

Copyright

What is copyright?

Who am I?

- Musician, composer
- Educator – teaches music business management and performance
- Worked for many years in international music business, president for the world composers forum (CIAM), worked for the UN organisation WIPO
- Chairperson at NORCODE

NORCODE

- NORCODE's main objective is to contribute in building the cultural infrastructure in developing countries and strengthen the situation of the rights holders.
- We aim to:
- Provide an introduction to international conventions and training and assistance in developing legislation
- Work to develop basic organizations for holders of copyright and related rights
- Support the formation of organizations for collective rights management and other organizational and technical projects which aim to strengthen right holders' interests

African
musicians
are global
megastars





INSTAGRAM



Your Story



Reminisce



Olamide



Naira Marley

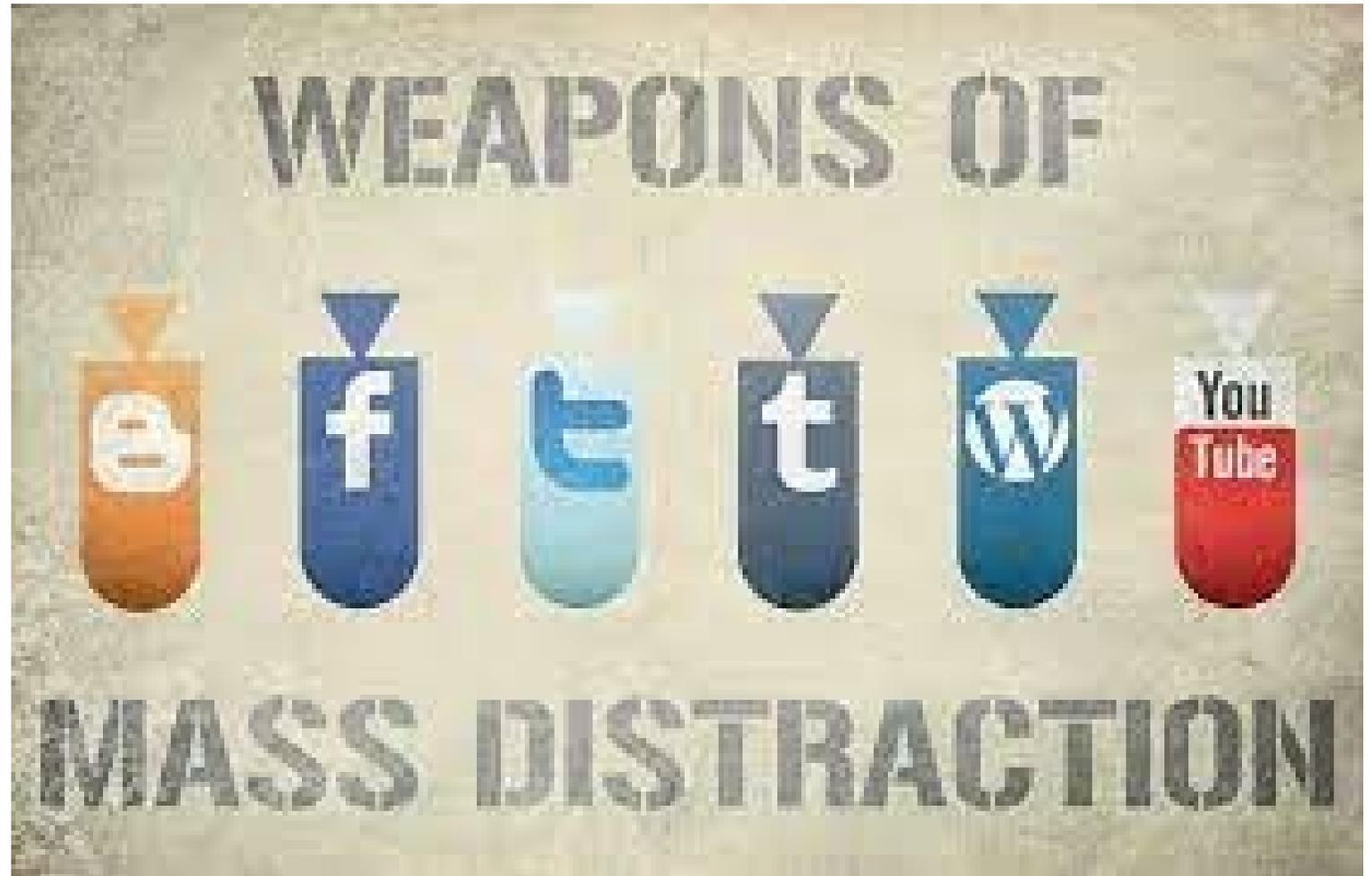


Sarz



Empowered by
social media
practices

Experts at
creating
attention



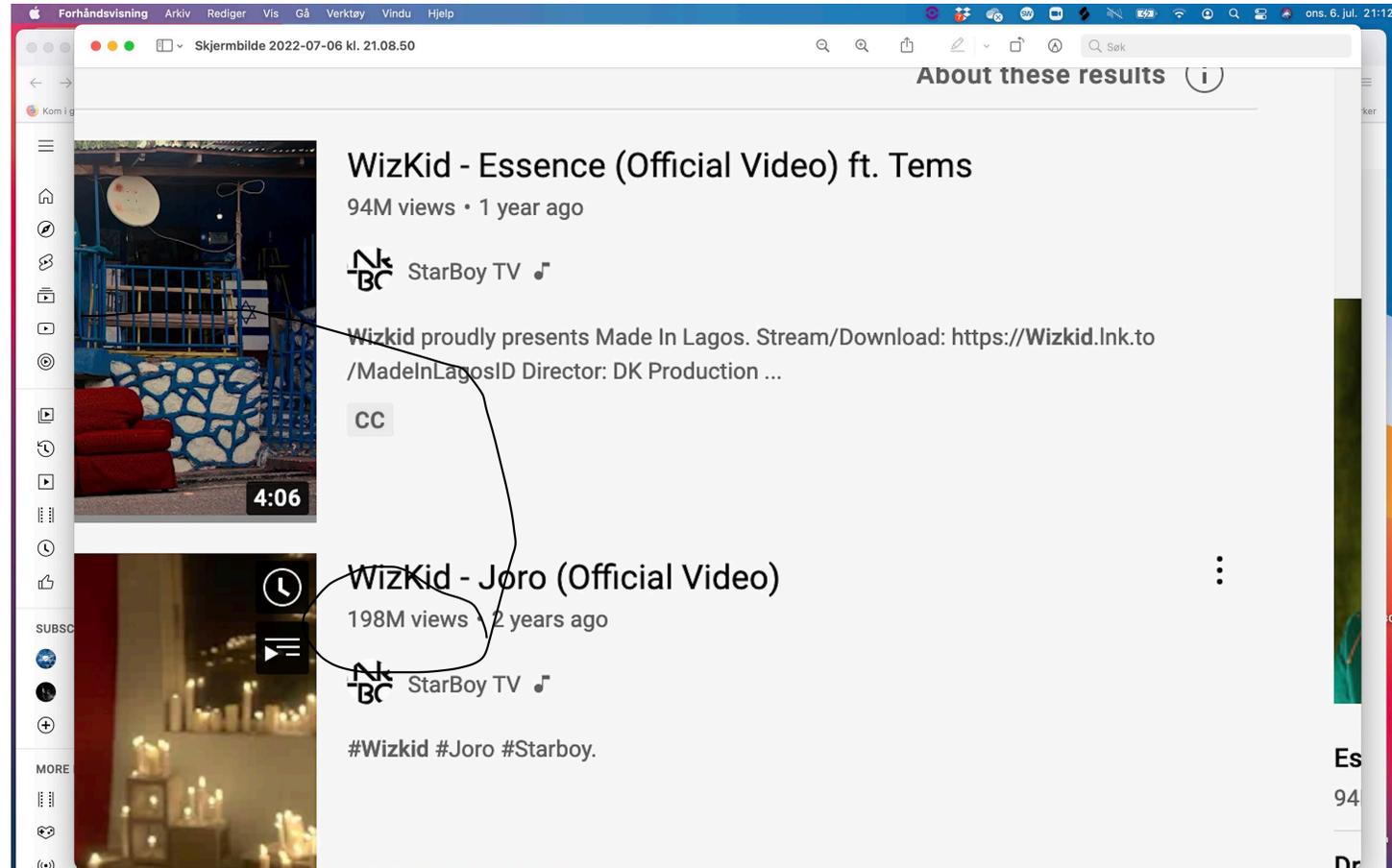


But disempowered in turns of revenue

Because the
vehicle for
bringing
money in



For turning this



The image shows a screenshot of a web browser displaying YouTube search results. The browser's address bar shows "Skjermbilde 2022-07-06 kl. 21.08.50". The page title is "About these results". Two video results are visible:

