



Models for (Alternative) Compensation Systems

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De wens van de consument: een alternatief vergoedingsmodel?

October 30, 2015, Amsterdam

Problem and background

- © exclusivity and mass-scale unauthorized online uses
- Challenges in exercise and monetization
- Challenges in enforcement: inefficient, costly, undesirable
- No fair remuneration for creators in new online business models
- Challenges in lawful access and dissemination by end-users (despite emerging access channels)
- Fair balance and proportionality in ©
- Users willing to pay and participate in “alternative” schemes
- Welfare effects of “alternative” schemes can be positive

Alternative Compensation Systems (ACS)

Basic characteristics ACS

- Legal mechanisms internal or external to ©
- “Legalize” mass-scale online (end-)uses
- Predominantly aim at non-commercial uses
- No requirement of direct rights holder \leftrightarrow end-user authorization
- Regulating restrictions to exclusivity & exercise
- Adequate compensation to creators and/or all rights holders (“permitted-but-paid”)
- “Alternative”... to legal and factual exclusivity
- *Content-flat rates, licence globale, broadband levy, sharing license, etc.*

Legal Models for ACS

VCL

ECL

MCM

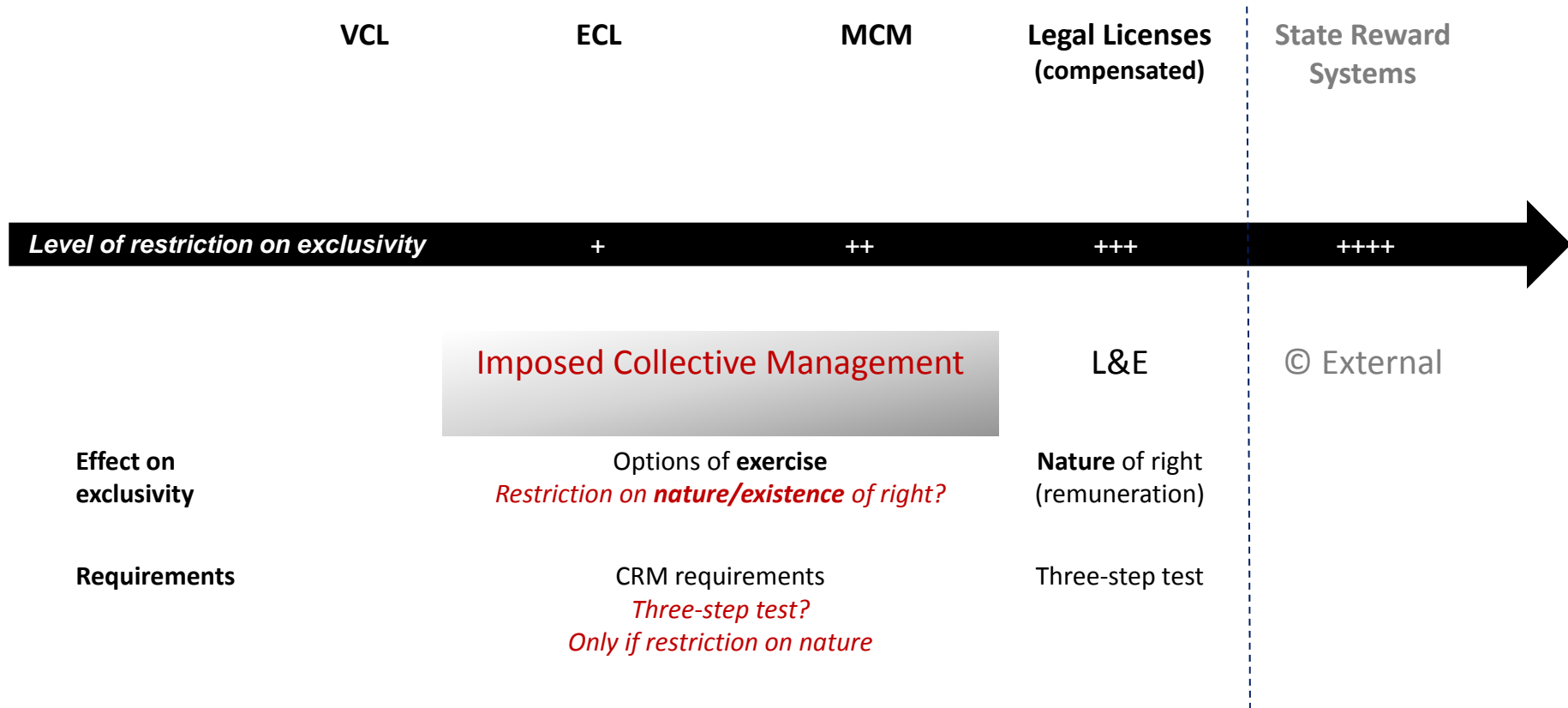
**Legal Licenses
(compensated)**

**State Reward
Systems**

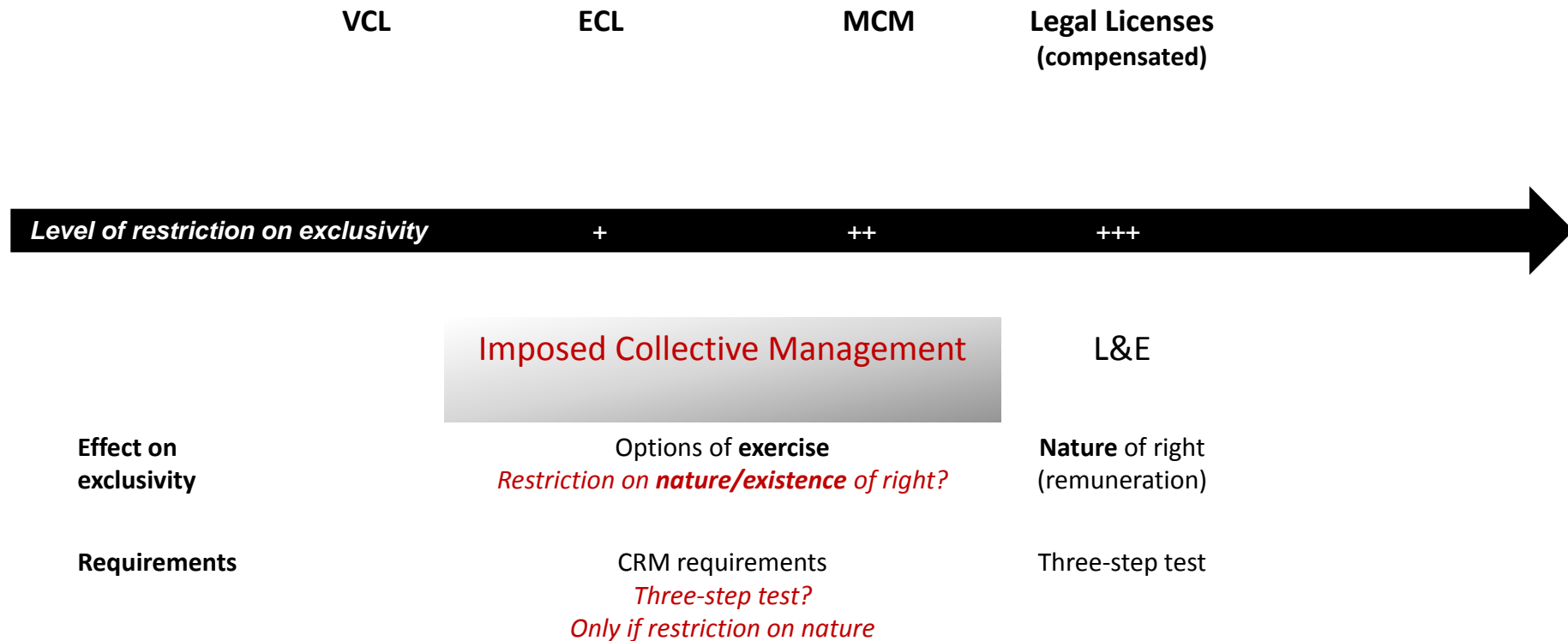
Legal Models for ACS



Legal Models for ACS



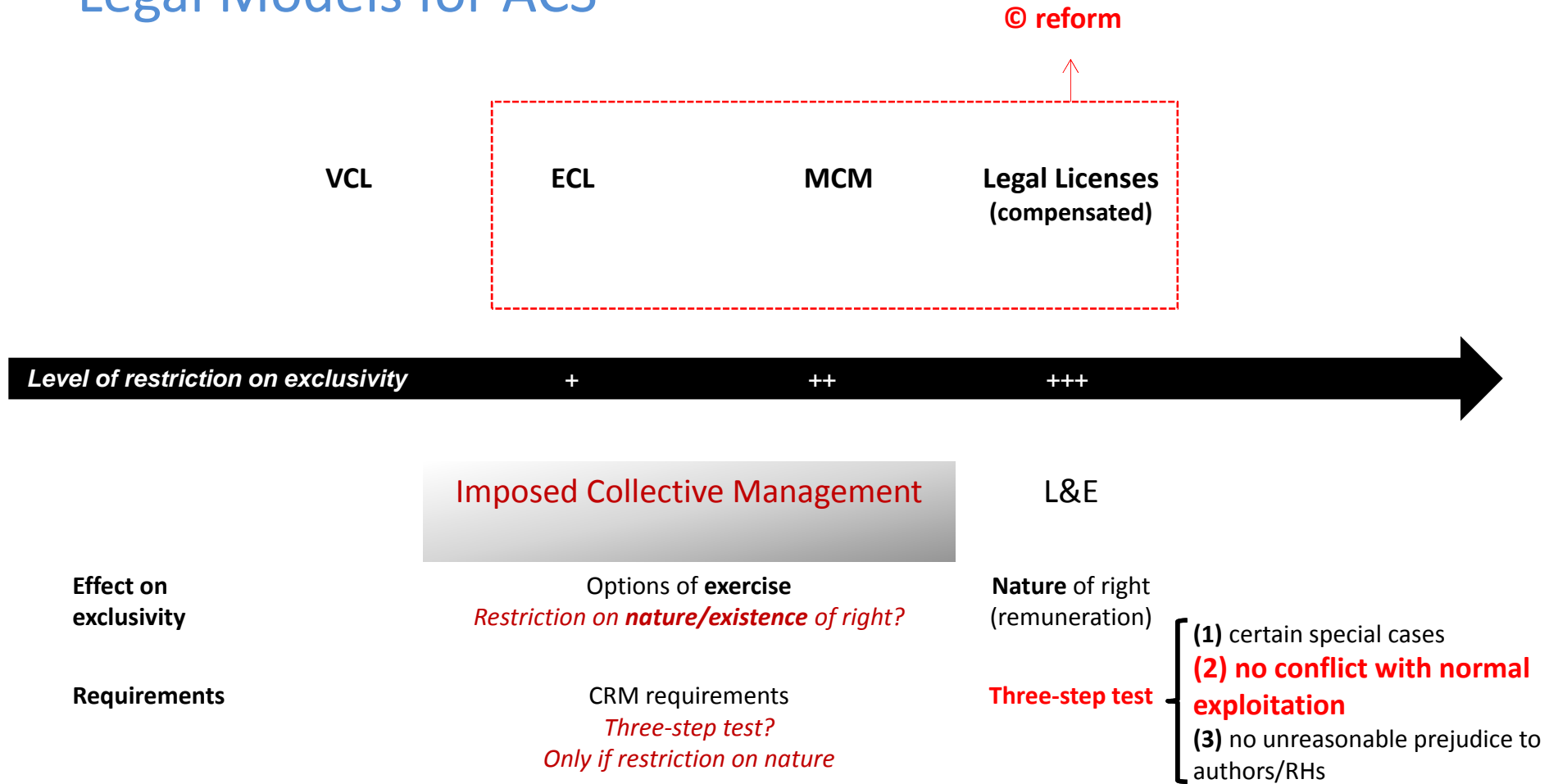
Legal Models for ACS



ACS can be combined with each other and/or the status quo

- ≠ models for ≠ rights
- Opt-in & opt-out of ACS
- Embargo period

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ACS-limitation

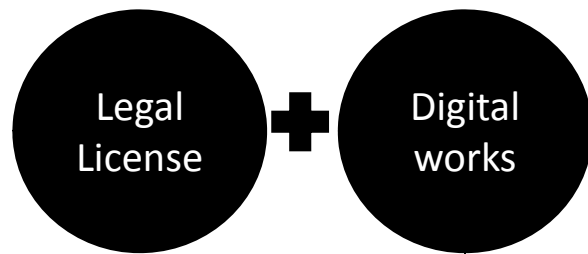
(e.g. in art. 5 InfoSoc Directive)

ACS-limitation
(e.g. in art. 5 InfoSoc Directive)



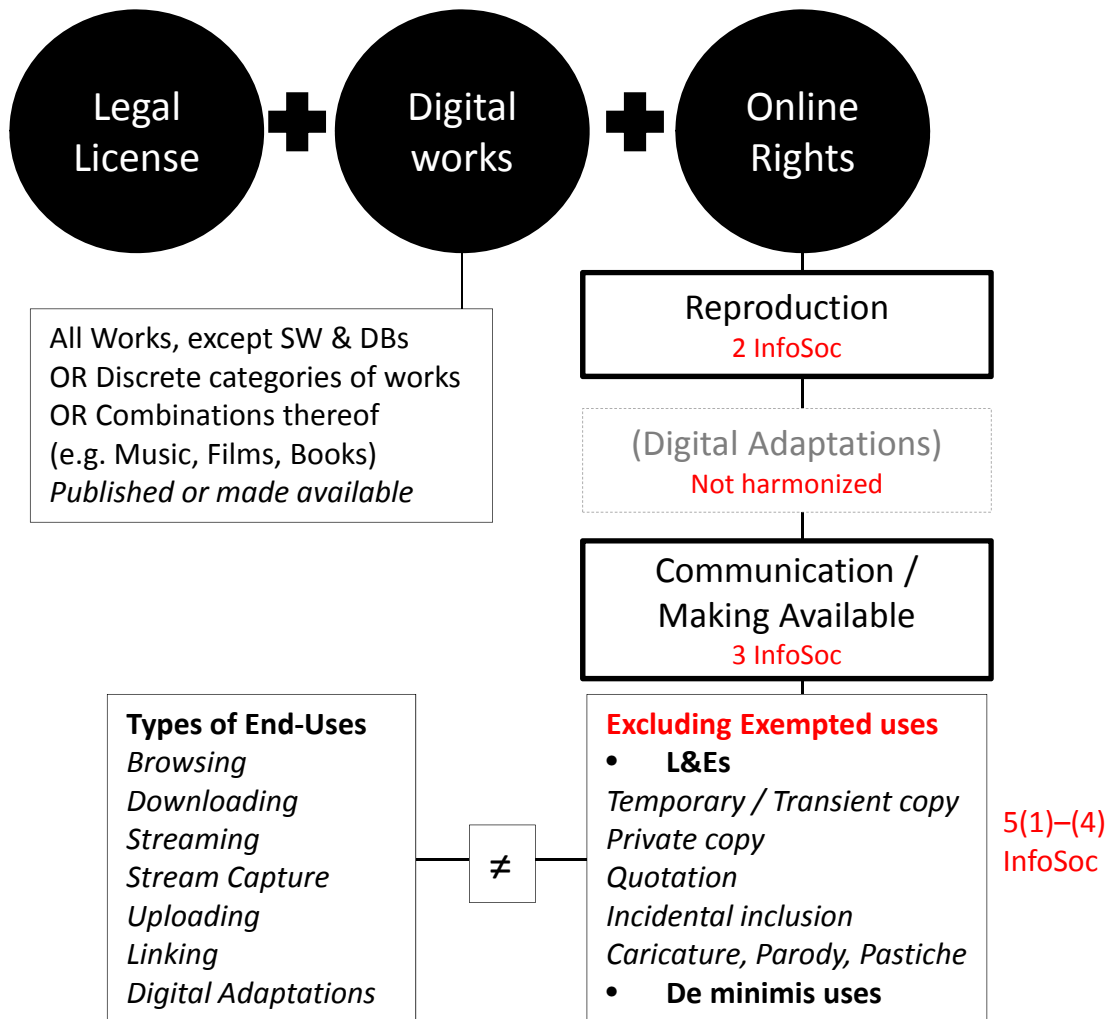
ACS-limitation

(e.g. in art. 5 InfoSoc Directive)

