

**Legal regulation of  
intellectual property  
In  
Multi-service Networks  
And  
Cable television  
after 1st of January 2008.**

**First of all would like to thank  
organizers of 3rd International Forum and  
personally CEO of Forum**

**Tatiana Pigul**

**for the professionalism and irreproachable work  
on organization and holding such necessary and  
interesting event and**

**also personally**

**Ilya Kondrin**

**for the aiding in preparation of this presentation.**

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- **«Internet-right» and digital broadcast**

**Initial owners of a new  
Internet-right  
(Make Available Right)**

***Authors***

(poets, composers, authors of scenario, translators etc.)  
Sub-paragraph 11 of paragraph 2 of article 1270 of Civil Code of  
RF

“make available a work to the public in such a way that any  
person may access it from any place and at any time of his  
own choice (make available right)”

***Artists***

(musicians, conductors, dancers etc.)  
Sub-paragraph 7 of paragraph 2 of article 1317 of Civil Code of  
RF

“make available a recording of performance to the public  
in such a way that any person may access it from  
any place and at any time of his own choice  
(make available right)”

***Producers of phonograms***

(practically it is always a natural person)  
Sub-paragraph 4 of paragraph 2 of article 1324 of Civil Code of  
RF

“make available a phonogram to the public in such a way  
that any person may access it from any place and at any time  
of his own choice (make available right)”

***Broadcasters***

Sub-paragraph 5 of paragraph 2 of article 1330 of Civil Code of  
RF

“make available a radio- or telecast to the public in such a way  
that any person may access it from the place and at any time  
of his own choice (make available right)”

**Secondary  
owners  
of a new  
Internet-right**

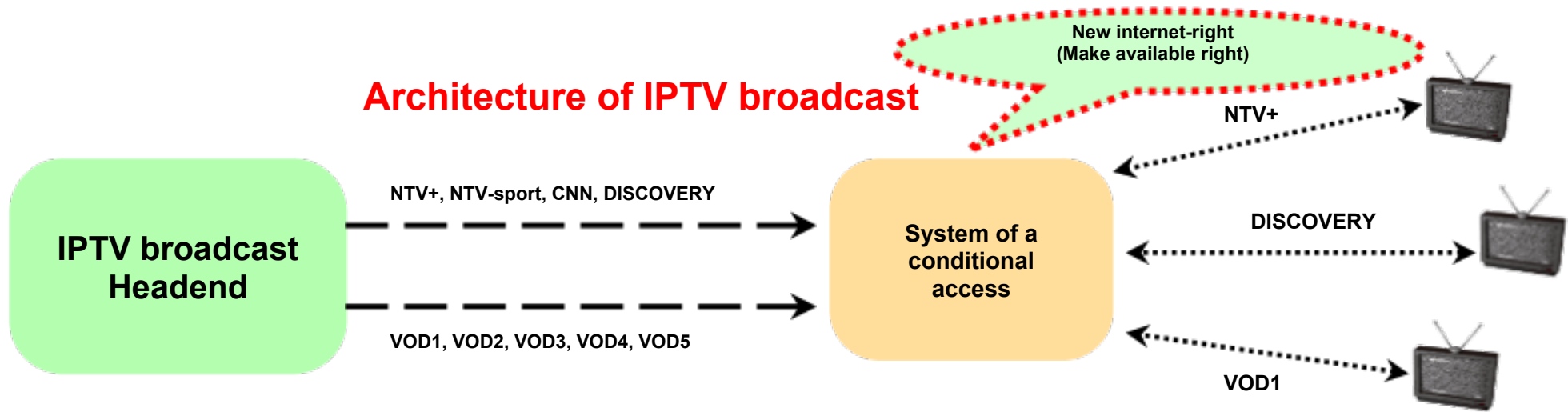
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graph TD; A[Secondary owners of a new Internet-right] --- B[Publishers (music publishers, book publishers, multimedia publishers, periodicals publishers etc)]; A --- C[Recording companies]; A --- D[Broadcasters (telecast retransmission)]
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**Publishers**  
(music publishers,  
book publishers,  
multimedia publishers,  
periodicals publishers  
etc)

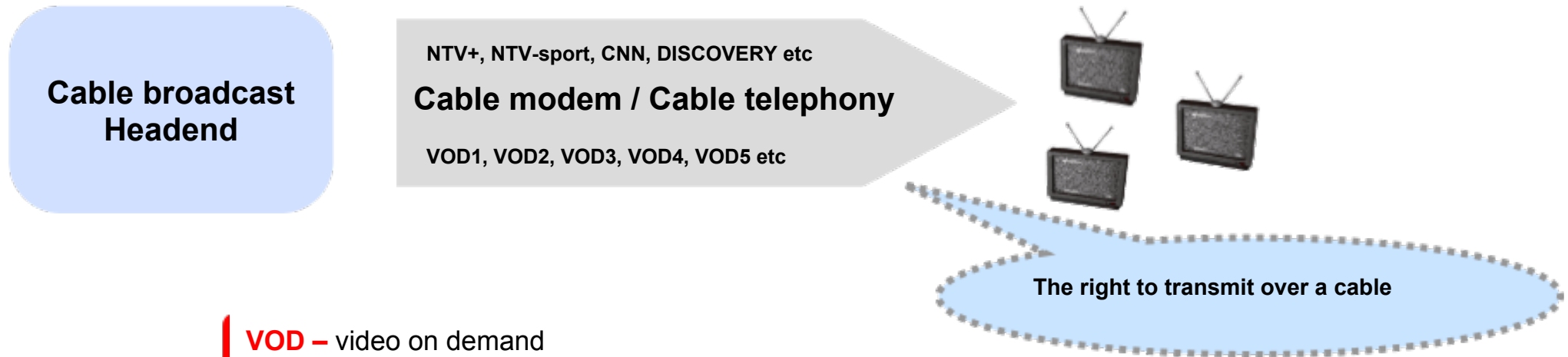
**Recording  
companies**

**Broadcasters**  
(telecast retransmission)

### Architecture of IPTV broadcast



### Architecture of cable broadcast 850 MHz



**Annotation:**

**VOD** – video on demand

**New internet-right** – make available a work to the public in such a way that any person may access it from any place and at any time of his own choice

