

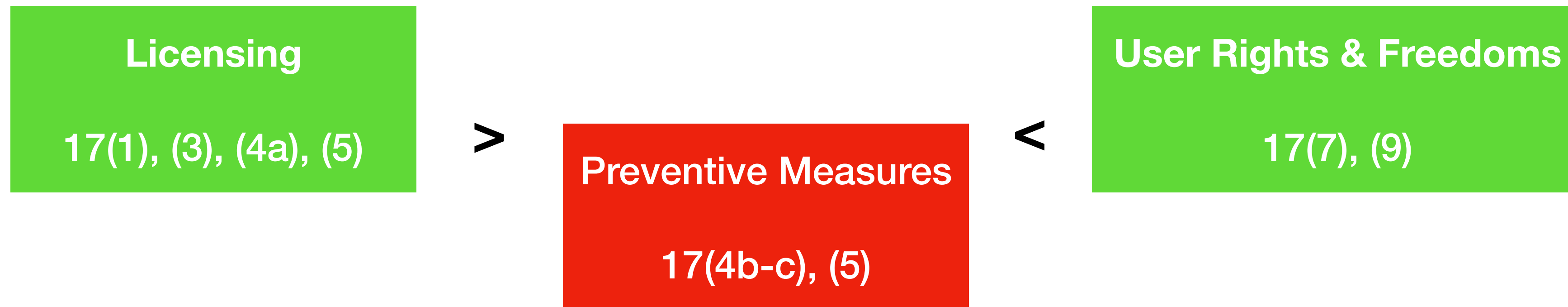
# **Best practices for cooperation of rightholders and OCSSPs under article 17 Copyright Directive**

VvA 12 June 2020 (Webinar)

