Article 17 stakeholder dialogue: How to safeguard users' rights

Brussels, 10 February 2020

COMMUNIA

What we can (hopefully) all agree on

- Article 17 of the DSM directive changes the liability of most sharing platforms by establishing that they perform acts of communication to the public with regards to copyright protected works uploaded by their users.

- Platforms will need to obtain authorisations for most uses of protected works uploaded by their users.

- Rightholders are not required to provide authorisations to platforms for uses of works uploaded by their users. In this case platforms have to work with rightholders to prevent the availability of works on these platforms.

- Platforms must ensure that measures undertaken as a result of this cooperation do not limit uses covered by exceptions and limitations or that are lawful otherwise.

SHD Insight 1: Business models vary widely

- We understand that some sectors (music, visual arts) want to license sharing platforms while others (AV, literary publishers) mostly don't.

- The purpose of Article 17 is not to force specific business models on anyone. It must be possible for rightholders to keep works off the platforms, **as long as this does not affect legitimate uses of these works.**

- The way Article 17 is structured this means that we will see automated blocking of content. The directive requires us to make sure that such automated blocking does not affect legitimate uses.

SHD insight 2: Automated Content Recognition is limited

- The available technological solutions are really good at identifying the use of protected works in user uploads (by matching uses of protected works in user uploads against reference files).

- But we have also learned that none of the available technological solutions even attempt to understand that context in which a use takes place. Understanding context is crucial for deciding whether a particular use is infringing or not. Existing technologies cannot make this determination.

- This means that ACR can be used for revenue accounting and monetisation, but that ACR cannot be used for fully automated blocking of user uploads.

How to ensure that user rights are safeguarded?

- Since existing ACR solutions cannot recognise uses under exceptions and limitations we need to introduce procedural safeguards that ensure that "the cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation" Art 17(7).

- The complaint and redress mechanism described in 17(9) is an **essential** element in achieving this, but it is **not sufficient** for achieving this objective.

How prevalent is blocking?

33% percent of French internet users have shared audio or video content
▼
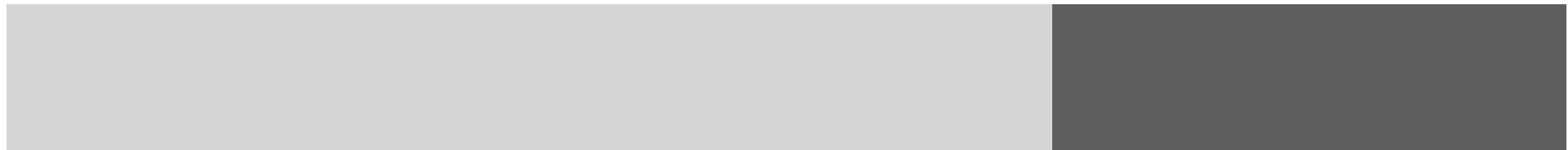
How prevalent is blocking?

13% of these users have had an upload blocked for copyright reasons
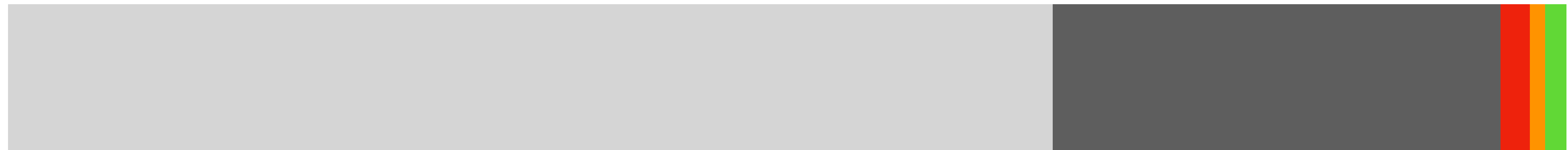
▼

▼

How prevalent is blocking?

56% of them have challenged the last block that they have encountered

How prevalent is blocking?

58% of these challenges have resulted in the content being reinstated

▼

this is 1.4% of all French internet users or about 700.000 individuals who have been wrongfully blocked at least once

Human judgement outperforms filters

42% of blocking decisions are not challenged by the uploader

▼

Human judgement outperforms filters

25% of blocking decisions are unsuccessfully challenged by the uploader

▼

Human judgement outperforms filters

33% of blocking decisions are successfully challenged by the uploader
▼

How to ensure that user rights are safeguarded?

- Since existing ACR solutions cannot recognise uses under exceptions and limitations we need to introduce procedural safeguards that ensure that "the cooperation between online content-sharing service providers and rightholders shall not result in the prevention of the availability of works or other subject matter uploaded by users, which do not infringe copyright and related rights, including where such works or other subject matter are covered by an exception or limitation" Article 17(7).