**International legal protection of “new Internet-right” (make available right) is implemented ONLY within the bounds of so called WIPO Internet-treaties:**

- **WIPO Copyright Treaty (WCT)**
- **WIPO Performances and Phonograms Treaty (WPPT)**



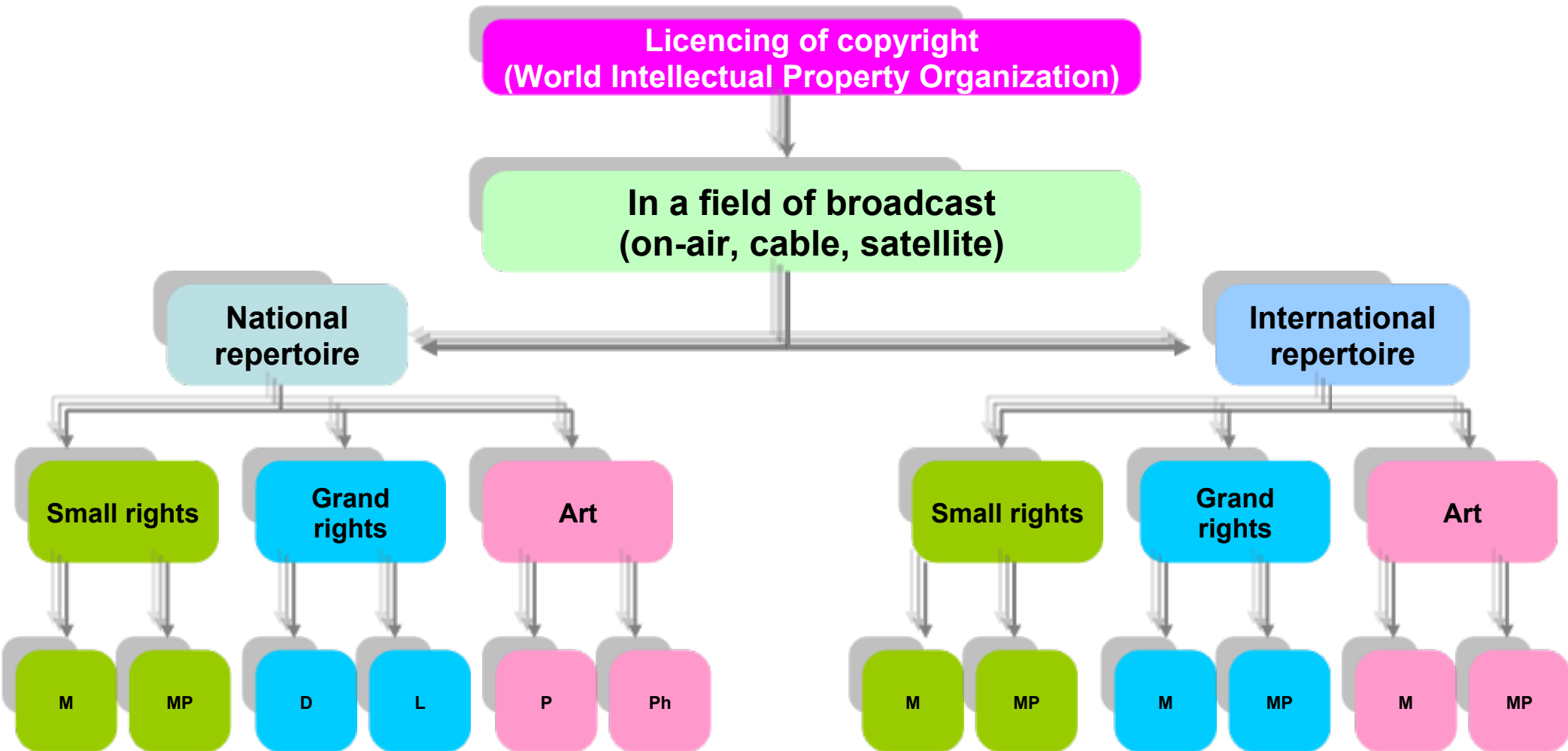
**At the present time Russian Federation has not ratified neither WIPO internet-treaties.**

**At the present time russian legislation does not protect**

**and**

**after the 1st of January 2008 will not protect foreign repertoire at a such way of its use by broadcasters as make available to the public (make available right)**

- **Changes in a system of collective management of copyright and related rights in a field of digital broadcast**



**Annotation:**

- M** – Musical works with text or without text
- MP** – Music from motion picture
- D** – Dramatic works and musical dramatic works
- L** – Literary works
- P** – Works of painting, graphic, sculpture, design, architecture
- Ph** – Photographs

## Concept of “small” and “grand” rights

Its two fundamental copyright management forms in a field of broadcasting (on-air, cable, satellite)

