,01	identity	0,01	0,01	0,01
0,09	0,01	0,04	0,01	0,03	illegal content	0	0	0,09
0,01	0,01	0,02	0,04	0,01	inclusive	0,01	0,01	0,01

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0	0,01	0	0,01	0,01	independent production	0	0,01	0,01
0,11	0,02	0,05	0,03	0,06	information society	0,44	0,04	0,03
0,09	0,01	0,05	0,08	0,08	infringement	0,03	0,09	0,07
0,13	0,05	0,13	0,16	0,02	innovation	0,01	0,09	0,09
0,15	0,03	0,13	0,24	0,08	intellectual property	0,17	0,22	0,05
0,08	0,03	0,07	0,05	0,07	internal market	0,1	0,09	0,05
0,01	0,01	0	0	0,01	internationalisation	0	0	0
0,05	0,06	0,04	0,03	0,01	internet	0,01	0,03	0,03
0,06	0,05	0,05	0,02	0,02	investment	0,05	0,04	0,04
0,01	0	0,01	0	0	IPR infringement	0	0,01	0,01
0,01	0,01	0,01	0	0	knowledge economy	0	0,01	0,01
0,03	0,01	0,02	0,01	0,01	labour	0	0,01	0,02
0,01	0,01	0,02	0,01	0,01	language	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0	language barriers	0	0	0,01
0,02	0,01	0,03	0,02	0,01	level playing field	0	0,01	0,02
0,01	0,01	0,01	0	0,01	liberalisation	0	0,01	0
0,01	0,01	0,01	0,01	0,01	linear	0	0,01	0,01
0,01	0,01	0,01	0	0	linear services	0	0,01	0,01
0,01	0,01	0,02	0,03	0,01	linguistic	0,01	0,01	0,01
0,01	0,01	0,02	0,03	0,01	linguistic diversity	0,01	0,01	0,01
0,13	0,15	0,09	0,03	0,18	management	0,1	0,31	0,04
0,17	0,17	0,15	0,08	0,09	market	0,11	0,13	0,11
0	0,01	0,01	0,01	0,01	media freedom	0	0	0,01
0,01	0,01	0,01	0,18	0,01	media literacy	0	0,03	0,01
0,01	0,01	0,01	0,01	0,01	minorities	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	minors	0,01	0,01	0,01
0,02	0,01	0,01	0,01	0,01	moral rights	0,06	0,01	0,01
0,01	0,01	0,01	0,03	0,01	multilingualism	0	0,01	0,01
0,01	0,01	0,01	0	0,01	multimedia	0,04	0,01	0,01

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0,05	0,06	0,03	0,04	0,04	network	0,06	0,06	0,03
0,02	0,01	0,02	0,02	0,01	new technologies	0,03	0,02	0,01
0,01	0,01	0,02	0	0,01	non-discrimination	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	non-linear	0	0,01	0,01
0,01	0,01	0,01	0	0	non-linear services	0	0,01	0,01
0,01	0,01	0	0	0,01	on-line services	0,01	0	0
0	0	0,02	0,03	0,01	pandemic	0	0	0,01
0,03	0,04	0,04	0,06	0,04	participation	0,02	0,04	0,04
0,05	0,07	0,06	0,03	0,08	performer	0,14	0,07	0,05
0,02	0,01	0,01	0,06	0,01	piracy	0,01	0,02	0,01
0,18	0,13	0,24	0,07	0,16	platform	0	0,02	0,3
0,01	0,01	0,01	0,03	0,01	pluralism	0,01	0,01	0,01
0,05	0,04	0,02	0,04	0,03	producer	0,1	0,05	0,01
0,01	0,01	0,01	0	0,01	production costs	0	0	0
0,01	0,01	0,01	0,01	0,01	profitability	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	prosperity	0	0,01	0,01
0	0,01	0,01	0	0,01	racism	0	0,01	0,01
0	0	0	0	0,01	recommender system	0	0	0,01
0,01	0,01	0,02	0,06	0,01	recovery	0,01	0,01	0,01
0,02	0,01	0,01	0,01	0,01	remuneration	0,08	0,02	0,01
0,02	0,01	0,01	0	0,01	reproduction right	0,07	0,01	0,01
0,01	0,01	0,01	0,05	0,01	resilience	0	0,01	0,01
0,04	0,02	0,03	0,08	0,03	responsibility	0,03	0,04	0,04
0,01	0,01	0,02	0,01	0,01	rights holders	0,01	0,01	0,01
0,03	0,01	0,01	0,01	0,01	satellite	0,09	0,02	0,01
0,02	0,02	0,05	0,01	0,02	security	0,02	0,02	0,03
0,02	0,01	0,03	0,01	0,01	self-employed	0,01	0,01	0,02
0,01	0,01	0,01	0,01	0,01	self-regulation	0	0,01	0,01