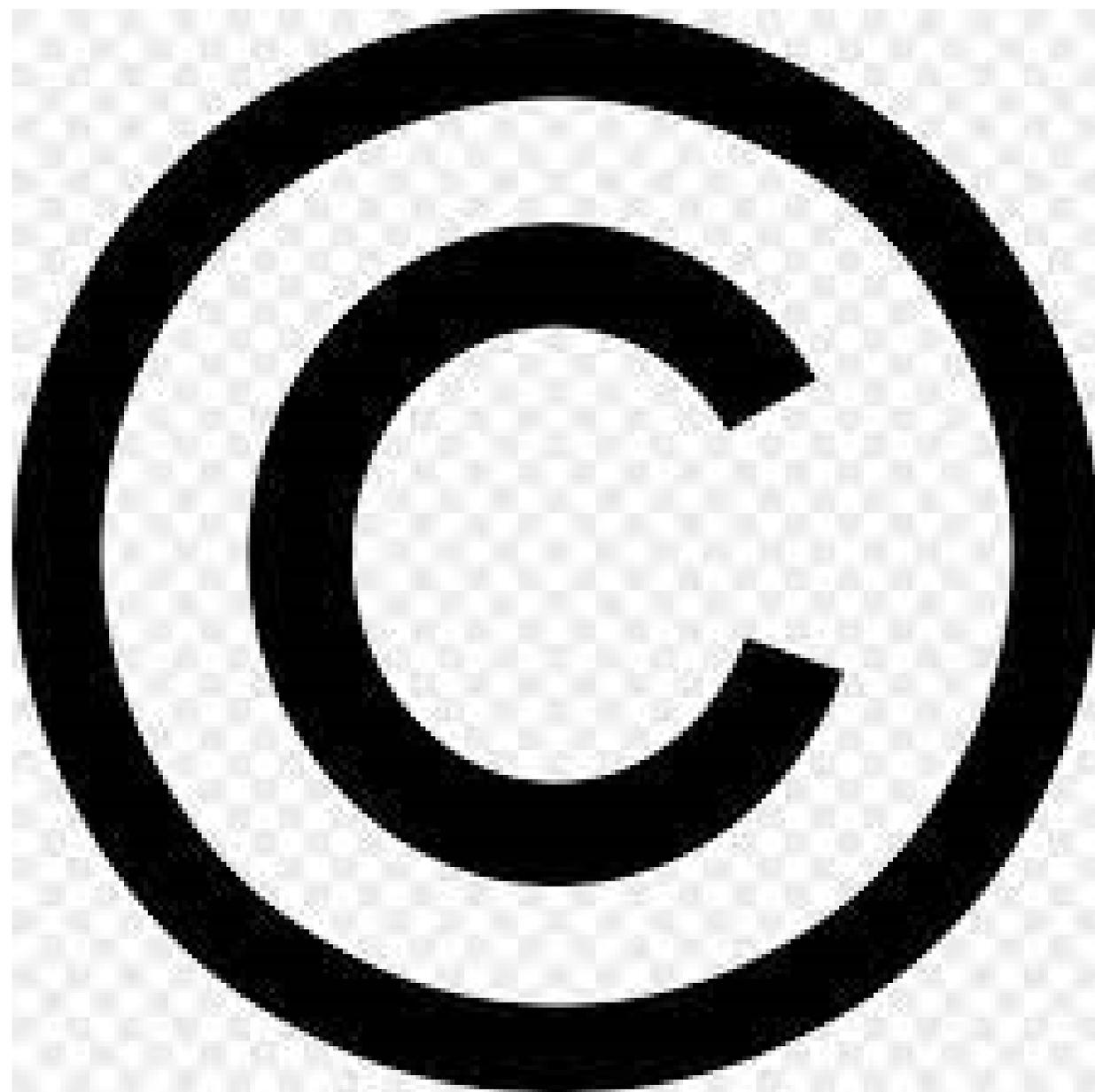
- WizKid - Essence (Official Video) ft. Tems**
94M views · 1 year ago
StarBoy TV
Wizkid proudly presents Made In Lagos. Stream/Download: <https://Wizkid.Ink.to>
/MadeInLagosID Director: DK Production ...
CC
- WizKid - Joro (Official Video)**
198M views · 2 years ago
StarBoy TV
#Wizkid #Joro #Starboy.

A hand-drawn black circle highlights the video title "WizKid - Joro (Official Video)" and its view count "198M views". A black line extends from the circle to the right, pointing towards the right edge of the screenshot.

Into this



IS:



Law

- A system of rules in order to regulate behaviour
- Enforced through social or governmental institutions
- Jean-Jacques Rosseau: The social contract: For peace, security, economical development and resolution of conflict the individual gives away some of his natural rights in order to obtain social order
- Law helps to ensure that a community shows respect and maintains equality amongst themselves
- Law is a mediator between different interest, within society or between individuals – a balancing act



Law

- State-enforced laws can be made by a collective legislature or by a single legislator, resulting in statutes, by the executive through decrees and regulations, or established by judges through precedent.
- Private individuals can create legally binding contracts, including arbitration agreements that may elect to accept alternative arbitration to the normal court process.
- The formation of laws themselves may be influenced by a constitution, written or tacit, and the rights encoded therein.
- The formation of laws may be “dictated” by binding international resolution by international bodies such as the UN (Human rights Charter, conventions) or EU law.
- The law shapes politics, economics, history and society in various ways and serves as a mediator of relations between people.

