# A comparative analysis of US and EU regulatory frameworks of crowdfunding for the cultural and creative industries

Elisabetta Lazzaro & Douglas Noonan

***Abstract***

In the face of the dramatic shrinking of public and private funding, the arts, culture and creative industries (CCI) are increasingly relying on crowdfunding. This is especially true for the crowdfunding models of project-based donations and rewards. Yet crowdfunding for the CCI is still a fragmented and below-potential market. Main reasons for this untapped potential include a lack of transparency and trust affected by differently binding or favouring national regulatory frameworks. We focus on regulation by critically comparing and discussing the main features of the two major frameworks for crowdfunding activity in the CCI, namely the USA and the EU. We first analyse crowdfunding development in both regions and critically compare the corresponding legal and regulatory situations, and their possible impacts on CCI operators. We further outline the major areas over which regulatory action ought to be expected, including taxation and matching subsidies, consumer and investor protection, and information provision. As in most of these areas public policy specific to crowdfunding in the CCI is relatively under-developed, we discuss critical design features and identify how efficiency and equity might be affected by policy. We finally recommend key policy priorities and suggest directions for future research in this emerging arena.

Keywords: Funding for the arts and culture; Reward-based and donation-based crowdfunding; Comparative analysis of regulation policy.

## 1 Introduction[1]

Since launching in 2009, the famous US platform Kickstarter has hosted over 450,000 projects that have raised in excess of $4.7 billion (Kickstarter 2019). To put this in context, it only took a few years before arts projects on Kickstarter raised more funds annually than the US National Endowment for the Arts' entire appropriation (Franzen 2012). In the face to the global shrinking of public and private funding in the cultural and creative sector, in the last years crowdfunding has emerged as a valid alternative or complementary mode of funding the arts and culture. In addition to reasons for public support of institutions advancing public-goods aspects of research and development,

[1] This research is supported in part by an award from the National Endowment for the Arts (Award#: 1844331-38-C-18).

This is the author's manuscript of the article published in final edited form as:

Lazzaro, E., & Noonan, D. (2021). A comparative analysis of US and EU regulatory frameworks of crowdfunding for the cultural and creative industries. International Journal of Cultural Policy, 27(5), 590–606. https://doi.org/10.1080/10286632.2020.1776270

strong rationales for subsidizing the cultural and creative sector frequently find support in theory and in practice (Throsby 1994). Whether it is Baumol and Bowen's (1965) cost disease arguments or public-goods aspects of many cultural resources, powerful normative arguments support subsidizing the cultural and creative sector – and crowdfunded ventures are no exception.

Crowdfunding in the cultural and creative sector (CCCF) is mainly oriented toward the financing of projects, rather than structural finance. CCCF usually takes the form of donation or reward crowdfunding, where only in the latter case the backer expects a reward, either symbolic or in kind (e.g. limited editions, tours, networking sessions and prototypes), more rarely monetary. Developed initially and especially in the USA, but also in the UK and continental Europe, CCCF represents a market in significant expansion and evolution. CCCF is becoming increasingly important to finance cultural and creative projects and ventures, untapping entrepreneurial potential (Lazzaro 2017). Furthermore, it favors community involvement, market research and audience development, the sharing of information and promotion, besides the development of professional skills (De Voldere and Zeqo 2017). Arguably CCCF's core advantages arise for its ability to lower the transaction costs for expanding market size or for fundraising to cover fixed cost of product development (which often has zero marginal production cost in creative sector). Yet, it is not free of barriers and risks.

If we look at the market of CCCF, it looks fragmented in terms of platforms' business models, geographical distribution/concentration, relevance of CCI sectors covered, available information, implied skills to operate and access this market, and, in particular, regulation, with distinct features of donation and reward crowdfunding compared to investment, or equity- and lending based, crowdfunding. In such a rapidly evolving marketplace, it becomes then crucial to look at the two main areas interested by CCCF, namely the US and Europe, and to critically analyze and compare their respective regulatory frameworks. In this sense, the major contribution of this paper is to highlight current regulation aspects of CCCF from an economic perspective and through a comparative way of its two major markets, in order to offer policy recommendations to main stakeholders.

The plan of the paper goes as follows. We first analyze some fundamental features of CCCF and the associated benefits and barriers, and we propose and estimate a simple model of startup firms raising capital. The basic model keys on transaction costs and the size of the market relative to the costs of launching a project – both factors that regulation can affect. This conceptual description of the emerging CCCF market points to the importance of how it is regulated (Section 2). We then turn to an assessment of the regulatory frameworks that may enhance CCCF benefits and limit CCCF barriers and risks in both the United States (Section 3) and the European Union and its member states (Section 4). The review of the literature and industry reports for the US and then for the EU highlights different priorities and approaches to regulating crowdfunding around the world. In general, "the success of local platforms largely depends on the characteristics of the national market and competition from international platforms" (Torkanovskiy 2016, 115). Although regulation in this area is fairly limited in the United States, regulatory systems in the European Union that have been described as "heavily limit[ing] mechanisms to promote offers and campaigns to a wide range of potential investors… [and] hinder[ing] the emergence of an ecosystem with platforms that can offer the infrastructure for internet-based campaigns" (Hooghiemstra and de Buysere 2016, 135). We finally provide a critical comparison of these regulatory frameworks in Section 5. This comparative lens leads to some policy recommendations as well as suggestions for future research in this field.

## 2 Benefits and barriers to CCCF expansion

### *2.1 Benefits*

The rapid emergence of donation and reward crowdfunding, especially for cultural and creative projects and ventures, points to many benefits and barriers. Appreciating those benefits and barriers is central to regulating crowdfunding's operations and growth (Lazzaro and Noonan 2019). At its core, crowdfunding's key distinctive innovation owes to its dramatically lower transaction costs for fundraising associated with its online platform and associated technologies. By lowering the transaction costs, the creator can now market her project to a much larger audience ('the crowd') at far lower costs for communication and payment and, in many cases, delivery of goods and services. If the old model was a musician raising money, perhaps to pay for recording her next album, by passing a hat among the audience at her performances, then the new model is digitally broadcasting a link to an online crowdfunding platform, potentially reaching a wider and better market, making contributions more convenient, and ultimately lowering delivery costs. These distinctive advantages of crowdfunding are examined more below.

The growth in crowdfunding as a preferred fundraising technology comes as some creators are better able to reach their market. The lower transaction costs can affect the intensive margins by lowering fundraising costs among existing contributors, which helps the viability of previously marginal projects as well as giving creators better 'market research' data from crowdfunding campaigns' performances. Perhaps most dramatically, crowdfunding's reduced transaction costs affect the extensive margin, enabling some artists and creators the opportunity to market their projects where previously they lacked a sufficient audience or identifiable market. Along the extensive margin, crowdfunding has launched new artists' careers, made costly hobbies and professional projects more affordable, and financed innovative experiments that might never have seen the light of day by, essentially, drawing in a larger market to help fund the venture. As lower transaction costs have expanded the size of the crowd, more interested contributors can be identified and previously unviable ('niche') projects can receive a "green light".

The advantages of the crowdfunding platform and approach have been touted at length elsewhere. Broader geographic distribution of financing for entrepreneurial projects often leads the list of crowdfunding's benefits (Sorenson et al. 2016). How crowdfunding platforms fit with a "world is flat" perspective on the global economy continues to receive scholarly attention (e.g. Agrawal et al. 2015, Fleming and Sorenson 2016, Mendes-Da-Silva et al. 2016, Giudici et al. 2018), with a preliminary conclusion that new venture financing is far less geographically concentrated under crowdfunding (Yu et al. 2017). Yet location continues to matter a great deal, especially at the extensive margin, as crowdfunding has enabled more geographic localization (local specialization?) of projects as ventures in smaller markets are now viable. This geographic 'flattening' effect reaches not just where projects are located, but also where the creators and the backers need to locate – as increasingly the producers and consumers need not collocate (Breznitz and Noonan 2020).

