

# AUDIO-VISUAL PERFORMERS' RIGHTS

---

## KNOW YOUR RIGHTS

- *British Equity Collecting Society Ltd*
- *Jess Winchester – Legal Counsel*
- *Tayyiba Nasser - Chief Executive*





## **THE COPYRIGHT, DESIGNS AND PATENTS ACT 1988 (CDPA)**

COVERS ALL FORMS OF “INTELLECTUAL PROPERTY”.

IP IS INTANGIBLE BUT IN LEGAL TERMS IS REGARDED AS PROPERTY, SO CAN BE BOUGHT AND SOLD.

**WHAT RIGHTS DO PERFORMERS IN AUDIOVISUAL FIXATIONS HAVE BY STATUTE IN THE UK?**

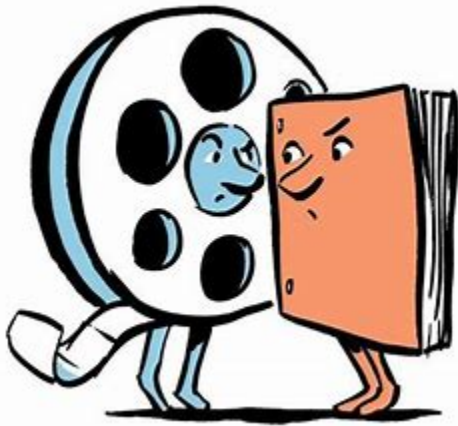


AUTHORS OF A LITERARY, DRAMATIC  
MUSICAL OR ARTISTIC WORK OWN  
THE COPYRIGHT.

PERFORMERS' RIGHTS IN THEIR  
PERFORMANCES ARE SIMILAR TO  
COPYRIGHT – REFERRED TO AS  
“RELATED RIGHTS” OR  
“NEIGHBOURING RIGHTS”.

RIGHTS IN PERFORMANCES ARE SET  
OUT IN PART II OF THE CDPA.

COPYRIGHT, DESIGNS AND PATENTS  
ACT 1988 (LEGISLATION.GOV.UK)  
[HTTPS://WWW.LEGISLATION.GOV.UK/](https://www.legislation.gov.uk/ukpga/1988/48/part/II)  
[UKPGA/1988/48/PART/II](https://www.legislation.gov.uk/ukpga/1988/48/part/II)



ISC130-TS

CS201706



"Need I remind you, Doctor, that you signed over intellectual property rights to the lab?"

## PERFORMERS' PROPERTY RIGHTS:

LAST UNTIL **50 YEARS** AFTER THE DATE OF THE PERFORMANCE OR AFTER THE DATE THE PERFORMANCE IS RELEASED.

THEY ARE LIKE ANY OTHER TYPE OF PROPERTY SO THE PERFORMER CAN ASSIGN THEM OR LEAVE THEM TO SOMEONE IN A WILL.

## THE PERFORMER'S CONSENT IS REQUIRED FOR:

RECORDING A LIVE PERFORMANCE.

BROADCASTING A LIVE PERFORMANCE.

MAKING A RECORDING OF A  
PERFORMANCE FROM A BROADCAST OF  
THE LIVE PERFORMANCE.

---







THE PERFORMER'S CONSENT IS  
REQUIRED FOR:

---

**COPYING** A RECORDING OF A  
PERFORMANCE - KNOWN AS THE  
“**REPRODUCTION RIGHT**”.

CURRENTLY **NO PRIVATE COPYING  
EXCEPTION IN UK**. BECS IS LOBBYING  
FOR THIS AS THEN PERFORMERS WOULD  
RECEIVE COMPENSATION IN THE FORM  
OF A LEVY ON COPYING DEVICES.





THE PERFORMER'S  
CONSENT IS REQUIRED  
FOR:

ISSUING COPIES OF A  
PERFORMANCE TO THE  
PUBLIC – KNOWN AS THE  
“**DISTRIBUTION  
RIGHT**”.

---



THIS REFERS TO  
PHYSICAL COPIES  
E.G. DVDS.

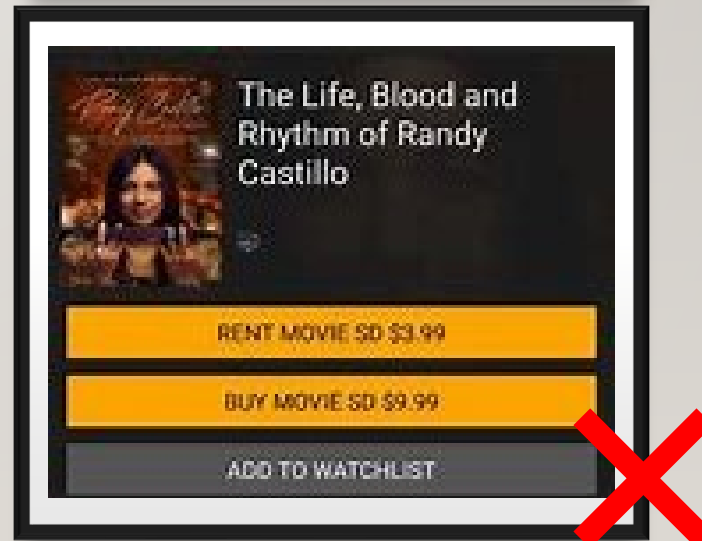
THE PERFORMER'S  
CONSENT IS REQUIRED  
FOR:

**RENTAL** OR **LENDING** OF  
COPIES TO THE PUBLIC.

---

THIS REFERS TO PHYSICAL  
COPIES EG. DVDS.

LENDING REFERS TO IN  
LIBRARIES ETC. FOR NO  
COMMERCIAL ADVANTAGE.







THE PERFORMER'S CONSENT IS REQUIRED FOR:

---

MAKING A **RECORDING OF A PERFORMANCE** AVAILABLE TO THE PUBLIC BY **ELECTRONIC TRANSMISSION** AT A TIME AND PLACE CHOSEN BY THE VIEWER.

KNOWN AS THE “**MAKING AVAILABLE RIGHT**”.

E.G., NETFLIX, AMAZON PRIME VIDEO, BBC IPLAYER, 4OD, YOUTUBE, PLUTO.



# What is **Equitable Remuneration**?

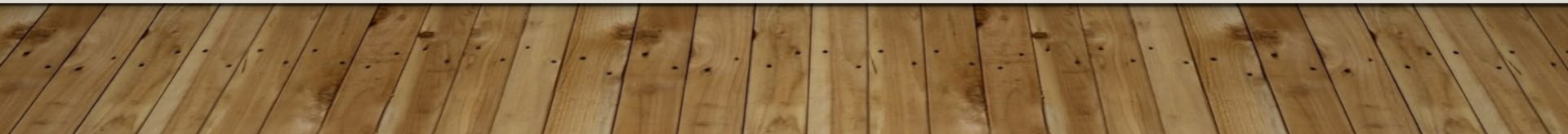
Equitable remuneration can be described as “fair payment”.

---



In order to be useful to performers, a right to equitable remuneration needs to be:

- (i) set out in law (statutory);
- (ii) unwaivable (meaning the performer cannot be compelled to waive it in the contract with the producer); and
- (iii) transferable only to a collecting society (meaning the performer cannot assign it to the producer in the contract).





# AV PERFORMERS RIGHTS IN THE UK

RIGHT	USAGE	TYPE OF RIGHT	EFFECT
REPRODUCTION	COPYING	EXCLUSIVE	TRANSFERRED TO PRODUCER
	PRIVATE COPY	NO EXCEPTION	NO COMPENSATION
DISTRIBUTION (PHYSICAL COPIES)	SALE	EXCLUSIVE	TRANSFERRED TO PRODUCER
	RENTAL	EXCLUSIVE WITH MANDATORY EQUITABLE REMUNERATION	OBSOLETE
	LENDING	EXCLUSIVE	TRANSFERRED TO PRODUCER
COMMUNICATION TO THE PUBLIC	LIVE	EXCLUSIVE	PERFORMER GIVES CONSENT
	BROADCASTING PUBLIC PERFORMANCE	NO RIGHT	BEIJING TREATY COULD CHANGE THIS
	MAKING AVAILABLE (ON DEMAND)	EXCLUSIVE	TRANSFERRED TO PRODUCER



# PACT EQUITY CINEMA FILMS AGREEMENT 2021

---

The Artist shall grant to the Producer **all consents required** under the Copyright Designs and Patents Act 1988 or any modification or re-enactment thereof to enable the Producer to make the fullest use of the Artist's services and the products thereof in perpetuity.

The Artist shall assign to the Producer with full title guarantee free from all third-party rights **all present and future** copyright and other rights (including without limitation performer's property rights and any and all New Rights) in and to the performances and services of the Artist and the products thereof **throughout the world** for the full period of copyright and thereafter insofar as is possible in perpetuity.