“Small” rights

“Grand” rights

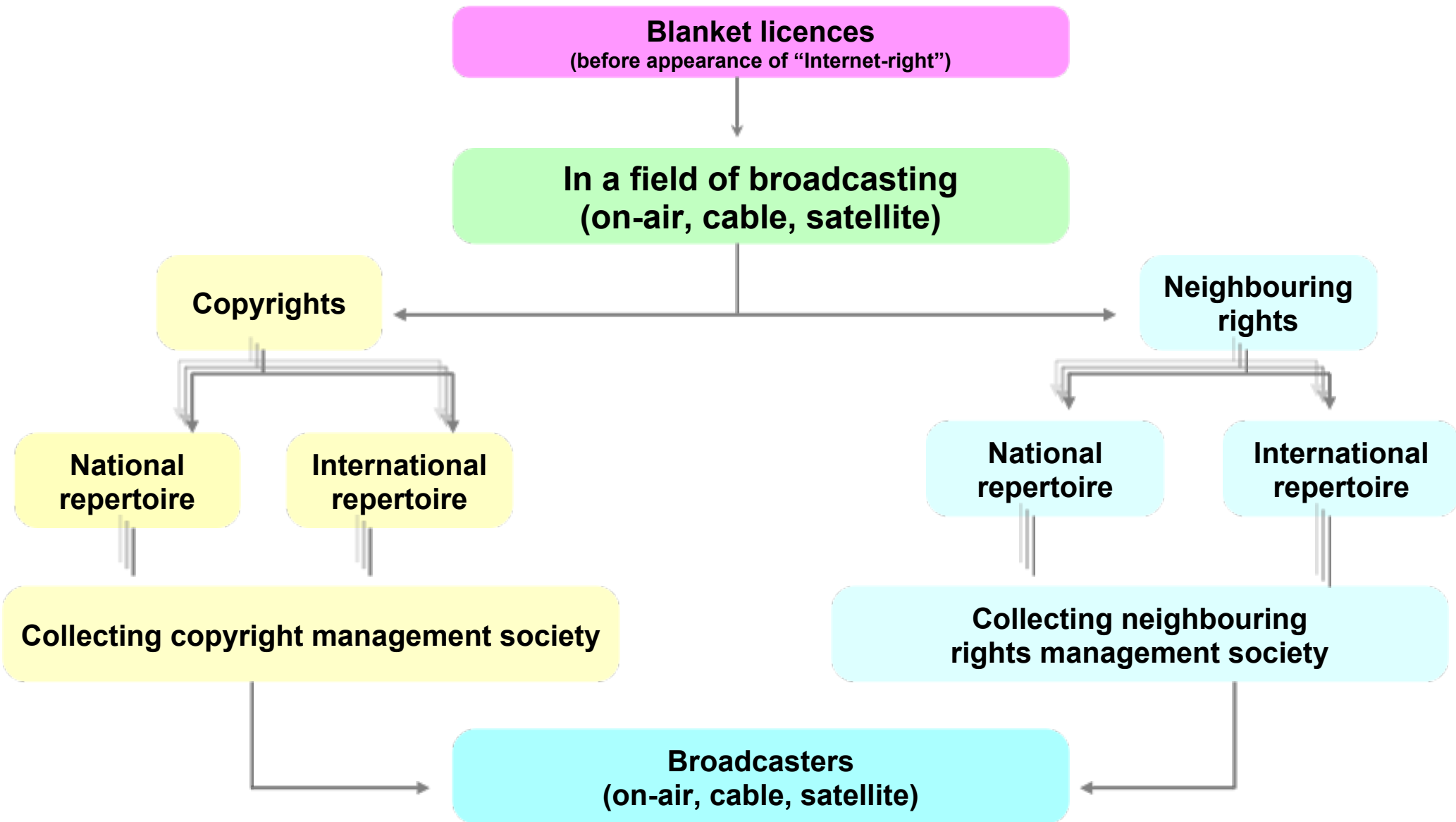
Collective copyrights management form

Collective copyrights management form applies only in a case of excerpts use (no more than 10-25 minutes)

Individual copyrights management form in relation to entire work

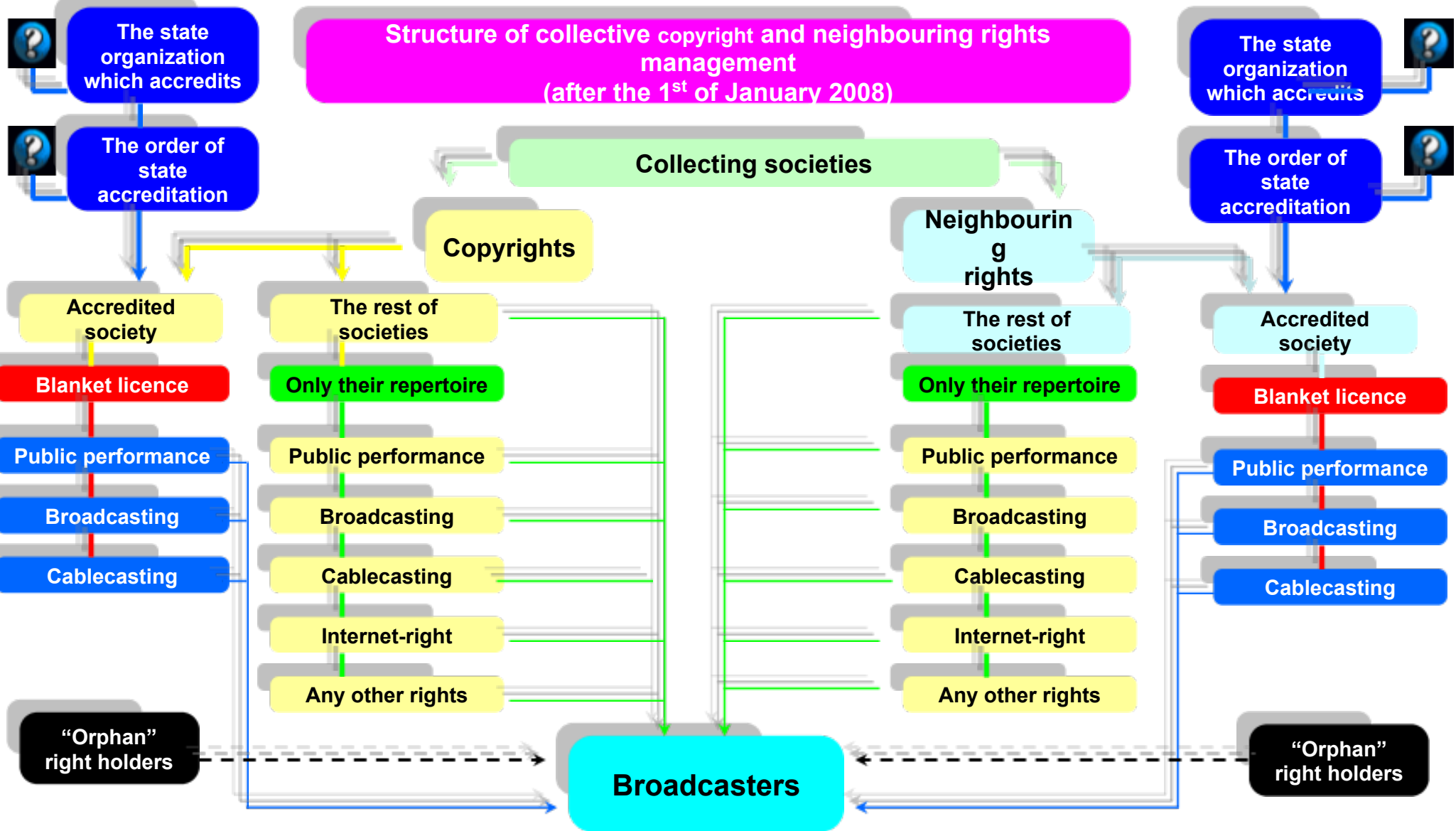
Blanket licence to use excerpts in television Broadcast (no more than 10-25 minutes)