Copyright

- **Copyright** is a legal right created by the law of a country that grants the creator of an original work exclusive rights for its use and distribution for a limited time.
- The exclusive rights are not absolute but limited by limitations and exceptions to copyright law, including fair use.
- Copyright protects only the original expression of ideas, and not the underlying ideas themselves.
- Copyrights are considered *territorial rights*, which means that they do not extend beyond the territory of a specific jurisdiction.
- Typically, the duration of copyright spans the author's life plus 50 to 120 years

International - national

UN Human rights charter **Article 27.**

(2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

- EU- law. When you create an **original literary, scientific and artistic work**, such as poems, articles, films, songs or sculptures, you are protected by copyright. Nobody apart from you has the right to make the work public or reproduce it.
- These rights are then implemented into national copyright laws and national institutions.

Two important international conventions:

- Bern - creators (1886) for musical works
- Rome – performers and producers (1964) for recordings
- The custodians of these treaties are national Collective Management Organisations (CMOs) where composers, songwriters, performers and producers are members. These organisations license musical works to music users: Radio, TV, streaming, concerts, background music: everywhere where music is consumed.
- They collect around 15 billion € yearly and distribute it between members on an international basis.

Berne 1886

- The Berne Convention deals with the protection of works and the rights of their authors.
- It is based on **three basic principles** and contains a series of provisions determining the **minimum protection** to be granted, as well as special provisions available to **developing countries** that want to make use of them.

3 basic principles

1. Works originating in one of the Contracting States (that is, works the author of which is a national of such a State or works first published in such a State) must be given the same protection in each of the other Contracting States as the latter grants to the works of its own nationals (principle of "national treatment").
2. Protection must not be conditional upon compliance with any formality (principle of "automatic" protection)
3. Protection is independent of the existence of protection in the country of origin of the work (principle of "independence" of protection). If, however, a Contracting State provides for a longer term of protection than the minimum prescribed by the Convention and the work ceases to be protected in the country of origin, protection may be denied once protection in the country of origin ceases

Moral rights:

- The Convention also provides for "**moral rights**", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

Rome convention:

- secures protection in performances for performers, in phonograms for producers of phonograms and in broadcasts for broadcasting organizations.

Performers

- **Performers** (actors, singers, musicians, dancers and those who perform literary or artistic works) are protected against certain acts to which they have not consented, such as the broadcasting and communication to the public of a live performance; the fixation of the live performance; the reproduction of the fixation if the original fixation was made without the performer's consent or if the reproduction was made for purposes different from those for which consent was given.

Producers

- **Producers of phonograms** have the right to authorize or prohibit the direct or indirect reproduction of their phonograms. In the Rome Convention, “phonograms” means any exclusively aural fixation of sounds of a performance or of other sounds. Where a phonogram published for commercial purposes gives rise to secondary uses (such as broadcasting or communication to the public in any form), a single equitable remuneration must be paid by the user to the performers, to the producers of the phonograms, or to both. Contracting States are free, however, not to apply this rule or to limit its application.

Broadcasters:

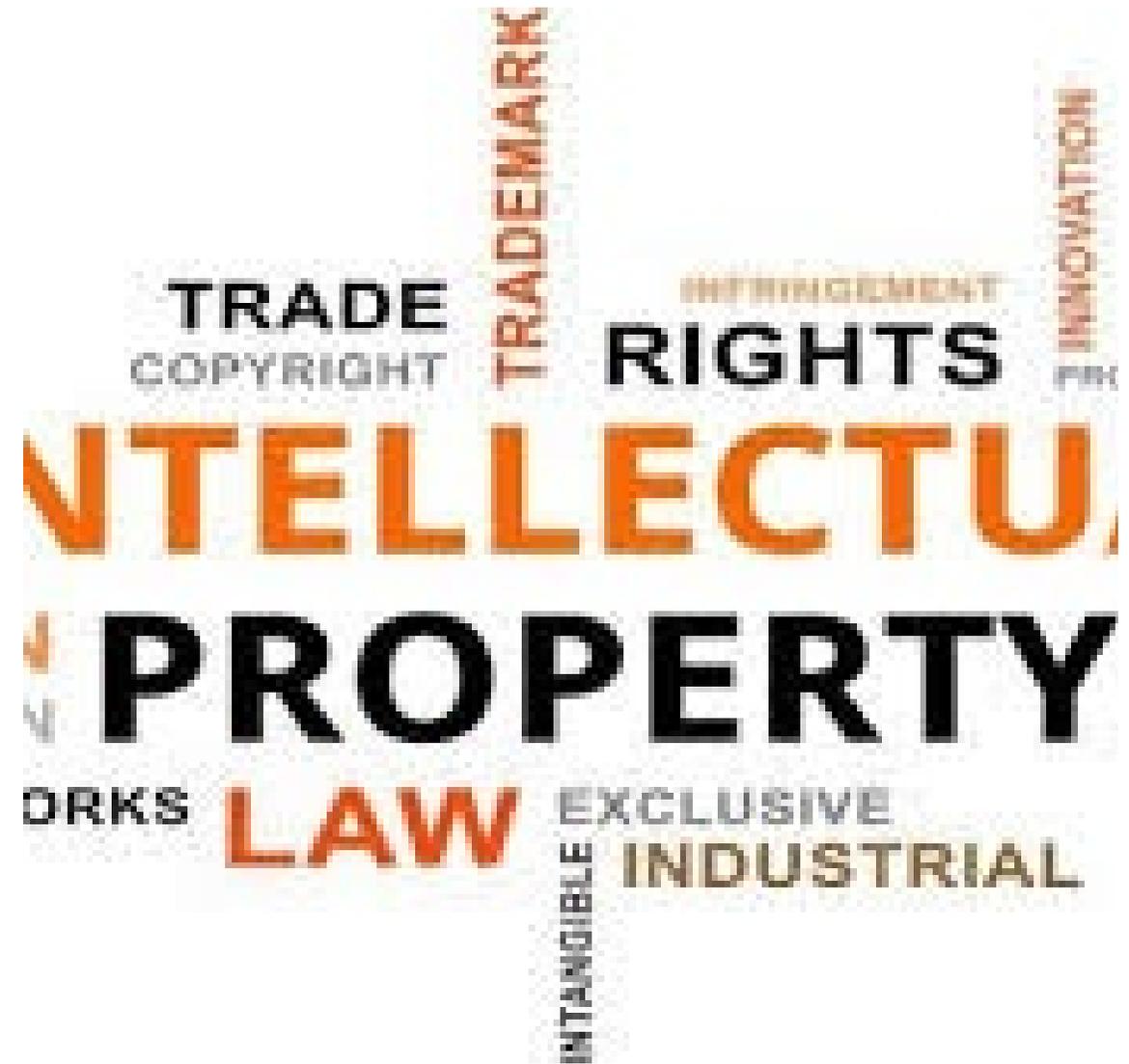
- **Broadcasting organizations** have the right to authorize or prohibit certain acts, namely the rebroadcasting of their broadcasts; the fixation of their broadcasts; the reproduction of such fixations; the communication to the public of their television broadcasts if such communication is made in places accessible to the public against payment of an entrance fee.

