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# PUBLIC HEARING ON THE TRANSPOSITION OF ARTICLE 17 IN FINLAND

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# Practicalities

## Käytännön kysymyksiä/Praktikaliteter

- Language regime
- Asking for the floor: "Raise hand"-function
- Taking the floor: 1. Open your mic, 2. Tell your name and organisation, 3. Be concise
- There will first be a presentation by the Ministry
  - We will stop at intervalls and take possible **questions**
- Then there will be questions to stakeholders
  - Stakeholders are welcome to **reply/comment**
- In the end, there will be a discussion
  - Stakeholders are welcome to provide general comments on the model or ask further questions.

# Focus of this session

## Ydinkysymykset / fokus

- **The focus of the discussion today is on the blocking procedure and the ADR mechanism, including the provision of information between the parties.**
  - We are not going to discuss the following:
    - The scope of application; the definition of Online Content Sharing Service Providers (OCSSP)
    - The Communication to the Public (CTP) right or the licensing regime
    - The need to update the Finnish Copyright Act as a result of the introduction of certain mandatory exceptions and limitations (E&L) to copyright in article 17

# Transposition process and schedule in Finland

Täytäntöönpanoprosessista ja aikataulusta

Om implementeringsprocessen och tidtabellen

- 10+ workshops and public hearings since 05/2019 and numerous smaller stakeholder meetings on the DSM directive and the online transmission directive
- The two directives are being transposed at the same time.
- The transposition has been delayed. The new preliminary schedule; draft bill out for comments/public hearing in 02/2021, finalized bill sent to Parliament in 04/2021.

# Why this meeting, now?

Miksi tämä kokous, nyt? Varför ett möte, nu?

- Stakeholder demands to be heard at an early stage.
- Transparency of the public administration
- It is important to receive input from stakeholders, in particular considering the delay of the Commission's guidance on the practical application of article 17.
- Finland already has provisions on copyright take-down (for hosting-services); the new rules have to be aligned with existing rules
- The blocking procedure deviates from models that have been discussed during the stakeholder dialogue in Brussels.

**Requirements in  
art 17 regarding  
the prevention of  
access to  
infringing content**



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# 1. Ex ante and ex post access prevention (art. 17 (4))

- OCSSPs must make *best efforts to ensure the unavailability of specific works and other subject matter for which the rightholders have provided the service providers with the relevant and necessary information; and in any event*
- *act expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and make best efforts to prevent their future uploads*
- **Nota bene:** In the draft, we use the concept “prevent/disable access”, because removing/deleting the files from the OCSSP server would destroy evidence and may make it impossible for users to prove legitimate use.



## 2. The mechanism may not lead to disabling access to non-infringing content (art 17 (7))

- *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.*



### 3. No filtering obligations (art. 17 (8))

- *The application of this Article shall not lead to any general monitoring obligation.*

## 4. Blocking only upon human review (art 17(9))

- *decisions to disable access to or remove uploaded content shall be subject to human review*

# 5. Rightholders to justify blocking requests (art 17 (9))



- *Where rightholders request to have access to their specific works or other subject matter disabled or to have those works or other subject matter removed, they shall duly justify the reasons for their requests.*

## 6. OCSSP to provide efficient complaint procedure (art. 17 (9))

- OCSSPs shall *put in place an effective and expeditious complaint and redress mechanism that is available to users of their services in the event of disputes over the disabling of access to, or the removal of, works or other subject matter uploaded by them.*
- *complaints submitted under the mechanism shall be processed without undue delay*