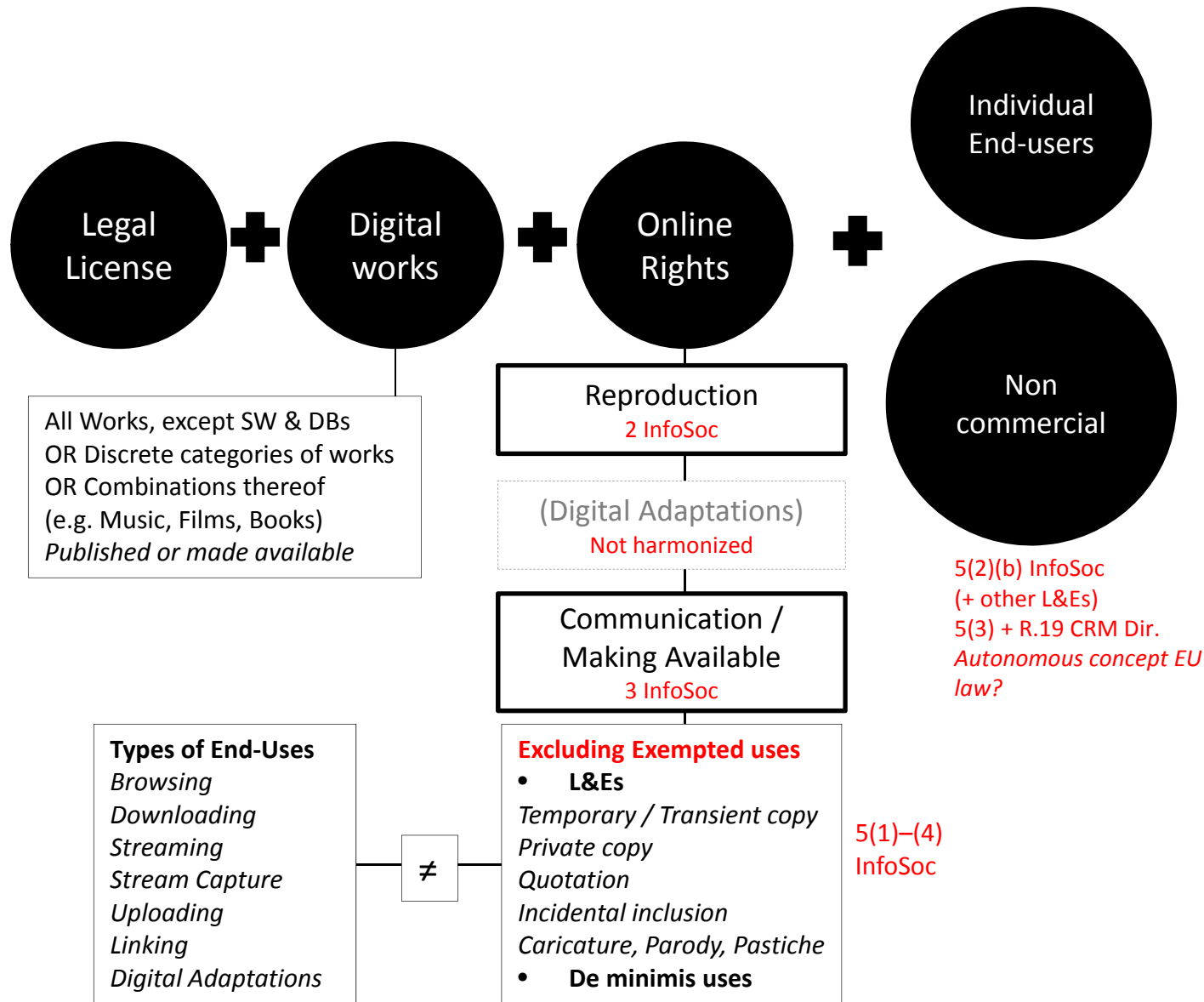


All Works, except SW & DBs
OR Discrete categories of works
OR Combinations thereof
(e.g. Music, Films, Books)
Published or made available