- The complaint and redress mechanism described in Article 17(9) is an **essential** element in achieving this, but it is **not sufficient** for achieving this objective.

- In order to meet the objective established by Article 17(7) the complaint and redress mechanism needs to be combined with the ability for users to override automated blocking (via flagging / declarations of lawful use):

A scenario for safeguarding users' rights (based on academic statement)
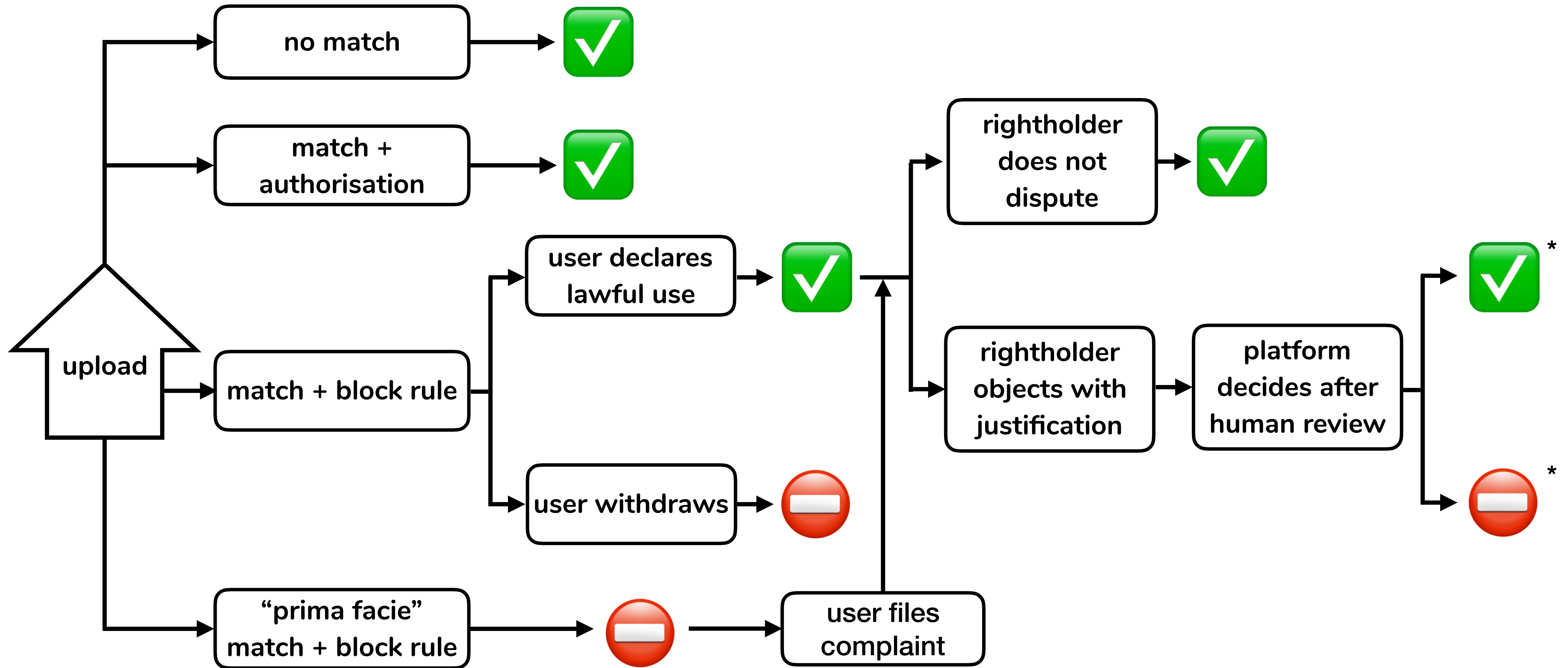
* Either party can challenge the platform decision in out-of-court redress mechanism.

Some additional considerations

- Ownership claims by rightholders must be transparent to users and it must be possible to challenge them. There must be sanctions for rightholders who repeatedly make wrongful ownership claims.

- It needs to be ensured that users do not face legal liability for making good faith declarations of lawful use (to incentivise responsible use, repeat abusers could be stripped of the ability to make lawful use declarations).

- When third party content is matched in monetised user uploads monetisation must be split.

- There should also be a minimum threshold for automated blocking rules: Such rules should not be possible if the matched content is less than 10 seconds long.

- The whole process must be transparent to both rightholders and users. Platforms should be required to publish statistics.

Thanks for listening

COMMUNIA