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0,01	0	0	0,01	0,01	small and micro enterprises	0	0,01	0,01
0,01	0,01	0,01	0,01	0	SME	0	0,01	0,01
0,01	0,01	0,01	0,03	0,01	social cohesion	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	start-up	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	state aid	0	0,01	0,01
0,01	0,01	0,01	0	0,01	streamlined	0	0,01	0,01
0,01	0,01	0,01	0,03	0,01	subsidiarity	0,01	0,01	0,01
0,01	0,01	0,01	0	0	subsidies	0	0,01	0,01
0,03	0,01	0,04	0,16	0,01	sustainable	0,01	0,02	0,04
0,01	0,01	0,01	0	0,01	technology-neutral	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	telecommunication	0,02	0,01	0,01
0	0,01	0,01	0	0,01	territorial cohesion	0	0,01	0,01
0,02	0,01	0,05	0,05	0,01	training	0,01	0,02	0,02
0,01	0	0	0	0,01	transfrontier	0,01	0,01	0
0,01	0,01	0,01	0,02	0,01	transition	0,01	0,01	0,01
0,05	0,09	0,11	0,03	0,04	transparency	0,01	0,05	0,07
0,01	0,02	0,01	0	0,01	unfair	0,01	0,01	0,01
0,01	0,01	0,01	0,01	0,01	value chain	0	0,01	0,01
0,01	0,01	0,01	0	0	venture	0	0,01	0,01
0,01	0,01	0,01	0	0	venture capital	0	0,01	0,01
0,01	0,01	0,09	0,01	0,01	workers	0	0,01	0,03
0,02	0,01	0,06	0,04	0,01	working conditions	0	0,01	0,03
0,01	0,01	0,01	0,02	0,01	young people	0	0,01	0,01
0,01	0,01	0,01	0,01	0,01	youth	0	0,01	0,01

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7.3. Annex 3: Occurrences of fairness in policy documents

Policy Documents *by EU Institution*	Identifier of Document	Occurrences of fairness
European Commission		
1995 Green Paper on Copyright and Related Rights in the Information Society	COM(95) 382	4
2004 Commission Communication - The Management of Copyright and Related Rights in the Internal Market	COM(04) 261	4
2007 Communication on Creative Content Online in the Single Market	COM(2007) 836	1
2009 Communication on Enhancing the enforcement of intellectual property rights in the internal market	COM(2009) 467	7
2016 Communication on Online Platforms and the Digital Single Market **Opportunities and Challenges for Europe**	COM(2016) 288	8
2021 Communication on Better working conditions for a stronger social Europe: harnessing the full benefits of digitalisation for the future of work	COM(2021) 761	9
European Parliament		
2007 Resolution on Cross-border collective copyright management	P6_TA(2007)0064	17
2008 resolution on Cultural industries in Europe	P6_TA(2008)0123	7
2014 resolution on Private copying levies	P7_TA(2014)0179	7

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2015 resolution on Harmonisation of certain aspects of copyright and related rights	P8_TA(2015)0273	12
2018 resolution on New European agenda for culture	P8_TA(2018)0499	7
2021 resolution on Artificial intelligence in education, culture and the audiovisual sector	P9_TA(2021)0238	14
2021 resolution on Fair working conditions, rights and social protection for platform workers -New forms of employment linked to digital development	P9_TA(2021)0385	13
2021 resolution on the situation of artists and the cultural recovery in the EU	P9_TA(2021)0430	8
Council of the European Union		
1991 Conclusions on copyright and neighbouring rights	*OJ C 188, 19.07.1991*	0
1997 Council Conclusions on Music in Europe	*OJ C 1, 03.01.1998*	0
2008 Conclusions on the development of legal offers of online cultural and creative content and the prevention and combating of piracy in the digital environment	*OJ L 201, 25.07.2006*	3
2018 conclusions on the strengthening of European content in the digital economy	*OJ C 457, 19.12.2018*	3
2018 Council conclusions on the Work plan for culture 2019-2022	OJ C 460/12, 2018/C 460/10	1

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2021 conclusions on the recovery, resilience and sustainability of the cultural and creative sectors	*OJ C 209, 02.06.2021*	2

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