**João Pedro Quintais (IViR)**  
**@jpquintais**

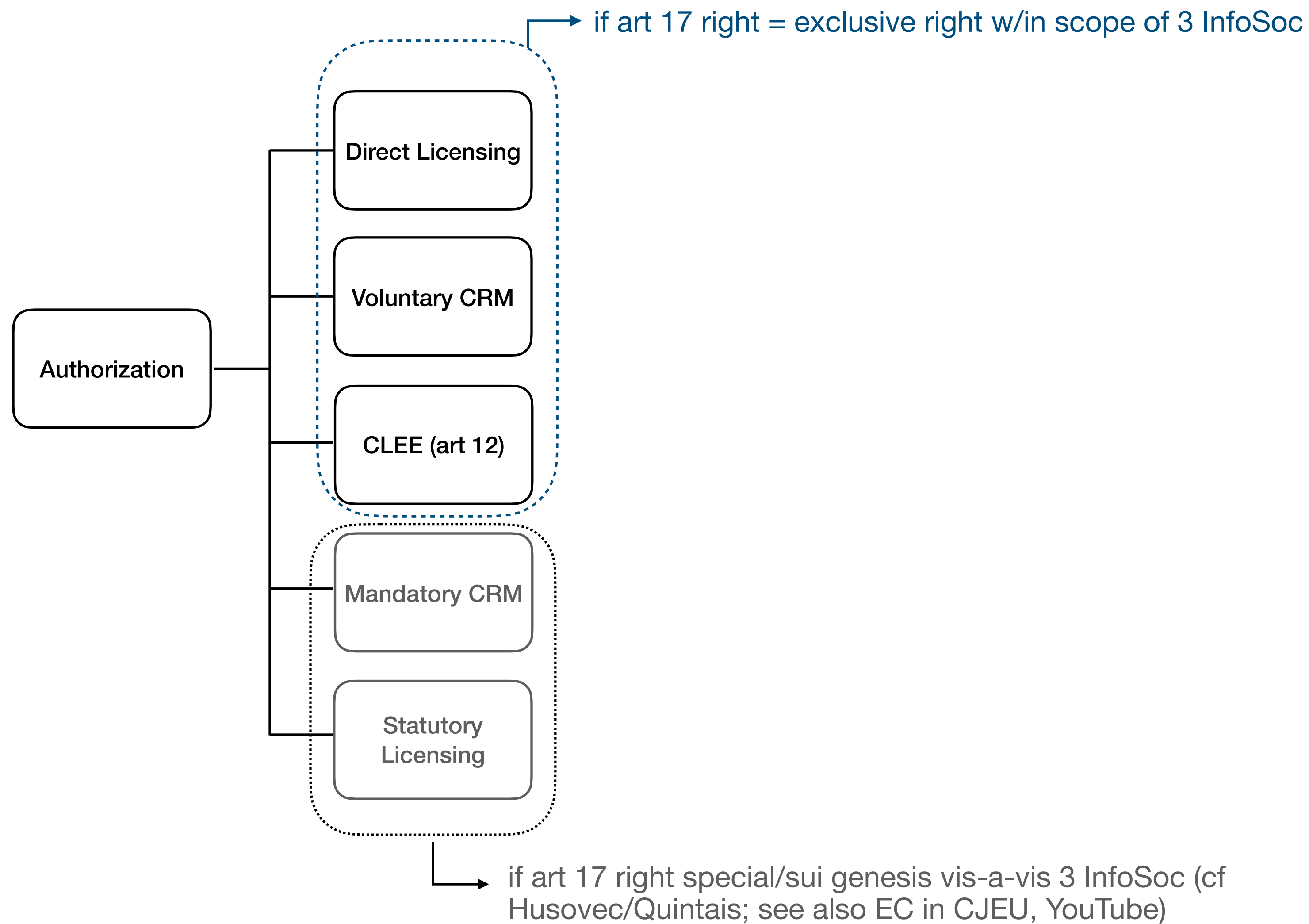
# Article 17

## Normative hierarchy

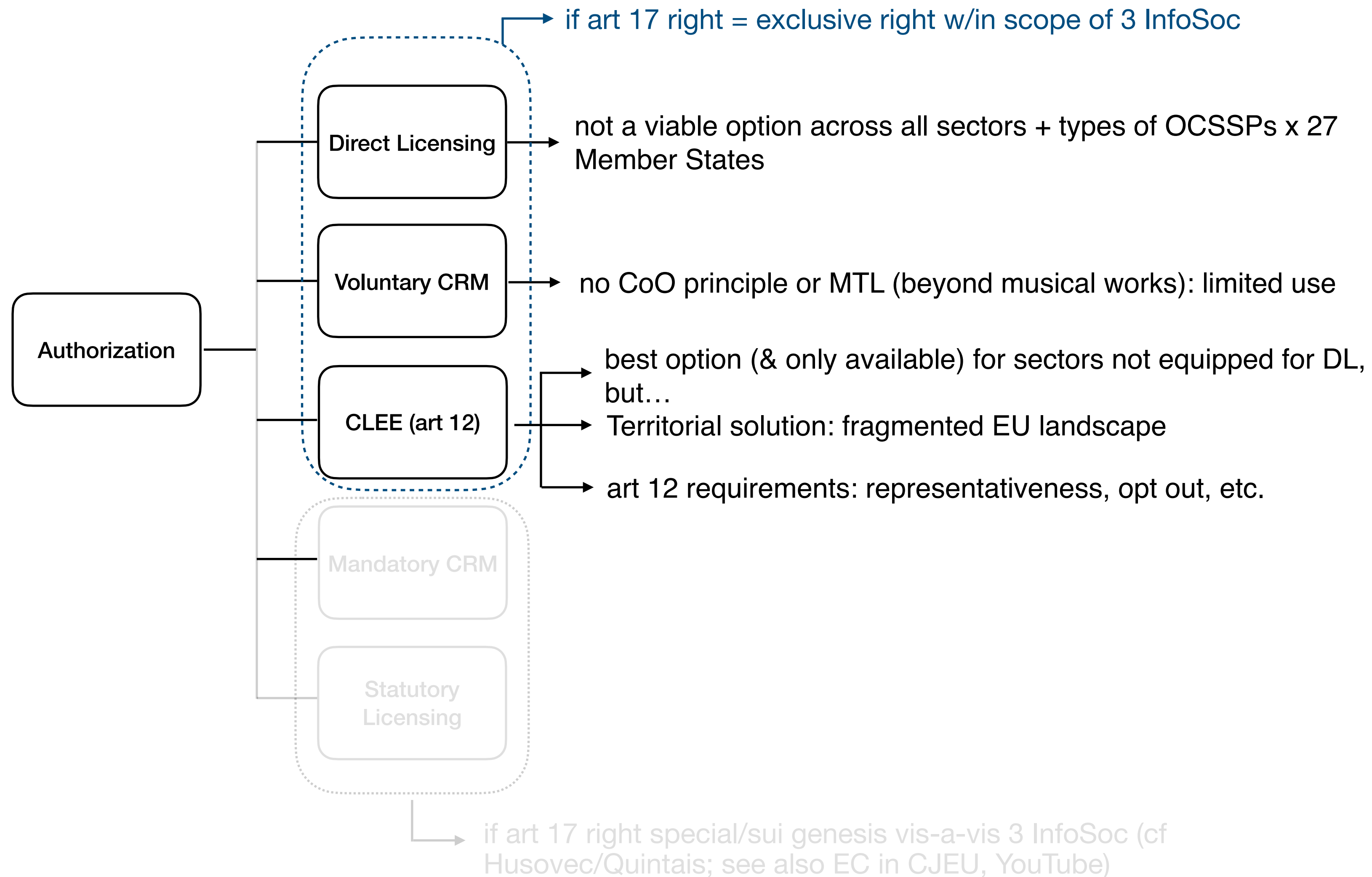


# #1. Authorization

**1 size does not fit all + art 17 does not mandate it!**



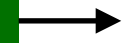
**1 size does not fit all + art 17 does not mandate it!**



- new / clarified mandates advised (Amend CRM Acts: 3 InfoSoc mandates extend to 17 CDSM)
- Low threshold below “systemic” OCSSPs, i.e. flexible interpretation of best efforts in 17(4)(a), in light of 17(5) proportionality & factors **(NL!)**
- e.g. non-obvious (c) holders → passive OCSSP OK (also valid for direct licensing)

# **#2. Preventive Measures vs User Rights / Freedoms**

**Authorization**



**Authorization**



**Best efforts to  
obtain authorization  
17(4)(a)**





**Authorization**



**Best efforts to  
obtain authorization  
17(4)(a)**



**Preventive Measures  
17(4)(b-c)**

**Authorization**

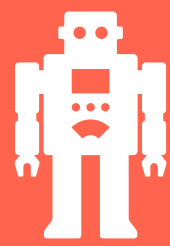


**Best efforts to  
obtain authorization  
17(4)(a)**



**Preventive Measures  
17(4)(b-c)**

NTD?  
Others?

  
CRTs  
(Filters, NSD)

