

State educational institution of higher professional education “Russian academy of justice”

Ilya Kondrin

MAKING AVAILABLE RIGHT AS PROVIDED BY RUSSIAN CIVIL LAW

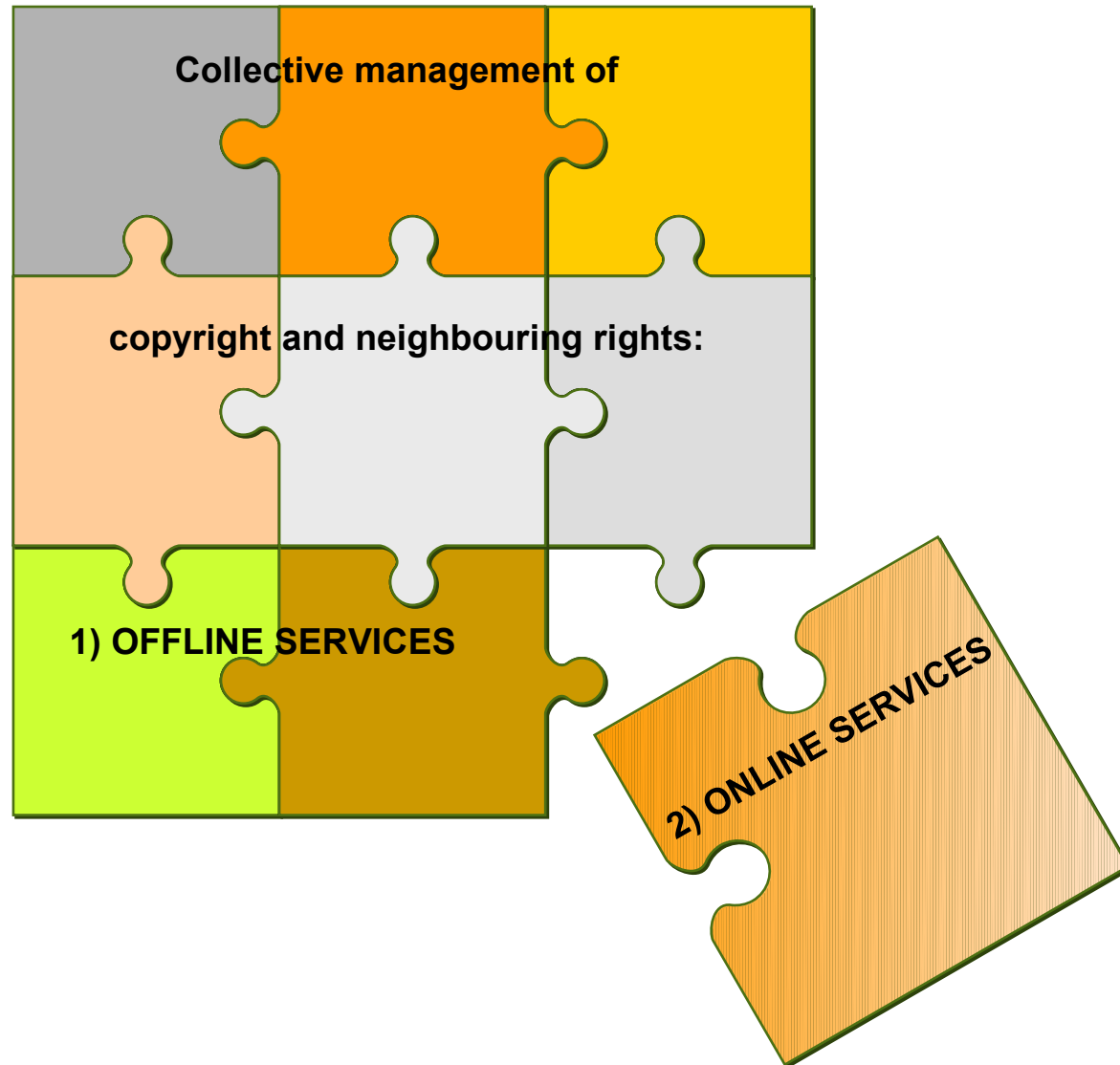
D I S S E R T A T I O N

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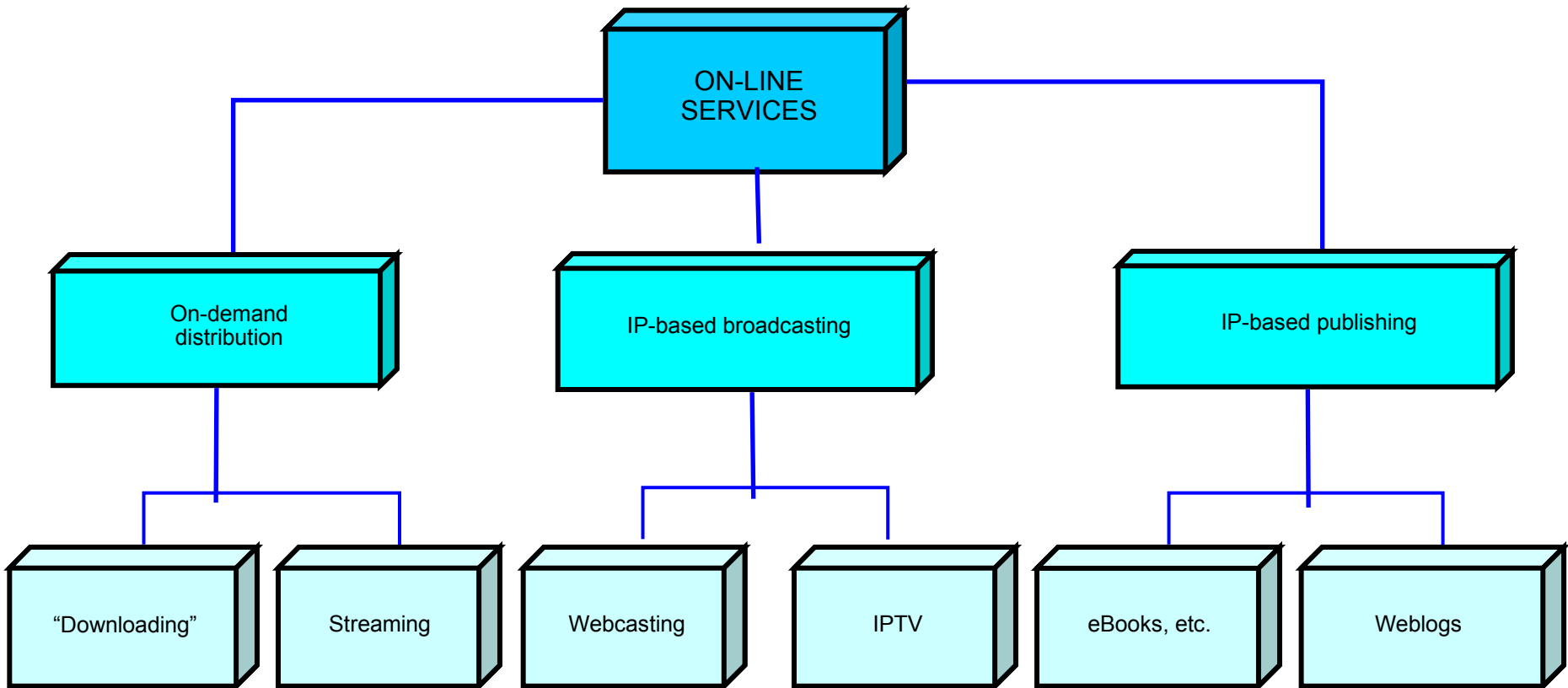
Is it necessary to change anything in Russian copyright legislation, especially in the field of collective management

Specialization: 12.00.03 – civil law; business law; family law; international private law

