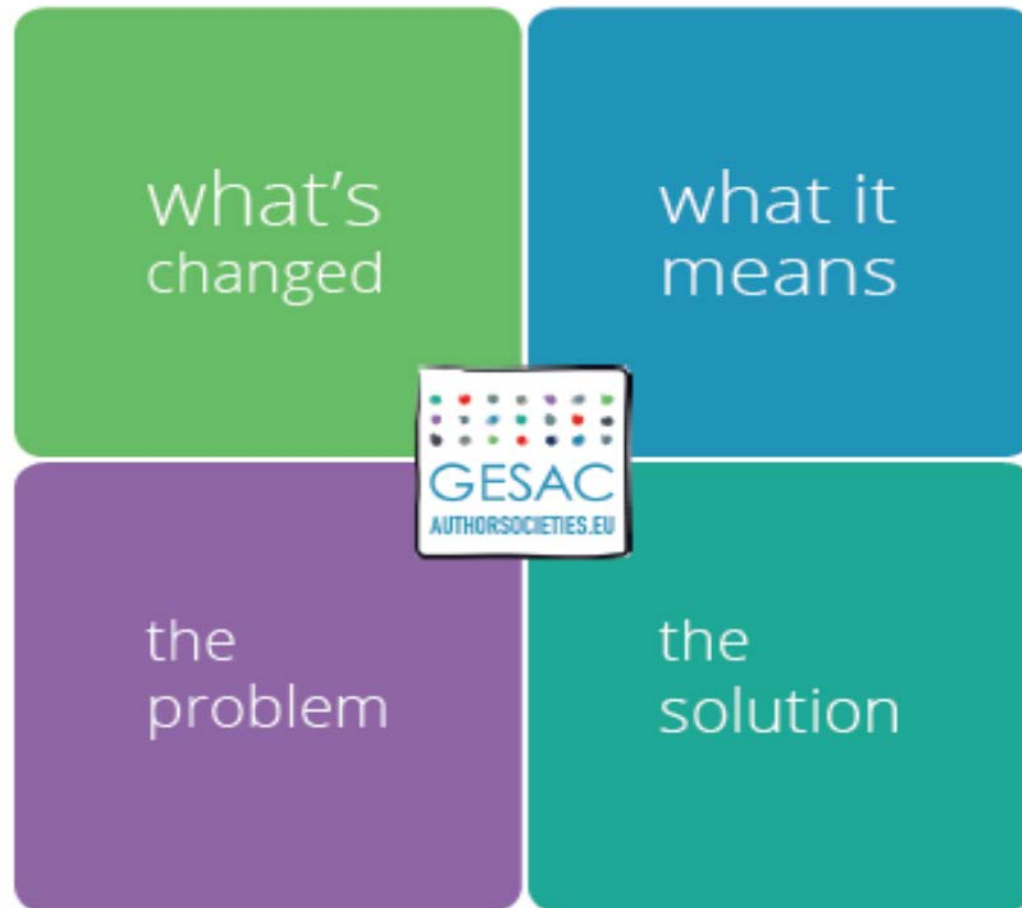
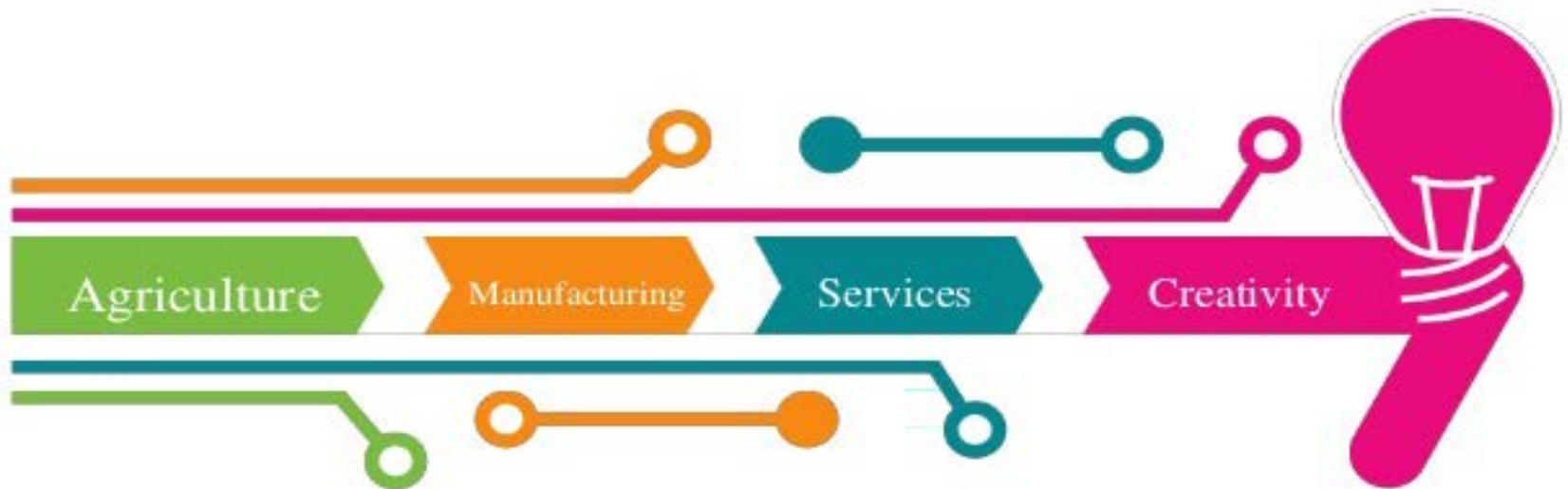