**Authorization**

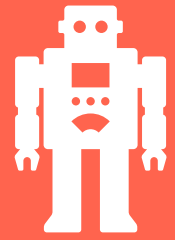


**Best efforts to  
obtain authorization  
17(4)(a)**

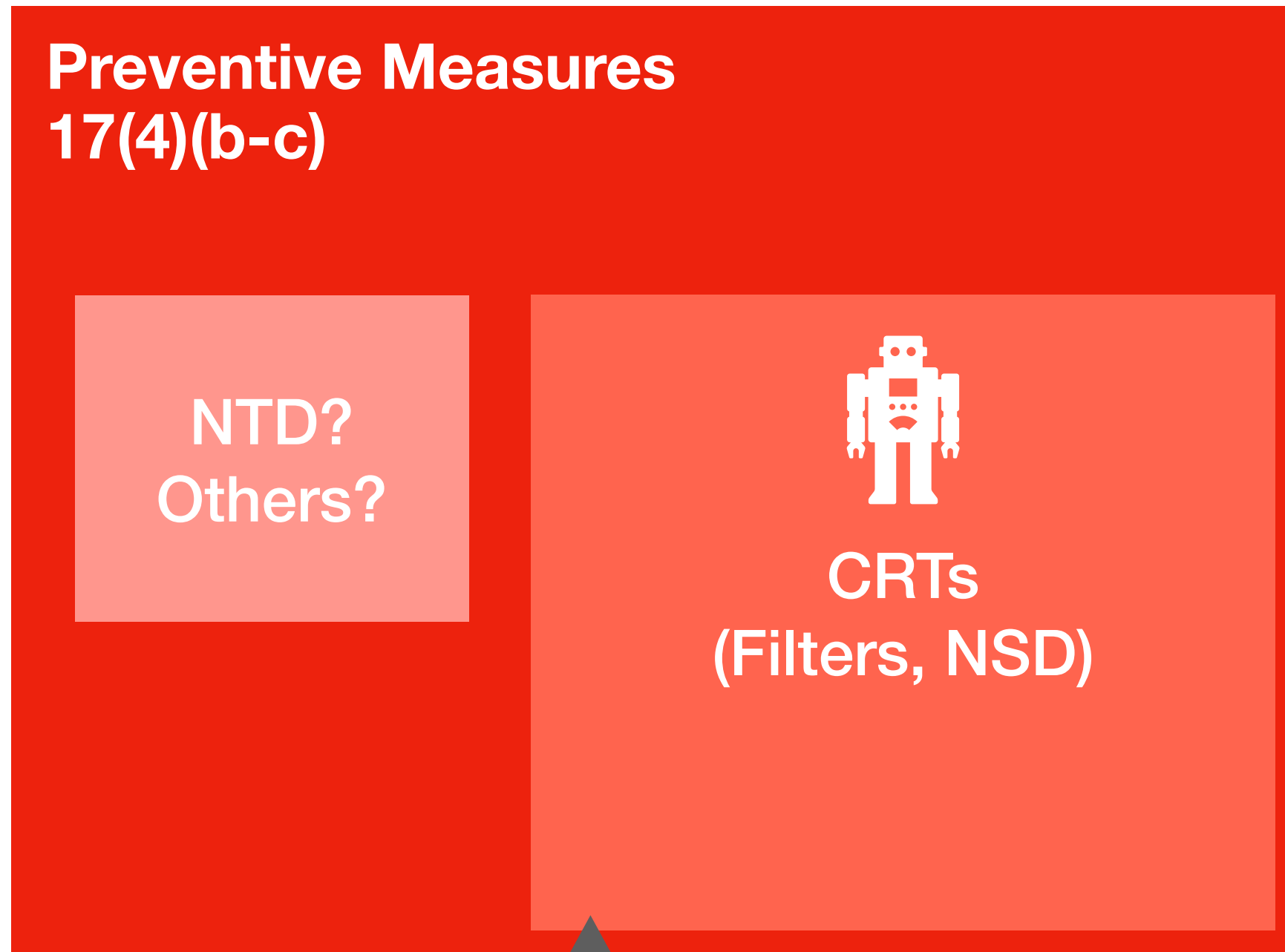
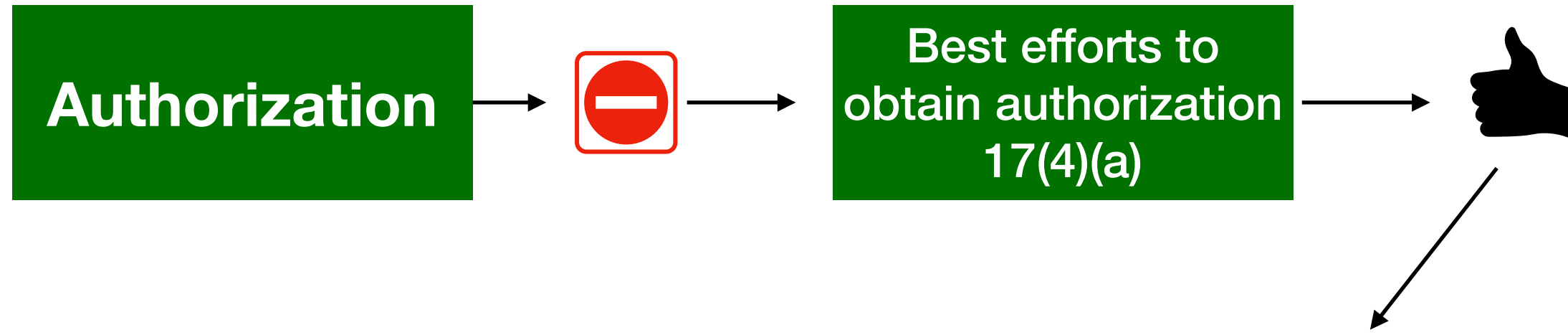


**Preventive Measures  
17(4)(b-c)**

NTD?  
Others?

  
CRTs  
(Filters, NSD)