Is it necessary to change anything in Russian copyright legislation, especially in the field of collective management

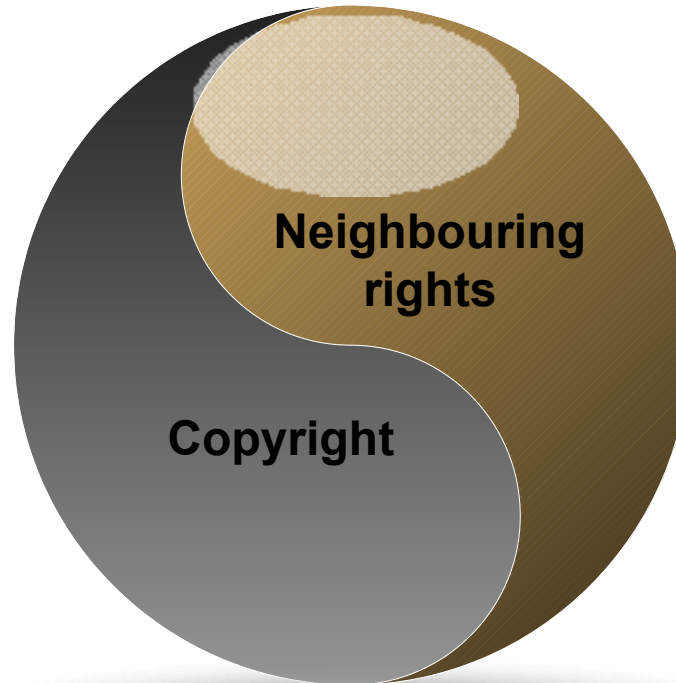


Digital environment for which a digital content is necessary



THE MAIN COMPONENTS OF DIGITAL CONTENT LEGALITY

- Copyright of authors and heirs.
- Copyright of others right holders (e.g. music publishing houses).



- Neighbouring rights of performers and producers of phonograms.
- Neighbouring rights of broadcasters.