Other major benefits related to crowdfunding's lower transaction costs include improved information in these online fundraising markets. Project creators can better convey the qualities of their ideas, products, services, etc. in a rich, multimedia environment. Prospective buyers, for instance, can sample some of the new songs before deciding to commit, rather than taking a gamble on dropping money in hat. Crowdfunding research routinely shows that projects with better information describing their venture are more likely to succeed in their fundraising goals (Mollick 2014, Courtney et al. 2017). Allowing creators to share more information can reduce uncertainty in the market, but does little to address information asymmetries. Yet these crowdfunding ecosystems take cues from other online sales platforms to create and maintain information about creator reputation. In some cases, they also foster more interaction between the creator and prospective backers, allowing for even richer exchanges of information.

Lastly, allowing creators to collect better market research data through a crowdfunding campaign can yield great value to creators, including enhancing their odds of later receiving more traditional venture capital (Butticè and Noonan 2016, Xu 2017). In essence, testing prototypes in a crowdfunding marketplace with real stakes (money) involved marks a substantial improvement in market research over running focus groups and expert opinion. In general, projects that receive a higher amount of pledged money through crowdfunding attract more subsequent interest from investors (particularly in the world of technology), although "this positive effect emerges (and becomes more intense) only when it is complemented by the presence of patents granted for the new product idea, which proves technological viability and exclusive protection, or when the entrepreneur has built a large network of social relationships and thus can benefit from a large pool of strategic resources" (Roma et al. 2017).

Indirect benefits of crowdfunding also warrant attention, as these often grab the limelight. Advocates often point to crowdfunding's ability to "democratize funding" (Mollick and Robb 2016) and "levelling the playing field" (De Buysere et al. 2012, Bruton et al. 2015, Breznitz and Noonan 2020). In a sense, these refer to the promise of crowdfunding to expand the margins of viable projects and allow new entrants. Insofar as there are severe barriers to entry for funding – for venture capital, for government funding, for charitable donations, etc. – then crowdfunding may indeed offer a platform that bypasses those monopolized funding markets. In this sense, crowdfunding closely resembles other platform-based disruptive markets, such as ridesharing and AirBnB, whose benefits partly derive from overcoming barriers to entry. It even helps reduce barriers to entry into more conventional financing. A correlation exists between "Kickstarter projects in a region" and "increased angel investing activity, even after instrumenting with projects that should not be of interest to investors" (Yu et al. 2017).

Spillovers from CCCF to other more traditional forms of financing new ventures and IP protection remain important areas for future research. Bringing creators more directly in contact with their audience or crowd may offer benefits other than just improved market research. It might improve the experience for the backers, give stakeholders more influence over production, and even identify more 'wisdom of the masses' (Mollick and Nanda 2015). Diversifying the pool of funders, and thus diversifying the projects that ultimately receive funding, may hold some of the largest benefits from a broader, social perspective. Fears of "mob rule" and "tyranny of the majority" aside, crowdfunding as a mechanism to mitigate elitism in new cultural and creative ventures may yet hold benefits for society. Each of these benefits, however, directly depend on barriers that crowdfunding faces. After all, if certain groups are disenfranchised from participating in crowdfunding, these indirect benefits are greatly limited.

### *2.2 Barriers*

Despite the rapid rise of CCCF – now a 'household term' among the arts and culture communities – it faces significant barriers and poses some serious risks. The most immediate issue, mentioned above, concerns information asymmetry and the lack of transparency. Although information asymmetry in fundraising is not exclusive to crowdfunding, merely shifting the marketplace to an online forum hardly resolves the matter. Adverse selection, whereby good projects would fail because observably identical bad projects are the only projects that sustain on the crowdfunding platform, remains a concern in theory at least. Although the growth of crowdfunding platforms suggests that either this concern is overstated or that there is a great deal of 'lemons' (Akerlof 1970) waiting for the crowdfunding opportunity, the fundamental challenge of better enabling transparency remains. Again, this is true for all fundraising campaigns for new ventures. Perhaps a bigger concern for crowdfunding is the moral hazard problem (Strausz 2017), or the possibility that creators fail to adequately deliver to their backers. Once funded, in most (all?) crowdfunding platforms, projects may face suboptimal pressure to deliver on their promises. Though reputational effects may be severe, one-off creators who simply scam the market before disappearing into anonymity pose a threat. Subtler, and potentially more threatening, are the biases that crowdfunding might support. Although it might promise to 'democratize' funding, its theoretical promise might be replaced by a reality of discrimination (Rhue and Clark 2016, Youkin and Kuppuswamy 2017) and other biases (Greenberg and Mollick 2017, Johnson et al. 2018).

The rise of crowdfunding over the past decade has been characterized by several key features. Agrawal et al. (2014) find that crowdfunding is not geographically constrained and tends to support 'market-for-superstar'-style distributions with fundraising highly skewed to a few creators. Crowdfunding capital may substitute for other traditional sources of financing, although this research continues to evolve (see, e.g., Roma et al., 2017; Yu et al., 2017). In addition, Agrawal et al. (2014) also observe a prominent role of friends and family in early stages of fundraising. Clearly social networks matter, especially for certain types of more local projects than for wide-reaching digital projects (Breznitz and Noonan 2020). Crowdfunding platforms play a key role in reaching contributors – whether they are members of a local community making a donation to cover fixed costs or they are consumers effectively using crowdfunding as a presale platform.

### *2.3 A simple model of crowdfunding platforms and minimum efficient scale*

Consider a simple model of startup firms that face fixed costs (FC) associated with raising capital to develop and market their product. In some small markets, relative to the fixed startup costs, the demand does not support production by even one firm. This situation can be seen in panel A of Figure 1, where local demand cannot reach even the minimum efficient scale. The advent of crowdfunding can be seen to reduce the fixed costs associated with raising capital. Lowering the transaction costs of fundraising shifts the average cost (AC) curve downward to AC'. This draws new firms to enter this market using the crowdfunding platform. With traditional venture capital (and finance for arts and cultural projects) concentrating geographically, technologies that reduce fundraising costs may have uneven effects across different markets. If the FC associated with fundraising is negatively correlated with local market size or density, then crowdfunding technologies may lead to disproportionately more entry in smaller markets than in larger one. These smaller markets might be for local goods and services in less populous communities (e.g., small town theater, local festivals) or for niche goods for rare tastes (e.g., highly specialized film or music genres).

An alternative conception of crowdfunding platforms models them as essentially online pre-sale markets, where it reduces transaction costs for reaching a broader market rather than reducing transaction costs for capital fundraising. This alternative model is illustrated in Panel B of Figure 1. Here, the cost curve is unchanged and the demand curve shifts outward to D' as the online platform allows the firm to reach more consumers.

[Figure 1 here]

The difference between the two models stems from different models of crowdfunding. Equity-based models, where backers are investors rather than consumers, correspond more to Panel A and a crowdfunding technology that reduces transaction costs in fundraising. Reward-based models, where the backers are consumers making advance purchases, correspond more to Panel B and a crowdfunding technology that expands the size of the market. Both approaches show how crowdfunding can reduce the *relative* minimum efficient scale (MES) in these markets to enable new entry. As crowdfunding lowers the transaction costs of reaching the crowd of investors or of consumers, these crowds enable new producers to succeed in new markets. The lower MES may disproportionately favor entry in small markets, as demand in larger markets may already exceed MES.