PRODUCTION COMPANY **OWNS** THE PERFORMER'S RIGHTS AND CAN EXERCISE THE RIGHTS OF CONSENT.

THE PRODUCER CAN THEREFORE **LICENSE** THE FILM/PROGRAMME.

IN EXCHANGE, THE PRODUCER GIVES THE PERFORMER A **CONTRACTUAL PROMISE TO PAY:**

- INITIAL FEE,
- ANY ADDITIONAL FEES (ROYALTIES & RESIDUALS) WHEN SECONDARY EXPLOITATION TAKES PLACE.





# PACT EQUITY CINEMA FILMS AGREEMENT 2021

---

**The Quit Clause:** Where in respect of performances contracted in accordance with this Agreement the Artist is **entitled by law** to receive from **domestic or foreign collecting societies equitable remuneration** or other forms of income provided for by the law of any jurisdiction additional to the income arising under this Agreement, or where the Artist is entitled by law to receive any other income from any other collective bodies **additional to the income arising under this Agreement**, nothing in this Agreement shall prevent the Artist from laying claim thereto. The Artist shall not be obliged to account to the Producer for the income referred to in this clause and the Producer shall not lay claim to any such income.



# AV PERFORMERS REMUNERATION

RIGHT	USAGE	UK	EUROPE (SOME)
REPRODUCTION	PRIVATE COPY	NO COMPENSATION	COMPENSATION
DISTRIBUTION (PHYSICAL COPIES)	SALE	TRANSFERRED TO PRODUCER	TRANSFERRED TO PRODUCER
	RENTAL	TRANSFERRED TO PRODUCER EQUITABLE REMUNERATION BUT OBSOLETE	EQUITABLE REMUNERATION BUT OBSOLETE
	LENDING	TRANSFERRED TO PRODUCER	EQUITABLE REMUNERATION RIGHT OFTEN SMALL AMOUNTS DISTRIBUTED WITH PC
COMMUNICATION TO THE PUBLIC	LIVE	PERFORMER GIVES CONSENT	PERFORMER GIVES CONSENT
	BROADCASTING PUBLIC PERFORMANCE	NO RIGHT / BEIJING	EQUITABLE REMUNERATION RIGHT
	MAKING AVAILABLE (ON DEMAND)	TRANSFERRED TO PRODUCER	EQUITABLE REMUNERATION RIGHT

# AEPO ARTIS

---

IOAN KAES – GENERAL SECRETARY, AEPO ARTIS

Video on Performers Rights & CMOs:

<https://vimeo.com/506019882>



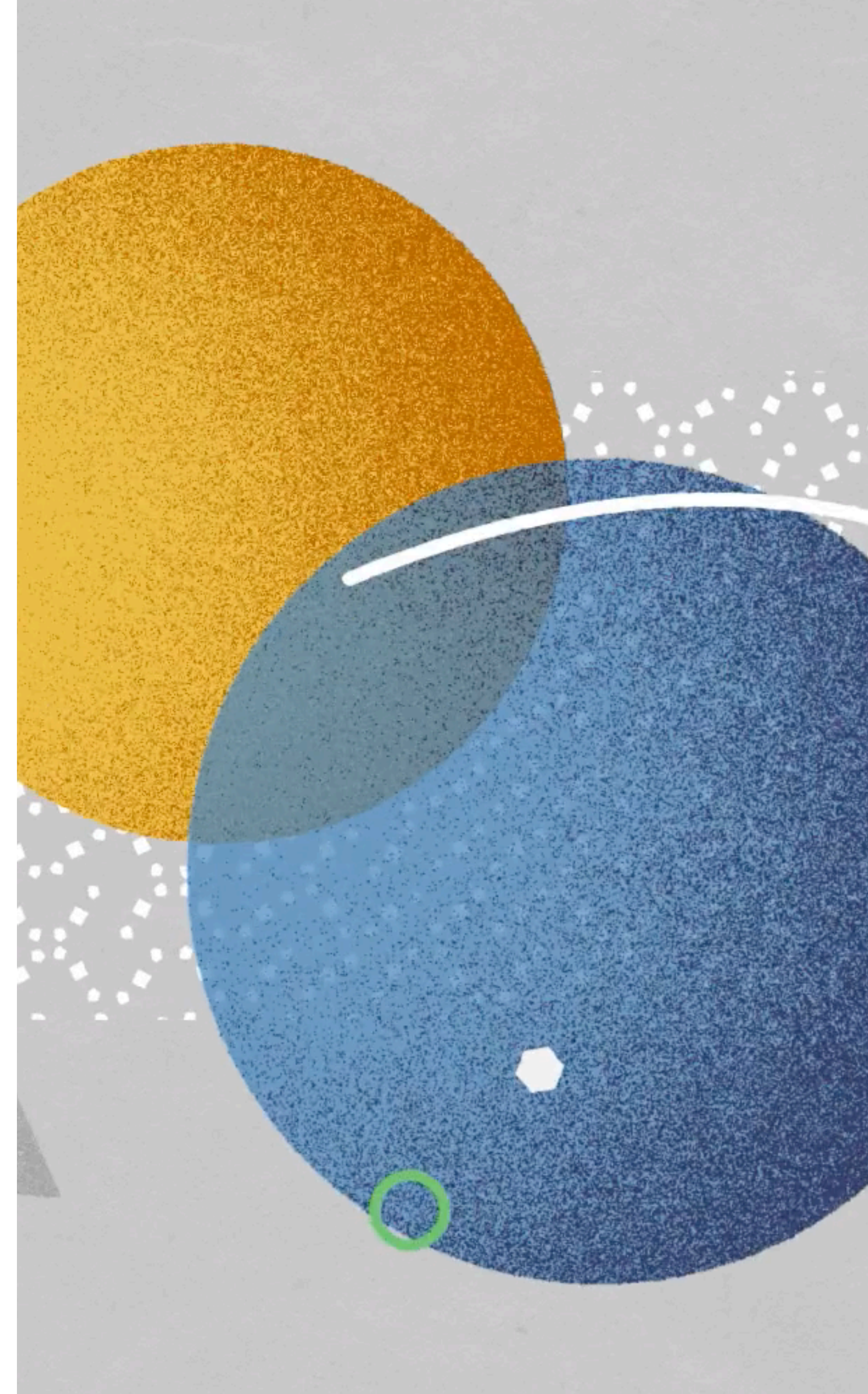
# AEPO-ARTIS

**AEPO-ARTIS'S MISSION IS TO PROTECT, STRENGTHEN AND DEVELOP PERFORMERS' RIGHTS AND TO PROMOTE THEIR COLLECTIVE MANAGEMENT. AEPO-ARTIS ASPIRES TO ENSURE ALL PERFORMERS BENEFIT FROM THE EXPLOITATION OF ALL THEIR PERFORMANCES AND THUS CONTRIBUTE TO CREATIVITY AND CULTURAL DIVERSITY.**

**AEPO-ARTIS IS A NON-PROFIT MAKING ORGANISATION THAT REPRESENTS 37 EUROPEAN PERFORMERS' COLLECTIVE MANAGEMENT ORGANISATIONS FROM 27 DIFFERENT EUROPEAN COUNTRIES.**

- PERFORMERS MUSIC ONLY
- PERFORMERS AUDIOVISUAL ONLY
- PERFORMERS MUSIC AND AUDIOVISUAL
- PERFORMERS / PRODUCER MUSIC ONLY
- PERFORMERS / PRODUCERS AUDIOVISUAL ONLY
- PERFORMERS / PRODUCERS / AUTHORS AUDIOVISUAL ONLY
- PERFORMERS / PRODUCERS / BROADCASTERS MUSIC AND AUDIOVISUAL

**THE NUMBER OF PERFORMERS, FROM THE AUDIO AND AUDIOVISUAL SECTOR, REPRESENTED BY OUR MEMBER ORGANISATIONS CAN BE ESTIMATED AT 650.000.**