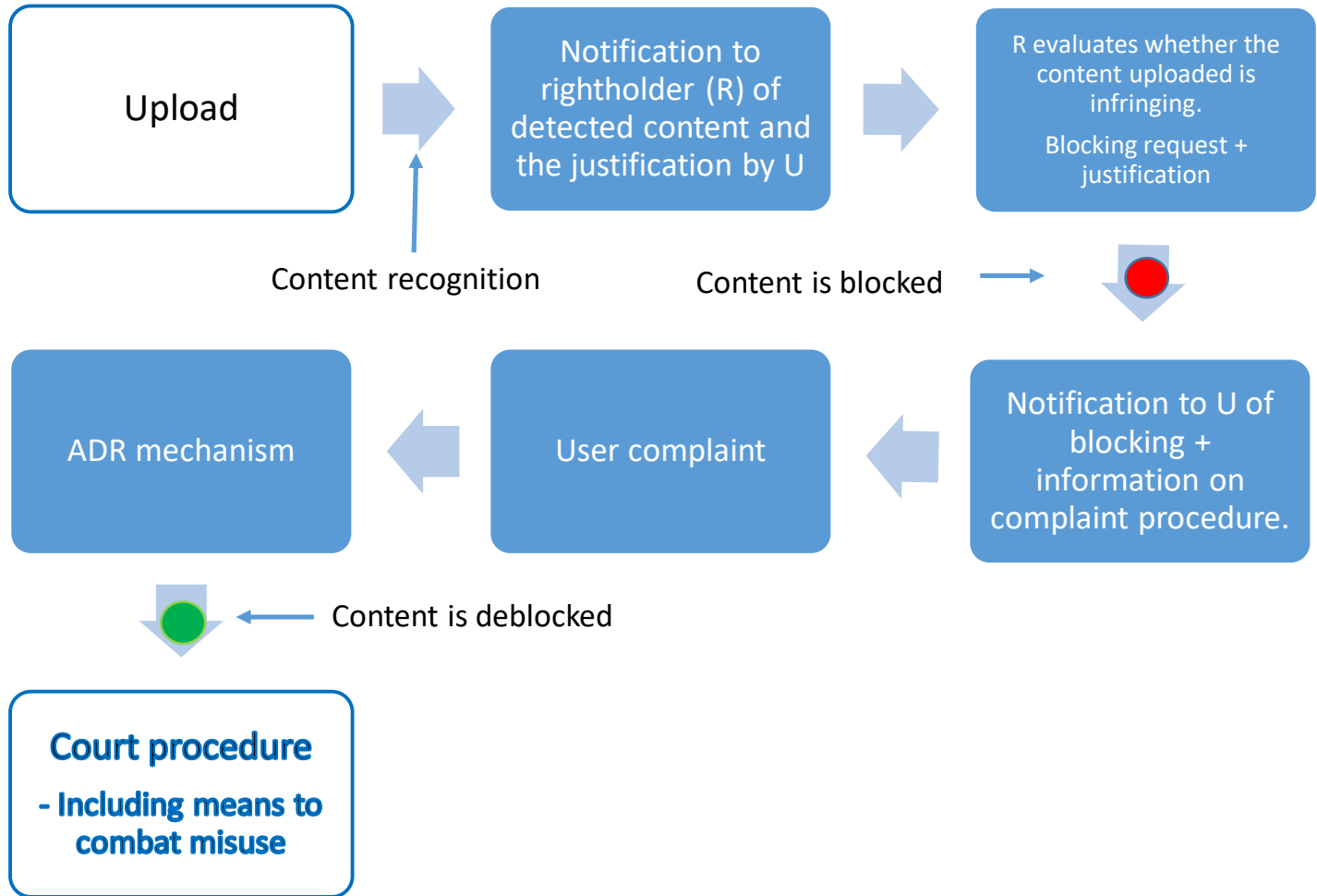
## 7. Member States to provide ADR mechanism to the benefit of users (art 17(9))

- *Member States shall also ensure that out-of-court redress mechanisms are available for the settlement of disputes. Such mechanisms shall enable disputes to be settled impartially and shall not deprive the user of the legal protection afforded by national law, without prejudice to the rights of users to have recourse to efficient judicial remedies. In particular, Member States shall ensure that users have access to a court or another relevant judicial authority to assert the use of an exception or limitation to copyright and related rights.*