A family of Intellectual Property Rights

- Copyright
- Patents
- Industrial designs
- Databases
- Trade marks

Intellectual property rights

- Property rights enables the owner to derive moral but also economic value from the use of copyright-protected works.
- The management of these rights are an economic activity.
- Copyright is originally with the person who creates the work.
- The starting point is a set of exclusive rights.
- The rightsholder has the power to decide how the work can be used and by whom.
- This can be done either by individually managing the rights, individually signing agreements by users.
- Or by a collective management of rights, giving the mandate to a CMO to manage the rights on the individual rightsholder's behalf.





Why CMOs?

- Individual management might be impractical or even impossible.
- Small sums, many sources.
- In many cases, collective management is a better alternative and sometimes the only feasible way to manage rights when the works are used in high numbers by many users.
- A single rightsholder will not be granted permission to be broadcasted, be on streaming services etc.
- The protection of individual expressions of personalities managed by professionals licensing and negotiating on behalf of the many
- Gives the collective bargaining power towards big business

Communication to the public is under copyright, administered by CMOs

- Radio, TV, newspapers, public gatherings where music is used, concerts, cinemas, background music in shopping malls, cafes, streaming services
- The arrangement will have to have a commercial and public aspect in order for the rights to kick in: entrance fee, advertisements, a public space etc.
- Copyright law often gives the citizen the opportunity to make private copies in a limited number for his/her private consumption
- Music in a private party is not a communication to the public



CMOs collaborate over borders:

- Around 15 bill € yearly are collected and distributed to members of music CMOs: composers, music publishers, record labels and performers.
- Money collected in one country can go to a rightsholder in another country through reciprocal agreements.

CMOs are natural (national) monopolies

- A natural monopoly is a monopoly in an industry in which high infrastructural costs and other barriers to entry relative to the size of the market give the largest supplier in an industry, often the first supplier in a market, an overwhelming advantage over potential competitors.
- This frequently occurs in industries where capital costs predominate, creating economies of scale that are large in relation to the size of the market; examples include public utilities such as water services and electricity, railways and telecommunications.
- CMOs are often registered as private companies, foundations or co-operatives owned by the members themselves
- A “public utility” towards music-users (licensees)
- A company paying out dividends to the members

The life-cycle of a song

- **Creation** – composer, songwriter,
immaterial, intangible, a property of the mind – Berne convention – CMOs for authors and music publishers, music publishing in US terms
- Transferred to a **tangible medium** – performers and producer recording, tape, broadcast, digital manifestation – Rome Convention – CMOs for neighbouring rights or direct fees to performers and/or record label
- **Experience** – ephemeral live experience. (Berne not Rome).
Performers are paid directly, fee to composer CMO