THE MAIN RULE OF DIGITAL CONTENT ILLEGALITY

DIGITAL CONTENT

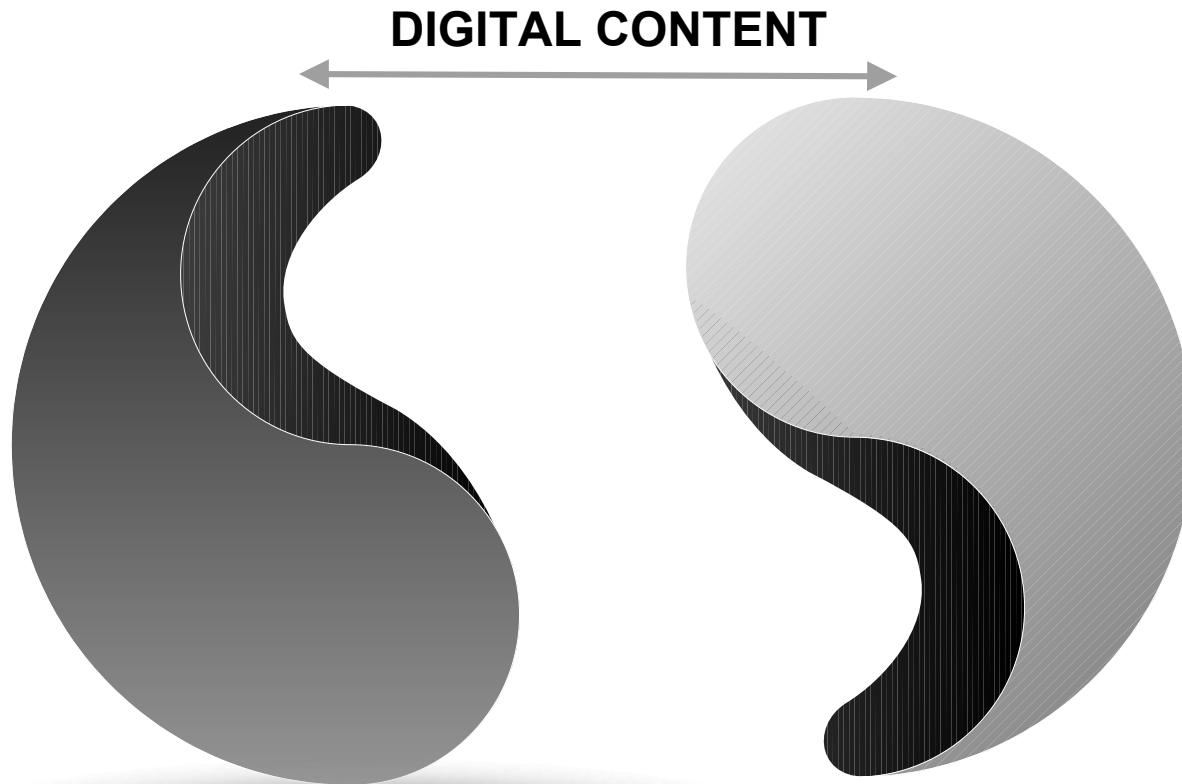


Simultaneously enjoyment of 100% copyrights and 100% neighbouring rights in digital content

Art. 1229 IV part of Russian Civil Code

- “Other persons can not use ... the results of intellectual activity ... without consent of right holder...”
- “Exploitation of the results of intellectual property ... (including exploitation by means provided by this code)... such exploitation without right holder’s consent is illegal and entails responsibility provided by this code, other laws...”

THE MAIN RULE OF DIGITAL CONTENT ILLEGALITY



Even if one of two types of rights is missing digital content is **illegal**

HOW DIGITAL CONTENT BECOMES LEGAL?