# The blocking procedure



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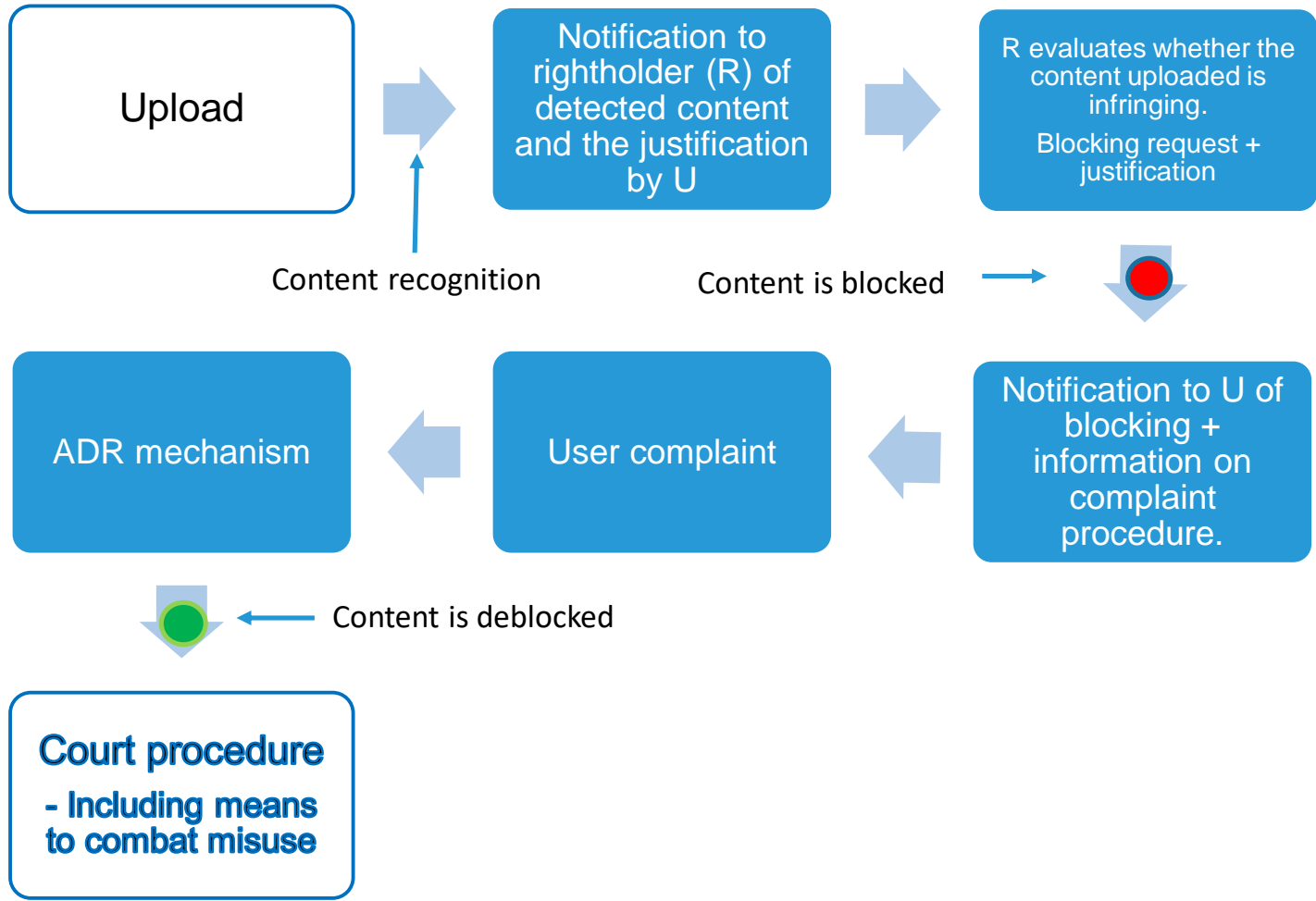


# Step 1: Content recognition

## Sisällöntunnistus / Innehållsdetektering

- OCSSP obliged to put in place an appropriate content recognition system that matches up-loads by users to **content** which has been claimed by rightholders
- In case of a match, the OCSSP has to forward to R a message re. this fact, including any justification provided by U.





# Step 2: Decision to block content

## Päätös sisällön estämisestä / Beslut att spärra tillgång

- The evaluation of whether the uploaded content infringes copyright is made by the rightholders (or their representatives), taking due note of the reasoning provided by the user.
- **The rightholder takes the decision to block;** the OCSSP is obliged to obey, otherwise OCSSP:s are directly liable for any copyright infringement.

# Why is the rightholder tasked with the assessment of infringements?

- According to the views of the Commission, rightholders would not be obliged to provide a *reference file* including the original work to the OCSSP (but only a digital fingerprint) - > a reference file would be needed to assess the application of E&L.
- In addition, the *OCSSPs do not have information on the license agreements that R has made.*
- If OCSSPs are to determine the legality/illegality of the content, they are at the same time determining whether they themselves perform a copyright-relevant act.