# Transfer of Value in Digital Economy



# Creativity is the new economy



*... so, we should make sure creators  
are at the core of the value chain ...*

**... and their input which is the main  
supply of the economy is not  
expropriated and made commons ...**

## THE LANDSCAPE OF DIGITAL CONTENT HAS EVOLVED

What does  
this mean?

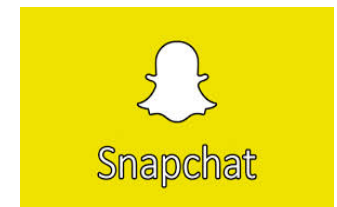
# Digital Service Providers



vs.



# Internet Intermediaries

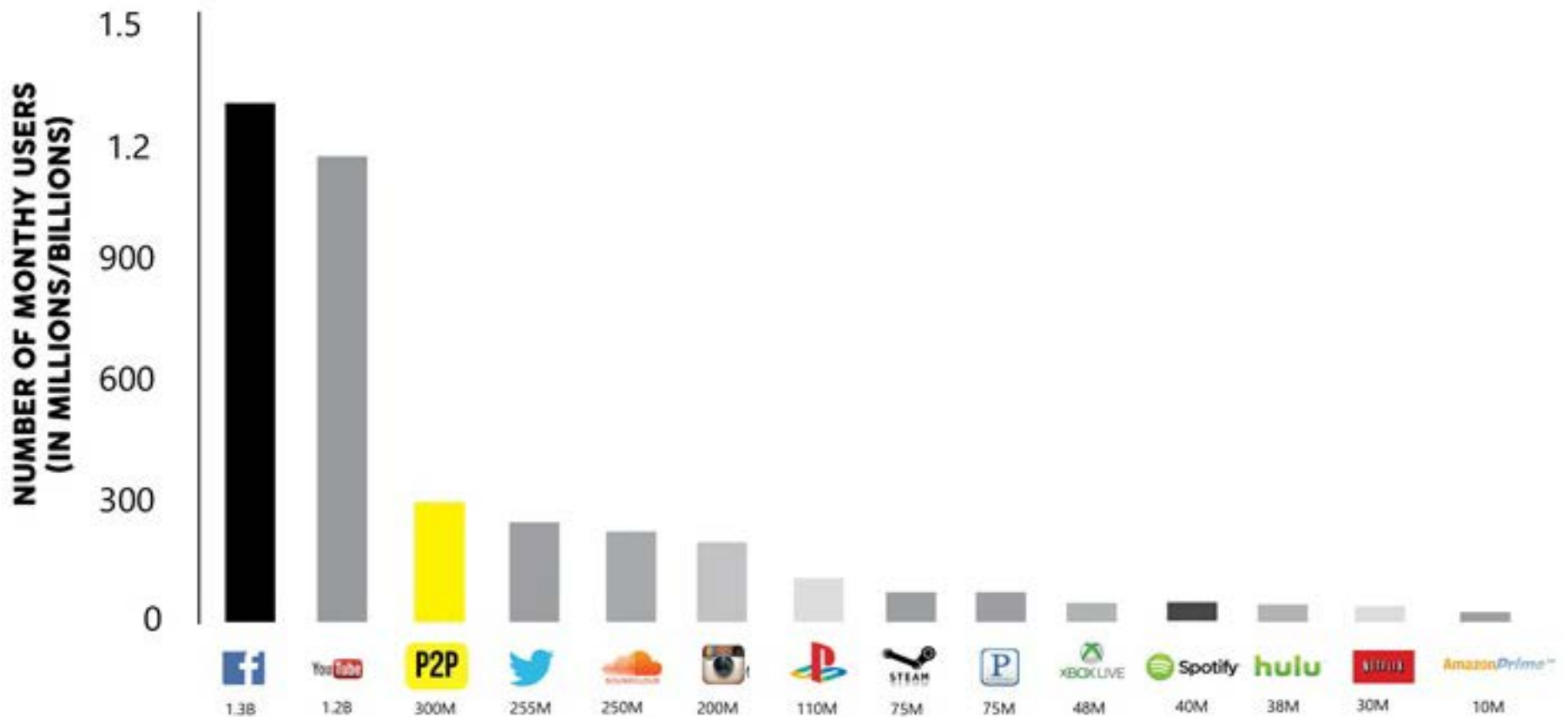


... the usage *grows* all the time ...



... and 'online intermediaries' are leading the market for access to cultural content ...