Individual licence from the right holder to use entire work



**Annotation:**

**Blanket licence** – the licence in the name of all right holders both which transferred rights to collecting society and which did not.



**Annotation:**

Any right holder who did not conclude an agreement in writing with accredited collecting society, is entitled at any moment wholly or partially to refuse management by accredited collecting society of his rights. **That mean to withdraw his rights from blanket licence.**

**Important peculiarity of collective copyright  
and neighbouring rights management  
(after the 1st of January 2008)**

**The law in relation the “Internet-right”  
makes no provision for possibility of its:**

- **management by accredited society**
- **inclusion in a blanket licence**

- **How competitive activity between russian collecting societies exert negative influence on developing of digital broadcast in Russia**



**1992 – the beginning of competitive activity for the monopoly in a field of collective copyright and neighbouring rights management in Russia.**

**Writ of Constitutional Court of Russian Federation from the 28<sup>th</sup> of April 1992. “Relating to case about examination of writ of presidium of Supreme Soviet of RSFSR from 3rd of February 1992 № 2275-I “About All-Russian copyright agency (VAAP)”.**

***Excerpt:***

***“Such way creates special circumstances for the economical activity of VAAP. Other organizations have no opportunities to compete with it, on equal conditions to struggle for market, for clientele. The possibility of foundation of such organizations is insufficient. Quality decreasing and rise in prices by servicing of authors are connected with it, especially by protecting their interests overseas. Thereby VAAP can carry out a dictatorship in relation to its client i.e. the author. It all already occurred in activity of former All-USSR Copyrights Agency and State Agency of USSR on Copyrights and Neighbouring Rights. Repetition of similar legal situation would mean decreasing guaranties of observance constitutional norms of state copyright protection.”***

## **2005 – the beginning of competitive activity in a field of collective copyright management in telecasting**

**Writ of Federal Court of Arbitration  
of Moscow district from 30th March 2005  
relating to case № A40-34778/0110-339**

**Excerpt:**

***“Non-government organization “Russian Authors’ Society” (OO “RAO”) brought in court of arbitration an action against Nonprofit partnership “Society of Authors and other Right holders on collective management their rights ROAP”, Federal State Unitary Enterprise “All-Russian State Television and Radio Company” to recognize licence agreement №5747/60-00/№1/1 from 26th of December 2003 concluded between defendants as null and void, to prohibit NP “Society of Authors and other Right holders on collective management their rights ROAP” from doing any acts relating to collective management of property rights of authors and other owners of copyrights at public performance, cablecasting and broadcasting, reproduction by means of mechanical, magnetic and other recording, make available to the public (including use of digital network, including Internet).....”***