[Table 1 here]

The relationship between crowdfunding platforms and minimum efficient scale points to the technology's potential to spur entrepreneurship in the creative and cultural sector, especially in smaller markets. If the fixed costs of new entry are largely the same for a given project, regardless of the size of the market, then crowdfunding's role in reducing costs and thus MES should mean it has bigger impacts in smaller markets. This can be seen in the results from Breznitz and Noonan (2020), who show that non-digital crowdfunding projects tend to disperse into smaller markets rather than concentrate in larger cities. Data from one of the world's largest reward-based crowdfunding platforms, Kickstarter, can illustrate the empirical relationship between domestic market size and crowdfunding activity. This US-based platform holds a dominant position in the US, and it also attracts many projects from around the world. Recent data indicate that the share of non-US projects on the platform has grown from 0% to 44% over the past nine years.[2] Creators who use Kickstarter can tap into a larger 'crowd' of backers and buyers. Although it is just one platform, and a country's Kickstarter activity may not be proportionate to its total crowdfunding activity, we hypothesize that this tool to expand the size of crowd will disproportionately impact smaller domestic markets.[3] To test this, we use data from the Kickstarter website, with descriptive statistics in Table 1.[4] For 162 non-US countries, we estimate an OLS regression of the (logged) total funds raised via Kickstarter per capita on wealth (logged GDP per capita), (logged) population, and indicators for OECD countries and whether a majority of its population is English-speaking. The results robustly show very strong relationships with wealth and population:

$$FUNDSRAISEDpc = 3.63 + 0.50\ GDPpc - 0.35\ POP + 1.89\ OECD + 0.92\ ENGLISH$$

The regression explains much of the variation in fundraising ($R^2 = 0.64$), and the strong, positive roles of wealth, OECD membership, and English language are as expected. The inelastic relationship between population and fundraising, with the coefficient for population less than unity ($\beta = -0.35$, robust standard error = 0.06), reveals that – although total Kickstarter activity grows with population – the Kickstarter funds raised per capita is greater in less populous countries.[5] Smaller domestic markets are able to take more advantage of the crowdfunding platform. This is to be expected if platforms like Kickstarter help new entrants reach larger crowds that might not have been available in their domestic or regional market. The practice of multihoming, where entrepreneurs can use a global platform like Kickstarter concurrently with their domestic platform, would amplify the effect of crowdfunding in encouraging new, previously unprofitable ventures in smaller markets. Historical limitations on use of platforms based on nationality and substantial learning costs to launch projects on new additional, different platforms act as barriers to crowdfunding. Removing trade barriers and expanding markets can also complement crowdfunding's technological advances in reducing the minimum efficient scale.

---

[2] Based on Kickstarter data obtained from webscraping via [https://webrobots.io/kickstarter-datasets](https://webrobots.io/kickstarter-datasets) , downloaded on 24 April 2020.

[3] Two issues arise in the proportionality of a non-US country's Kickstarter activity to its total CCCF activity. (1) Domestic platforms can be substitutes for Kickstarter, and the extent to which domestic platforms are dominant alternatives can differ systematically from country to country. (2) Conversely, domestic platforms can serve as complements if creators list their projects on multiple platforms – multihoming – in ways that differ systematically across countries. How the net effect of the complementarity and substitutability of Kickstarter to non-Kickstarter CCCF platforms covaries with domestic market size is theoretically ambiguous,

[4] Kickstarter data are obtained from the CrowdBerkeley dataset in 2017 and include all funds raised on that platform, by country, through 2016. All values are measured as 2016 USD.

[5] We also estimate this regression model with (raw) per-capita funds raised (mean=0.16, s.d.=0.44, N=189) as the dependent variable. The results ($FUNDSRAISEDpc = 0.41 + 0.03\ GDPpc - 0.02\ POP + 0.45\ OECD + 0.24\ ENGLISH$ ) indicate a very similar story: per-capita funds raised in Kickstarter are greater in smaller domestic markets.

### *2.4 Regulation*

Ultimately, crowdfunding's ability to achieve its potentials and overcome its barriers depends directly on how it is regulated. As an emerging marketplace, the regulatory framework for raising funds through the crowdfunding platforms is reactionary and still evolving. Lacking a regulatory system in place at the outset, the crowdfunding approach enjoyed some rapid growth without (legal) barriers and associated compliance fixed costs (Calcagno and Sobel 2014). But unregulated growth can pose some risks, especially if participants in the crowdfunding marketplace are victims of fraud, predation, or bias, of if the inherent risk on the platform deters optimal investments. The absence of clear standards and stable regulation in these markets can dissuade creators and backers from participating, and it can lead to distortions in the marketplace as some projects, or even some platforms, are favored through market design, taxation, or technological limitations. This may be especially true in Europe, where variation in national regulatory frameworks limit growth of what is essentially a global marketplace. The lack of harmonization between national systems stands as a major barrier. Compounding this lack of harmonization in regulatory systems are important differences in fiscal regimes, financial incentives, payment systems, intellectual property rights, data protection, professional standards, languages, and more. Crossing borders or switching among crowdfunding platforms can require significant adjustment costs. Market fragmentation in crowdfunding, especially in a post-Brexit world, remains a serious barrier to its continued expansion.

## 3 CCCF regulatory framework in the USA

The fiscal regulatory framework governing donation- and reward-based cultural and creative crowdfunding ventures within the United States is still emerging. Though more limited than the European legal and regulatory framework(s) for maintenance of crowdfunding, the existing laws and regulatory climate in the United States provide opportunities and challenges for regulators and those engaging in CCCF. Prior reviews of crowdfunding regulation in the US explicitly focus solely on laws such as the JOBS Act of 2013 that only apply to equity-based crowdfunding. In short, the JOBS Act exempted crowdfunding from federal securities laws to allow small businesses to raise capital from a variety of sources that included using crowdfunding to sell securities to the general public (Securities and Exchange Commission 2018). Over $1.5 billion has since been raised through these mechanisms (Barnett 2016). Although, the law does not apply to reward or donation crowdfunding, it has inspired a number of state-specific exemptions to increase local investment in small business both related to and separate from the arts. Unlike equity-based crowdfunding and its strict oversight by the Securities and Exchange Commission and the Financial Industry Regulatory Authority, the attention paid to regulation of US CCCF is more diffuse and indirect.

US federal and state laws do touch on crowdfunding in a limited way. Federal law governing crowdfunding is contained within the Code of Federal Regulations, specifically within Title 17, Chapter 2, Part 227. This federal code provides guidelines and requirements for issuers, intermediaries and funding portals of financial securities.[6] Several other miscellaneous provisions in this section of the CFR are tied to the Securities Act (1933) and to regulating of equity-based crowdfunding. State laws regarding crowdfunding, on the other hand, generally aim to encourage local investment. Thus, they tend to include more provisions related to reward-based crowdfunding. The crowdfunding laws of most states have only been written on or after 2014 as a direct response to federal passage of the JOBS Act and the increasing importance of online commerce. States such as California, New York and Ohio have no intrastate crowdfunding exemption on the books for equity-based crowdfunding, although 36 currently do (Zeoli 2017). States vary in policy areas such as the maximum income that can be received from equity-based crowdfunding ventures and the necessary ratio of investors pledging money from within the state itself. Explicit references to reward or donation crowdfunding by state agencies are rare. The Indiana Secretary of State makes passing reference to encouraging investment in local artists within the context of small business,[7] the California Attorney General offers advice for those who may have been the victims of a RC scam,[8] and Washington state offers guidance for how crowdfunding donations should be considered for taxation purposes.[9] Relevant state codes apply exclusively to equity-based crowdfunding ventures. State-level regulation of CCCF only applies to ventures resulting in small businesses using equity-based crowdfunding; and reward or donation crowdfunding campaigns garner no special regulation.

Taxation of CCCF remains an unclear and evolving situation in the United States. Government regulation and taxation of the crowdfunding platforms themselves depends on the company statute. For example, Kickstarter is a public-benefit corporation (which mixes tenets of profit maximization with concern for public benefit), while alternatives such as GoFundMe are for-profit companies. Although the tax treatment of these companies is straightforward, how to tax the crowdfunding ventures themselves – the creators, vendors, and investors – remains more complex. Generally, income accrued by artists and content creators on crowdfunding platforms is treated as taxable income by federal law (Metrejean and McKay 2015).