# Step 3: The blocking request

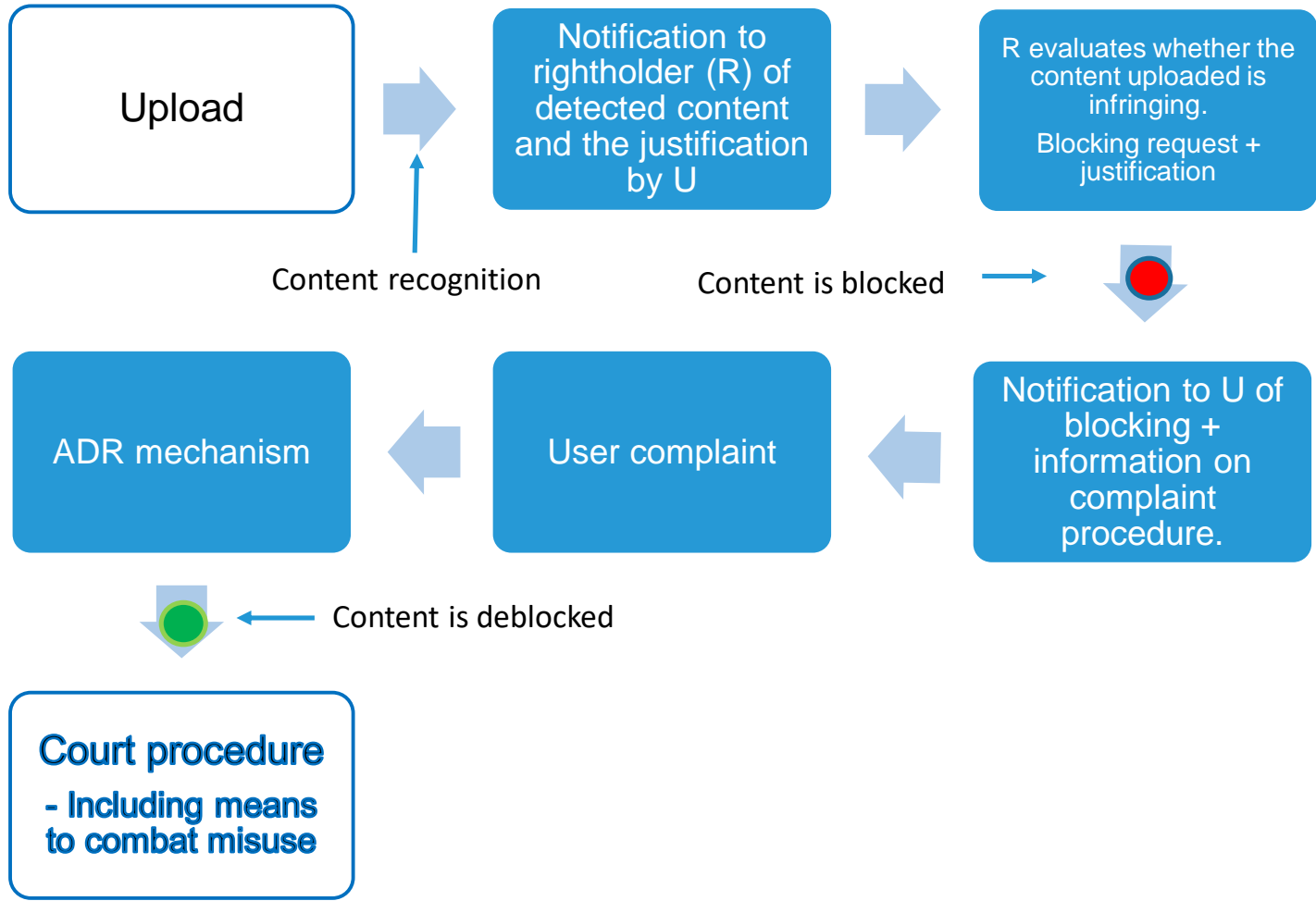
## Poistopyyntö / Blockeringsföreläggande

The blocking request shall include the following information:

- (1) the name and contact details of the person requesting removal;
- (2) any information necessary for the identification of the content to which disabling access is required;
- (3) a declaration by the applicant that in accordance with his evaluation made in good faith, the uploaded content has been unlawfully made available to the public as well as the reasons for the request for removal, taking into account the justifications provided by the user uploading the content;
- (4) a specification of the work, the rights of which are alleged to have been infringed;
- (5) a declaration from the applicant stating that he is the author or holder of a related right or is entitled to act on behalf of the rightholder.