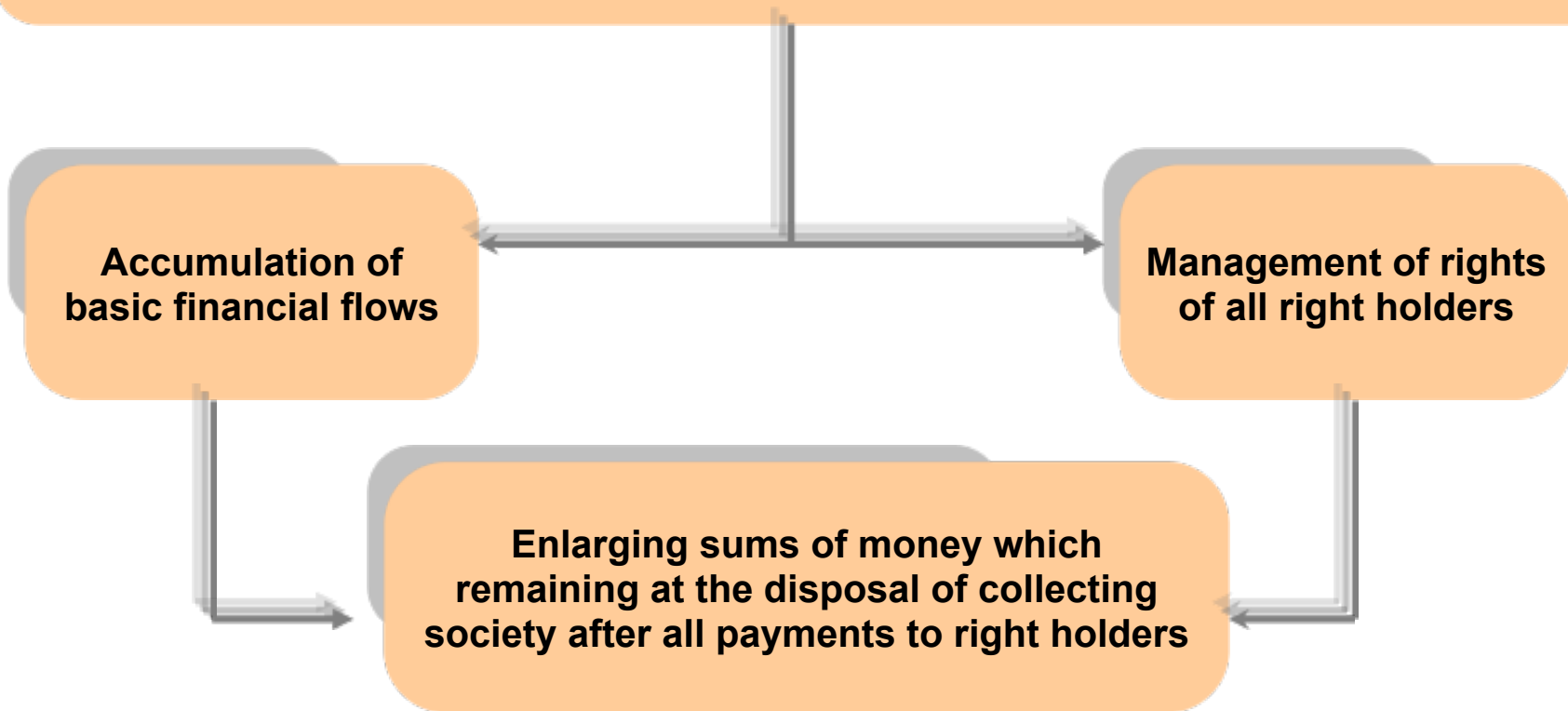
**1st of January 2008 – the goal of competitive activity in a field of collective rights management in telecasting**

**Obtaining a status as a accredited collective copyrights and neighbouring rights management society**

**Accumulation of basic financial flows**

**Management of rights of all right holders**

**Enlarging sums of money which remaining at the disposal of collecting society after all payments to right holders**



- **Compulsory licences as a guarantee of successful operating and development of digital broadcast in Russia**

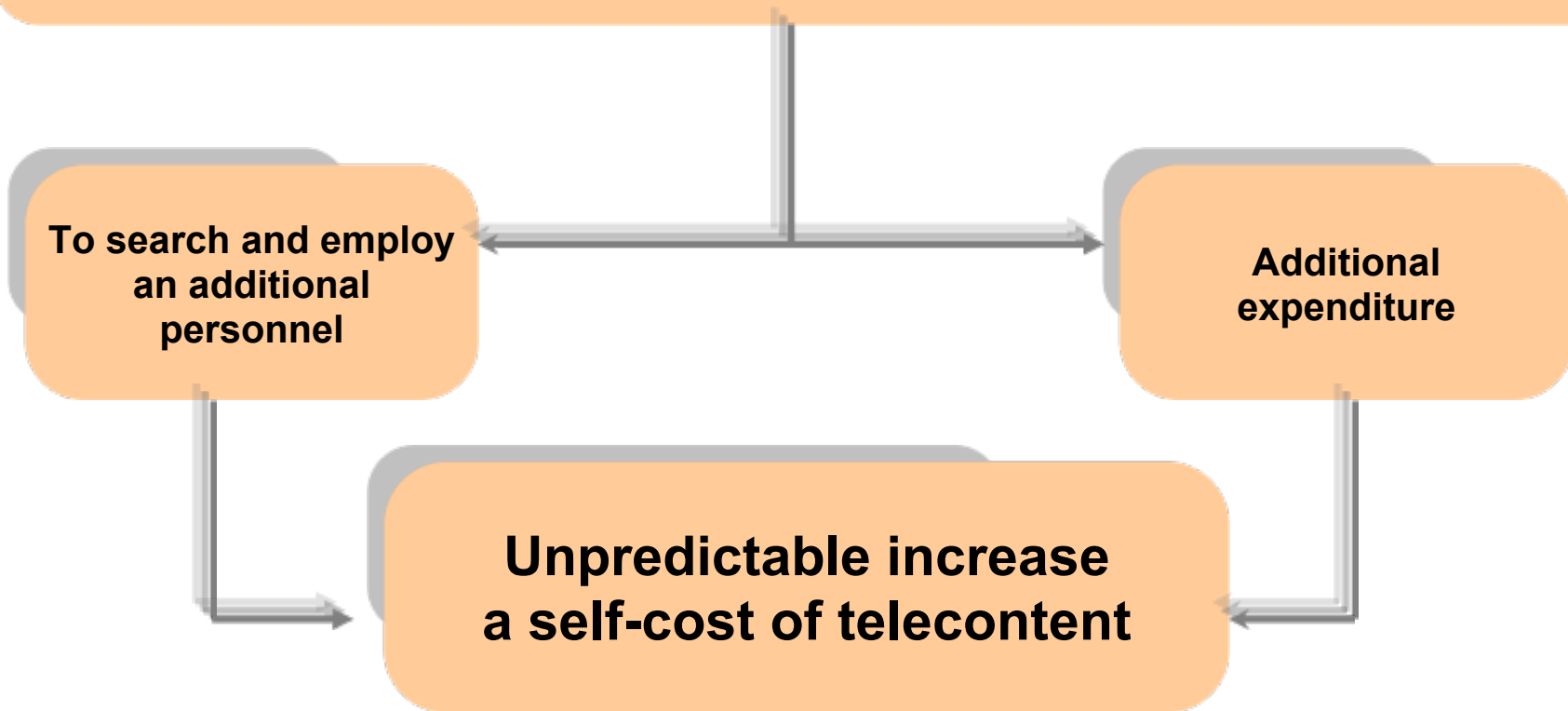
**Which problems will expect broadcasters after 1st of January 2008 in a field of “clearance” of rights on content?**