Though seemingly straightforward, some questions remain over what sorts of expenses are deductible and how (if at all) the Gift Exclusion under Section 102(a) of the federal tax code can be utilized in relation to crowdfunding ventures. The former issue depends on whether the venture is deemed a business or a hobby. As Metrejean and McKay (2015) note, "If the activity is deemed a trade or business, all otherwise allowable trade or business expenses should be deductible against the income (Sec. 62). If, however, the activity is deemed to be a hobby, only expenses to the extent of the income will be deductible (Sec. 183). Additionally, vendors and artists using Kickstarter and related platforms have an incentive to attempt to classify the proceeds raised from their reward-based crowdfunding venture as non-taxable gifts instead of traditional income. This exemption was intended for smaller transactions between family and friends, which certainly apply in many reward-based crowdfunding ventures. Yet some creators may attempt to classify donations made by strangers for an artistic venture as gift-giving. US

[6] 17 C.F.R. § 227.100-503.
[7] "Indiana Securities Division". (2018). Accessed August 28. https://www.in.gov/sos/securities/4114.htm
[8] "Online Crowdfunding". ibid.
[9] "Crowdfunding" ibid.

tax law is somewhat vague in this regard, especially as content creators reconcile the general lack of deference shown to the definition of "gifts" in American courts with Kickstarter itself urging users to attempt to utilize the gift loophole (Dietz 2014). Such exemptions would likely apply for the typical smaller project: research has indicated that the majority of backers of most artistic crowdfunding ventures are close family and friends (English 2013, Borst et al. 2018). Regardless, income accrued from crowdfunding ventures is generally treated as taxable income gained as the result of a business transaction at the federal level and, presumably, at the state level as well (no guidance appears to be provided in this regard). When declaring income from crowdfunding ventures, no clear consensus exists for the timing of reporting. There is no guidance given at the federal level. Although Washington state requires the income to be reported when the project is fully funded, other states could be more aggressive and treat the contributions as similar to a sale – thus requiring the income to be reported at the time of contribution (and allowing for a later credit if the funding ultimately does not vest (Gruba et al. 2015).

A related taxation issue involves how crowdfunding platforms apply sales tax. Given the significant competitive advantage for online marketplaces derived from their avoiding sales tax (Goolsbee 2000), treating reward-based crowdfunding pledges as essentially taxable pre-sales could affect the attractiveness of these platforms. Broadly, how sales tax applies to donations made to crowdfunding ventures with expectation of rewards primarily depends on the type of reward being offered. Selling tangible personal property, electronically delivered digital products, or certain services is subject to traditional retail sales tax, and crowdfunding platforms might seem to offer no exemption. Other rewards (e.g. listing backers' names online), however, may not qualify for retail tax and thus be considered donations (Gruba et al. 2015). Moreover, inter-state shipping of rewards complicates the calculation of sales tax. The legal landscape for taxing interstate online retail sales continues to evolve, and states offer no explicit crowdfunding-specific guidance.

Other regulatory concerns about crowdfunding platforms focus on issues of intellectual property (IP), patent law, and intentional acts of fraud perpetrated via crowdfunding platforms. Sharing early-stage ideas without proper protection of original ideas raises the risk of copyright infringement and other IP protection issues. Roberts and Nowotarski (2013) observe that the nature of "crowdfunding compounds the general difficulties faced with any product launch in a crowded IP landscape with unprecedented exposure of projects at the very earliest stages."

Fraud in reward-based crowdfunding captures considerable public attention in the United States. This includes acts of fraud (intentional or otherwise) and failing to deliver the rewards or perks promised by the crowdfunding project. According to one study (Mollick 2015), only around 9% of projects fail to deliver promised rewards, with the majority of those failures being from smaller projects and no noticeable links between failure rates and demographics such as education, gender and family status. Limited options exist for jilted investors to ensure reception of deliverables or a refund of their donation. Crowdfunding platforms generally refuse to refund money directly to investors when projects fail. Kickstarter maintains that while creators are required to "fulfill all rewards of their project or refund any backer whose reward they do not or cannot fulfill" (Strickler et al. 2012), the platform itself is not responsible for funds changing hands at any point in the transaction process. To Kickstarter, "The fact that Kickstarter allows creators to take risks and attempt to create something ambitious [despite not being guaranteed] is a feature, not a bug" (Strickler et al. 2012). Though frustrated backers of larger fundraising efforts occasionally undertake legal action (such as the case of a vendor who claimed to have invented an alternative to the iPad who was sued even when refunds were provided after the announcement of the product failure) (Gunatra 2016), such cases are rare. The lack of case law may be due to the high legal costs relative to the small donation amounts typically made to artists and vendors (Moores 2015). The office of the California Attorney General does offer a brief guide to help potential investors avoid fraudulent reward-based crowdfunding ventures through practical steps such as researching creators and crowdfunding platforms, doing reverse Google image searches, asking direct questions and more, as well as providing contact information to both common crowdfunding platforms and watchdog agencies such as the FTC and Better Business Bureau.[10] Regulatory frameworks for rewards-based crowdfunding in the US do not oversee the platforms themselves, but they do include general regulatory mechanisms for fraud (intentional or otherwise), such as consumer protections offered by the FTC and state attorneys general.

To conclude, the regulatory framework governing crowdfunding platforms in the United States is much looser for reward-based ventures than the stricter SEC laws governing equity-based investment in crowdfunded securities. The CFR contains no regulations strictly related to reward-based crowdfunding, and laws passed at the state level also fail to provide notable structure or guidelines for vendors and artists hoping to fundraise by using reward-based incentives. Some scholarly literature does address relevant issues such as gift exemption, IP theft, and fraud. But, by far, the regulation and its scholarly analysis are more plentiful for crowdfunding artists and platforms within the European Union.

## 4 CCCF regulatory framework in the EU

In Europe the cultural and creative sector is defined by the European-Union regulation.[11] It is thus not surprising that CCCF as such has been increasingly part of the policy agendas of the European Union as well as of its member countries. Policies are mainly aimed at (indirectly) improving the CCCF regulatory framework, besides its awareness and hence its adoption by users (De Voldere and Zeqo 2017).

Overall crowdfunding regulation is mainly competence of member states, a number of which have developed specific legislations in the last couple of years. A harmonization at the EU level is in fact not the rule, and so far there is no European crowdfunding legislation or ad hoc EU authority in charge of crowdfunding regulation, resulting in a EU fragmented market (Patti and Polyák 2017). A major consequence of that is the hindering of cross-border crowdfunding (ECN 2017). The EU is even less likely interested to play a harmonization role in the regulation of reward and donation

[10] "Online Crowdfunding." ibid.

[11] Regulation (EU) No 1295/2013 of the European Parliament and of the Council of 11th December 2013 establishing the Creative Europe Programme (2014 to 2020) and repealing Decisions No 1718/2006/EC, No 1855/2006/EC and No 1041/2009/EC.

crowdfunding, as financial return, securities and financial markets stability are not involved (ECN 2017). Such regulation is therefore unrestrictive or unspecific, and requirements simply imply standard trade or business licensing (Patti and Polyák 2017). Contrary to investment crowdfunding, reward and donation crowdfunding is also excluded from the recent Proposal for a Regulation of the European Parliament and of the Council on European Crowdfunding Service Providers (ECSP) for Business,[12] because it does not deal with financial products and related information asymmetries.

At a more global level, the regulation of crowdfunding in general falls within the scope of the International Organization of Securities Commissions (IOSCO), like in particular the limitation of cross-border activities, due to different regulatory systems (De Voldere and Zeqo 2017). Yet in the last years the EU, together with its member states, has become interested in the potential of the overall growing crowdfunding market, addressing it in a series of economic, financial and innovation policies.[13] For instance, the public consultation on the mid-term review of the Capital Market Union of 2017 by the European Commission[14] (which urges the strengthening and integration of EU capital markets and EU-wide supervision for the development of SMEs and job creation (ECN 2017)) considers the role of Financial Technology ("FinTech") and crowdfunding as improving market efficiency and competition.

The EU approach toward CCCF regulation remains rather soft, by means of workshops and public consultations, communications, a stakeholders' forum, reviews, reports and commissioned studies. In fact, besides fostering 'hard' regulation and fiscal incentives, policy makers can fulfill 'softer' roles toward CCCF, such as facilitators of the sharing of information, for instance on best practices, key performance indicators and market analysis, matchfunders, funders or owners of platforms, funders of research on crowdfunding and awareness campaigns, etc. (De Voldere and Zeqo 2017).

National regulatory frameworks instead differ in whether they treat specifically about crowdfunding or not (Patti and Polyák 2017) and the degree through which they facilitate or, on the contrary, restrain crowdfunding (De Voldere and Zeqo 2017). In the EU the United Kingdom, where more than 80% of European alternative finance is concentrated, represent(ed) the country most supportive of CCCF, followed by France, Germany, the Netherlands and Finland. Furthermore, the UK shows the highest average amount of money raised per campaign (Cambridge University 2016). Main features of UK's most supportive policy include a progressive regulation and tax reliefs (CrowdfundingHub 2016).