The OCSSP is obliged to inform U without delay of the blocking and provide a copy of the blocking request + instructions on the procedure for submitting a deblocking request.

The liability for copyright infringement arises at the moment of reception of the blocking request; the OCSSP must act without undue delay.



# Step 4: The deblocking request

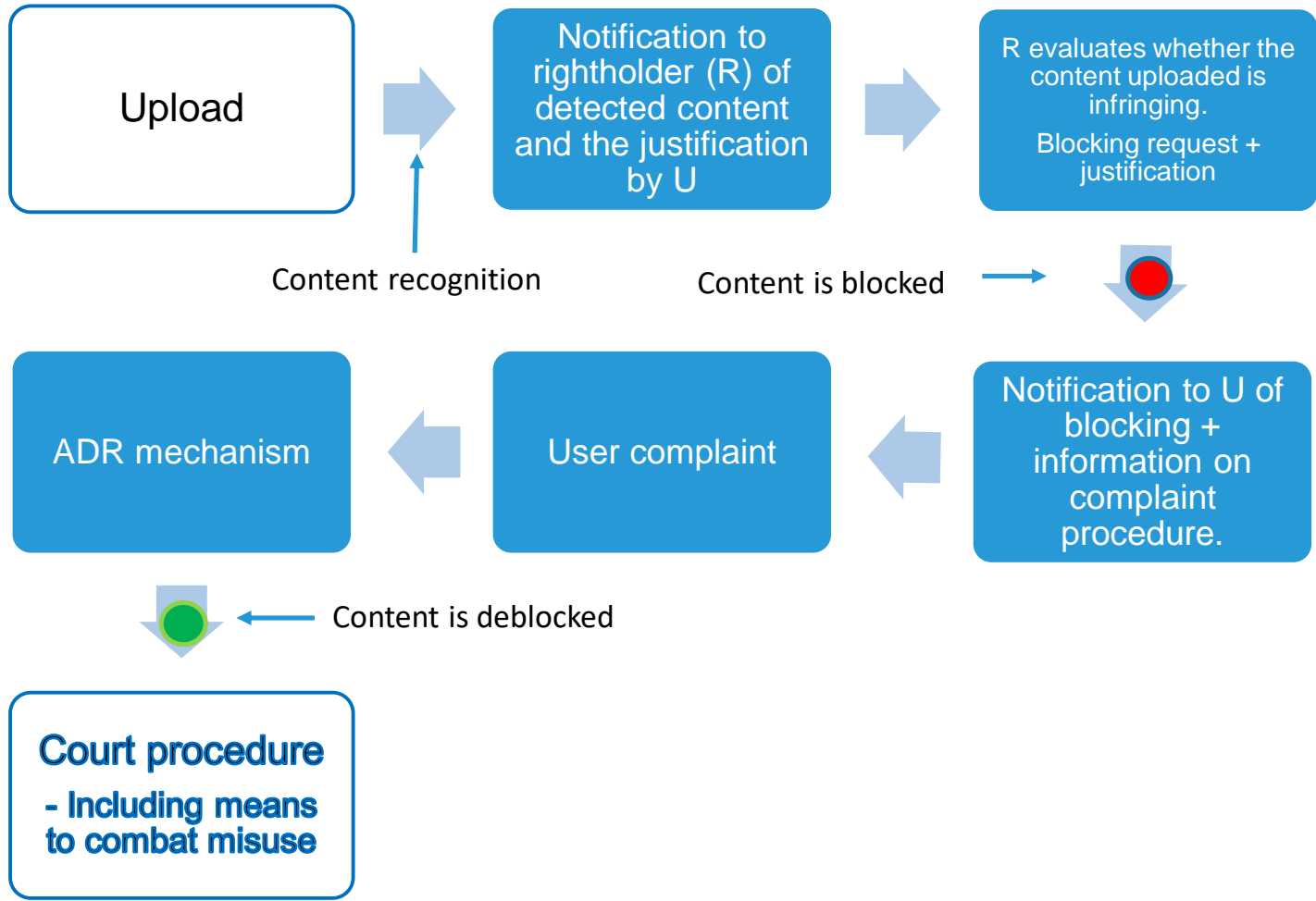
## Palauttamispyyntö / Begäran om återkallande av blockering

- U may object to the deblocking request by submitting a deblocking request to the ADR mechanism (including copy to OCSSP)
- The deblocking request shall include:
  1. the name and contact details of U
  2. a copy of the blocking request
  3. information on the contact point of the OCSSP
  4. information identifying the content, the blocking of which is deemed unjustified (a copy of that content)
  5. the facts and other reasons why the blocking is considered unjustified in response to the justification given by R
  6. any claim for compensation
  7. any other evidence necessary for the assessment of the matter, such as licensing agreements
  8. a declaration by the applicant that he is the user of the service whose content has been removed or that he is entitled to act on his behalf.