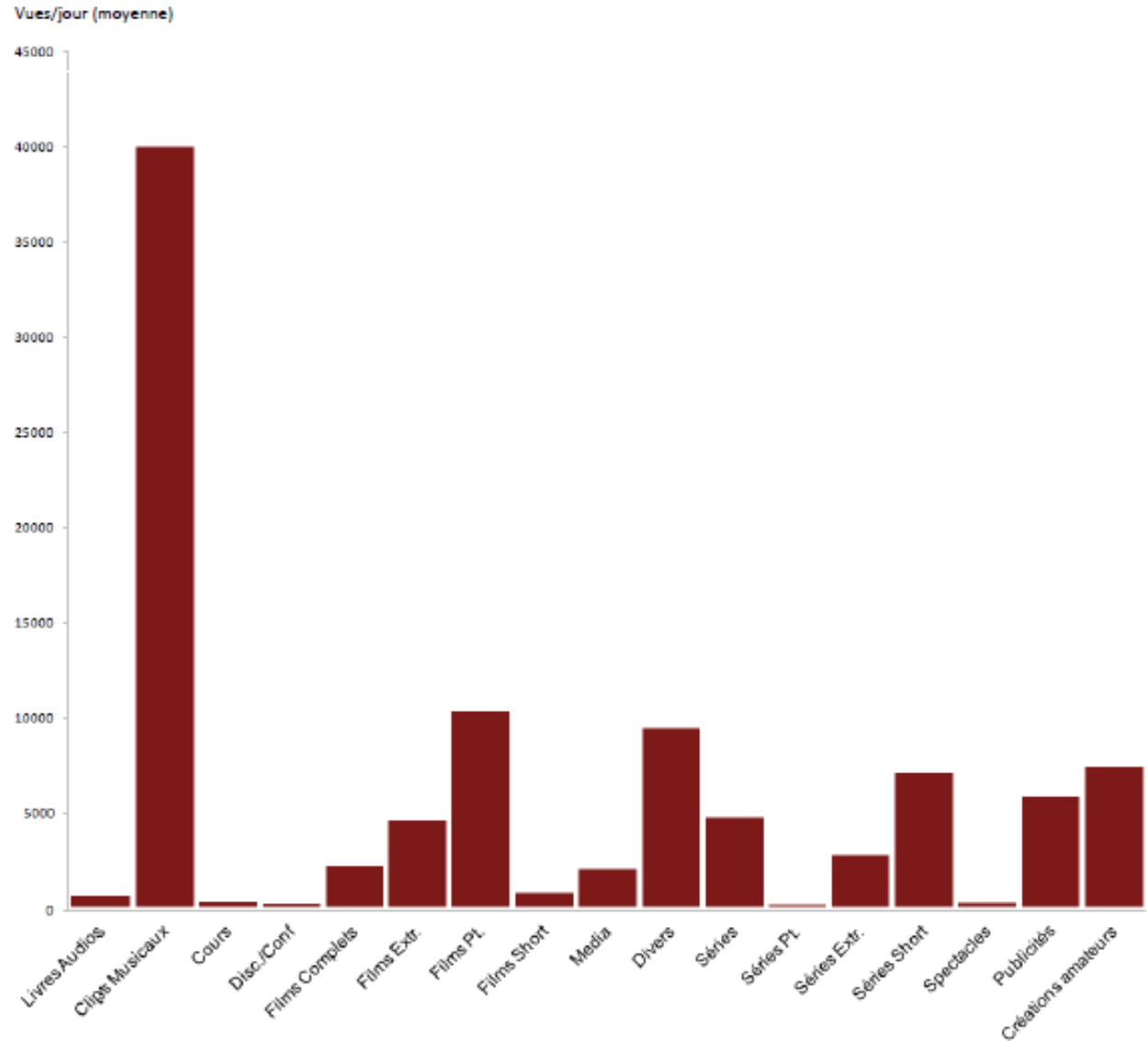
# P2P - vs - World's Largest Social and Digital Media Networks



# Music videos are by far the most popular content on YouTube

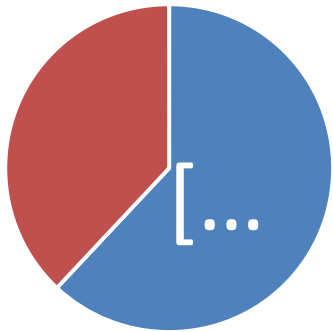
## Popularité selon la catégorie

Sur le graphe ci-contre, la moyenne du nombre de vues par jour des vidéos en fonction de leurs catégories.