CCCF is diversely developed in the EU member states (ECN 2017).[15] For instance, Belgium was among the pioneers and nowadays counts many platforms and a flourishing activity, contrary to Austria, Cyprus, Latvia and Lithuania, the latter even lacking any platform. In Ireland CCCF is quite developed, although the market is relatively small, and it is operated by local and Irish versions of international crowdfunding providers. In Italy, the Netherlands, Spain, Poland and Slovakia CCCF is quite developed and there operate many platforms. In the Czech Republic it is also

[12] COM/2018/0113 final - 2018/048 (COD).
[13] Such as the European Commission for Innovation Union, Capital Markets Union, the Green paper on long- term financing of the European economy and the Entrepreneurship 2020 Action Plan.
[14] COM(2017) 292 final.
[15] However, available data on crowdfunding in the various countries may not be always complete.

successful and popular, though the platforms are domestic. In Denmark CCCF is quite diffused through domestic and especially main foreign platforms, such as Kickstarter. In Germany crowdfunding is offered also by regionally organized cooperative banks to reach out to rural areas. In Greece crowdfunding platforms have been developed by a wide realm of players, including credit institutions, museums, NGOs, non-profit organizations, as well as other companies. In Malta, where there is only one national platform, crowdfunding campaigns, which are run also through international platforms, are expanding. In Luxembourg crowdfunding is still in an initial phase: given the small size of the market, there is only one foreign-based platform and other local and international attempts have not persisted. Similarly, in Hungary, Romania and Slovenia CCCF is still recent and to develop. Contrary to most countries, in Croatia crowdfunding is in decline and is operated almost only through international platforms, due to the small market. In Sweden, where investment crowdfunding is most important, CCCF is less diffused.

Since CCCF does not generally imply financial investments and returns, similarly to the EU, national legislations are usually less concerned about it. National regulation measures for CCCF are rather more limited and less impacted by the EU regulation with respect to investment crowdfunding for the reasons mentioned above (ECN 2017). These measures may be general, like mandatory licensing of (usually nationally) platforms, or concerning payment service. In a number of EU countries crowdfunding may be also subject to other related national laws and regulations on anti-money laundering (Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, UK) and anti-terrorism financing (Austria, Croatia, Czech Republic, Denmark, Estonia, Finland, France, Ireland, Italy, Latvia, Lithuania, Malta, Netherlands, Poland, Romania, Slovakia, Slovenia, Spain, Sweden), consumer protection (Austria, Belgium, Estonia, Greece, Hungary, Italy, Latvia, Slovenia, Spain, Sweden), privacy/personal data protection (Belgium, Croatia, Cyprus, Estonia, France, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Netherlands, Romania, Slovakia, Slovenia, Spain, UK), advertising/marketing (Denmark, Estonia, Hungary, Latvia), intellectual property (Greece), fundraising (Denmark) and humanitarian agencies (Slovenia). Similarly, despite the absence of a EU crowdfunding harmonization, recently developing national crowdfunding regulations are often impacted by other, related EU regulations, such as those on data protection and consumer protection. As for the protection of backers, in Europe this falls under consumer protection regulation and in particular under Directive 1999/44/EC on the sale of consumer goods and their conforming, Directive 2011/83/EU on consumer rights and withdrawal on distance sales, and Directive 93/13/EC on unfair terms in consumer contracts (Gutiérrez and Sáez 2018). In Sweden, which is among the most liberal countries toward CCCF, the lack of licensing lowers the entry barriers for foreign operators.

Yet various exceptions to missing or reduced specific regulation of CCCF exist in EU countries (ECN 2017). For instance, in the Czech Republic donation-based crowdfunding is subject to public collection requirements and scrutiny by the regional authority,[16] possibly limiting platforms activities. In Denmark reward pledges are taxed

[16] No specific regulation instead exists for platforms.

similarly to company sales, while platforms require a money collection permit in the case of donations. In Estonia, parallel to platforms regulation, a public-private cluster organization has promoted a non-binding code of best practice together with market participants. In Germany CCCF is not regulated at all, although this could become less the case when it is reward-based, because of some assimilation to investment products. In Hungary CCCF is generally exempted from the regulatory requirements, although payment services and custodial services requirements may apply, depending on the structure used by the platform and service provided by the company, but the application of these requirements is uncertain, contributing to the underdevelopment of the Hungarian crowdfunding market. In 2017 Ireland launched a public consultation on regulation of crowdfunding in the country. The crowdfunding industry and stakeholders expressed a general support for the regulation of crowdfunding in Ireland, since they felt it would favor both the industry and consumers. Yet the main concern was that regulation might be overly burdensome or onerous, and hinder the development of the industry, also from an international (in- as well outbound) perspective (Irish Department of Finance 2018). In Lithuania, the would-be CCCF platforms (since there is none so far) would be governed by the civil code, and collected funds would be taxed like taxable income. Also in Poland crowdfunding is basically ruled by the civil code. In the Netherlands, where a legal definition of crowdfunding does not exist, tax rules apply depending on the size and purpose of donations. In Spain and Portugal CCCF is the object of a relatively more articulated regulation, in particular when monetary rewards are implied. Furthermore, Portuguese regulation requires a prior registry at the Portuguese Authority for Consumer's Protection to comply with several information requirements. In Slovakia donations are subject to the civil code and the Public Collections Act, and regulation may intervene with large rewards. In Slovenia, individual taxpayers donating through crowdfunding are bound to regulation on personal income tax. In some other countries like the UK, France, Spain and Belgium, backers can benefit of tax incentives in the case of donation crowdfunding, but not reward, and also these schemes quite differ (Cicchiello et al. 2019).[17]

Despite the absence of crowdfunding harmonization in the EU, there are regulation similarities and/or cross-border activities between neighboring countries and in common language areas (e.g. Austria and Germany; Belgium and France and the Netherlands; the Czech Republic and Slovakia; Slovenia and Austria). Larger national crowdfunding markets are also the most interested by international (in/outbound) activity.

To conclude, CCCF is not regulated at the EU level and is rather the object of a variety of recent and developing national regulations, although these regulations tend to be general rather than specific about CCCF. The practice of CCCF is also quite varied across countries, as the associated business models of the operating platforms. The lack of regulation harmonization at the EU level favors a fragmentation of the crowdfunding market, leaving the sizes of national markets relatively small, and limiting crowdfunding crossing borders. Furthermore, a lack of a clear and comprehensive regulation favors uncertainty, hinders consumers' confidence, and hence the upscaling of the market. Therefore, the majority of EU countries, especially the most experienced ones, are in favor of a regulation of crowdfunding and its EU harmonization, at the same time

[17] Although it has been found that fiscal incentives are not per se significant drivers for contributors in Europe (De Voldere and Zeqo 2017).

avoiding too heavy, non-transparent and onerous regulation. On the other hand, a minority of relatively less experienced countries (e.g. Malta, Slovakia, etc.) are in favor of a more liberal framework to facilitate the market expansion.

## 5 A critical comparison and policy recommendations

The review of regulatory frameworks in the US and EU is summarized in Table 2. Across several dimensions, the similarities and differences in regulatory approaches are apparent. Overall, considerable similarities exist, especially for this emerging technological platform and the body of regulatory law and practice still being developed. However, the US and the EU display very different degrees of harmonization in regulatory frameworks within the continents. In the US, the lack of active state-level regulations (and the limitations on US state governments regulating interstate commerce, which CCCF often represents) leaves the federal government to establish CCCF-specific regulations. The result is a highly harmonized, and largely unregulated, single market for CCCF in the US. By contrast, the lack of a strong harmonizing effort at the EU level has allowed for diverging regulatory approaches by member European states.