# Step 5: Decision by ADR body

## ADR-elimien ratkaisu / Beslut av ADR-enheten

- A new Alternative Dispute Resolution body needs to be established
- The ADR body must be neutral and capable to decide on matters promptly.  
Probable disputes:
  - Interpretation of copyright law (in particular the applicability of exceptions and limitations)
  - Interpretation of agreements between R&U or R&OCSSP
- If the ADR body considers that there are no evident grounds for removing the content, it shall publish a decision reflecting this and communicate the outcome to U, R and OCSSP. In this case, the OCSSP is obliged to restore access to the content.
- The decision may include a recommendation for compensation for harm or damage caused by unjustified removal of content to be paid to the user.
- The decision of the ADR Body is not be binding on the court.



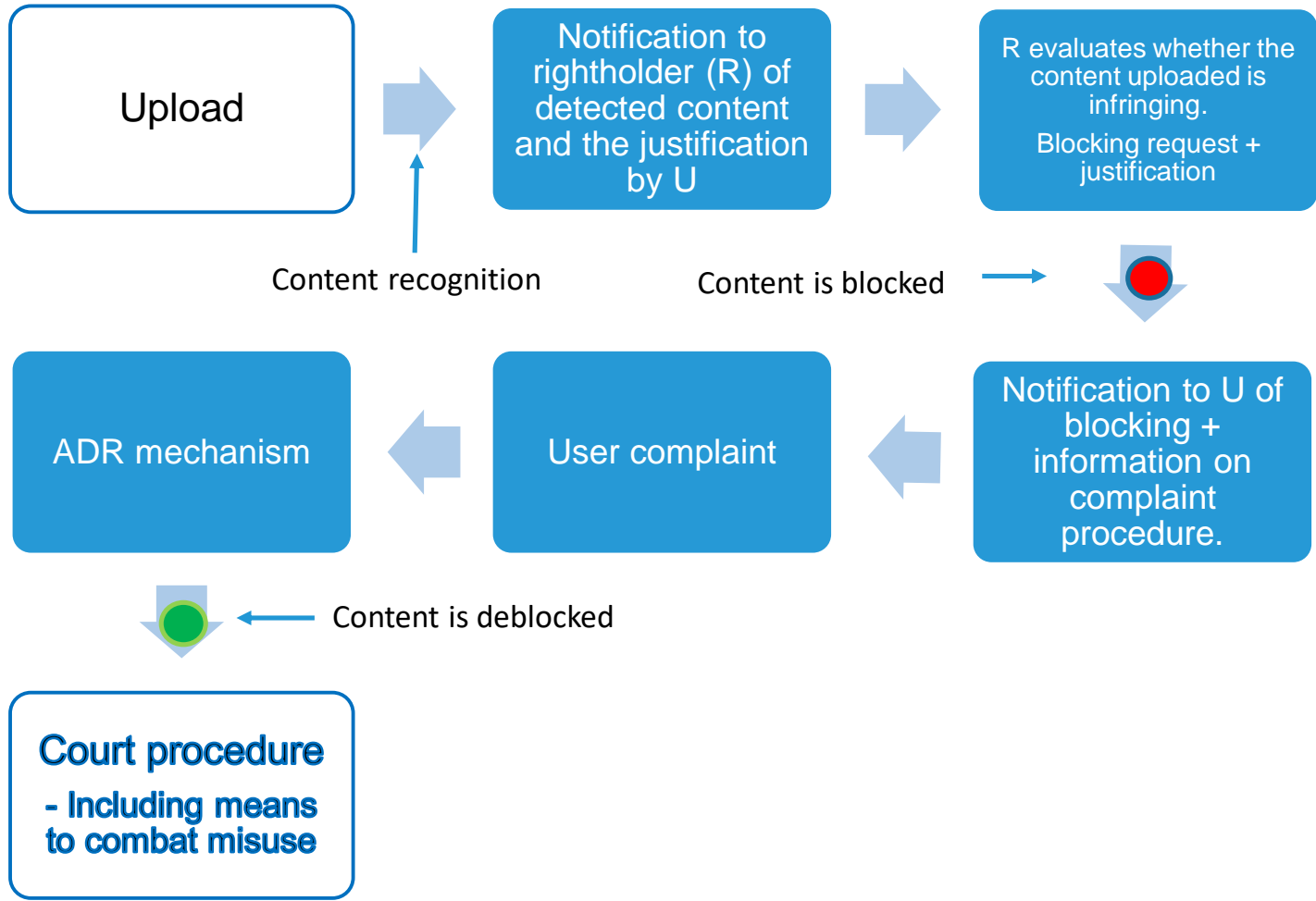


# Step 6: Final decision by the Court



## Tuomioistuimen lopullinen ratkaisu / Slutgiltigt beslut av domstol

- In case R, U or OCSSP is dissatisfied with the decision/recommendation of the ADR body, a case may be brought to the Market Court
- The Court may
  - confirm the user's right to use the work (on the basis of an E&L, a contract with the rightholder etc)
  - prohibit an OCCSP from blocking access to content uploaded by the user
  - confirm compensations to be paid to R for copyright infringement or to U for unjustified take-downs
  - confirm damages to be paid in case of the provision of false information (in the blocking or deblocking requests)
  - prohibit the rightholder from using the means of identifying and blocking access, in case of repeated or intentional unjustified blocking requests



# Questions to the stakeholders



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# Questions:

1. Is the information in the blocking-request sufficient/appropriate?
2. Is the information in the deblocking request (from user to ADR) sufficient?
3. Are the general information obligations of an OCSSP sufficient?
4. What information do rightholders need?
5. Are the measures to combat misuse of the blocking mechanism sufficient?
6. Should there be an obligation on OCSSP:s to preserve the upload for later proof?
7. Should decisions of the ADR mechanism be public?
8. Further unresolved issues

# 1. Is the information in the blocking-request sufficient/appropriate?

*The blocking-request shall include the following information:*

- 1. the name and contact details of the person requesting removal*
- 2. any information necessary for the identification of the content to which disabling access is required*