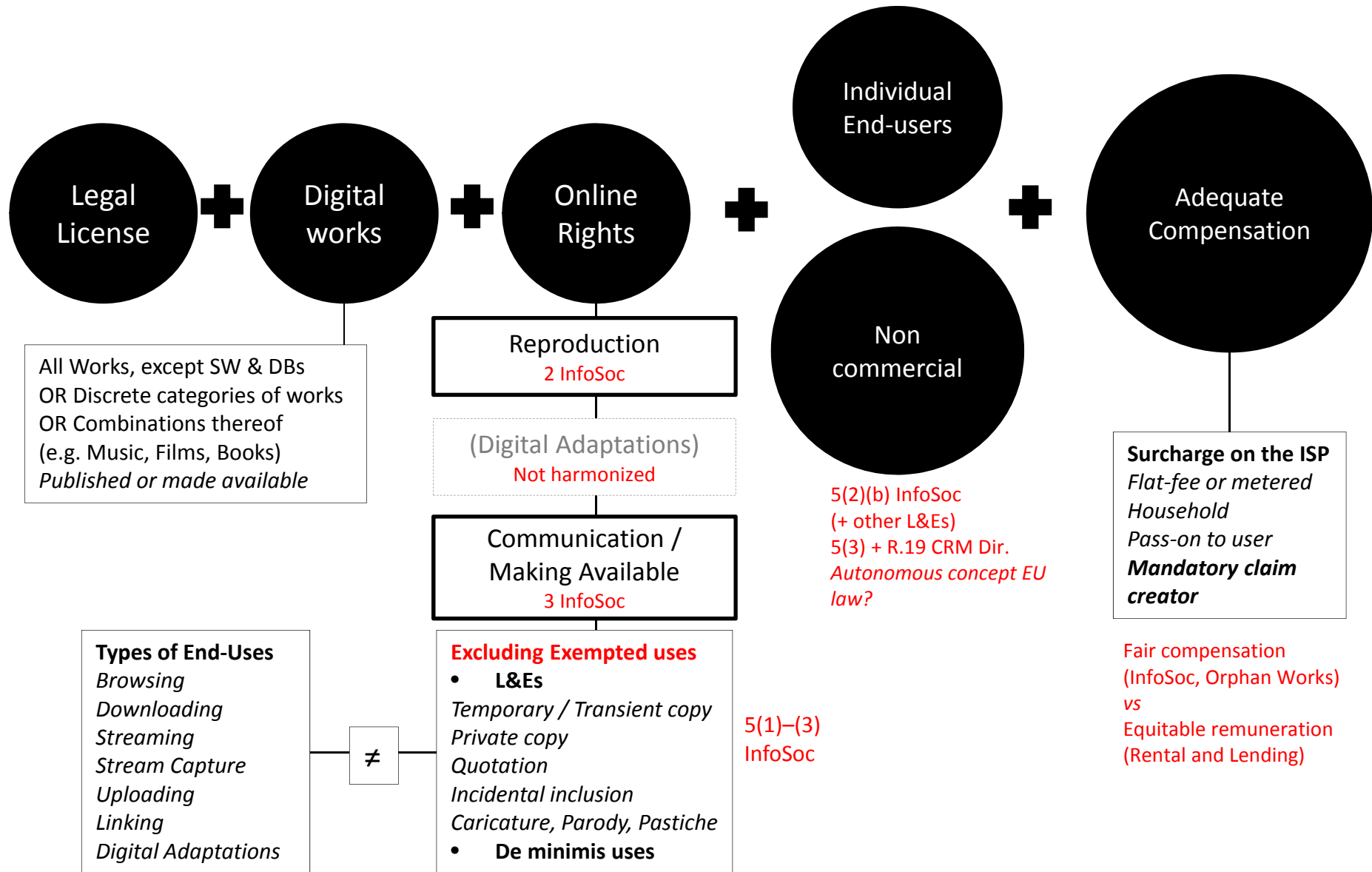
ACS-limitation (e.g. in art. 5 InfoSoc Directive)



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Step 2

No conflict with normal exploitation of works

Step 2



Step 2

Reproduction (online)

**Communication / making
available to the public (online)**

Step 2

Reproduction (online)

Communication / making
available to the public (online)

Scope exclusivity

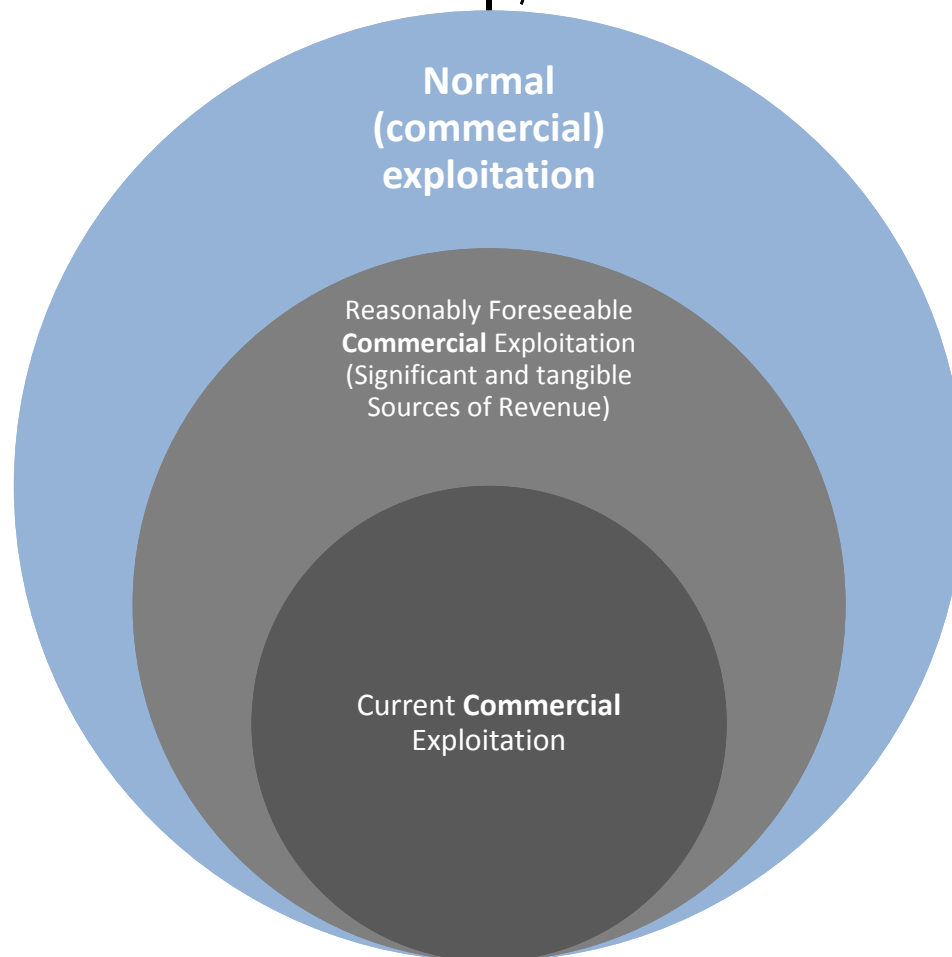
**Commercial
Exploitation**

Step 2

Reproduction (online)