not suited for  
17(7) uses



not suited for 17(7) uses

**User Rights & Freedoms 17(7), (9)**

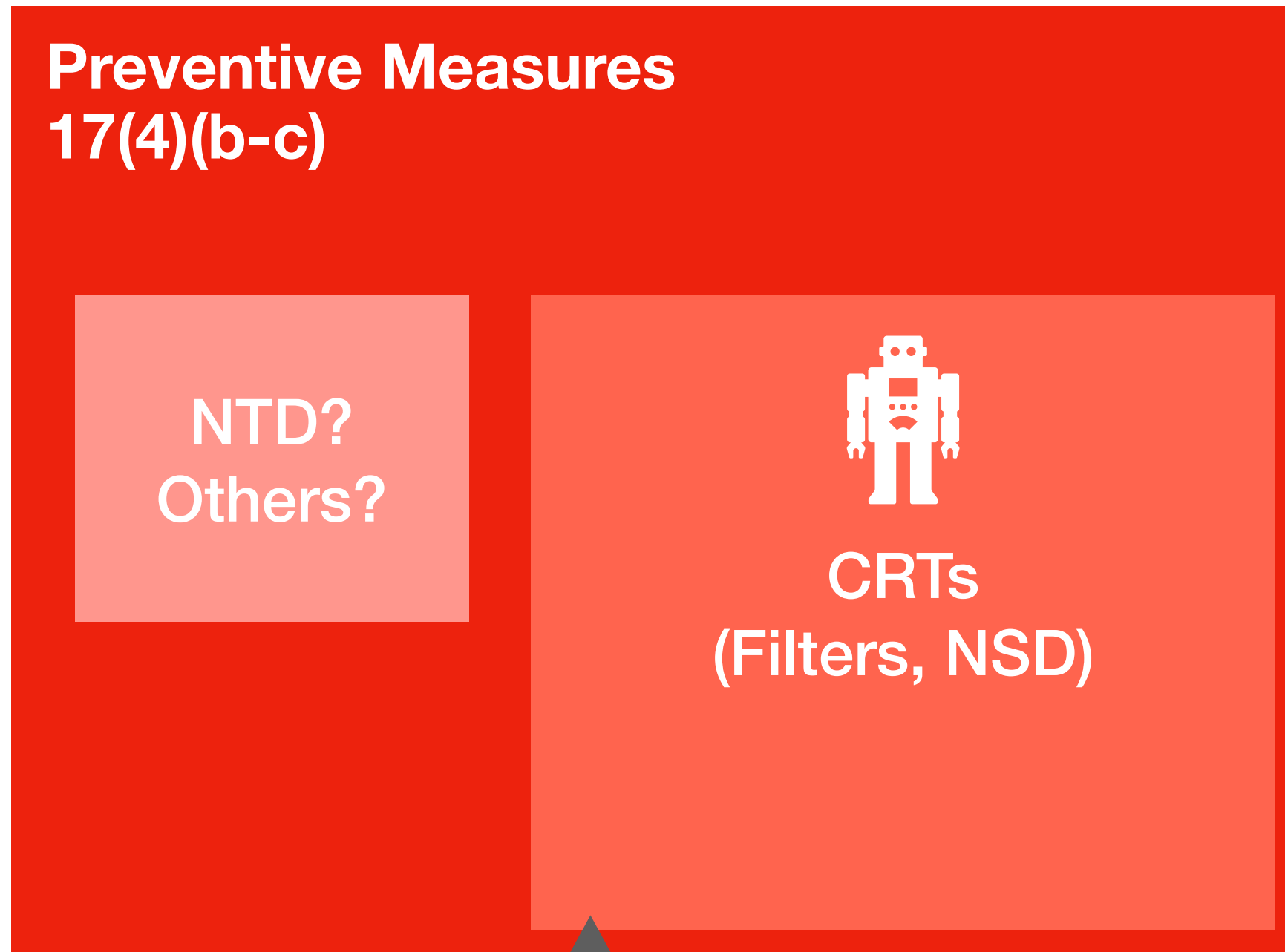
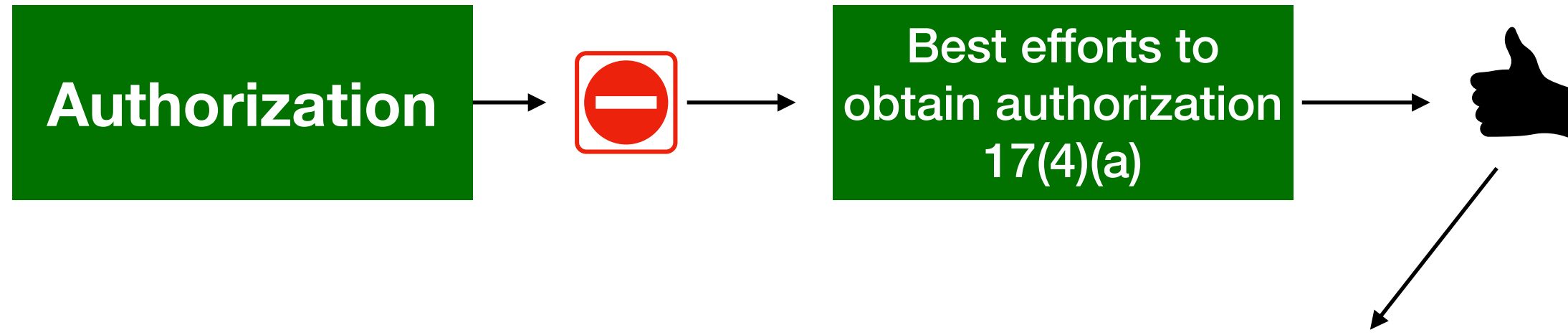
- covers most “transformative” UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)

