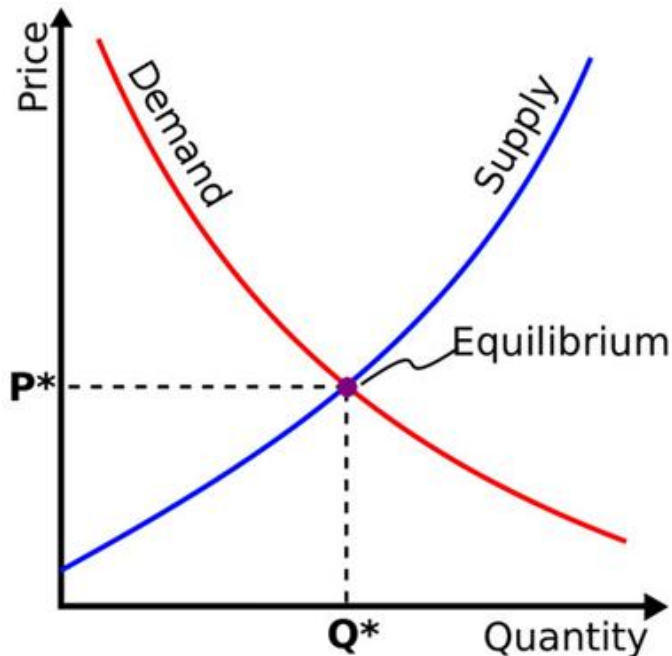


Copyright Contract Law in the DSM-directive

Dirk Visser

Leiden University

Visser Schaap & Kreijger



1. Ex post adjustment of individual contracts
2. Collective bargaining agreements
3. Mandatory collective management

Article 18

Authors and performers

shall receive

appropriate and proportionate remuneration

??

Lump sum or royalty?

“any contractual provision that prevents compliance shall be unenforceable” (article 23)

Article 20

**‘Bestseller Paragraph’
‘Contract adjustment mechanism’**

Authors and performers

shall receive

additional, **appropriate and fair** remuneration

when the remuneration originally agreed turns out to be

disproportionately low

compared to all the **subsequent** relevant **revenues** derived from the exploitation of the works or performances.

Lump sum or royalty?

??

*“any contractual provision that prevents compliance shall be unenforceable”
(article 23)*

??

“We have no indications that suggest that the judiciary is unable to interpret appropriateness and fairness in such a way that it does justice to the general feeling about appropriateness and fairness”

Dutch Ministry of Justice in answer to questions in parliament on the vagueness of ‘appropriate and fair compensation’ in copyright contract law on 22 May 2013

- ECLI:NL:RBAMS:2019:8099



€ ~~42~~ → € 65 per photo

+50%

- ECLI:NL:RBAMS:2019:8119



€ ~~0.13~~ → € 0.21 per word

+50%



Photo: Eric Brinkhorst / ANP Source: Villamedia.nl

(for publication in a Dutch regional newspaper, “taking into account all circumstances”)

'Bestseller Paragraph'

Soof 2

Copyright Contract Law Tribunal 18 April 2018

Dutch film "Soof 2" made a profit (!)

- Screenwriter 5% → 10% royalty
+100%
- Director 7% → 12% royalty
+70%



Ex post adjustment of individual contracts



Legal uncertainty



Less investment



A shrinking pie



Less money and less employment for authors and performers

• Lengthy legal proceedings



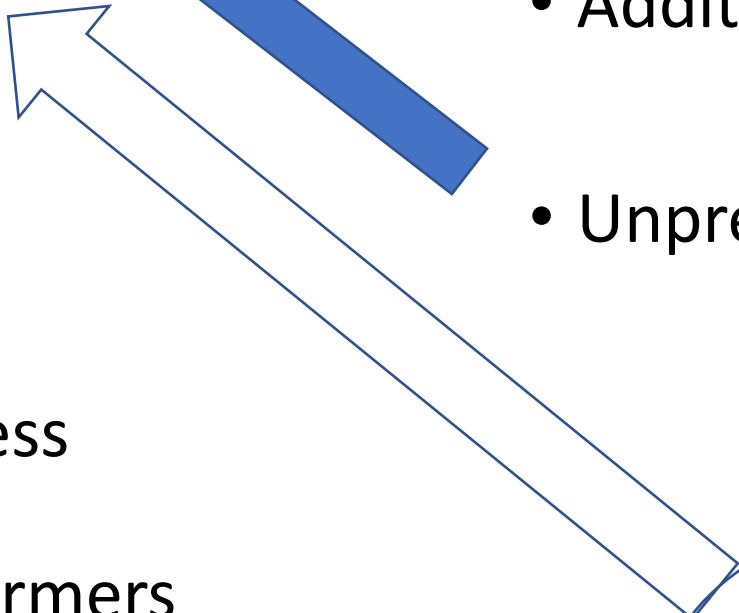
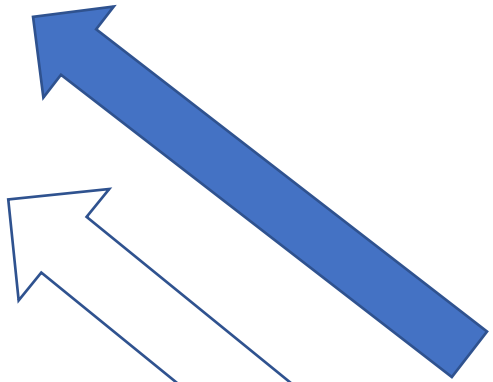
• Additional vague criteria



• Unpredictable decisions



remuneration higher than market value?



Collective bargaining agreements?

‘Guild style’ negotiations?

Permissible under EU Competition Law ??



Mandatory collective management?

- [introduced for film authors in The Netherlands in 2015]
- ‘Cable distribution style’.
- New remuneration rights in (certain kinds of) communication to the public (on top of exclusive rights).
- Exercised directly against broadcasters & VOD-platforms
- Takes all the hassle and pressure away from individual negotiations between authors and (small) producers and publishers
- Another levy > ‘levification’ of copyright

Experiences elsewhere?

Germany?

France?

Influence on investment? (by smaller EU producers)

Influence on overall income of authors and performers?

Empirical evidence?