Communication / making available to the public (online)

Scope exclusivity

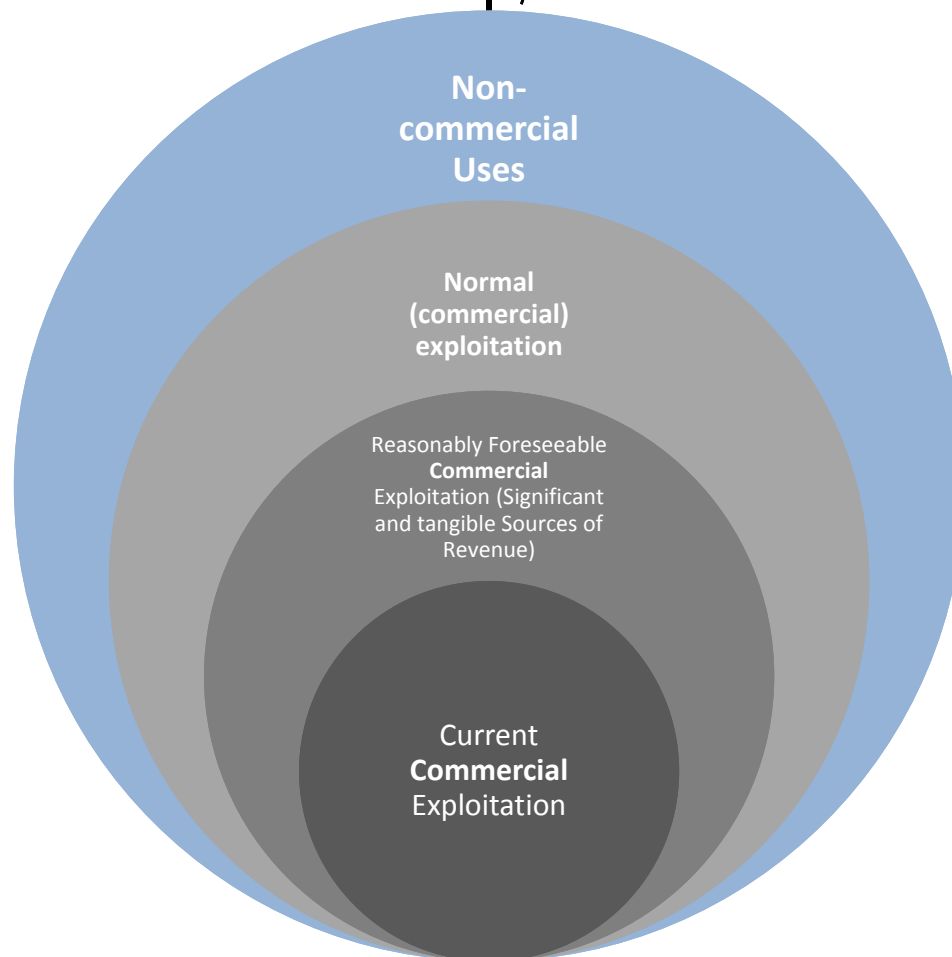


Step 2

Reproduction (online)

Communication / making available to the public (online)