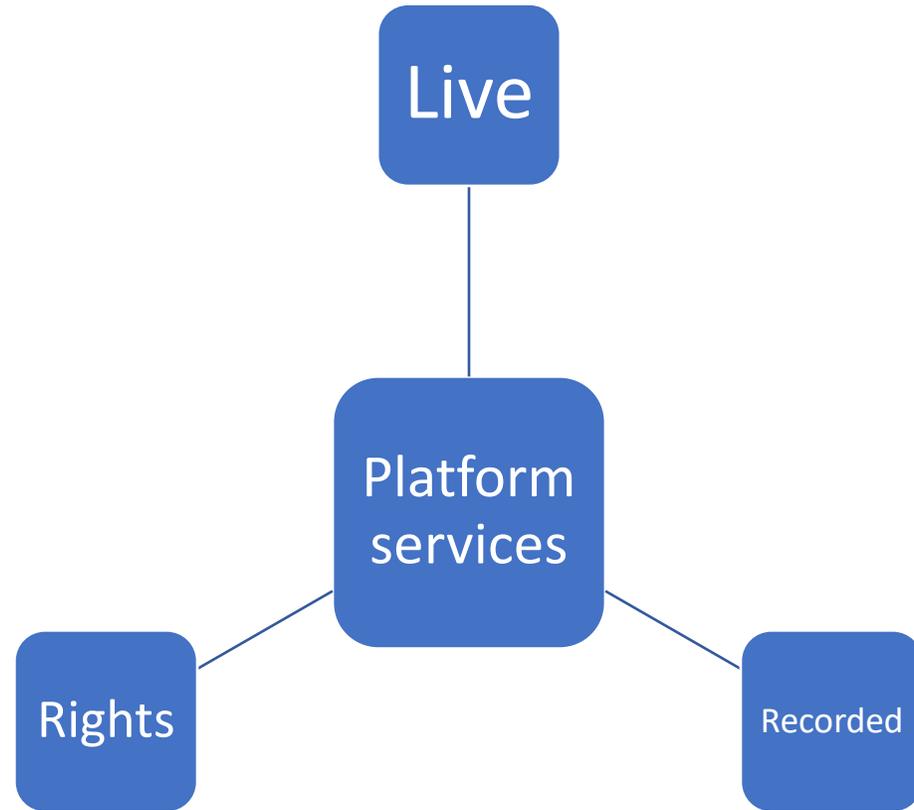
3 music industries:

Live

Rights

Recorded

Technology has swallowed all 3:





Streaming services are technology companies



The digital domain

- Everything is scalable
 - Everything is traceable
 - Everything is transparent
 - Everything can be monitored
 - Everything is under copyright
-
- If you play by the rules..

Copyright is «broken» in the digital:

- According to the Berne convention you don't have to register a work in order for it to be under protection
- But in the digital you *have* to have proper registration in order for the work to be accounted for
- So your work is protected but you are unable to claim royalties



Digital copyright infrastructure

- **Aggregation:**

takes recordings in and distributes the music to the digital service providers. (DSP's)

tags and equips the music with the appropriate meta-data

- **Monitoring:**

tracks the usage and sends reports to

- **CMOs** (Collective Management Organisations):