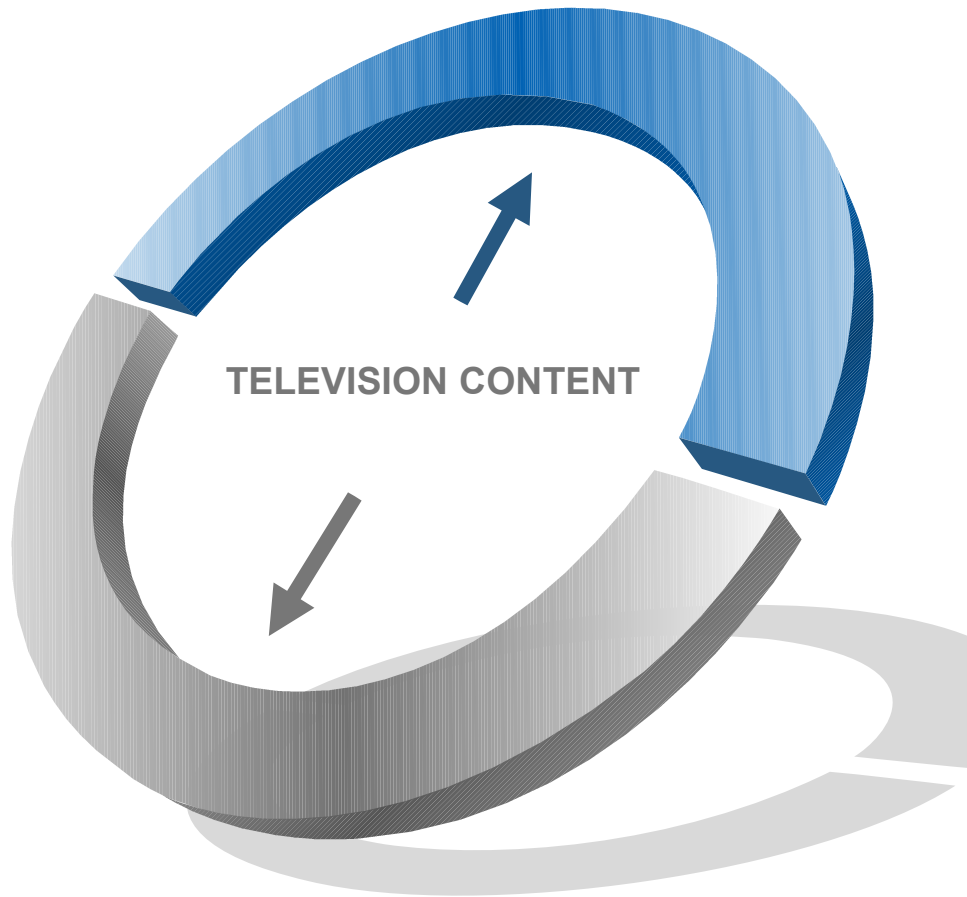
AS A RESULT OF “CLEARANCE” OF COPYRIGHTS AND NEIGHBOURING RIGHTS





As example of digital TV development in Russia

Two types of television content



LINEAR CONTENT

- Relation of television audience to delivered TV programs is passive.
- TV content is prepared and delivered simultaneously to all television audience.

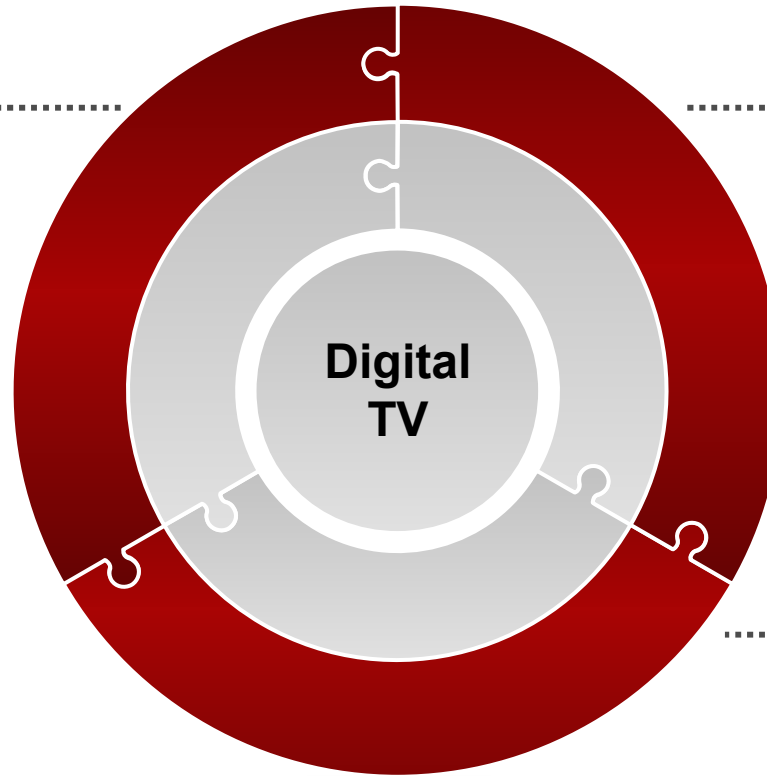
NON-LINEAR CONTENT

- Relation of television audience to delivered TV programs is interactive.
- Each TV viewer by himself chooses the time and place of access to TV content.
- Time-shifting, without spots etc.
- Television digital services on demand.

Three phases of transition to digital TV in Russia

1 PHASE

Multi-channel TV



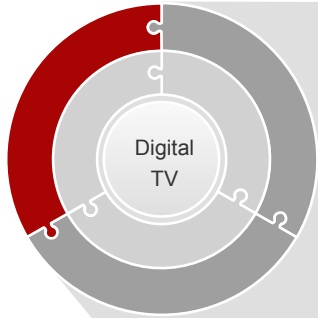
2 PHASE

Pay TV

3 PHASE

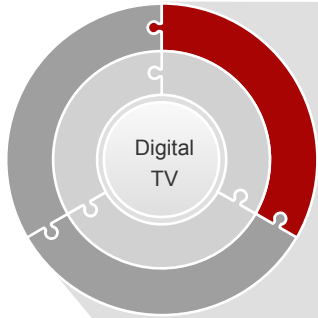
Non-linear TV

Now Russia goes through 1 phase of digital TV development



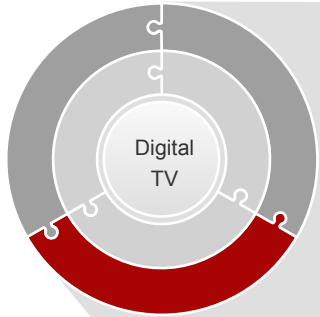
MULTI-CHANNEL TV

- Satellite multi-channel TV
- Cable multi-channel TV
- Linear content



PAY TV

- Pay TV becomes dominating
- Gratuitous analogue TV becomes outsider
- Quantity of available for viewing channels increases
- More on-screen entertainments for TV viewers (e.g. gaming)



NON-LINEAR TV

- IPTV
- Mobile TV
- Interactivity of television digital services
- Non-linear digital content
- User Generated Content

How long takes the “clearance” of digital rights in digital TV content in the homeland of copyright – in Great Britain?