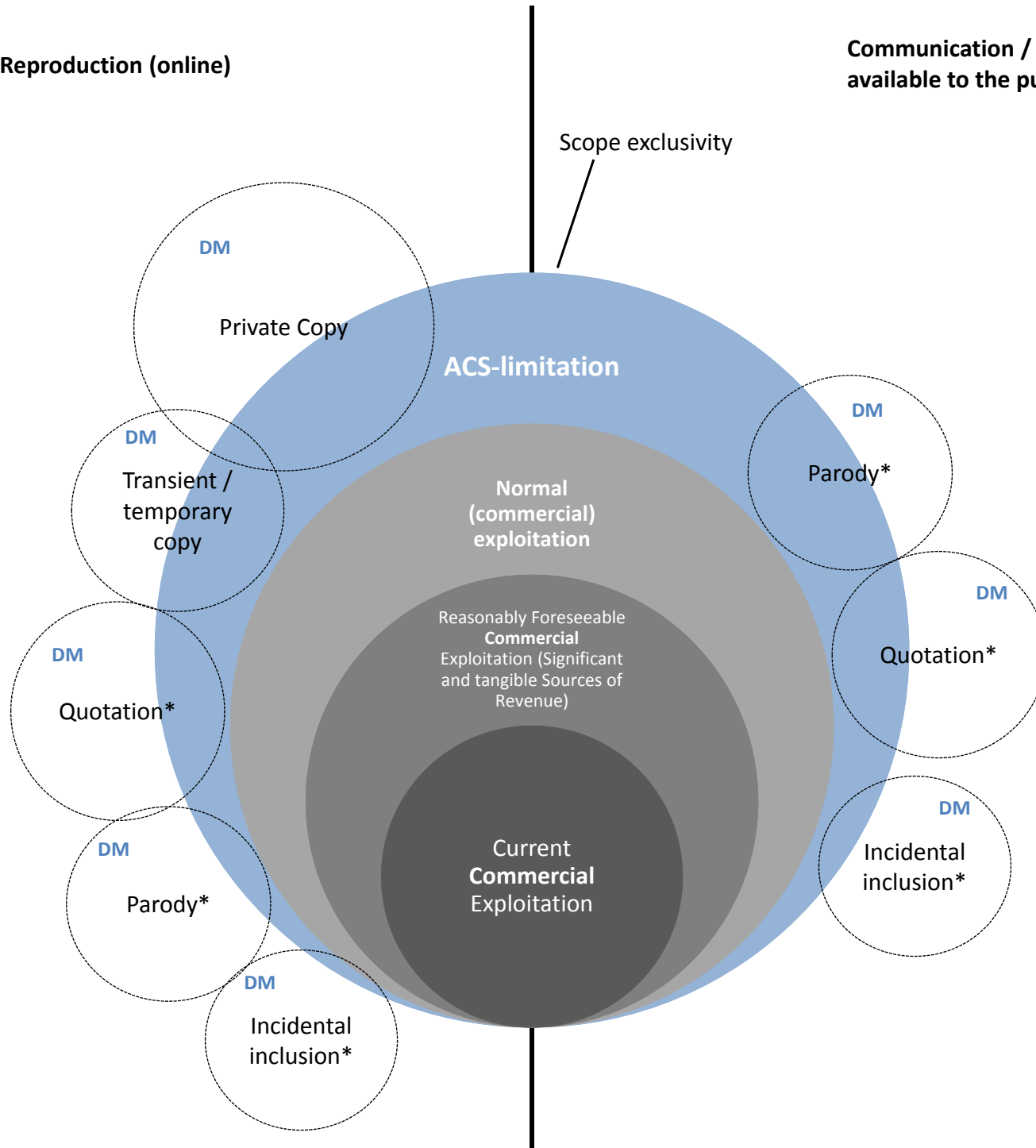
Scope exclusivity



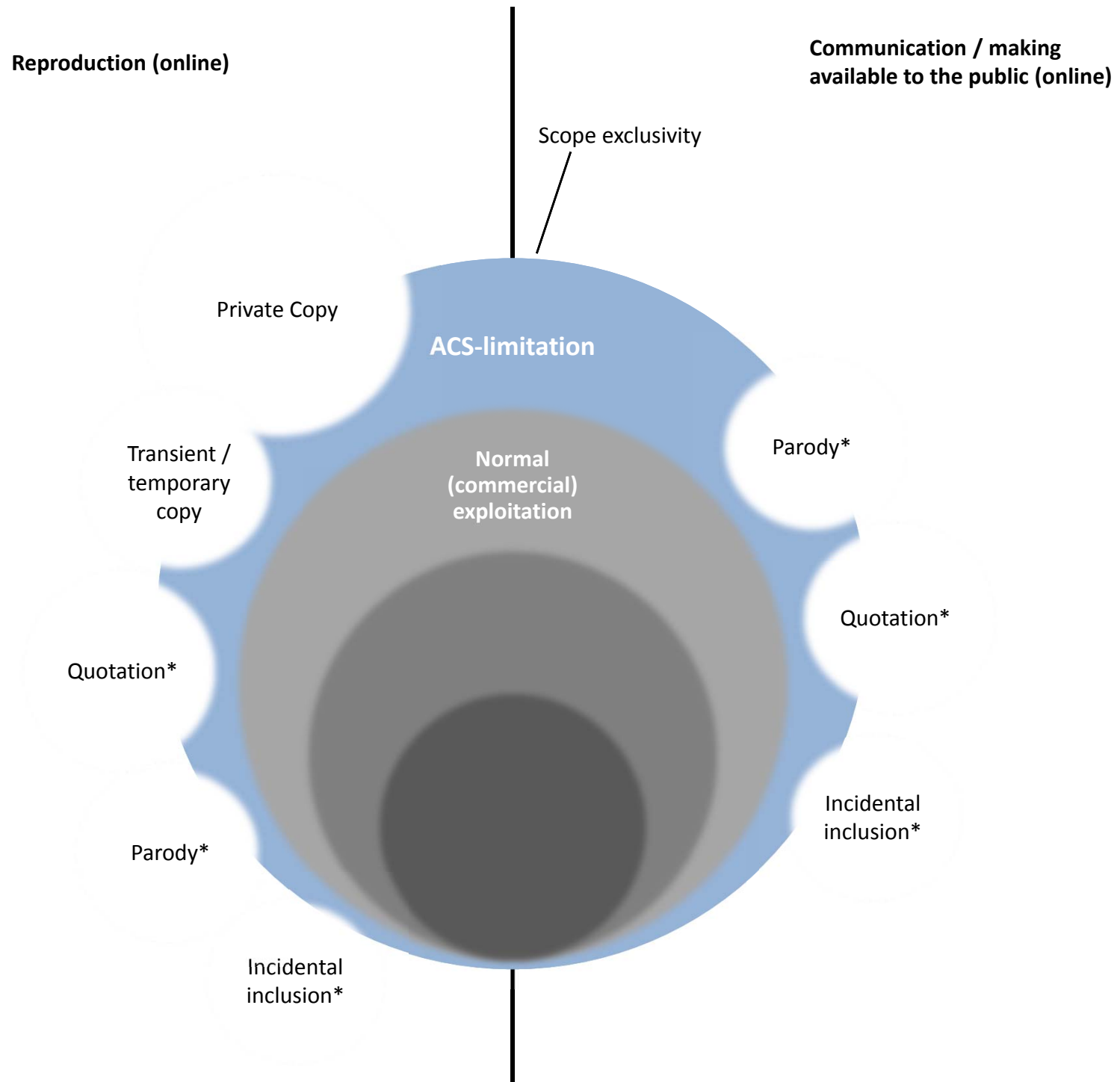
Step 2

Reproduction (online)