# AEPO-ARTIS

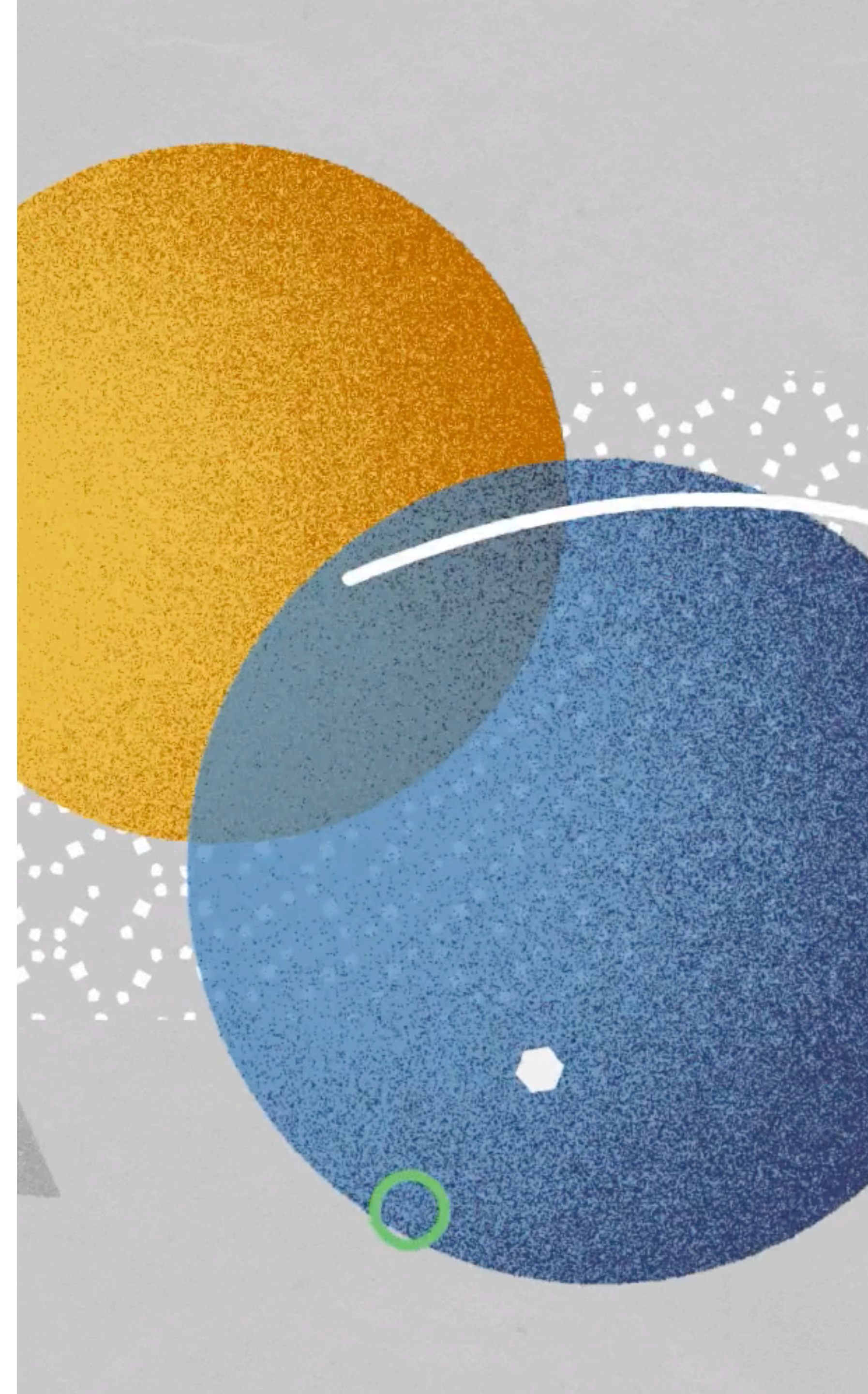
**BASED IN BRUSSEL**

## **SMALL TEAM**

- GENERAL SECRETARY
- LEGAL OFFICER
- POLICY AND LEGAL ADVISOR
- COMMUNICATIONS & SOCIAL MEDIA OFFICER
- OFFICE MANAGER

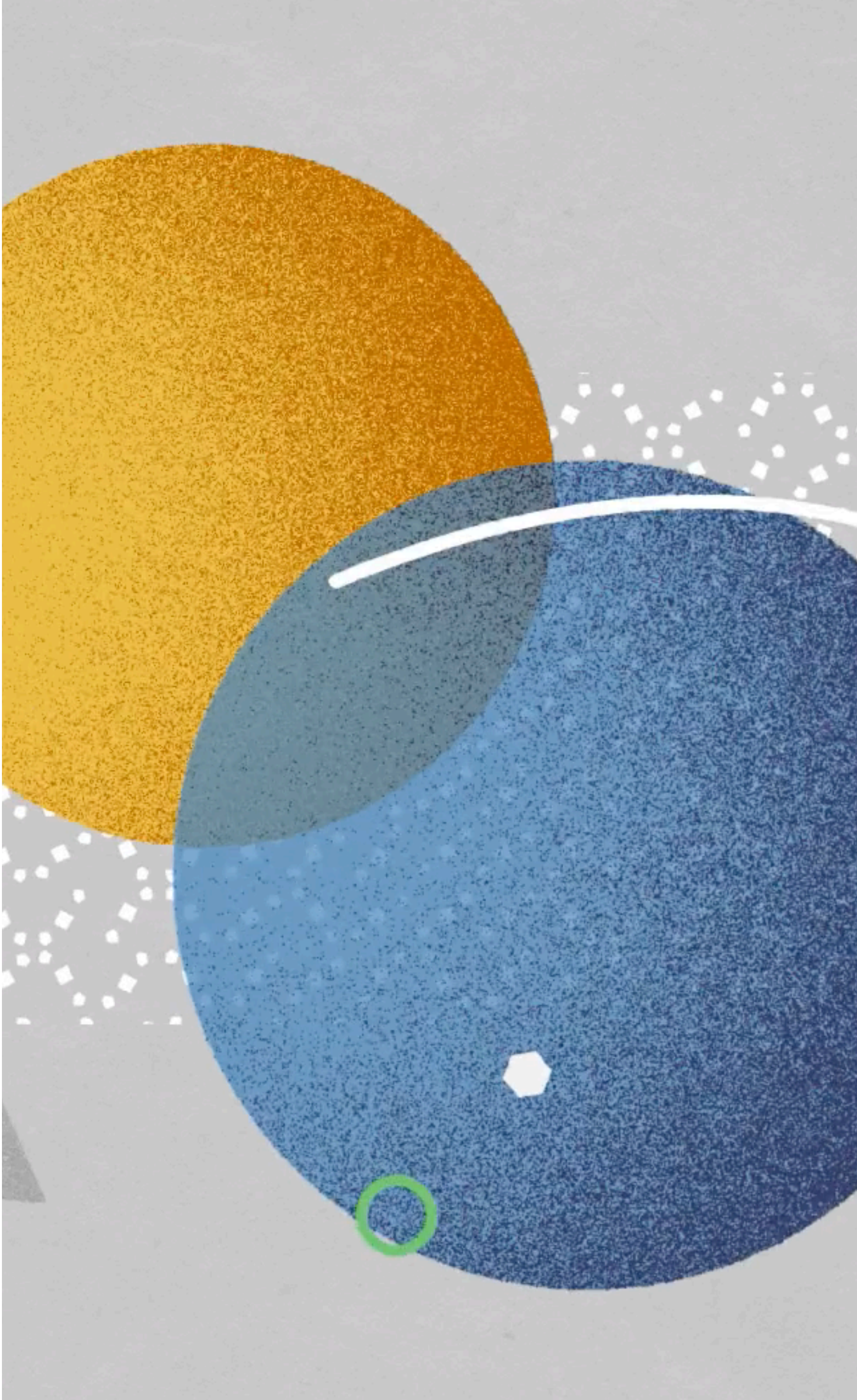
3,5 FTE

**MEMBERSHIP ORGANISATION ➤ EXPERTISE POOLING**





# AEPO-ARTIS





# FOCUS OF ACTIVITIES

## EUROPEAN

EP - COMMISSION - COUNCIL

## INTERNATIONAL

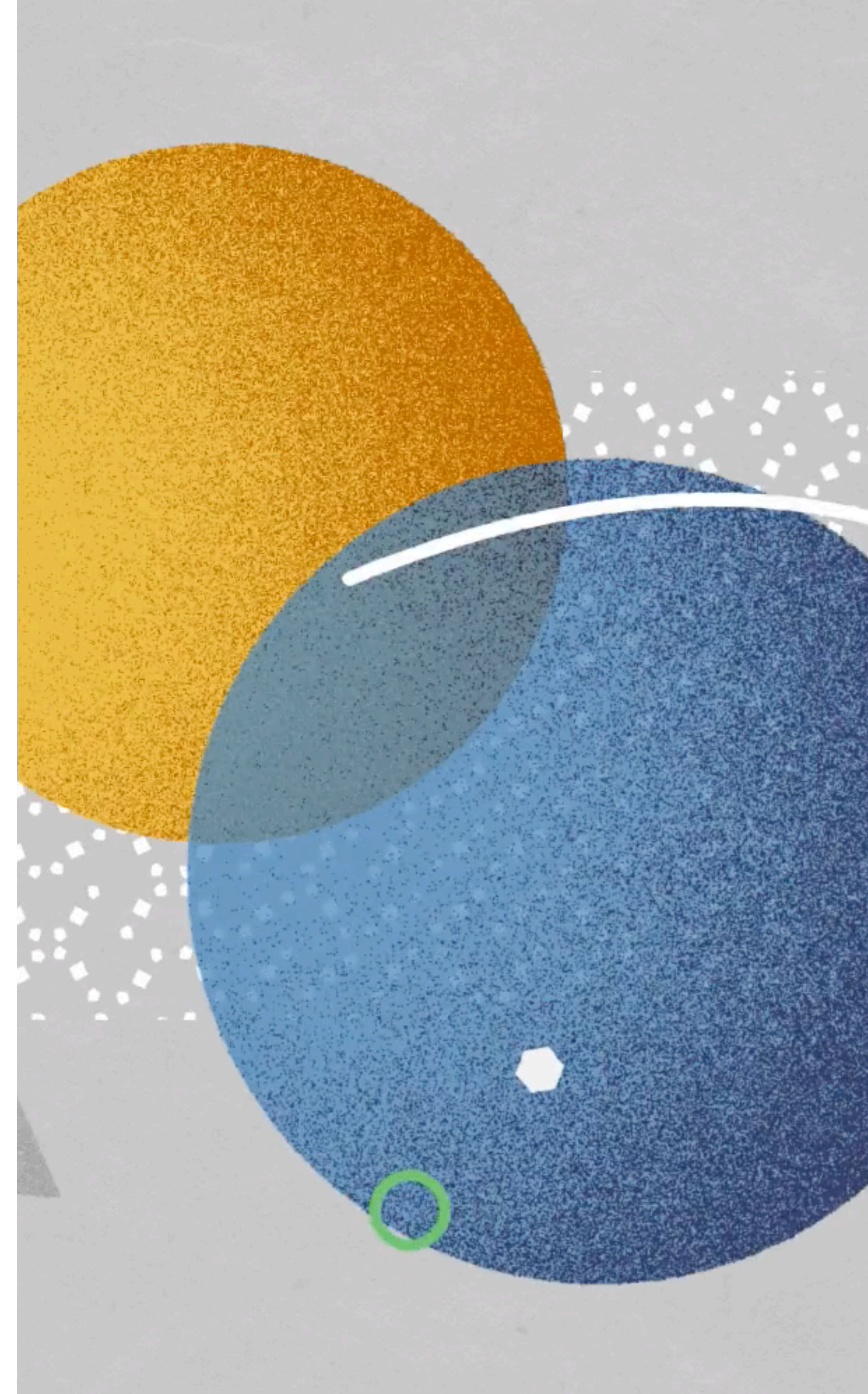
WIPO, WTO