As an example of launching the BBC iPlayer:

1. 2002 – beginning of negotiations with right holders for “clearance” of digital copyrights and neighbouring rights.
2. 2007 – completion of negotiations with right holders for “clearance” of digital copyrights and neighbouring rights.

→ “Record” negotiations term – **5 years**.





**Does Russia need to
replicate the best
practices of Great
Britain?**

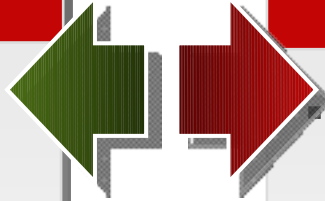
Copyright is necessary for following objects of copyrights

- Practically all objects of copyright
- List of such objects is in item 1 of art. 1259 of IV part of Russian Civil Code

Copyrights legally can be granted for following types of copyright objects

Released musical works with text or without text

- Excerpts of dramatico-musical works



CONCLUSION

The effective Russian legislation on copyright provides blanket licence only for music and only in relation to linear content

(art. 1244 of Russian Civil Code contains complete list of types of blanket licences which can be exercised by accredited collective management organizations)

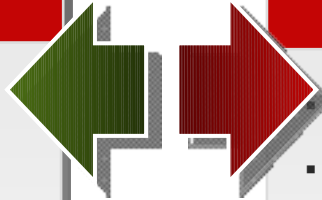
Russian specificity of copyright “clearance” in linear TV content in 2009

Copyright is necessary for following objects of copyrights

- Practically all objects of copyright
- List of such objects is in item 1 of art. 1259 of IV part of Russian Civil Code

Individual licensing for all types of copyright objects

- Search for each right holder of each necessary object of copyright and neighbouring rights
- Negotiating with each right holder of copyright and neighbouring rights individually
- Concluding individual licensing agreement with each right holder of copyright and neighbouring rights
- Negotiating about fee rates for exercise of copyrights and neighbouring rights individually



CONCLUSION

IN DIGITAL ENVIRONMENT RUSSIAN BROADCASTERS CAN'T ACQUIRE ANY COPYRIGHTS AND NEIGHBOURING RIGHTS BY THE AGENCY OF COLLECTIVE MANAGEMENT ORGANIZATIONS ACCREDITED BY STATE

(art. 1244 of Russian Civil Code does not provide blanket licence for “making available right”)

Russian specificity of copyright “clearance” in non-linear TV content in 2009

Russian specificity of copyright and neighbouring rights “clearance” in digital environment

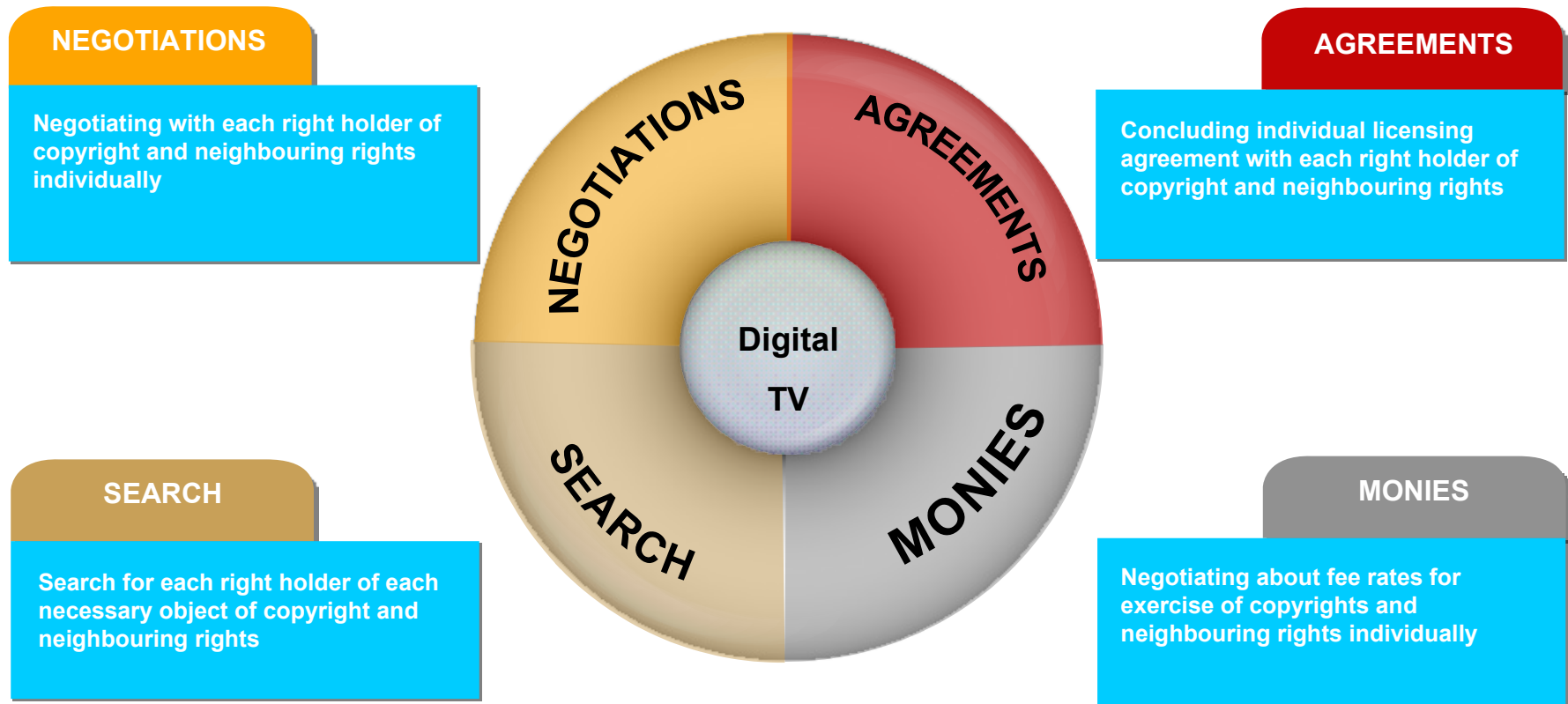
The Russian law **does not provide** establishment of any collective management organization accredited by state for digital environment (*Internet, IPTV, Mobile TV, etc.*)