[Table 2 here]

### *5.1 Self-regulation*

Perhaps the defining feature of CCCF has been its rapid growth combined with its largely unregulated operations, especially relative to equity-based crowdfunding for investments. Crowdfunding for the investment world has drawn the attention of regulators, but CCCF operations remain "below the radar," certainly in the US and across many EU member states. The lack of regulation, perhaps in a lower stakes and more experimental setting, has fostered an environment of openness, creativity, and accessibility. Gutiérrez and Sáez (2018) highlight the innovativeness of reward-based compared to investment-based crowdfunding. They show how the regulation of the former, which has developed in a legal vacuum, should not be assimilated into the rather regulated investment-based crowdfunding framework. In particular, in reward-based crowdfunding non-penalty contracts may foster the discovery of talent by backers, who have information on the quality of the projects (instead of the platforms) and are themselves early adopters, rather than investors. These supporters, especially the more active backers, have been shown to effectively promote delivery of final products by the creators, even after the fundraising campaign ends (Butticè and Noonan 2020). The contributor community itself is part of the enforcement system.

In light of the limited scope of federal and state laws designed to regulate CCCF, the crowdfunding platforms engage in some self-regulation. The terms-of-use of the largest platforms provide some guidance on prohibited offerings and how income (for creators) or contributions (for backers) should be reported for taxation or tax relief. That form of self-regulation plus the considerable reputational mechanisms provided online point to a primarily decentralized, informal regulatory practice. However, there are several instances of larger-scale operations intentionally pushing fraudulent but seemingly appealing projects to receive money with no future intent to provide deliverables. Kickstarter has suspended projects from the platform for violating its rule that physical products offered as rewards must have working prototypes, though enforcement is spotty and inapplicable to projects without physical product rewards. Kickstarter could do more to self-regulate as gatekeeper (Ganatra 2015), even if moral hazard and explosive growth in numbers of projects and creators pose challenges. Though such instances are rare, scams are common enough that an online database (kickscammed.com) exists for Internet users to search and record acts of crowdfunding fraud, in addition to active discussion boards. A rich ecosystem of third-party information providers has also emerged to provide backers (and creators) with additional information (e.g., kickended, kicktraq, krowdster). In general, the low-cost approach of self-regulation has been consistent with maintaining lower transaction costs between creators and backers, an essential ingredient in unlocking crowdfunding's benefits.

### *5.2 Harmonization*

Harmonization comes to the fore as the other major issue in CCCF regulation. Disparate regulatory frameworks create extra uncertainty and cost for creators engaging in crowdfunding. Moreover, by fragmenting the markets, the potential for crowdfunding to tap into larger marketplaces – larger crowds – is diminished. The 'scale economies' of crowdfunding are lost without harmonization across jurisdictions. The presence of fragmented markets, where distinct groups of backers are found on different platforms (even within the same jurisdiction), can motivate multihoming by creators, though that comes at an additional cost to creators (Viotta da Cruz 2015). Regulatory recommendations put forward for the EU point to the increasing of cross-border crowdfunding and the upscaling of platforms, besides establishing a code of conduct to regulate crowdfunding and hence increase trust (De Voldere and Zeqo 2017). Removing misunderstandings about crowdfunding platforms – are they storefronts for existing products or platforms to supporting new creations? – can help reduce frictions surrounding breached contracts when projects unintentionally fail to deliver (Ganatra 2015). Following core economic advantages outlined above, regulation to expand marketplaces to larger crowds (attracting more creators and more backers) stands to grow its benefits.

### *5.3 Intellectual property rights and fraud*

Concerns about IP protection and fraud remain in the CCCF context. In both the US and the EU, more general laws to protect IP and protect against fraud continue to function and apply to crowdfunding; no special regulation exists. Whether that approach, coupled with self-regulation, will continue to be sufficient remains to be seen. Further, whether there are efficiency gains from alternative regulatory approaches is an open question. In the US, platforms and third-party information providers undertake considerable effort at self-regulation with respect to fraud. Issues about IP protection however, are another matter. Instituting better protections exist to attract innovators to share their ideas may enable further expansion of CCCF. Some scholars see existing patent protections for crowdfunding projects as inadequate for protection of artists. Miao (2015) recommends several reforms to balance the need to protect IP while encouraging innovation in crowdfunding platforms. Allowing creators' crowdfunding campaigns as nonprejudicial disclosures as long as patent applications are subsequently filed promptly and clarifying experimental use exemptions for crowdfunding, for instance, may be welcome improvements that encourage innovation without risking theft. Ganatra (2015) provides recommendations on future transparency and regulation for the emerging market of CCCF.

### *5.4 Recommendations*

Firstly, harmonizing CCCF regulatory regimes among the states holds the greatest promise to remove barriers for continued beneficial crowdfunding expansion. Lowering the transaction costs and tapping into bigger crowds lowers the MES and allows for more new, creative entrants. This especially applies to the EU, where different states' approaches limit the market size and pose additional complications, but it also can apply to the US. For instance, altering and harmonizing state rules to allow for all backers to receive comparable 'consumer' protections can also extend anti-fraud protections.

Secondly, as new regulation comes into play for these emerging marketplaces, balance should be struck to encourage entrepreneurship. Especially for the creative and cultural projects, the unstructured and open nature of crowdfunding holds considerable promise. From a cultural perspective, diversity levels of procedural formalism across countries could also produce different effects of crowdfunding regulation on entrepreneurs (Stephen et al. 2009). The approach to regulation taken in the JOBS Act for equity-based crowdfunding, emphasizing disclosure and transparency requirements, could reduce information asymmetries and encourage still more CCCF growth without unduly burdening participants (Ganatra 2015). Restricting entry of creators to crowdfunding platforms, perhaps by raising the bar for disclosure and other entry costs, may reduce instances of creator failure, but such screening would also limit entry to crowdfunding. Further, the ability of new platforms to enter and for creators to shop among different platforms offers checks against a platform's monopoly power and better competitive incentives. Again, striking a balance between the openness and accessibility of these platforms for non-traditional artists and creators requires (implicitly) defining and accepting some risk tolerance for the marketplace as a whole. A risk-free crowdfunding ecosystem likely fails to deliver on its many advantages of fostering creativity and innovative cultural projects.

More proactively, public officials could consider ways to leverage the strengths of crowdfunding platforms to improve their own policymaking and funding decisions. For instance, the power of crowdfunding platforms reaches larger and more targeted population and elicit their preferences for various ventures – credibly backed by their own funds – can be used to inform public projects and goals. Some crowdfunded projects are indeed 'created' by government agencies, leading to crowdfunding being used as a form of lower-cost voluntary taxation. Yet the potential for government use of crowdfunding extends further. Matching funding programs, for instance, can more directly link public funds to the will of the public (i.e., the crowd). Although this involves allocating funds to projects supported by those better able to pay (and use crowdfunding platforms), such an approach can complement other funding allocation rules to both allow public demand to help influence where public funds go and also potentially "crowd in" additional private support. Given the important rationales for public support of certain arts and cultural projects, finding ways to effectively use crowdfunding to promote this sector and amplify public investment warrants additional attention.

## 6 Conclusions

Crowdfunding represents an important alternative, or complement, to the financing modes and sources of the cultural and creative sector. Furthermore, crowdfunding is relevant for its informative, promotional, co-creative and democratizing features. Rewards and donations, with their distinctive features, are the prominent models in CCCF. We have assessed the benefits and barriers of CCCF through the lenses of regulatory frameworks, the institutional instruments allowing, or supporting, crowdfunding to achieve its potentials and overcome its barriers. We have critically considered and compared the regulatory frameworks of the two main marketplaces, namely the US and the EU, in terms of involved authorities and respective roles, regulation intensity and specificity and degree of harmonization, together with other aspects of taxation, IPR and fraud.

We have highlighted as CCCF presents a series of benefits, such as: lower transaction costs and potentially wider and better market outreach through applied technologies; financing, and related risk, diversification; new viability of niche markets and creative supply; broader geographical distribution of financing; rich and multimedia information about creative innovation conveyed to the market; more interaction and information reciprocally shared on the market from more upstream phases of the value chain; better collection of market data and reduction of uncertainty – although not necessarily information asymmetries. A focus on these core benefits guides regulatory reform recommendations. Indirect benefits include positive spillovers from subsequent interest generated among investors and democratized funding. Benefits are reinforced by the presence of IPR and social networking, but also depend on existing barriers and risks. Barriers relate to entry and exit of platforms and creative organisations and professionals. Risks deal with information asymmetries and associated adverse selection and moral hazard, although these are not exclusive of crowdfunding.