+

**Other E&Ls and lawful uses 17(7), (9)**

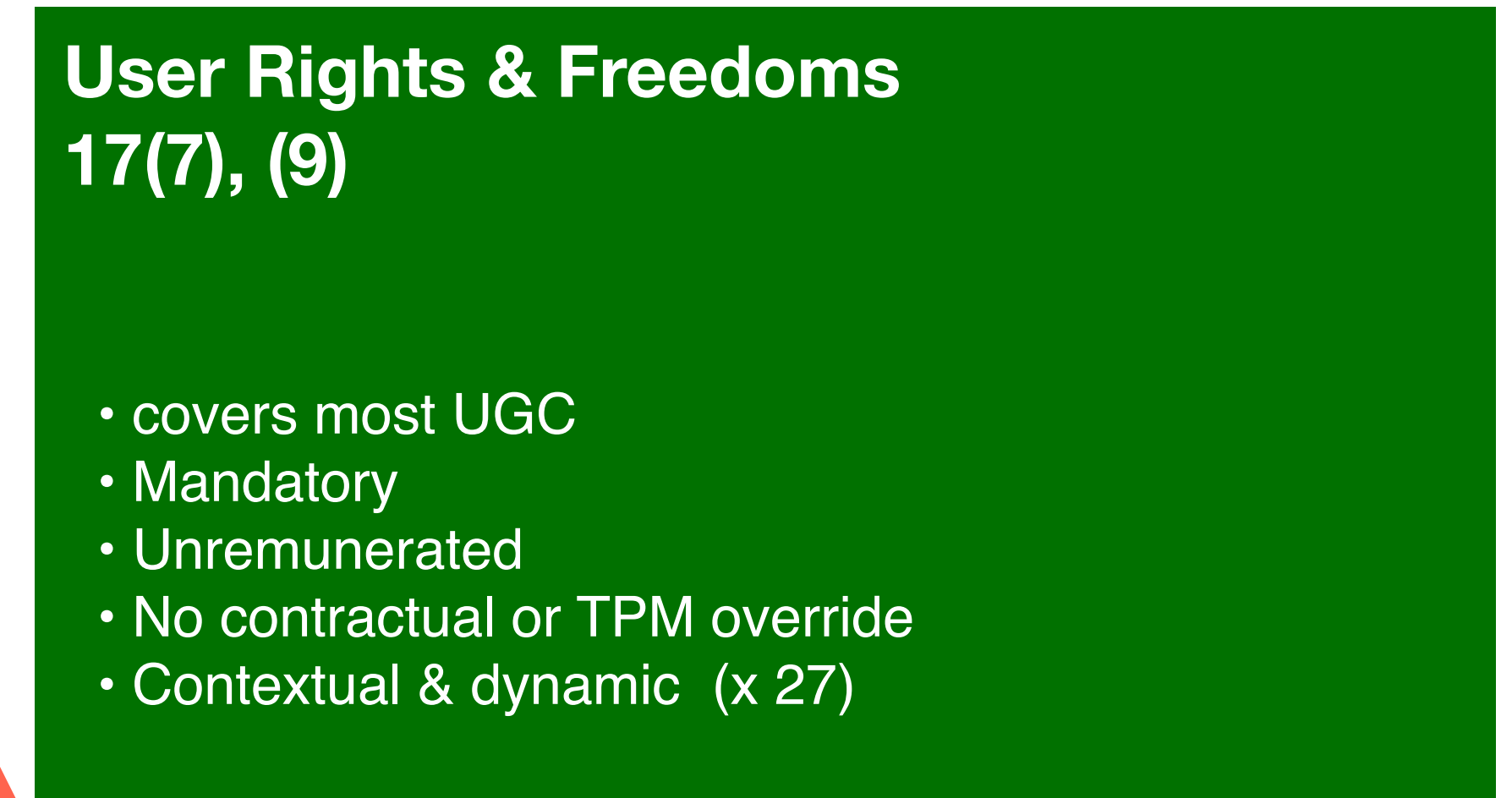
+

**Complaint & Redress (Procedural Safeguards) 17(9)**



not suited for 17(7) uses

NL approach

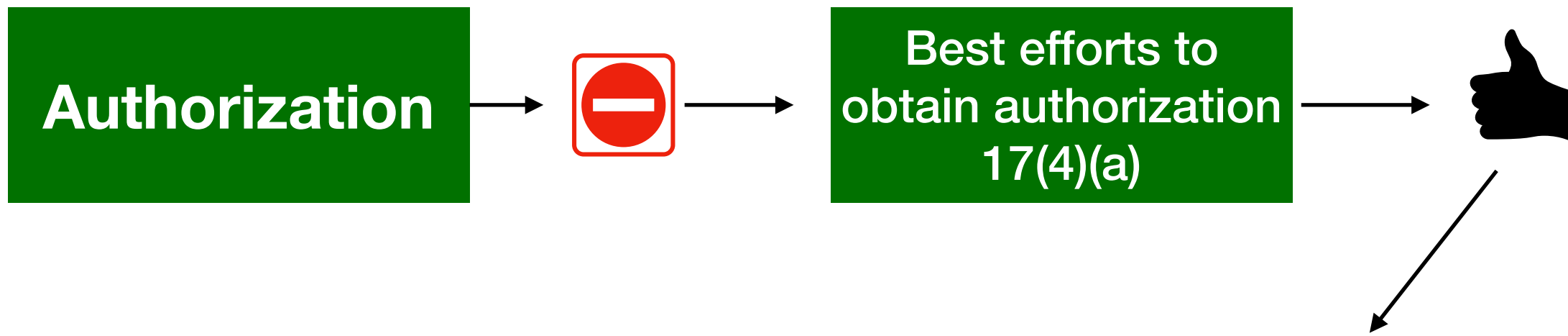


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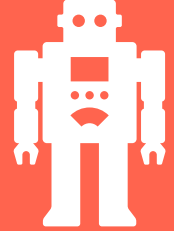
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**Preventive Measures 17(4)(b-c)**

NTD?  
Others?



CRTs  
(Filters, NSD)