## NATIONAL

GOVERNMENTS, IPO'S

## INDUSTRY

STAKEHOLDERS

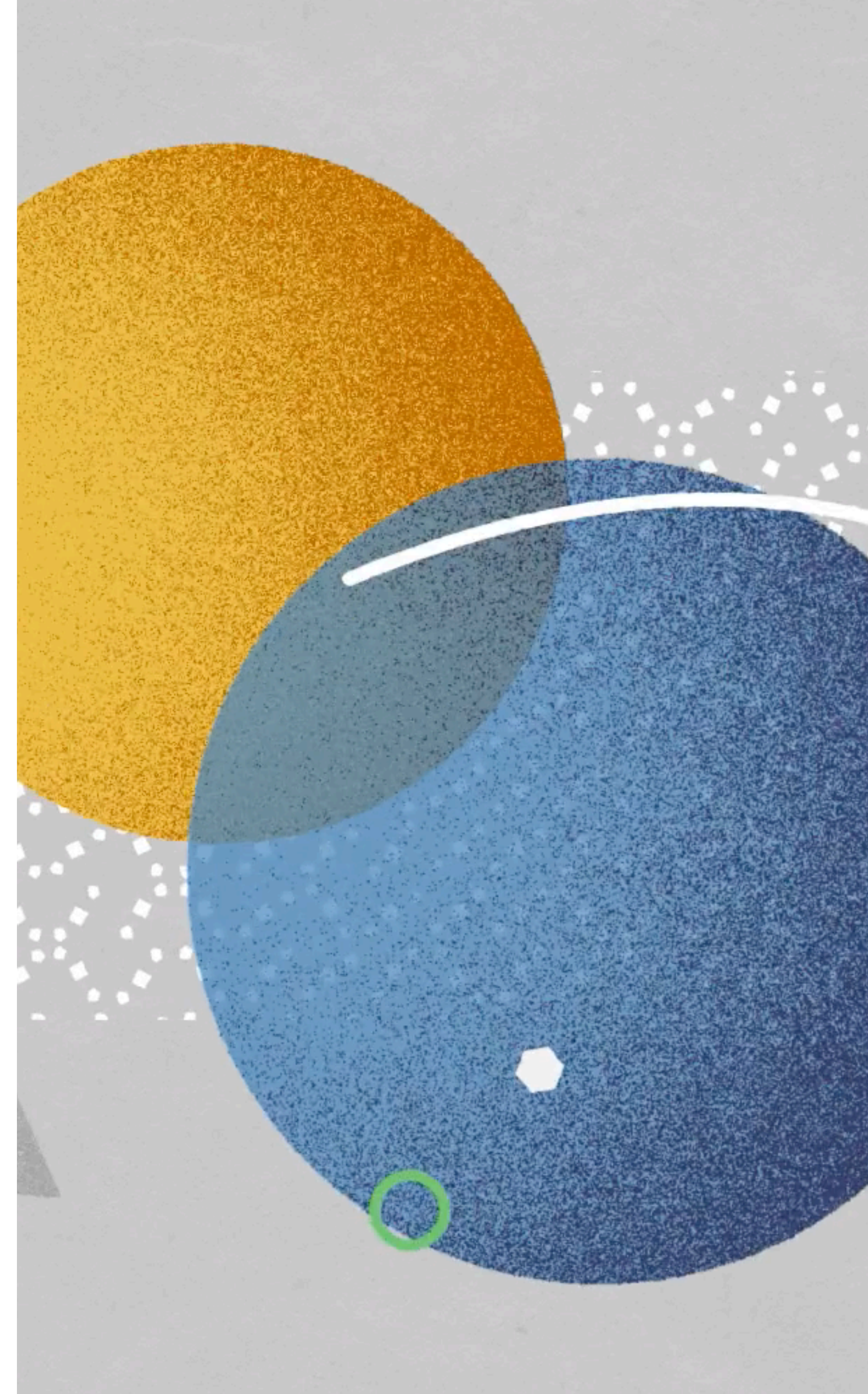




# TRENDING AUDIOVISUAL TOPICS

## IMPLEMENTATION COPYRIGHT DIRECTIVE

- ADOPTED IN APRIL 2019
  - IMPLEMENTATION DEADLINE JUNE 2021
  - STATUS = 9/27
  - FOCUS ON
    - \* ART. 17 (UGC PLATFORMS)
    - \* ART. 18 (APPROPRIATE AND PROPORTIONATE REMUNERATION)
    - \* ART. 19-22 (TRANSPARENCY AND CONTRACT ADJUSTMENTS)
- ENSURING THAT ONLINE EXPLOITATIONS LEAD TO FAIR REMUNERATION FOR PERFORMERS