We have discussed how crowdfunding ability to achieve its potentials and overcome its barriers depends directly on how it is regulated, to reduce fraud, bias, confusion of standards and, ultimately international harmonization in terms of parties' rights protection, professional standards and fiscal regimes. At the same time, over-regulation and excessive costs ought to be avoided. By looking at both the US and the EU, CCCF results an important and emerging practice. Corresponding regulations are not specific and limited, and are evolving especially in the EU. While in the US crowdfunding regulation is a federal matter and is highly harmonized, in the EU regulation is mainly exercised at member-states level, implying a great variety of regulatory frameworks and, correspondingly, of business models. At central level, the EU rather intervenes in a soft way, through consultations, the main reasons being the prevalent non-financial nature of CCCF.

In our critical comparison we have further highlighted how the limited regulation by public authorities may allow for self-regulation of operators, and hence contribute to openness, creativity, and accessibility in the CCCF marketplace. As for IPR, the practice of CCCF calls for more specific transparent regulation. A lack of harmonization within the EU and internationally may pose considerable challenges to CCCF and its expansion. In fact, while a non-harmonized market may deter new entrants because of perspective profits face to bureaucracy costs, investments and market size, sufficiently liberalized single small markets may favor big international (or global) entrants, with consequent expansion of the market although with possible drawbacks, first of all in terms of diversity.

Recommendations point to a harmonization of CCCF, starting from the EU, and to a supportive, rather than oppressive, regulation, for instance enhancing transparency, stressing measures in favor of entrepreneurs, tolerating some levels of risk, and fostering more forms of public-private partnership.

In this paper we opted for an analysis from a policy-maker's perspective, organised in terms of the various areas of intervention of CCCF regulation. We are aware that at least another perspective was possible – though alternative – in terms of the direct subjects of such regulation, namely creators, backers and platforms, and other stakeholders. Furthermore, as we have shown, CCCF regulation is a quite diverse matter that follows its rapidly evolving market, which implies a constant effort of update, as well as multiple margins of intervention, in particular for policy-design purposes. Regulating multi-sided platform industries poses significant complexity, where network and scale economies, possibility of monopoly power by platforms, and competition among platforms inducing some market fragmentation (Evans 2003).

Because of the distinct features and functioning of CCCF with respect to other crowdfunding models, future research should deserve more separate and focused efforts, also based on available data. Developing datasets that enable comparative analysis, especially across multiple platforms, would be especially helpful. As crowdfunding per se is global, and the creative economy is expanding worldwide, it would be relevant to expand its comparative regulation analysis to other geographical areas of the world. The study of CCCF in particular allows to better disentangle the innovation component typical of creativity, and new collective creative patterns. Therefore research on CCCF regulation should further disentangle their possible leverages. Spillovers from CCCF to other more traditional forms of financing new ventures and IP protection remain important areas for future research.

***Acknowledgements***

This research is supported in part by an award from the National Endowment for the Arts (Award#: 1844331-38-C-18).

***References***

Akerlof, G.A. (1970). The market for "lemons": Quality uncertainty and the market mechanism. *Quarterly Journal of Economics*, 84(3), 488–500.

Agrawal, A., Catalini, C. & Goldfarb A. (2014). Some Simple Economics of Crowdfunding. *Innovation Policy and the Economy*, 14: 63–97.
Agrawal, A., Catalini, C. & Goldfarb, A. (2015). Crowdfunding: Geography, Social Networks, and the Timing of Investment Decisions. *Journal of Economics & Management Strategy,* 24(2): 253–274.
Barnett, C. (2016). The Surprising State of Equity-Based Crowdfunding Post-JOBS Act. *Forbes*. Accessed August 29 2018. https://www.forbes.com/sites/chancebarnett/2016/11/17/the-surprising-state-of-equity-crowdfunding-post-jobs-act
Baumol, W. J. & Bowen, W. G. (1965). On the performing arts: the anatomy of their economic problems. *American Economic Review*, 55(1/2), 495–502.
Belleflamme, P., Omrani, N. & Peitz, M. (2015). The economics of crowdfunding platforms. *Information Economics and Policy*, 33, 11–28.
Borst, I., Moser, C., & Ferguson, J. (2018). From friendfunding to crowdfunding: Relevance of relationships, social media, and platform activities to crowdfunding performance. *New Media & Society*, 20(4), 1396–1414.
Bruton, G., Khavul, S., Siegel, D. & Wright, M. (2015). New financial alternatives in seeding entrepreneurship: Microfinance, crowdfunding, and peer-to-peer innovations. *Entrepreneurship Theory and Practice*, 39(1), 9–26.
Butticè, V. & Noonan, D. (2016). Do Not Bite More Than You Can Chew: The Side Effects of Crowdfunding on Entrepreneurial Performances. *Riunione scientifica nazionale AIIG*, 1–28.
Butticè, V. & Noonan, D. (2020). Active backers, product commercialisation and product quality after a crowdfunding campaign: A comparison between first-time and repeated entrepreneurs. *International Small Business Journal*, 38(2), 111-134.
Calic, G. & Mosakowski, E. (2016). Kicking Off Social Entrepreneurship: How A Sustainability Orientation Influences Crowdfunding Success. *Journal of Management Studies*, 53(5): 738–767.
Calcagno, P.T. & Sobel, R.S. (2014). Regulatory costs on entrepreneurship and establishment employment size. *Small Business Economics*, 42: 541–559.
Cicchiello, A.F., Battaglia, F. & Stefano Monferrà (2019) Crowdfunding tax incentives in Europe: a comparative analysis, The European Journal of Finance, 25:18, 1856-1882.
Courtney, C., Dutta, S. & Li, Y. (2017). Resolving information asymmetry: Signaling, endorsement, and crowdfunding success. *Entrepreneurship Theory and Practice*, 41(2), 265–290.
CrowdfundingHub (2016). *Current State of Crowdfunding in Europe*, Amsterdam.
De Buysere, K., Gajda, O., Kleverlaan, R., Marom, D. & Klaes, M. (2012). *A framework for European crowdfunding*.
De Voldere, I. & Zeqo, K. (2017). *Crowdfunding. Reshaping the crowd's engagement in culture*, European Commission, Brussels.
Dietz, E. (2014). The Tax Code's Crowdfunding Dilemma: The Temptation of Kickstarter Creators to Use the Gift Exclusion Under Section 102(a). 37 *Hamline Law Review*, 293.
Dushnitsky, G., Guerini, M., Piva, E. & Rossi-Lamastra, C. (2016). Crowdfunding in Europe: Determinants of Platform Creation across Countries. *California*