licenses the rights to DSPs

distributes the correct revenue to the creative community

African music suffers because

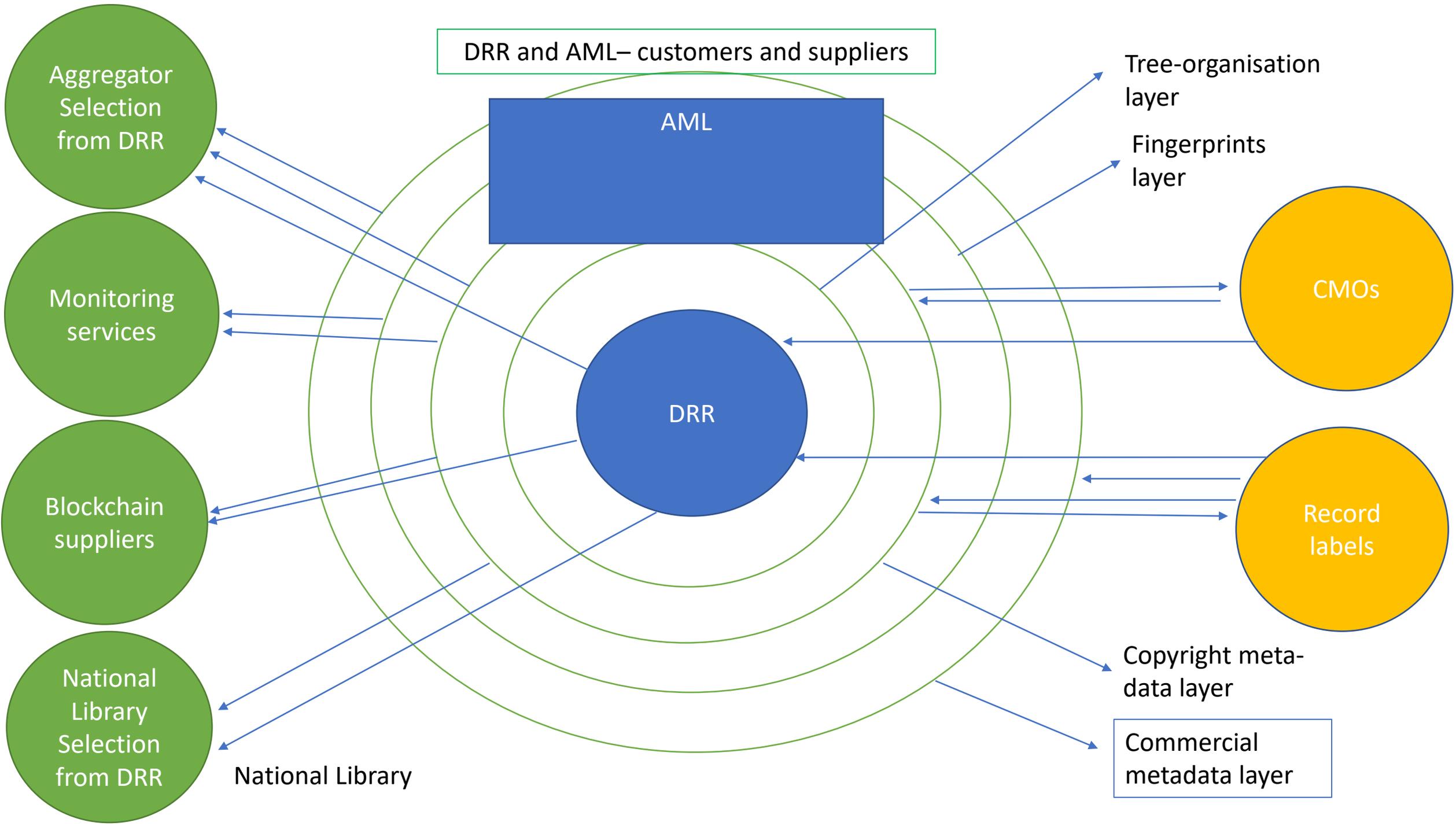
- Local aggregators are not in place. Recordings will be distributed to foreign aggregators such as Tunecore, Orchard etc. Reports are often missing, seldom received.
- Monitoring of markets are not in place because the music does not have the appropriate or correct meta-data (identifiers) in place.
- Local CMOs are not working properly
- Local CMOs are unable to license music to DSPs because they are not set up in their territory. (But accessible for consumers).

CMO in a box

- Technology developed by NORCODE in order enable African music to be properly registered, tracked and remunerated
- Ready to be deployed later this month
- Tools that simplify registration and enables true scalability
- The core of the system is a digital resource repository (DRR).
- A rightsholder

AML (automated meta-data layering) – basic functionalities:

- The DRR receives a file and automatically spins off:
 - 1) Format: MP3, Flac
 - 2) Recognize whether the file is already ingested in another version. (How?) Tree-structure of each work and the recordings related to it.
 - 3) With basic input from holders of exclusive rights automatically create: a) a full metadata set for the handling of copyrights, (Quansic) b) fingerprints for monitoring services and c) a commercial meta-dataset (vinyl, CD, release date etc) for the handling of sales (DDEX)



Metadata Modules

Copyright
Metadata

Fingerprint
Metadata

Archive
Metadata

Commercial
Metadata

Blockchain
Metadata

Linking Identifiers

C4ids

Digital Resources

DRR

Horizontal versus vertical integration:

- Horizontal integration and vertical integration are competitive strategies that companies use to consolidate their position among competitors.
- Horizontal integration is the acquisition of a related business. A company that opts for horizontal integration will take over another company that operates at the same level of the value chain in an industry.
- Vertical integration refers to the process of acquiring business operations within the same production vertical. A company that opts for vertical integration takes complete control over one or more stages in the production or distribution of a product.

Horizontal versus vertical

- Horizontal deals with market shares – mergers. 5 big majors become 3. Universal has 32.1 % market share of the recorded music business – can not become much larger
- Vertical deals with value chains – Warner owns «content» providers – movies, films, but also magazines, newspapers and TV stations that market these products.
- Legal conditions apply to both and combinations of both.
- US – Anti-trust laws.
- EU – competition laws.

Minimum standards of protection

- relate to the works and rights to be protected, and to the duration of protection:
- As to works, protection must include "every production in the literary, scientific and artistic domain, whatever the mode or form of its expression" (Article 2(1) of the Convention).