not suited for 17(7) uses

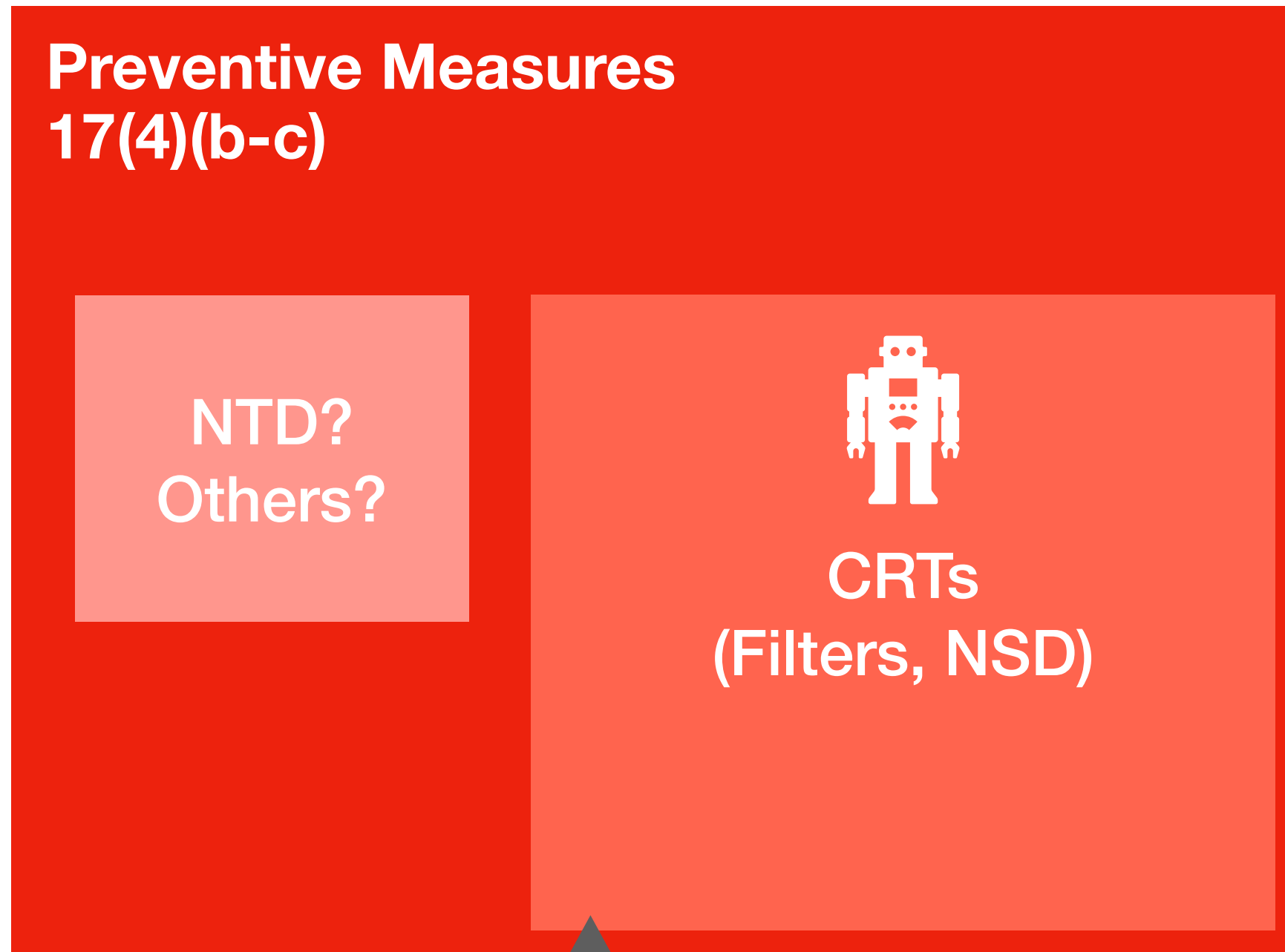
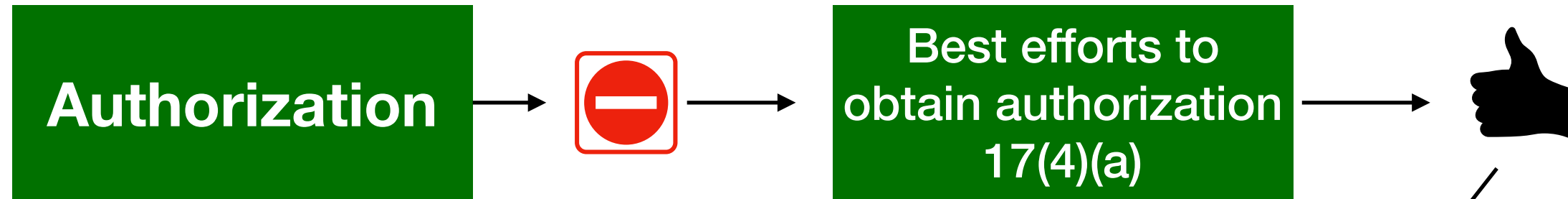
- incompatible 17(7) and FoE
- Inconsistent w/ CRT capabilities & empirical evidence counter notices
- proportionality (alternatives exist)