**Obtaining a licences from right holders on individual basis**

**To search and employ an additional personnel**

**Additional expenditure**

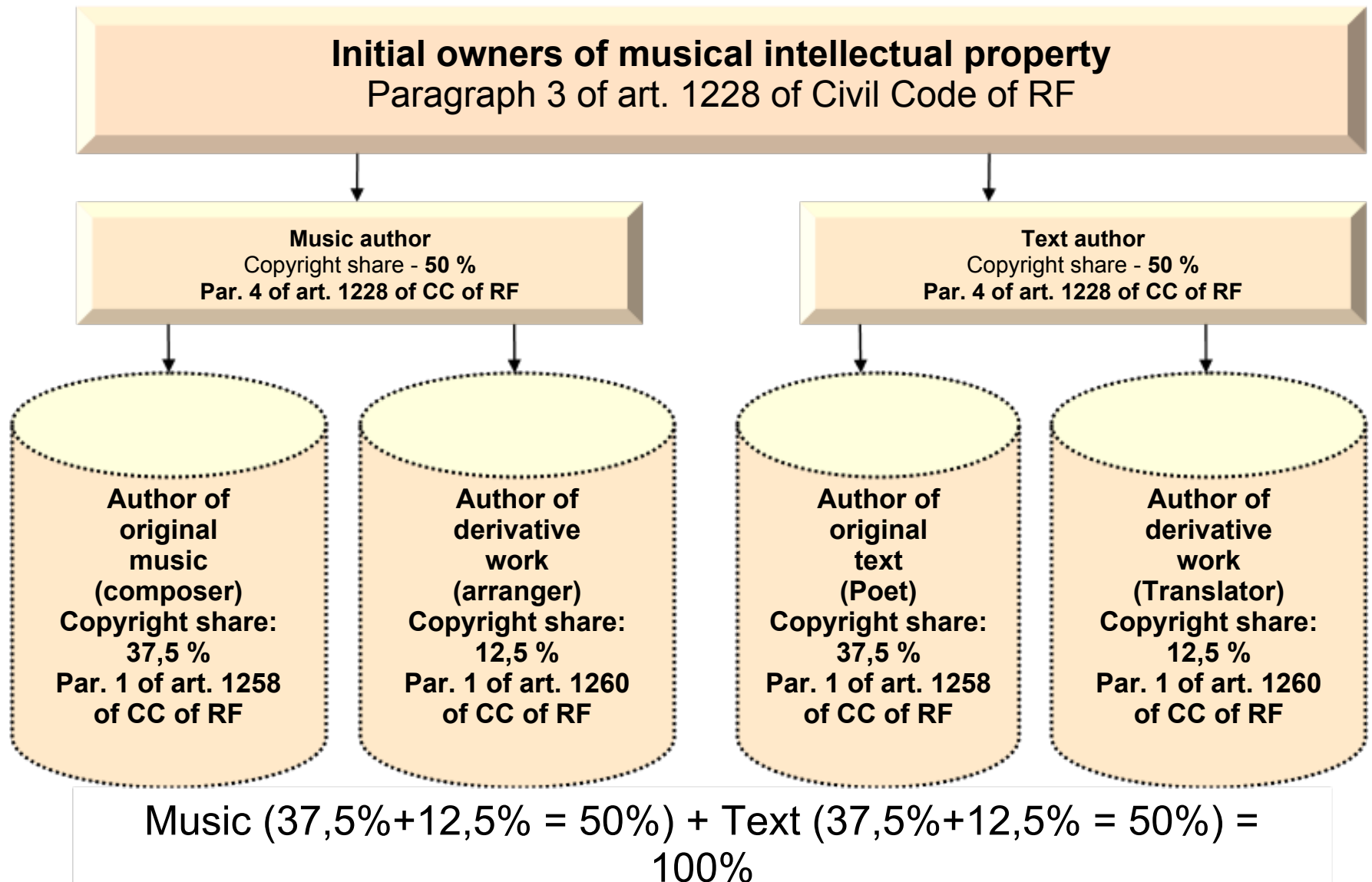
**Unpredictable increase a self-cost of telecontent**