The Russian law **does not provide** the exercise in Russia of blanket licences in digital environment (*on behalf of all authors, artists, producers of phonograms*)



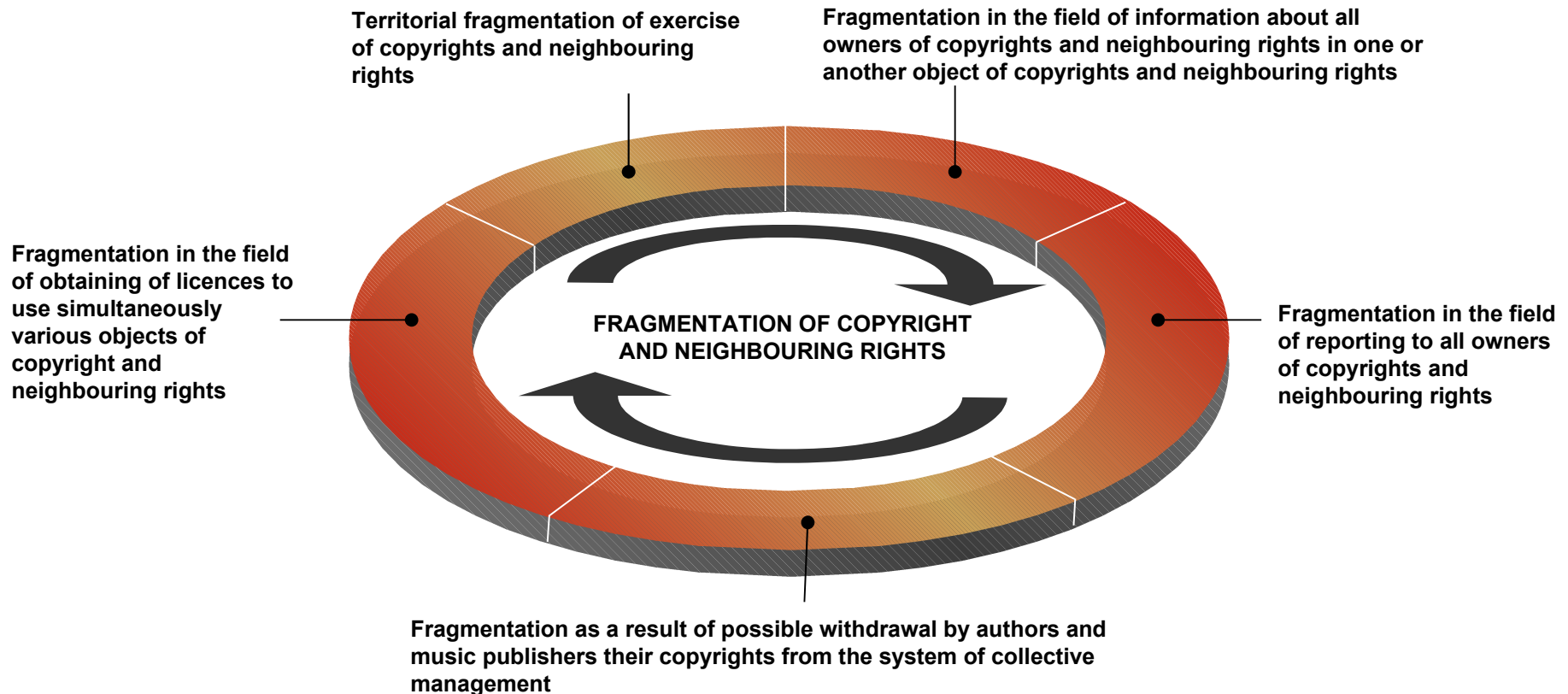
The Russian law **actually provides** only individual licensing in digital environment (*concluding licence agreements with each of owners of copyrights and neighbouring rights on various objects of copyright and neighbouring rights*)