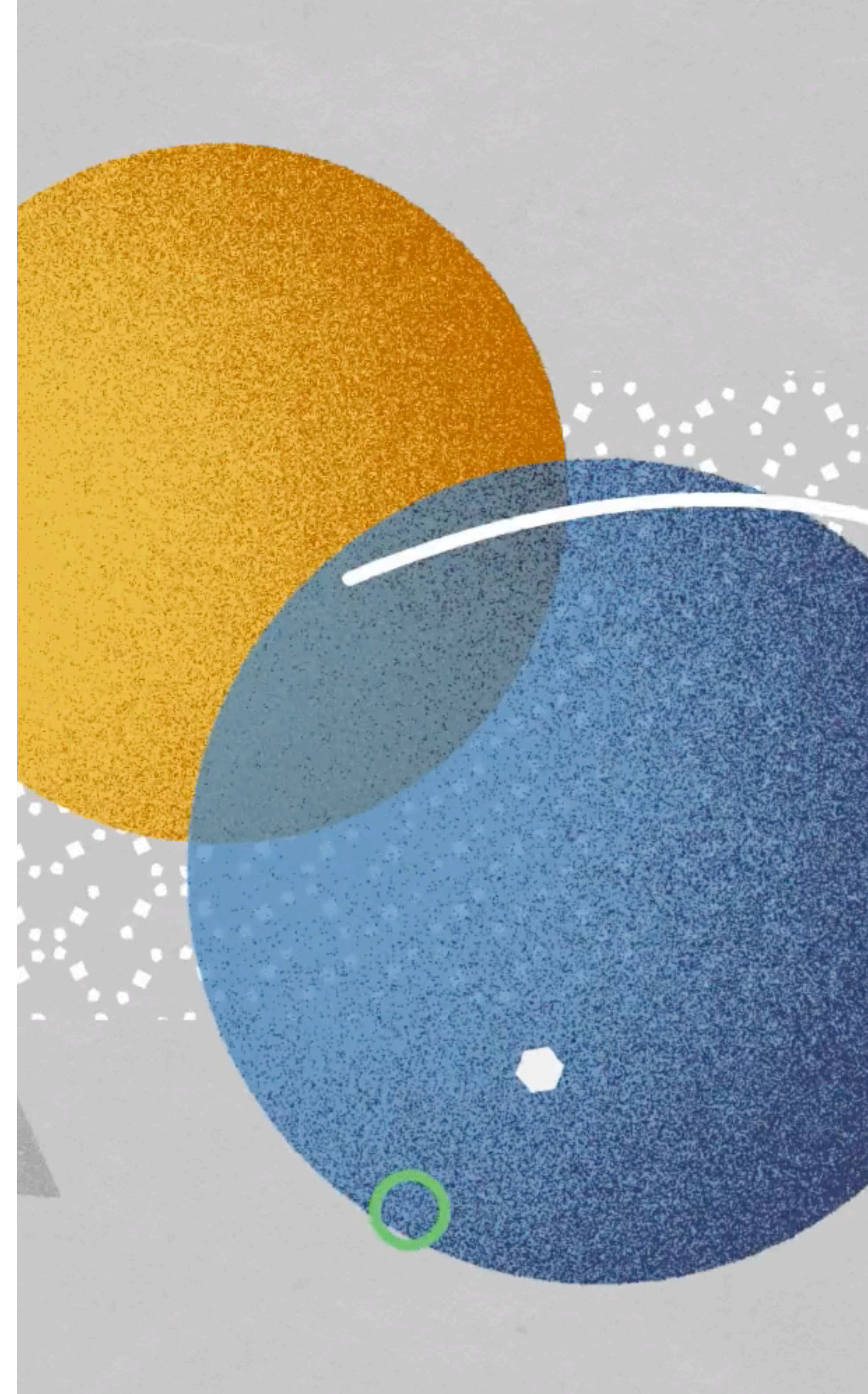


# TRENDING AUDIOVISUAL TOPICS

## IMPLEMENTATION SATCAB 2.0 DIRECTIVE

- ADOPTED IN APRIL 2019
- IMPLEMENTATION DEADLINE JUNE 2021
- STATUS = 11/27
  
- FOCUS ON
  - \* ART. 2 (DEFINITIONS)
  - \* ART. 4 (EQUAL TREATMENT RETRANSMISSION)
  - \* ART. 8 (EQUAL TREATMENT DIRECT INJECTION)

➤ **ENSURING THAT NEW DISTRIBUTION TECHNOLOGIES ARE NOT RESULTING IN NEW PAYMENT SCHEMES THAT CUT OUT PERFORMERS**



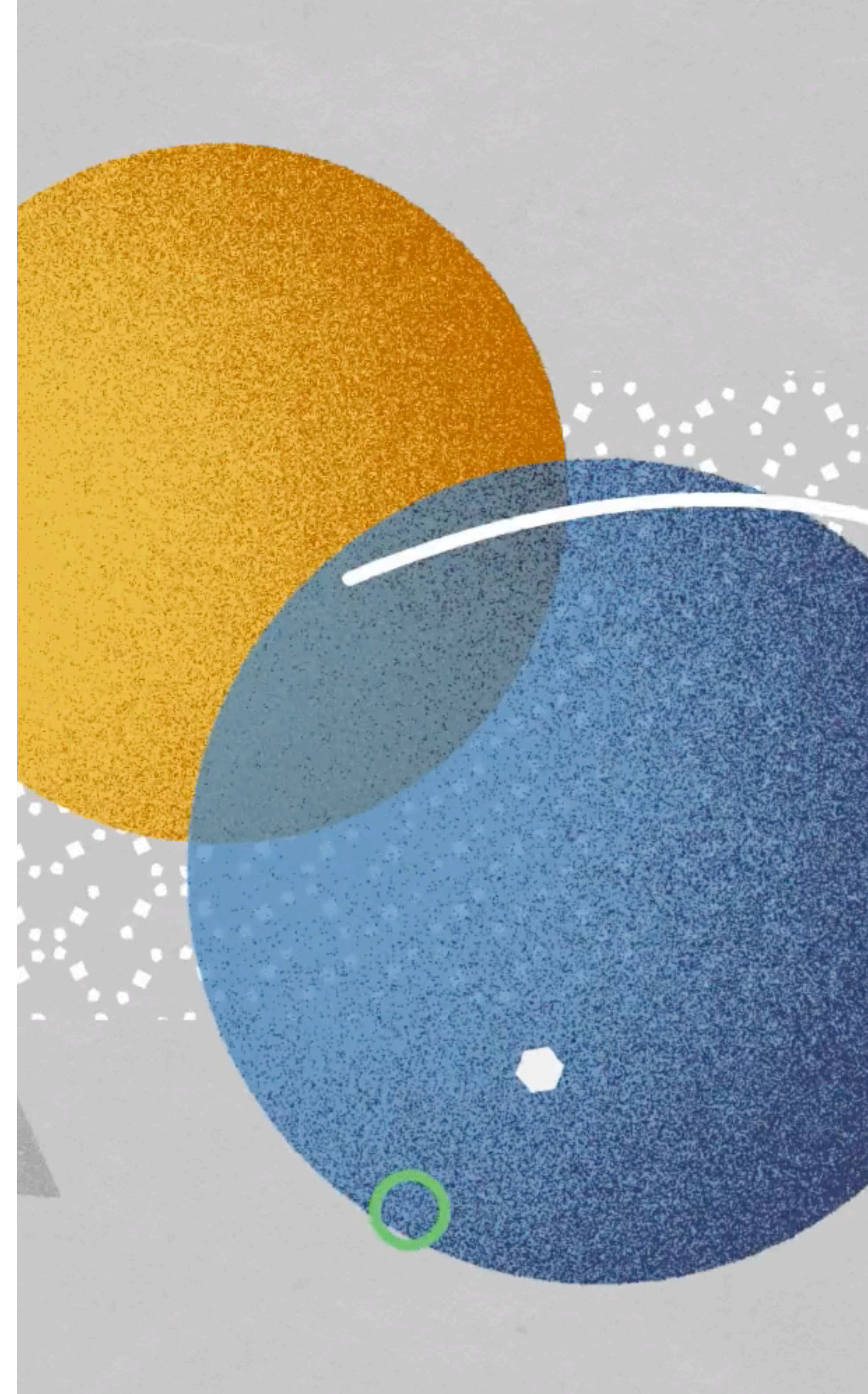


# TRENDING AUDIOVISUAL TOPICS

## IMPLEMENTATION DSM DIRECTIVES

### RESOLUTION ON THE SITUATION OF THE ARTIST (20/10/2021)

THE EP "CALLS ON THE MEMBER STATES TO TRANSPOSE DIRECTIVE (EU) 2019/790 ON COPYRIGHT IN THE DIGITAL SINGLE MARKET, WITH A STRONG FOCUS ON THE PROTECTION OF CULTURAL AND CREATIVE WORKS AND THOSE CREATING THEM, AND, IN PARTICULAR, TO **GUARANTEE FAIR, APPROPRIATE AND PROPORTIONATE REMUNERATION FOR AUTHORS AND PERFORMERS**; CALLS ON THE COMMISSION TO CLOSELY MONITOR THE EFFECTIVE IMPLEMENTATION OF THESE KEY PRINCIPLES."