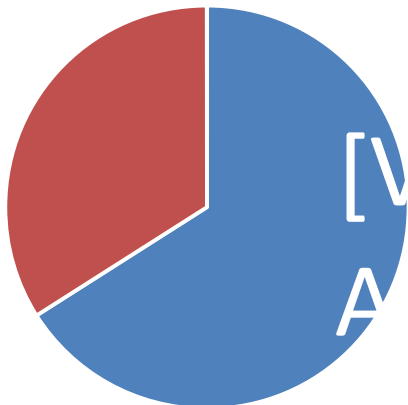
# Creative works drive the digital economy



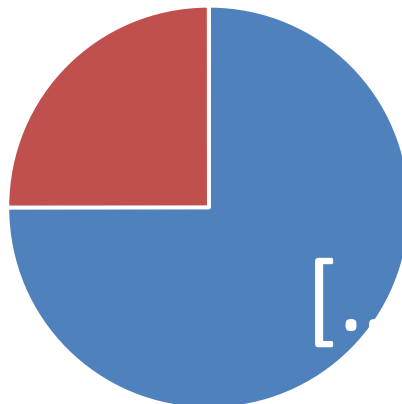
Total direct and indirect impact of cultural content

... especially for the self-proclaimed Intermediaries use of cultural content is key to attract and keep consumers on their platforms ...