The provisions of Russian copyright legislation cause increase of transaction costs during implementation of programme on digital broadcasting in Russian Federation



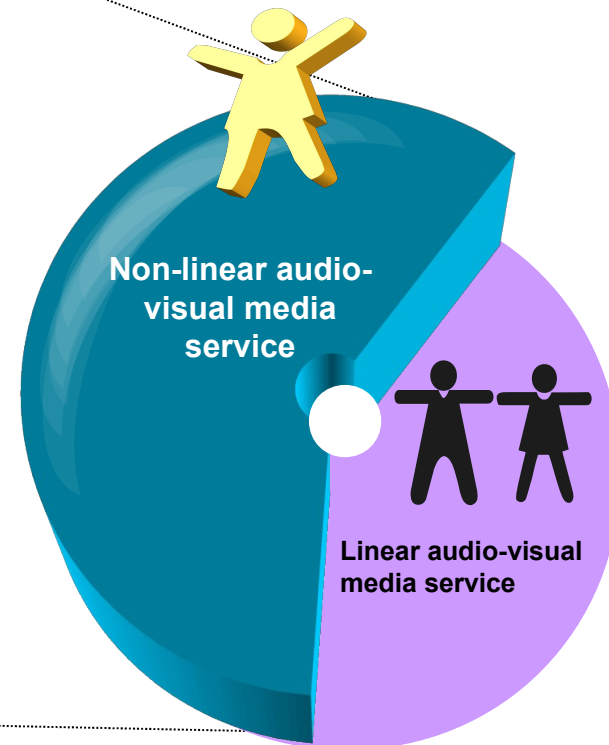
❑ Fragmentation of copyrights and neighbouring rights in respect to digital environment

In a negative impact of fragmentation of literary and artistic property on digital business as such conventionally it is possible to define a few following matters:



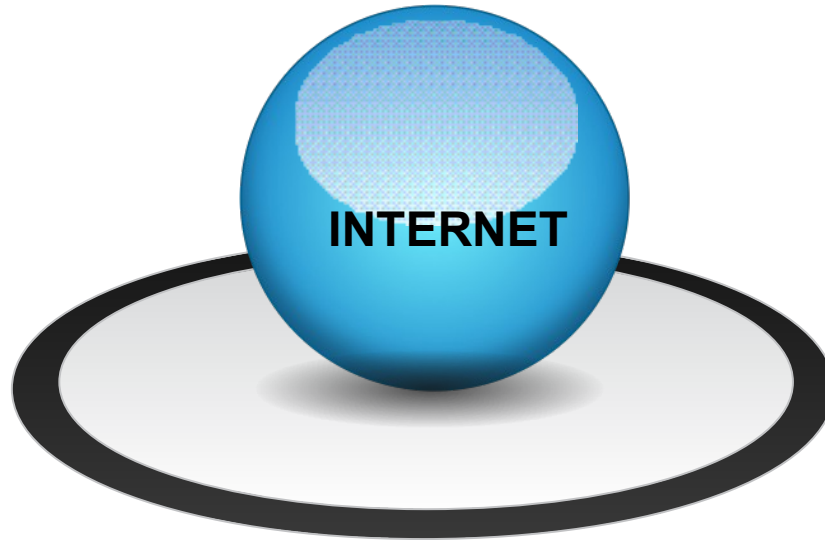
EU LEGISLATION

- ❖ **“on-demand audiovisual media service” (i.e. a non-linear audiovisual media service) means an audiovisual media service provided by a media service provider for the viewing of programmes at the moment chosen by the user and at his individual request on the basis of a catalogue of programmes selected by the media service provider**