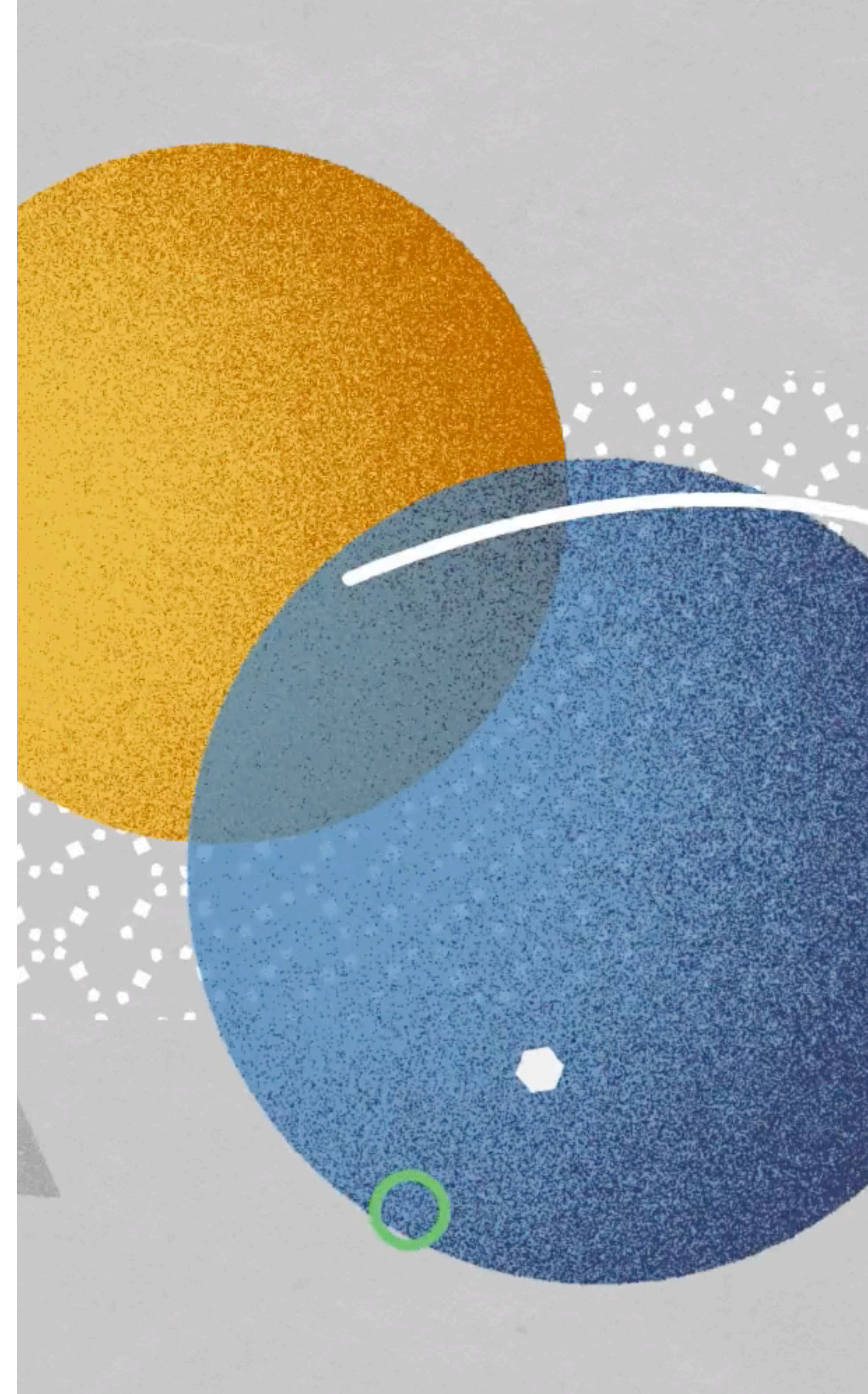


# TRENDING AUDIOVISUAL TOPICS

## IMPLEMENTATION DSM DIRECTIVES

### RESOLUTION ON THE SITUATION OF THE ARTIST (20/10/2021)

THE EP "REGRETS THE FACT THAT THE NATIONAL TRANSPOSITION OF DIRECTIVES 2019/790 AND 2019/789 IS SOMEWHAT DELAYED, WHILE ONLY A FEW MEMBER STATES HAVE SEIZED THE OPPORTUNITY PROVIDED BY **ARTICLE 18** TO IMPLEMENT **APPROPRIATE REMUNERATION MECHANISMS**; URGES THE MEMBER STATES TO TRANSLATE ARTICLE 18 OF DIRECTIVE 2019/790 INTO **EFFECTIVE** REMUNERATION MECHANISMS."





# TRENDING AUDIOVISUAL TOPICS

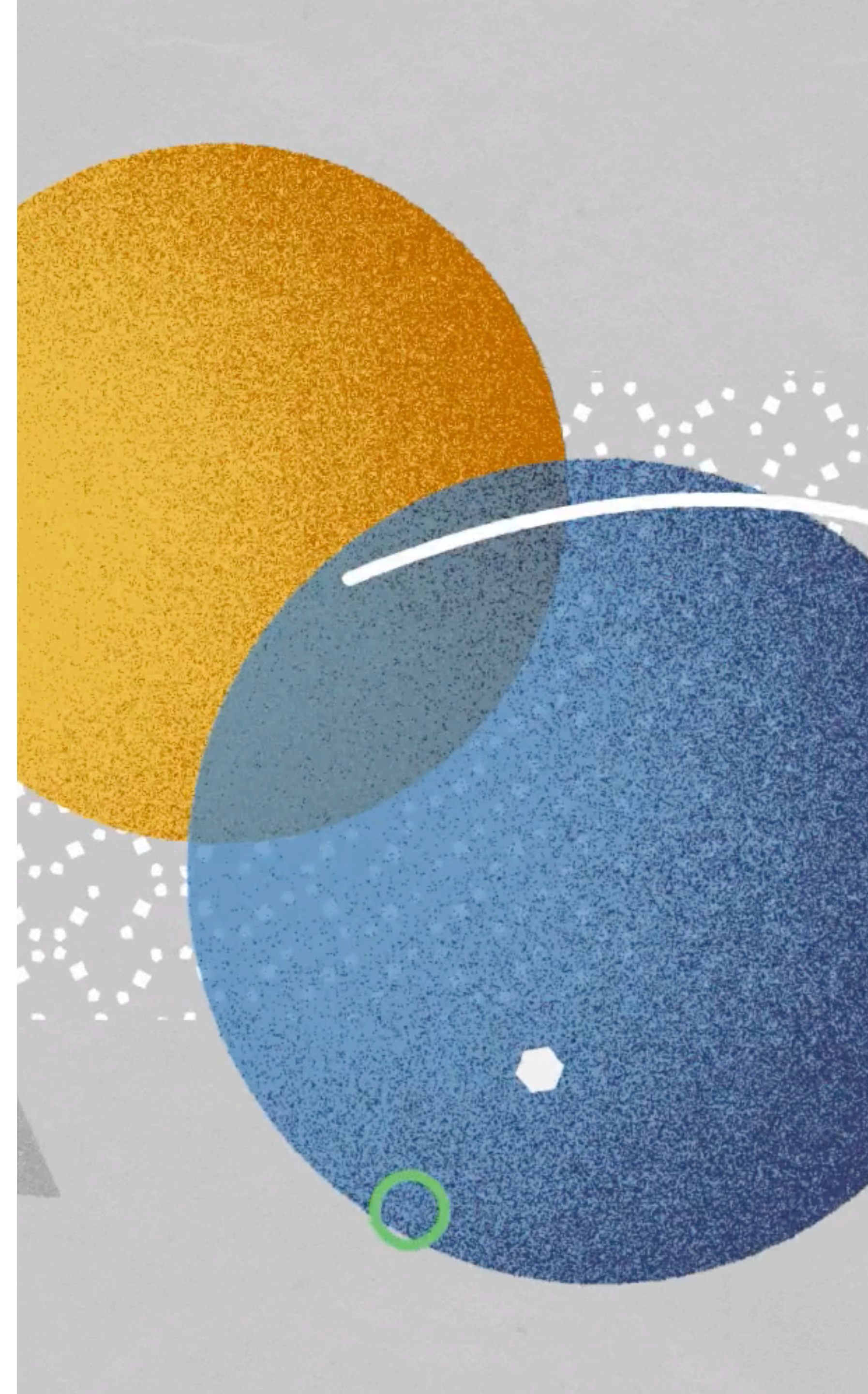
## IMPLEMENTATION DSM DIRECTIVES

### RESOLUTION ON EUROPE'S MEDIA IN THE DIGITAL DECADE (20/10/2021)

THE EP "CALLS ON THE MEMBER STATES TO **URGENTLY TRANSPOSE ARTICLE 18** OF THE COPYRIGHT DIRECTIVE AND TO ESTABLISH REMUNERATION **MECHANISMS** THAT WILL GENERATE **APPROPRIATE AND PROPORTIONATE REMUNERATION** FOR AUTHORS **AND PERFORMERS** FOR THE USE OF THEIR WORKS AND PERFORMANCES ON ALL MEDIA, IN PARTICULAR ONLINE MEDIA"

THE EP "URGES THE COMMISSION TO CONDUCT **A STUDY ON THE IMPACT OF VOD SERVICES** ON THE EUROPEAN FILM AND AUDIOVISUAL MARKET, IN PARTICULAR ON THE RELATIONSHIPS BETWEEN THE DIFFERENT ACTORS IN THE VALUE CHAIN AND TO TAKE TANGIBLE STEPS TO PREVENT POTENTIALLY COERCIVE PRACTICES THAT CAN HAMPER CREATORS FROM ENJOYING ADEQUATE AND PROPORTIONATE REMUNERATION;