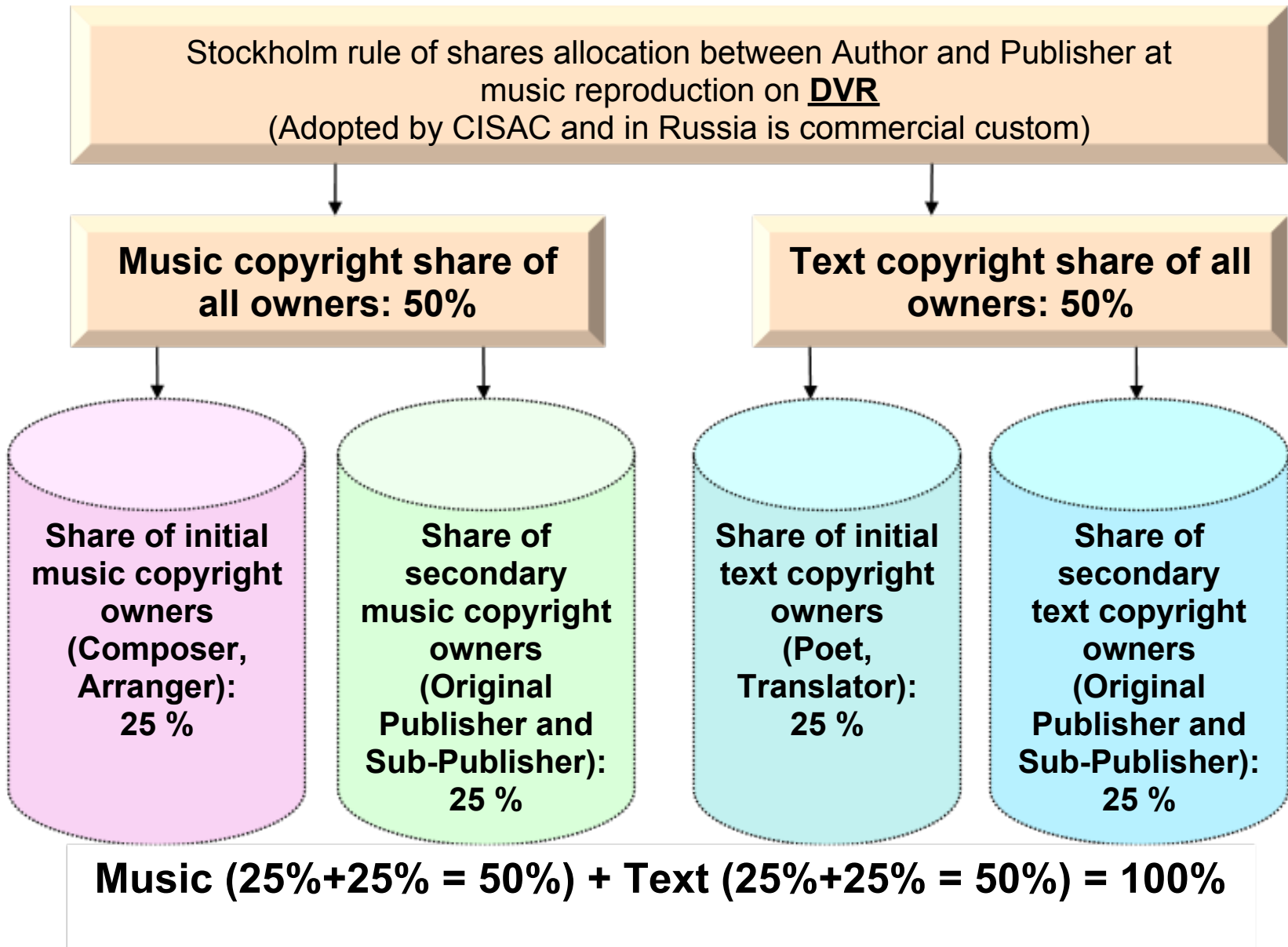


**What first of all each broadcaster should take into account at “clearance” of rights directly at right holders?**



**From whom and for what price broadcaster has to obtain written permits (licences) for all rights shares in one or another work.**