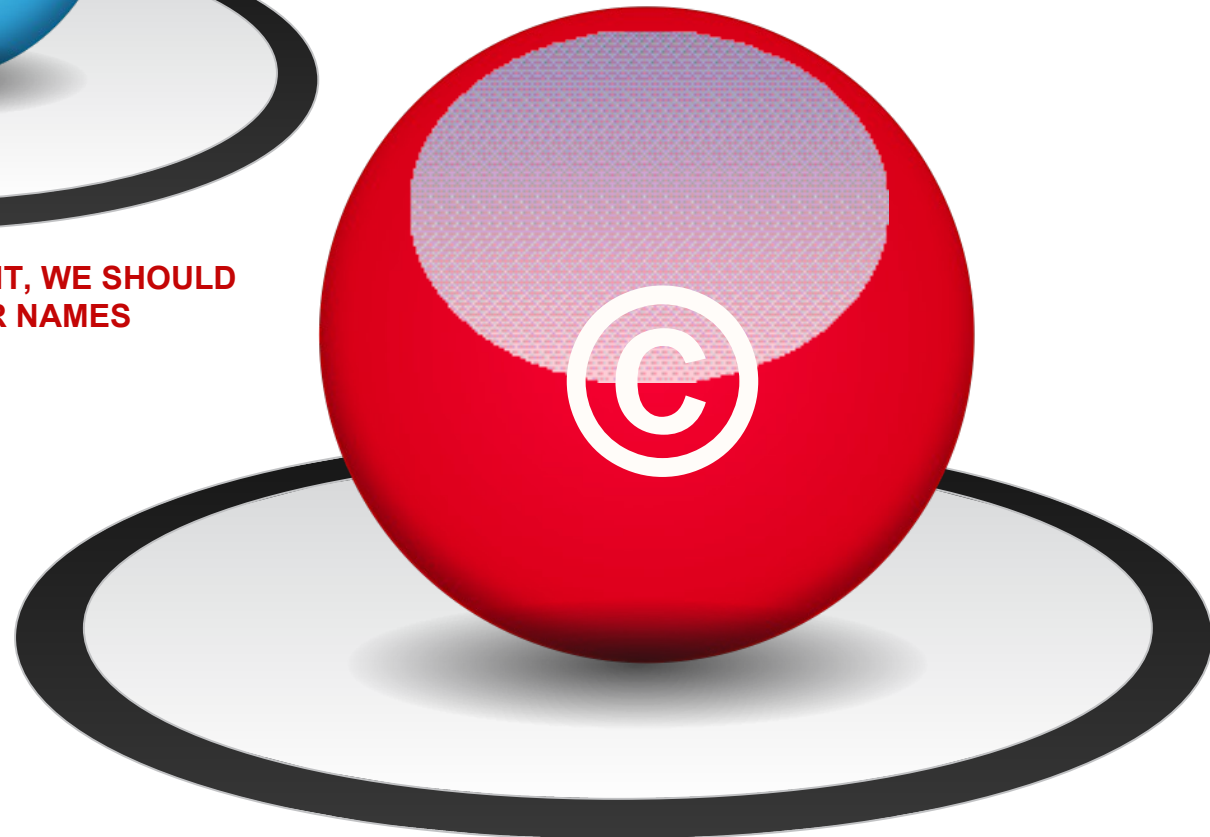


Summary legislative base of legislation directly or indirectly relating to making available right



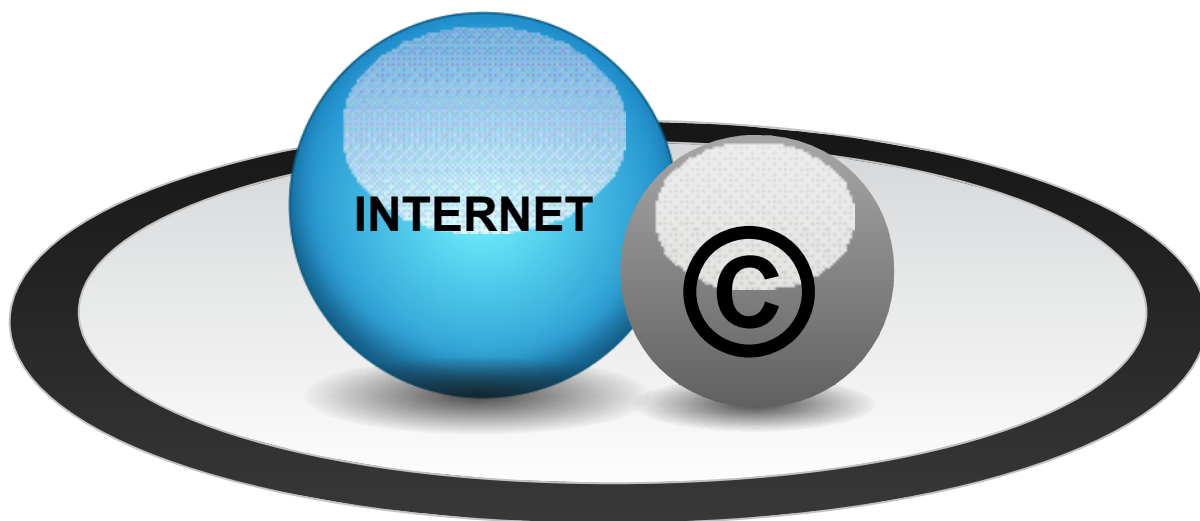


**INTERNET – IT IS ENEMY OF COPYRIGHT, WE SHOULD
CALL THINGS BY THEIR PROPER NAMES**



WHAT TO DO?

1. It is necessary to do so that future international treaties and our national legislation can defend most important positions relating to copyright in Internet environment.
2. It is not only our problem, it is world-wide problem.



We can't be the last

THE OPINION OF
RUSSIAN
PRESIDENT



Ilya Kondrin

“Does Russia need its own strategy of digital content development”

№ 9



№ 10



№ 11



How get to know other parts of dissertation?