- 3. a declaration by the applicant that in accordance with his evaluation made in good faith, the uploaded content has been unlawfully made available to the public as well as the reasons for the request for removal, taking into account the justifications provided by the user uploading the content*
- 4. a specification of the work, the rights of which are alleged to have been infringed*
- 5. a declaration from the applicant stating that he is the author or holder of a related right or is entitled to act on behalf of the rightholder.*

## 2. Is the information in the deblocking request (from user to ADR) sufficient?

*The deblocking request shall include the following information:*

- 1. the name and contact details of the applicant*
- 2. a copy of the rightholders request for removal*
- 3. information on the contact point of the OCSSP*
- 4. information identifying the content, the blocking of which is deemed unjustified*
- 5. the facts and other reasons why the blocking is considered unjustified in response to the reasons given by the rightholder*
- 6. any claim for compensation and the grounds for such a claim*
- 7. any other evidence necessary for the assessment of the matter, such as licensing agreements*
- 8. a declaration by the applicant that he is the user whose content has been removed or that he is entitled to act on his behalf.*

### 3. Are the general information obligations of an OCSSP sufficient?

*The online content-sharing service provider shall publish the following information in conjunction with the service:*

- 1. the contact point of the online content-sharing service provider to which the author's removal request and the user's deblocking request can be submitted*
- 2. information on the means available to identify copyright-infringing content and to disable access to it*
- 3. the information necessary for the online content-sharing service provider in order to fulfil its obligations to identify and block access to copyright-infringing content or to obtain the necessary authorisation from rightholders to use the content*
- 4. information identifying the repertoire the service provider has acquired licenses to*
- 5. a reference to the copyright limitations that users of the service are entitled to invoke*
- 6. information on the procedure for requesting deblocking of the content.*

## 4. What information do rightholders need?

- *The OCCSP is obliged to provide, at the request of a rightholder, the following information in their possession in respect of the licensed work:*
  1. *the number of users that have uploaded the work on the service;*
  2. *the number of users that have read, viewed or listened to the work in the service;*
  3. *information on the income received by the OCSSP from the use of the work in the service.*

This issue is covered in Art 17 (8).