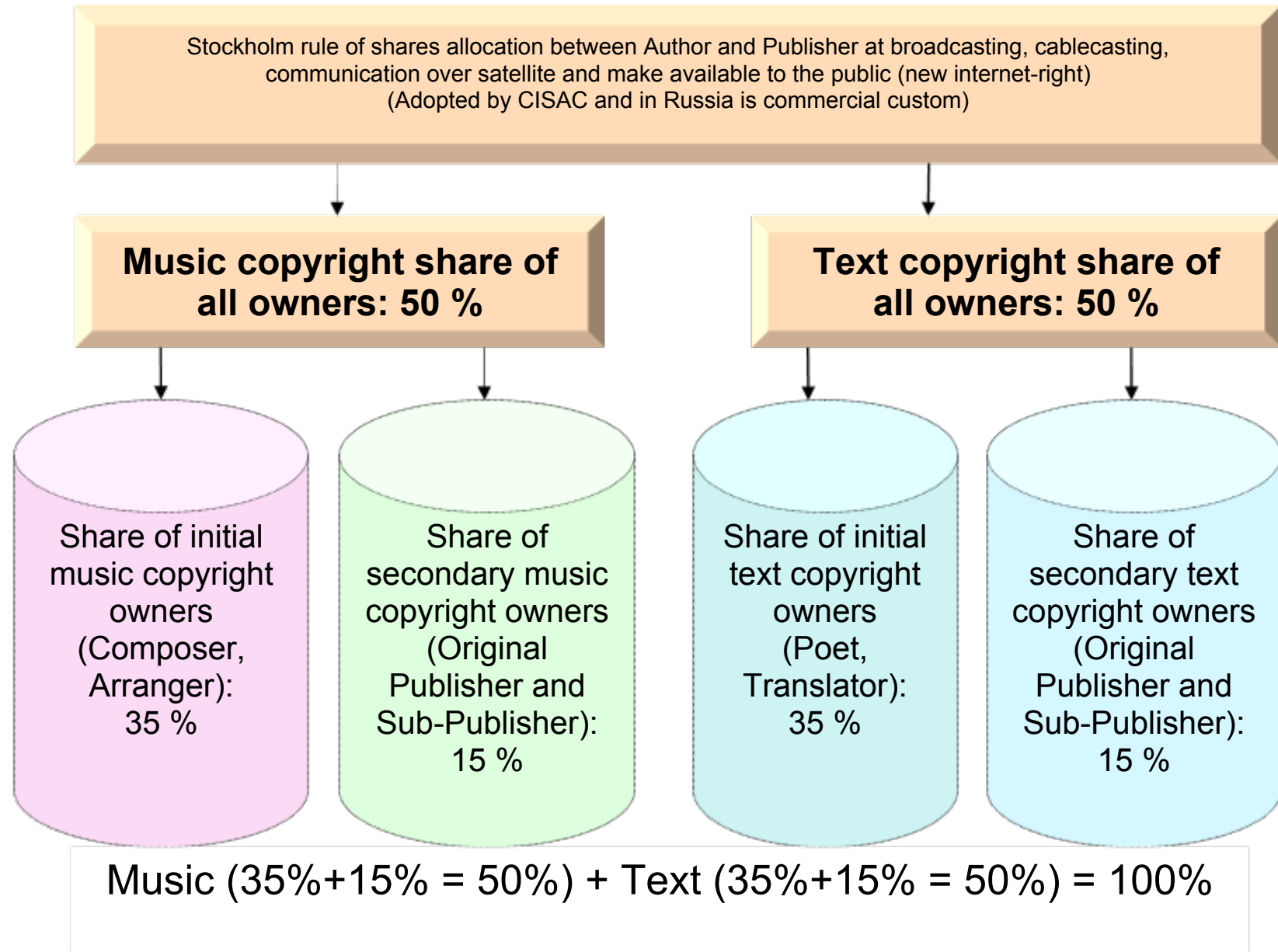






# Independent Copyright Management Consulting

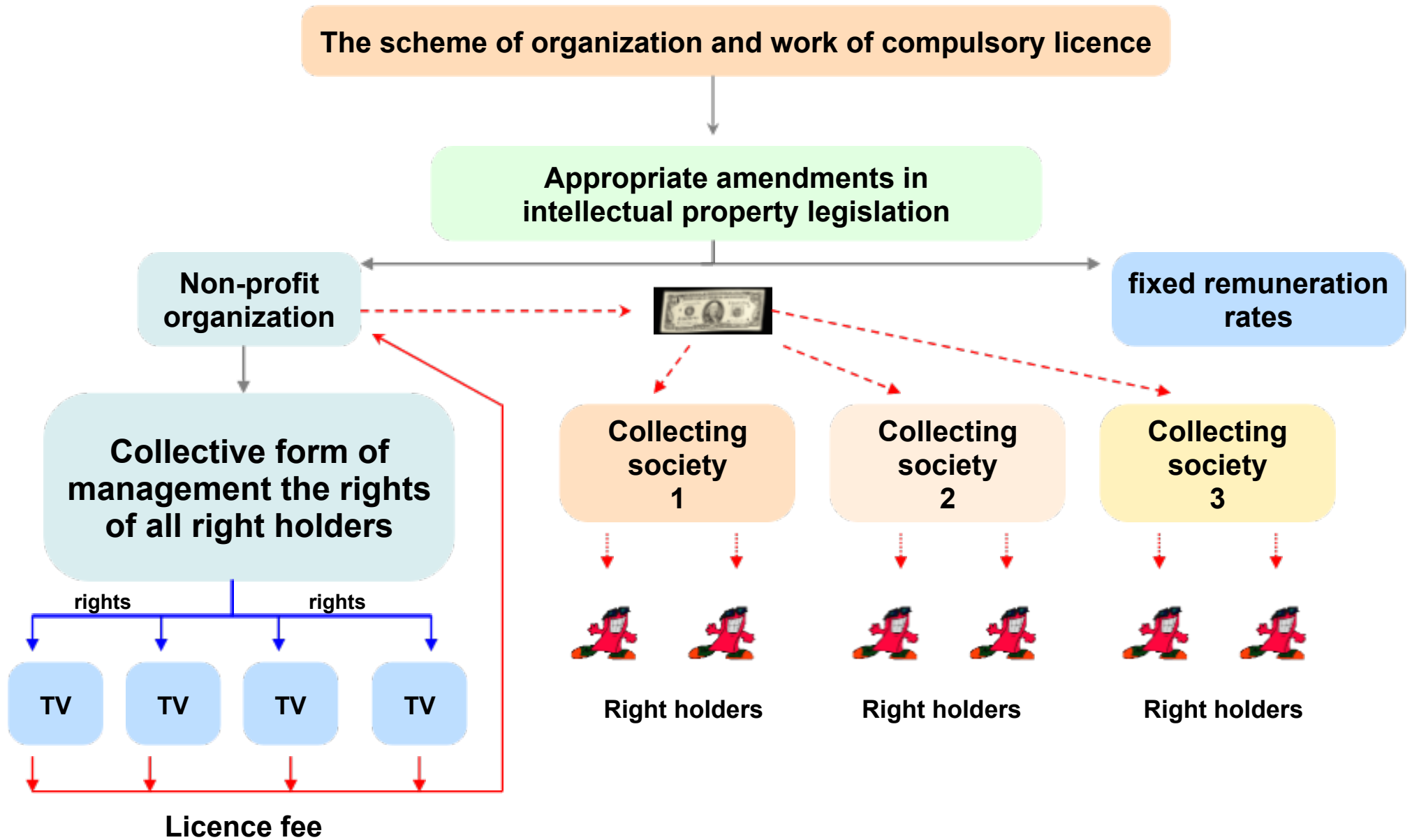
Due Diligence in Intellectual Property Transactions



**The only acceptable solution for problem of obtaining written permits (licences) by broadcasters on all rights shares in one or other work in market economy is a **COMPULSORY LICENCE****



**Exactly so it has been made in USA in 1995 when copyright law established a obligation for broadcasters to pay remuneration to initial (*producers and artists*) and secondary (*record labels*) neighbouring rights owners at digital broadcasting**



# Your questions

You can put to us by mail:



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