*Management Review*, 58(2): 44–71.
English, R. (2013). Rent-a-crowd? Crowdfunding academic research. *First Monday* 19(1).
European Crowdfunding Network (2017). *Review of Crowdfunding Regulation*, Brussels.
Evans, D. S. (2003). The antitrust economics of multi-sided platform markets. *Yale Journal on Regulation*, 20, 325.
Fleming, L. & Sorenson, O. (2016). Financing by and for the Masses: An Introduction to the Special Issue on Crowdfunding. *California Management Review*, 58(2), 5–19.
Franzen, Carl. (2012). Kickstarter Expects To Provide More Funding To The Arts Than NEA. 24 February 2012. talkingpointsmemo.com.
Ganatra, J.H. (2015). When a Kickstarter stops: exploring failures and regulatory frameworks for the rewards-based crowdfunding industry. *Rutgers University Law Review*, 68, 1425–72.
Giudici, G., Guerini, M. & Rossi-Lamastra, C. (2018). Reward-based crowdfunding of entrepreneurial projects: the effect of local altruism and localized social capital on proponents' success. *Small Business Economics*, 50(2), 307–324.
Goolsbee, A. (2000). In a world without borders: The impact of taxes on Internet commerce. *The Quarterly Journal of Economics*, 115(2), 561–576.
Greenberg, J. & Mollick, E. (2017). Activist choice homophily and the crowdfunding of female founders." *Administrative Science Quarterly*, 62(2), 341–374.
Gruba, J., McAfee, L. & Ashby, B. (2015). Crowdfunding Contributions and State Sales and Use Taxes. *The Tax Adviser*. Accessed 29 August 2018. https://www.thetaxadviser.com/issues/2015/jun/tax-clinic-08.html
Ganatra, J. H. (2015). When a Kickstarter stops: Exploring failures and regulatory frameworks for the Rewards-Based Crowdfunding Industry. *Rutgers UL Rev*., 68, 1425.
Gutiérrez M. & Sáez I. (2018). The Promise of Reward Crowdfunding. *Corporate Governance: An International Review*, 26: 355–373.
Hooghiemstra, H. & de Buysere, K. (2016). The Perfect Regulation of Crowdfunding: What Should the European Regulator Do? In Brüntje, D. and Gajda, O. (Eds.) *Crowdfunding in Europe: State of the Art in Theory and Practice*. 135. Springer Press: Germany.
Irish Department of Finance (2018). *Paper for Policy Committee on Crowdfunding*, Dublin.
Johnson, M. A., Stevenson, R. M. & Letwin, C. R. (2018). A woman's place is in the… startup! Crowdfunder judgments, implicit bias, and the stereotype content model. *Journal of Business Venturing*. 33(6): 813–831.
Kappel T. (2009). Ex Ante Crowdfunding and the Recording Industry: A Model for the U.S. *Loyola of Los Angeles Entertainment Law Review*, 29: 375–385.
Kickstarter (2019). Stats. Accessed 29 November 2019. https://www.kickstarter.com/help/stats
Lazzaro E. (2017). Cultural and Creative Entrepreneurs. In Mickov, B., Doyle, J. E. (Eds.), *Culture, Innovation and the Economy*, Routledge, London, pp. 33–37.
Lazzaro E., Noonan D. (2019). US vs. EU regulatory frameworks of crowdfunding for the arts and culture", in Schiuma, G., Demartini, P., Yan, M.-Y. (eds.), Knowledge Ecosystems and Growth - Proceedings of the 14th International Forum on

Knowledge Asset Dynamics, pp. 2059-2071.
Mendes-Da-Silva, W., Rossoni, L., Conte, B.S., Gattaz, C.C. & Francisco, E.R. (2016). The impacts of fundraising periods and geographic distance on financing music production via crowdfunding in Brazil. *Journal of Cultural Economics*, 40(1), 75–99.
Metrejean, C. & McKay, B. (2015). Crowdfunding and Income Taxes. *Journal of Accountancy*. Accessed 28 August 2018. https://www.journalofaccountancy.com/issues/2015/oct/crowdfunding-and-income-taxes.html
Miao, Li. (2015). Patent Issues of Crowdfunding – Exploring Patent Strategies of Crowdfunding Projects and the Need for Patent Reform (Master's thesis). Munich Intellectual Property Law Center.
Mollick, E.R. (2014). The dynamics of crowdfunding: An exploratory study. *Journal of Business Venturing*, 29(1): 1–16.
Mollick, E.R. (2015). Delivery rates on Kickstarter. 2015 December 4. Available at SSRN: https://ssrn.com/abstract=2699251 .
Mollick, E.R. & Nanda, R. (2015). Wisdom or madness? Comparing crowds with expert evaluation in funding the arts. *Management Science*, 62(6): 1533–1553.
Mollick, E.R. & Robb, A. (2016). Democratizing innovation and capital access: The role of crowdfunding." *California Management Review*, 58(2), 72–87.
Moores, C. (2015). Kickstart my Lawsuit: Fraud and Justice in Rewards-Based Crowdfunding. 49 *University of California-Davis Law Review* 383-424.
Patti, D. & Polyák, L. (2017). *Funding the Cooperative City: Community Finance and the Economy of Civic Spaces*, Cooperative City Books, Vienna.
Rhue, L. & Clark, J. (2018). The Consequences of Authenticity: Quantifying Racial Signals and their Effects on Crowdfunding Success."Available at SSRN: https://ssrn.com/abstract=2837042
Roberts, G. & Nowotarski, M. (2013). The IP issues of crowdfunding. *Managing Intellectual Property*, 229: 36-38.
Roma, P., Petruzzelli, A., Perrone, G. (2017). From the crowd to the market: The role of reward-based crowdfunding performance in attracting professional investors. *Research Policy* 46(9): 1606-1628.
Securities and Exchange Commission (2018). Crowdfunding. Accessed August 29. https://www.sec.gov/spotlight/crowdfunding.shtml
Sorenson, O., Assenova, V., Li, G. C., Boada, J. & Fleming, L. (2016). Expand innovation finance via crowdfunding. *Science*, 354(6319), 1526-1528.
Stephen, F., Urbano, D. & van Hemmen S. (2009). The responsiveness of entrepreneurs to working time regulations. *Small Business Economics*, 32: 259–276.
Strausz, R. (2017). A Theory of Crowdfunding: A Mechanism Design Approach with Demand Uncertainty and Moral Hazard. *American Economic Review*, 107(6): 1430–1476.
Strickler, N., Chen, P. & Adler, C. (2012). Accountability on Kickstarter. *The Kickstarter Blog*. Accessed 29 May 2019. https://www.kickstarter.com/blog/accountability-on-kickstarter?page=2
Throsby, D. (1994). The production and consumption of the arts: A view of cultural economics. *Journal of Economic Literature*, 32(1), 1–29.

Torkanovskiy, E. (2016). Non-equity Crowdfunding as a National Phenomenon in a Global Industry: The Case of Russia. In Brüntje, D. and Gajda, O. (Eds.) *Crowdfunding in Europe: State of the Art in Theory and Practice*. 115. Springer Press: Germany.

Xu, T. (2017). Learning from the Crowd: The Feedback Value of Crowdfunding. (January 15, 2017). Available at SSRN: https://ssrn.com/abstract=2637699 or http://dx.doi.org/10.2139/ssrn.2637699

Younkin, P. & Kuppuswamy, V. (2017). The colorblind crowd? Founder race and performance in crowdfunding. *Management Science*. 64(7), 2973–3468.

Yu, S., Johnson, S., Lai, C., Cricelli, A. & Fleming, L. (2017). Crowdfunding and regional entrepreneurial investment: an application of the CrowdBerkeley database. *Research Policy*, 46(10), 1723–1737.

Zeoli, A. (2017). 2017 State of the States – List of Current Active and Proposed Intrastate Crowdfunding Exemptions (Updated). CrowdfundingLegalHub.com. Accessed August 29. https://crowdfundinglegalhub.com/2017/08/28/2017-state-of-the-states-list-of-current-active-and-proposed-intrastate-crowdfunding-exemptions-updated/

**Table 1: Descriptive statistics for Kickstarter projects, by non-US country**

| | All (N=162) | | OECD only (N=35) | | EU (N=28) | |
|---|---|---|---|---|---|---|
| **variable** | **mean** | **std. dev.** | **mean** | **std. dev.** | **mean** | **std. dev.** |
| FUNDSRAISEDpc | 0.183 | 0.47 | 0.630 | 0.82 | 0.522 | 0.80 |
| GDPpc | 0.015 | 2.16 | 0.037 | 0.02 | 0.032 | 0.02 |
| POP (millions) | 42.940 | 154.09 | 27.607 | 34.62 | 18.150 | 23.39 |
| OECD | 0.216 | | 1 | | 0.821 | |
| ENGLISH | 0.247 | | 0.514 | | 0.536 | |

Note: OECD and ENGLISH are dummy variables.

**Table 2: Comparison between US and EU regulatory frameworks for CCCF**

| Dimension | United States | European Union |
|---|---|---|
| Regulation of equity-based crowdfunding | JOBS Act (2013) to allow and regulate | Proposed EU regulation for ECSP |
| Regulation of RC/DC overall | Little or no special attention – just like any sale or donation | Little, but some member states regulate more stringently |
| Role of federal/EU-level regulation | Primary, yet largely silent | Soft, largely consultations |
| Role of state/national-level regulation | As taxing authority, offers some guidance | Primary, some fragmented markets and regulation |
| Taxation of creators | As income, generally ambiguous | Mixed, sometimes as sales |
| Tax incentives for backers | Generally none, though possibly used to avoid sales tax | Mixed, limitedly to donations |
| IP protection | No special policy | No special policy |
| Fraud protection | Like any other transaction; platforms self-regulate | Like any other transaction |
| Changes over time | Remains largely unregulated | Continues to evolve, especially at state level |