THE EP "IS CONCERNED ABOUT THE SYSTEM OF WORK-FOR-HIRE AND **BUY-OUT CONTRACTS**"





# TRENDING AUDIOVISUAL TOPICS

## IMPLEMENTATION COPYRIGHT DIRECTIVE

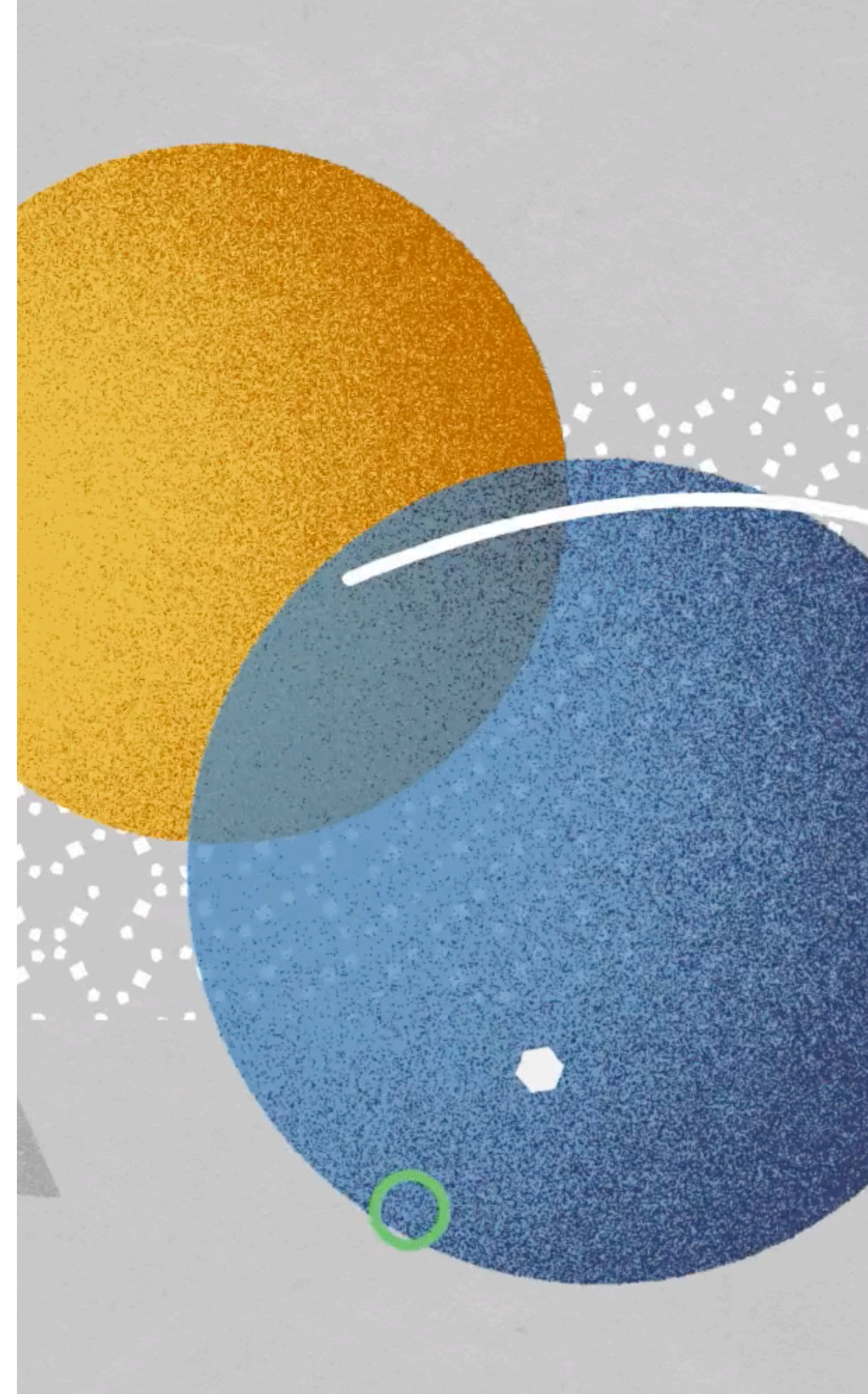
### UK DCMS - RECOMMENDATIONS AND RESPONSES

**RECOMMENDATION 4:** WE RECOMMEND THAT THE GOVERNMENT ADDRESSES THESE INCONSISTENCIES AND INCONGRUITIES BY EXPLORING WAYS TO PROVIDE PERFORMERS WITH A RIGHT TO EQUITABLE REMUNERATION WHEN MUSIC IS CONSUMED BY DIGITAL MEANS.

**RECOMMENDATION 6:** WE RECOMMEND THAT THE GOVERNMENT LEGISLATE SO THAT PERFORMERS ENJOY THE RIGHT TO EQUITABLE REMUNERATION FOR STREAMING INCOME.

- REFERRAL TO THE UK COMPETITION AUTHORITY RE DOMINANCE OF MAJORS.
- EQUIVALENTS TO EU DIRECTIVE TRANSPARENCY OBLIGATIONS.
- EQUIVALENTS TO EU DIRECTIVE ART. 17.
- MINIMUM VIABLE DATA STANDARD ('CREDIT'S DUE').