**User Rights & Freedoms 17(7), (9)**

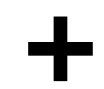
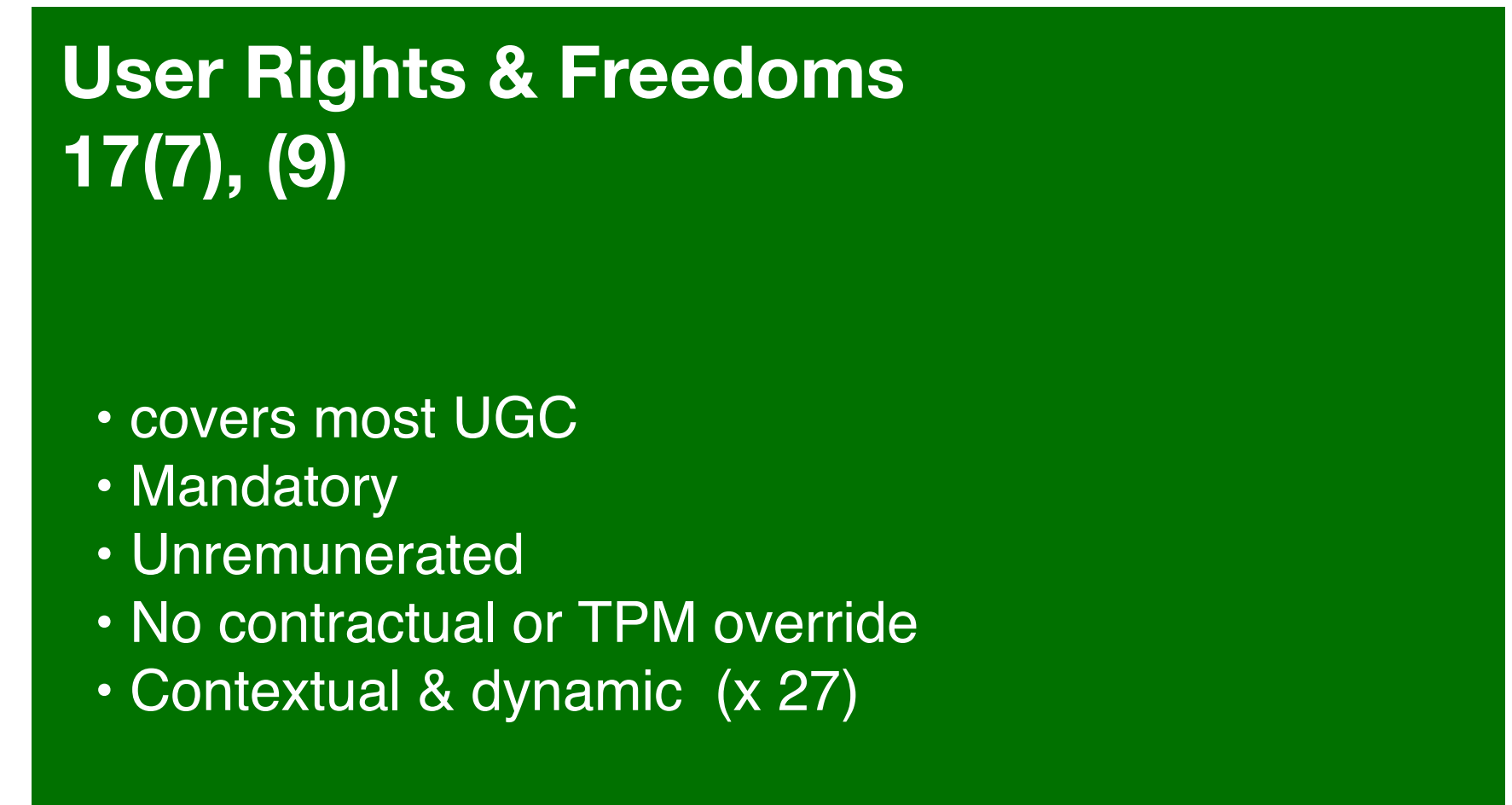
- covers most UGC
- Mandatory
- Unremunerated
- No contractual or TPM override
- Contextual & dynamic (x 27)

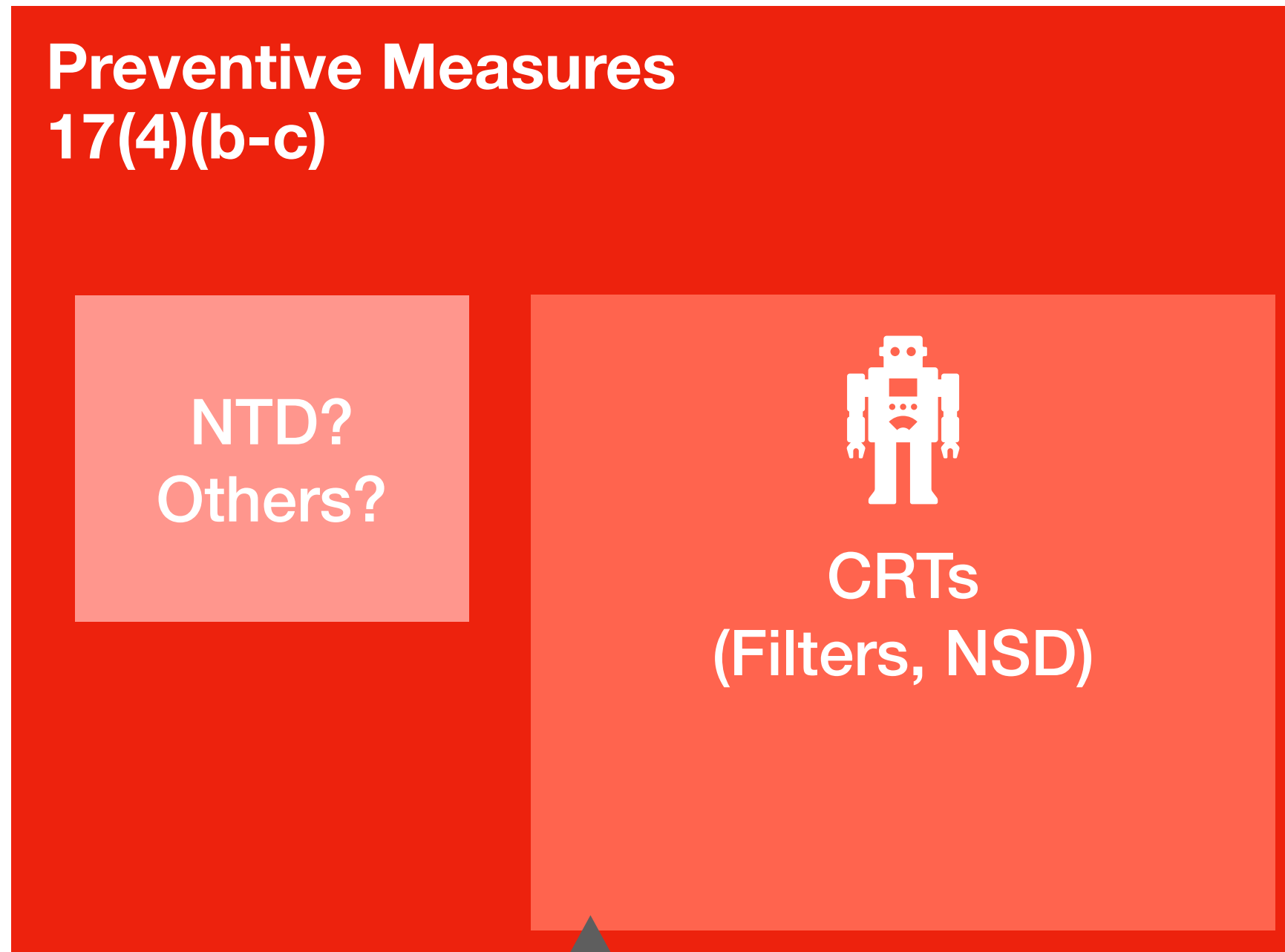
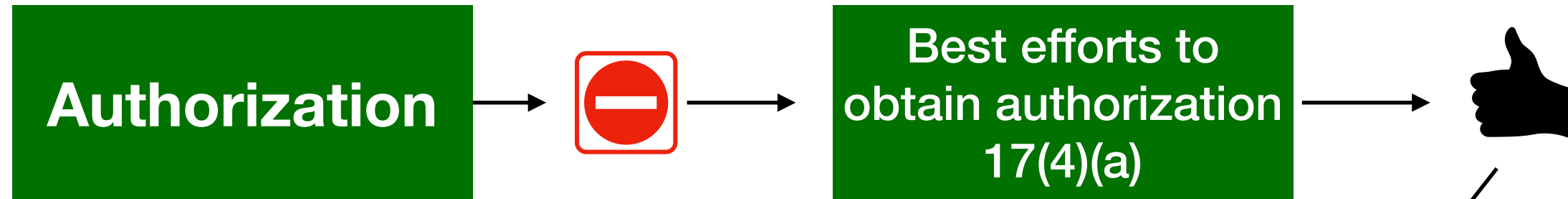
**Other E&Ls and lawful uses 17(7), (9)**