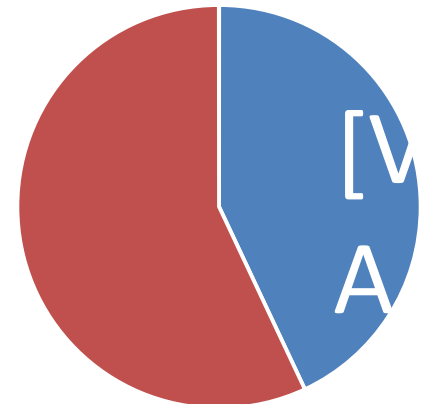
Direct impact of cultural content on the revenues of some services



Video platforms



Content aggregators



Social media

## *Services abusing “safe harbour” privileges of E-Commerce Dir and seeking further exceptions*

- are not limited to a “mere conduit” or “storage” of information,
- are designed to make content available,
- organise the means for public’s access to such content,
- develop special search engines,
- develop software to enable consumers to view and listen to the content,
- seek to develop the widest audience possible and
- seek to monetise the access given to protected content through advertising strategies.

*... based on an assumption that  
creators' consent or their  
remuneration is not required ...!*

# *Why is this the biggest problem?*

- No or very low **remuneration** from the **biggest usage** on internet
  - *E.g. YT much more music related traffic than all licensed services combined*
- **Discouraging** legitimate businesses
  - *Because intermediaries provide the same services (e.g. on-demand streaming) without liability*
- Not respecting **creators' choice**
  - *E.g. Zoe Keating, Björk, Rammstein, La Roux, Dylan pulled content from some services but are still available on YouTube, Dailymotion, etc. without fair remuneration*

# « *Modernisation of copyright* »

An opportunity to clarify that,

- i) they **take part in making cultural content available** to the public, and therefore;
- ii) they **cannot invoke “safe harbour” on their copyright related activities.**

# *What does the proposal provide?*

The absolute minimum to address the “transfer of value”

- Recital 37: Description of the problem
- Recital 38: Clarification of application of communication to the public right to UUC services and loss of their safe harbour status when having an active role
- Recital 39: Cooperation between rightholders and UUC platforms
- Art 13: Obligation to deploy technical measures for UUC services storing and providing access to large amount of content regardless of their role

# *It confirms that*

- UUC services' acts result in "C2P"
  - Why it is C2P? Access (*Svensson*), indispensable role (*Rafael Hotels, Premiere League, etc.*), no editorial control required (e.g. *Airfield*)
- Their role is "active" when optimising the presentation or promoting content, irrespective of the means used
  - How C2P and ECD reconcile? Control v. command on works, knowledge v. full knowledge of consequences
- Their role in the market as the biggest source of creative content online is significant and therefore cooperation needed even if they have a passive role, where they provide access to large amount of protected works
  - Political initiative but what is new about it? See below

# *The proposal creates 3 types of situations*

1. UUC platform + communicates to the public + has an active role = subject to copyright licence, as well use of technical measure for the functioning of licences in cooperation with RH
2. UUC platform + communicates to public + passive role + large amount of content = obligation to use technical tools and cooperate
3. UUC platform + communicates to public + passive role + small amount of content = no liability



# *Is this new?*

- Legal regime applicable to such services weren't clear; correct interpretation of the current law given
- Only available legal recourse was NTD, which is inefficient and unproductive
- For those who want wider access, it creates a framework for making content legally available, which didn't exist before
- Those who want take-down/stay-down will continue doing it regardless

# *Hyperlinking from Svensson to GS Media?*

- New public – Exhaustion of C2P?
- Aggregators – 3-step-test
- Framing/Embedding – Is it only a technicality?
- Profit making nature – Is it a condition for C2P?
- What to do to protect your rights, who benefits?
- Hyperlinking exception?

***Thank you!***