## 5. Are the measures to combat misuse sufficient?

- The increased power of rightholders mandates a more efficient protection of users.
- The draft foresees the following safeguards for users;
  - OCSSP's must inform users of possibility to rely on E&L and on the possibility to file deblocking requests
  - OCSSP's must also take care of passing on the messages to rightholders and the ADR mechanism
  - Rightholders must provide adequate justification for blocking, including sufficient information on what works are claimed to have been infringed
  - Users have access to a specific ADR mechanism; the ADR mechanism can decide the content must be deblocked and can recommend the compensation to be paid in case of unjustified removal
  - The court can assess the application of E&L ex ante or ex post
  - The court can prohibit the rightholder from using the means of identifying and blocking access, in case of repeated or intentional unjustified blocking requests

## 6. Should there be an obligation on OCSSP:s to preserve the upload for later proof?

- Deleting the upload destroys evidence, sometimes paramount for the ability of users to prove their case.
- Without a legal obligation, the preservation would be up to the OCSSP, which is put in a difficult situation since the copy could be considered infringing.
- Maybe it should at least be clarified (in the Commission guidelines?) that the OCSSP is entitled to store the file as long as access to the public is blocked.

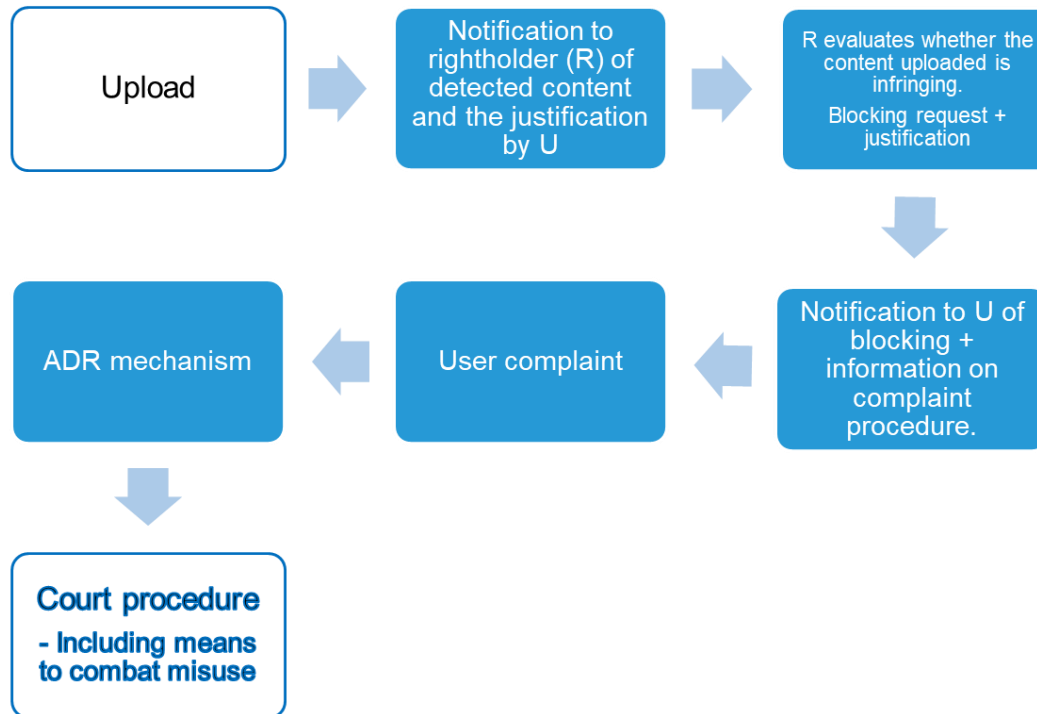
# 7. Should decisions of the ADR mechanism be public?

- If decisions are public, or at least available to those offering online recognition and blocking tools, it would be possible to refine the content recognition technology to recognize legal content.
  - That would require both the original work and the upload to be available.

## 8. Further unresolved issues

- What if a match corresponds to works claimed by multiple rightholders (i.e. contradiction as to whom the work belongs?)
  - Should the OCSSP be allowed to refrain from blocking?
  - How should such disputes be resolved?
- Are there issues with partly-cleared works in relation to blocking-requests that requires the attention by the legislator?
  - For instance if a "minor" rightholder requires blocking in which case, taken as a whole, it could be considered unproportionate that the work is blocked?

# Further comments on the model?



**Thank you!**



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