Communication / making available to the public (online)



Step 2



Step 2

Reproduction (online)

Communication / making available to the public (online)

NC = not for profit, no commercial scale or **direct** financial consideration, but with economic value for end-user → may exclude uses by third parties deriving financial consideration (e.g. p2p operator selling ads)

Scope exclusivity

- Non exempted non-commercial online uses by individuals (gap-filler)
- Not exercised, not monetized or too costly to enforce and monetize
- New (or superior) rights revenue

ACS-limitation

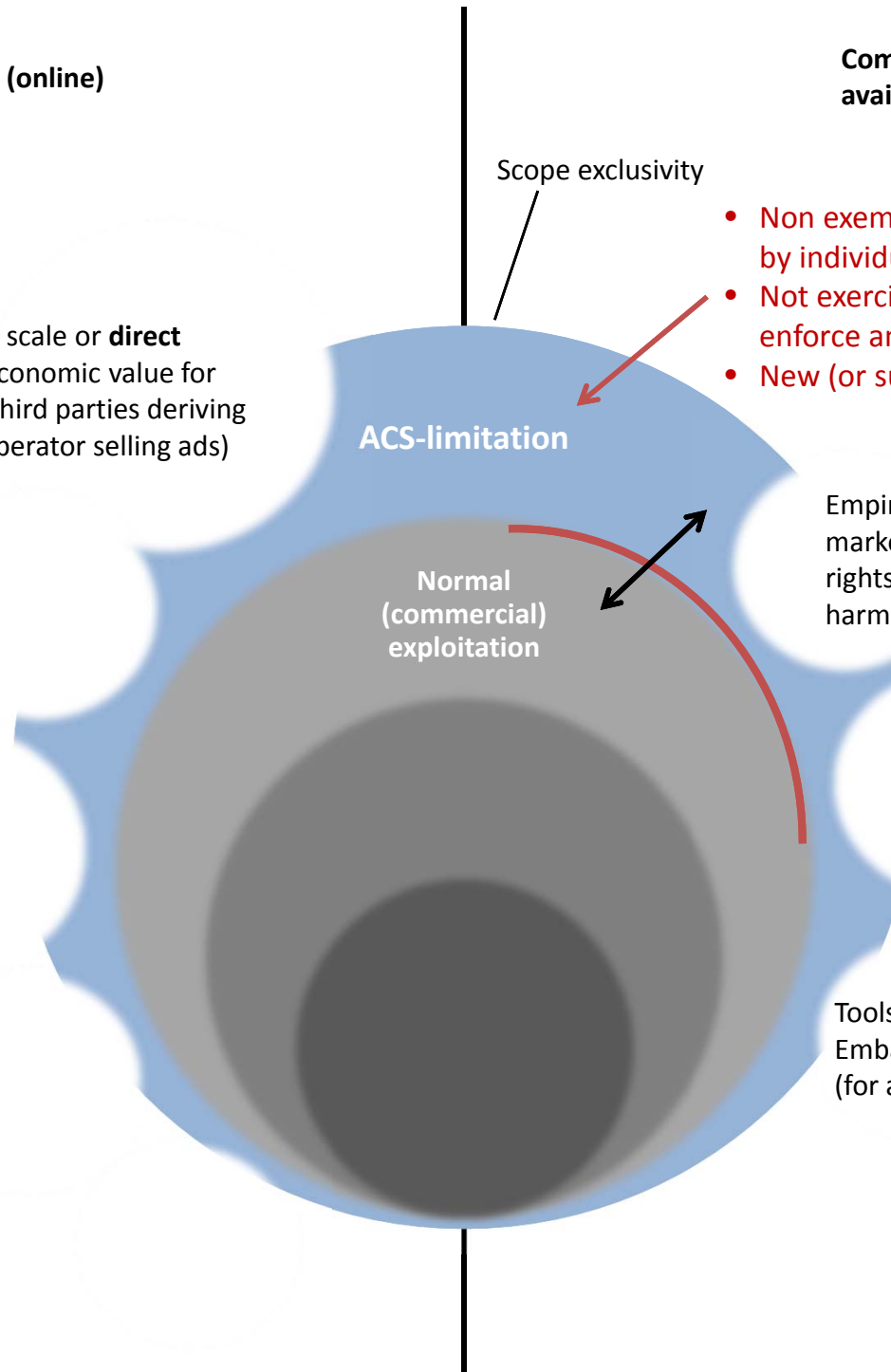
Normal (commercial) exploitation

Empirical research suggests low market substitution + enough rights revenue to compensate harm to RHs

Creators \geq Exploiters

RHs \geq indirect effects on market

Tools to overcome subsisting conflicts:
Embargo periods + Opt-out + Opt-in
(for all or only certain categories of works)





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