Exclusive rights:

- Subject to certain allowed reservations, limitations or exceptions, the following are among the **rights** that must be recognized as exclusive rights of authorization:
 - **the right to translate,**
 - **the right to make adaptations and arrangements** of the work,
 - **the right to perform in public** dramatic, dramatico-musical and musical works,
 - **the right to recite** literary works in **public,**
 - **the right to communicate to the public** the performance of such works,
 - **the right to broadcast** (with the possibility that a Contracting State may provide for a mere right to equitable remuneration instead of a right of authorization),
 - **the right to make reproductions** in any manner or form (with the possibility that a Contracting State may permit, in certain special cases, reproduction without authorization, provided that the reproduction does not conflict with the normal exploitation of the work and does not unreasonably prejudice the legitimate interests of the author; and the possibility that a Contracting State may provide, in the case of sound recordings of musical works, for a right to equitable remuneration),
 - **the right to use the work as a basis for an audiovisual work,** and the right to reproduce, distribute, perform in public or communicate to the public that audiovisual work

Moral rights:

- The Convention also provides for "**moral rights**", that is, the right to claim authorship of the work and the right to object to any mutilation, deformation or other modification of, or other derogatory action in relation to, the work that would be prejudicial to the author's honor or reputation.

Duration:

- As to the **duration** of protection, the general rule is that protection must be granted until the expiration of the 50th year after the author's death. There are, however, exceptions to this general rule. In the case of anonymous or pseudonymous works, the term of protection expires 50 years after the work has been lawfully made available to the public, except if the pseudonym leaves no doubt as to the author's identity or if the author discloses his or her identity during that period; in the latter case, the general rule applies. In the case of audiovisual (cinematographic) works, the minimum term of protection is 50 years after the making available of the work to the public ("release") or – failing such an event – from the creation of the work. In the case of works of applied art and photographic works, the minimum term is 25 years from the creation of the work

Limitations:

- The Berne Convention allows certain limitations and exceptions on economic rights, that is, cases in which protected works may be used without the authorization of the owner of the copyright, and without payment of compensation. These limitations are commonly referred to as "free uses" of protected works, and are set forth in Articles 9(2) (reproduction in certain special cases), 10 (quotations and use of works by way of illustration for teaching purposes), 10*bis* (reproduction of newspaper or similar articles and use of works for the purpose of reporting current events) and 11*bis*(3) (ephemeral recordings for broadcasting purposes).

Developing countries:

- The Appendix to the Paris Act of the Convention also permits developing countries to implement non-voluntary licenses for translation and reproduction of works in certain cases, in connection with educational activities. In these cases, the described use is allowed without the authorization of the right holder, subject to the payment of remuneration to be fixed by the law.

Governance

- The Berne Union has an Assembly and an Executive Committee. Every country that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member *ex officio*.
- The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Berne Union is concerned – is the task of its Assembly.

Revisions/updates:

- The Berne Convention, concluded in 1886, was revised at Paris in 1896 and at Berlin in 1908, completed at Berne in 1914, revised at Rome in 1928, at Brussels in 1948, at Stockholm in 1967 and at Paris in 1971, and was amended in 1979.
- The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.

Limitations and exceptions:

- The Rome Convention allows for **limitations and exceptions** to the above-mentioned rights in national laws as regards private use, use of short excerpts in connection with reporting current events, ephemeral fixation by a broadcasting organization by means of its own facilities and for its own broadcasts, use solely for the purpose of teaching or scientific research and in any other cases where national law provides exceptions to copyright in literary and artistic works. Furthermore, once a performer has consented to the incorporation of a performance in a visual or audiovisual fixation, the provisions on performers' rights have no further application.

Duration

- Protection must last at least until the end of a 20-year period computed from the end of the year in which **(a)** the fixation was made, for phonograms and for performances incorporated therein; **(b)** the performance took place, for performances not incorporated in phonograms; **(c)** the broadcast took place. However, national laws increasingly provide for a 50-year term of protection, at least for phonograms and performances.

Governance:

- WIPO is responsible, jointly with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO), for the administration of the Rome Convention. These three organizations constitute the Secretariat of the Intergovernmental Committee set up under the Convention consisting of the representatives of 12 Contracting States.
- The Convention does not provide for the institution of a Union or budget. It establishes an Intergovernmental Committee composed of Contracting States that considers questions concerning the Convention

Preconditions:

- This Convention is open to States party to the Berne Convention for the Protection of Literary and Artistic Works (1886) or to the Universal Copyright Convention. Instruments of ratification or accession must be deposited with the Secretary-General of the United Nations. States may make reservations with regard to the application of certain provisions.

Berne signatories 177 nations

- https://wipolex.wipo.int/en/treaties/ShowResults?search_what=B&bo_id=7
- Full text: <https://wipolex.wipo.int/en/text/278718>

Rome convention 96 nations

- https://wipolex.wipo.int/en/treaties/ShowResults?search_what=C&treaty_id=17
- Full text: <https://wipolex.wipo.int/en/text/289795>

Social media

- Many express their opinions on texts, pictures, music, films
- Is this an expression of personality?
- Could this be managed through a CMO?
- Discuss..

Exceptions for CMOs:

- Theatre music. musicals. (Grand rights)
- Buy-outs or work for hire - common in movies.
- Some companies operate as commercial CMOs. Rightsholders will then not be able to register the same works with a CMO (Epidemic sound).