**DRAFT BILL FOR ER (KEVIN BRENNAN) - IN FRONT OF UK PARLIAMENT DECEMBER 13TH**





# 2022 CHALLENGES

**DSM DIRECTIVES *AFTER* IMPLEMENTATION**

MONITORING - STUDIES ON MIXED MODELS

**BEIJING TREATY**

OFFICIAL EVALUATION BY EU COMMISSION

**TERM EXTENSION DIRECTIVE**

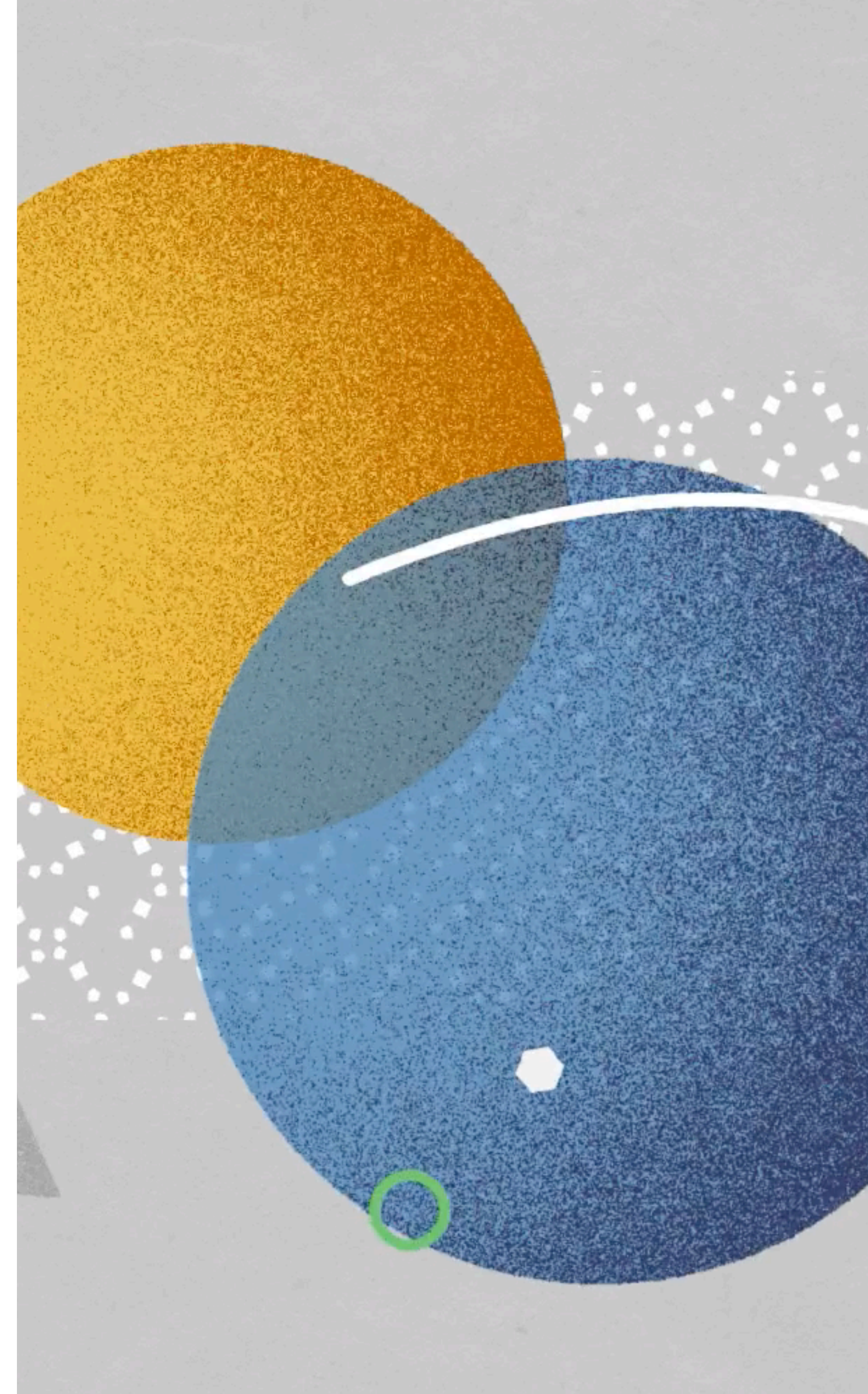
OFFICIAL EVALUATION BY EU COMMISSION

**COLLECTIVE MANAGEMENT DIRECTIVE**

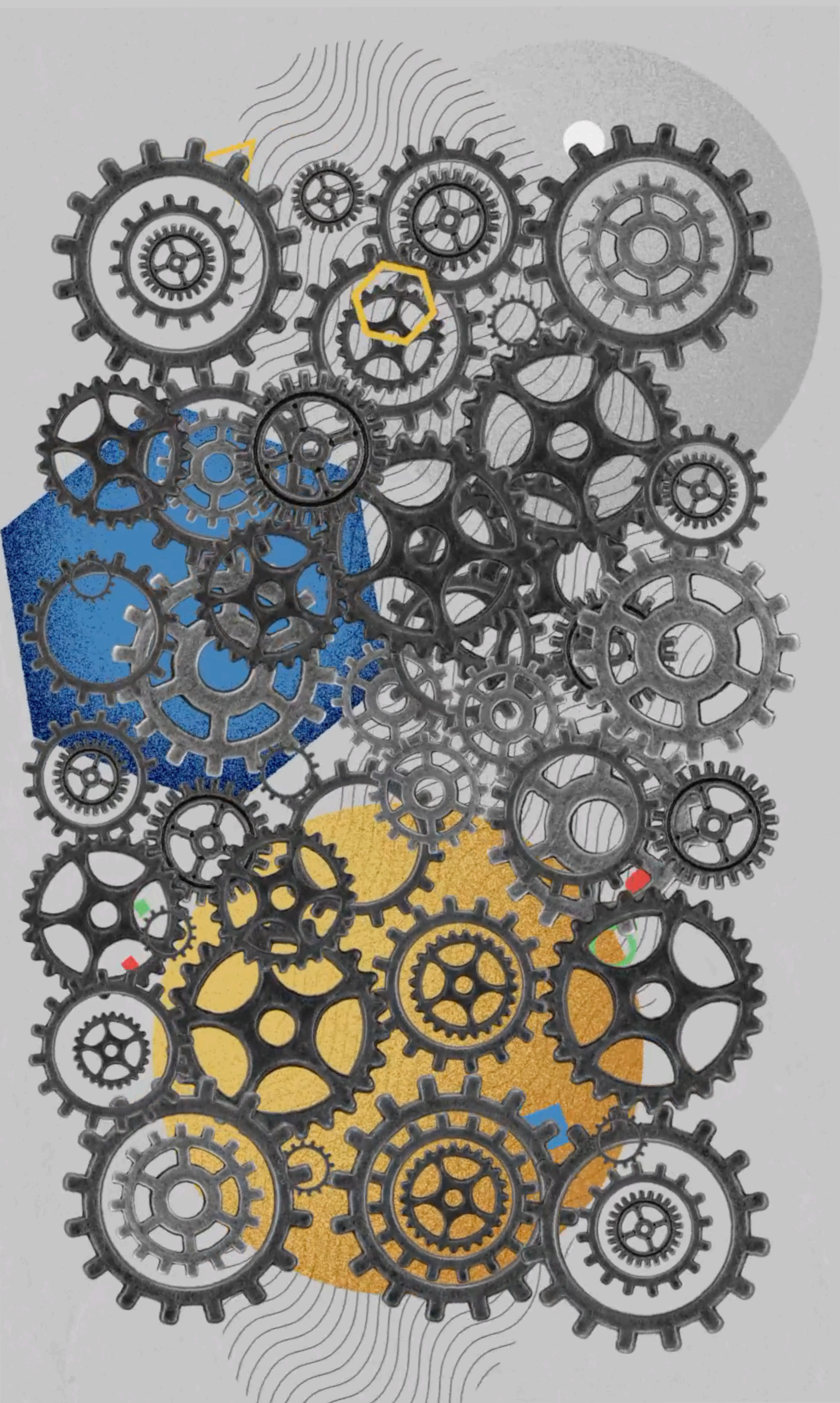
OFFICIAL EVALUATION BY EU COMMISSION

**DATA STANDARDS**

MAKE THE STANDARDS







**IOAN KAES**  
GENERAL-SECRETARY

**A E P O / A R T I S**

[www.aepo-artis.org](http://www.aepo-artis.org)

[www.linkedin.com/company/aepoartis](http://www.linkedin.com/company/aepoartis)

**AVENUE DE CORTENBERGH 116**

**1000 BRUSSELS - BELGIUM**





# WHAT PAYMENTS DO AV PERFORMERS RECEIVE?

---

## UNDER CONTRACT

- Initial Fee
- Subsequent Payments
  - % of original fee
  - % of fee producer received from licensing

## FROM BECS\*

- Private Copy Levies
- Equitable Remuneration
  - Broadcasting & Comm to Public
  - Public Performance
  - Making Available on Demand

\* Worldwide where BECS has a representation agreement



# COUNTRIES WHERE BECS HAS AN ACTIVE AGREEMENT WITH THE PERFORMERS' CMO

---



Belgium

Netherlands

Chile

Norway

Colombia

Portugal

Denmark

Romania

France

Spain

Germany

Sweden

Hungary

Switzerland

Italy



# WHY NOT THE USA?

---

SAG/AFTRA agreement:

- All rights assigned to producer
- No quit clause
- No equitable remuneration collected in the US for performers





# WHY PROTECT PERFORMERS IN STATUTE?

# WHY NOT JUST LEAVE IT TO CONTRACT?

Performers have a weaker bargaining position

Valuation during contract negotiations not linked to end value of product

Buy-outs are common for an initial period of several years, for a sum unrelated to success of production

No protection against unauthorised usage

Hard to police and enforce payments due from individual producers (no transparency)

The UK collectively bargained agreement is not legally binding and producers can elect not to use it



<u>Article 7:</u>	Right of Reproduction
<u>Article 8:</u>	Right of Distribution
<u>Article 9:</u>	Right of Rental
<u>Article 10:</u>	Right of Making Available of Fixed Performances
<u>Article 11:</u>	Right of Broadcasting and Communication to the Public

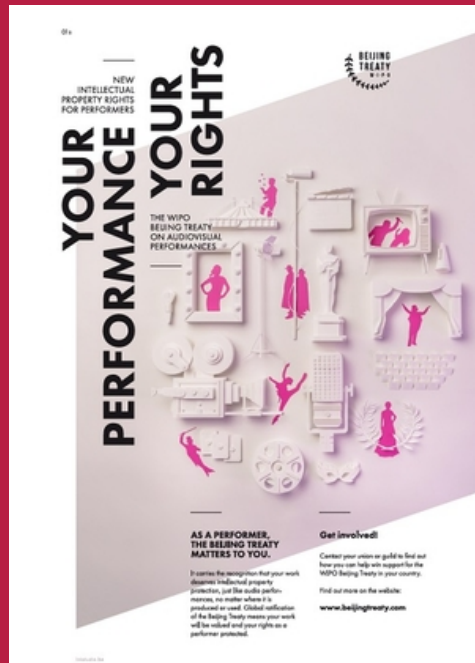
**BEIJING TREATY  
ON  
AUDIOVISUAL  
PERFORMANCES  
BEIJING, ON JUNE  
24, 2012**

---



# BEIJING TREATY ON AUDIOVISUAL PERFORMANCES BEIJING, ON JUNE 24, 2012

- **Article 11**
- **Right of Broadcasting and Communication to the Public**
- Options:
  - Exclusive rights;
  - Right to equitable remuneration;
  - Neither of the above.





## **BEIJING CAN IMPROVE THE SITUATION OF AUDIOVISUAL PERFORMERS**

**BUT**

- Only if ratified – so far 43 countries have acceded to or ratified the Treaty.

**AND**

If implemented into national legislation in a way that supports performers.





---

For more details about **BECS** see:

► [www.becs.org.uk](http://www.becs.org.uk)



► **@BECS\_Performers**