**Complaint & Redress (Procedural Safeguards) 17(9)**



not suited for 17(7) uses

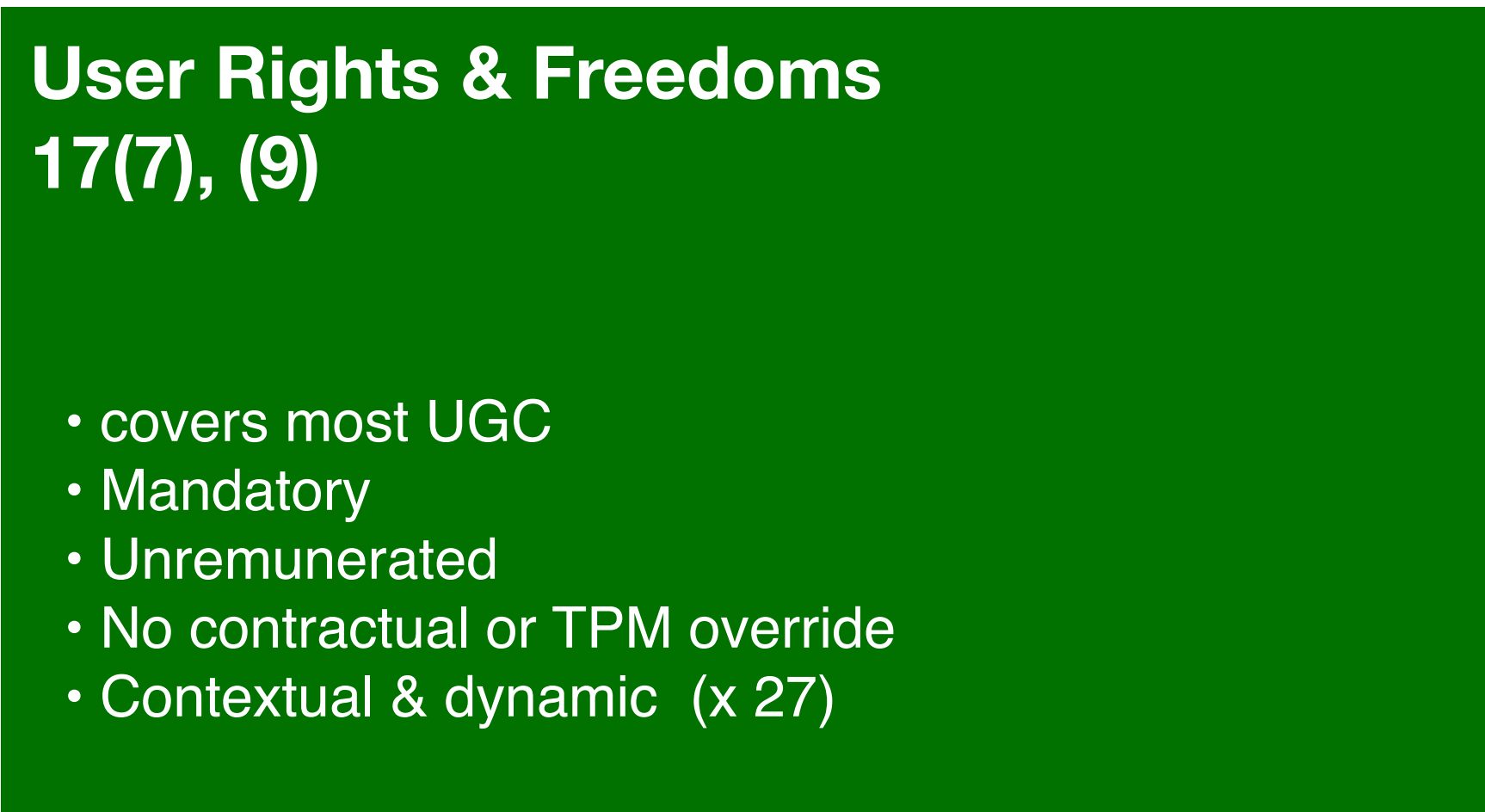




not suited for 17(7) uses



How?

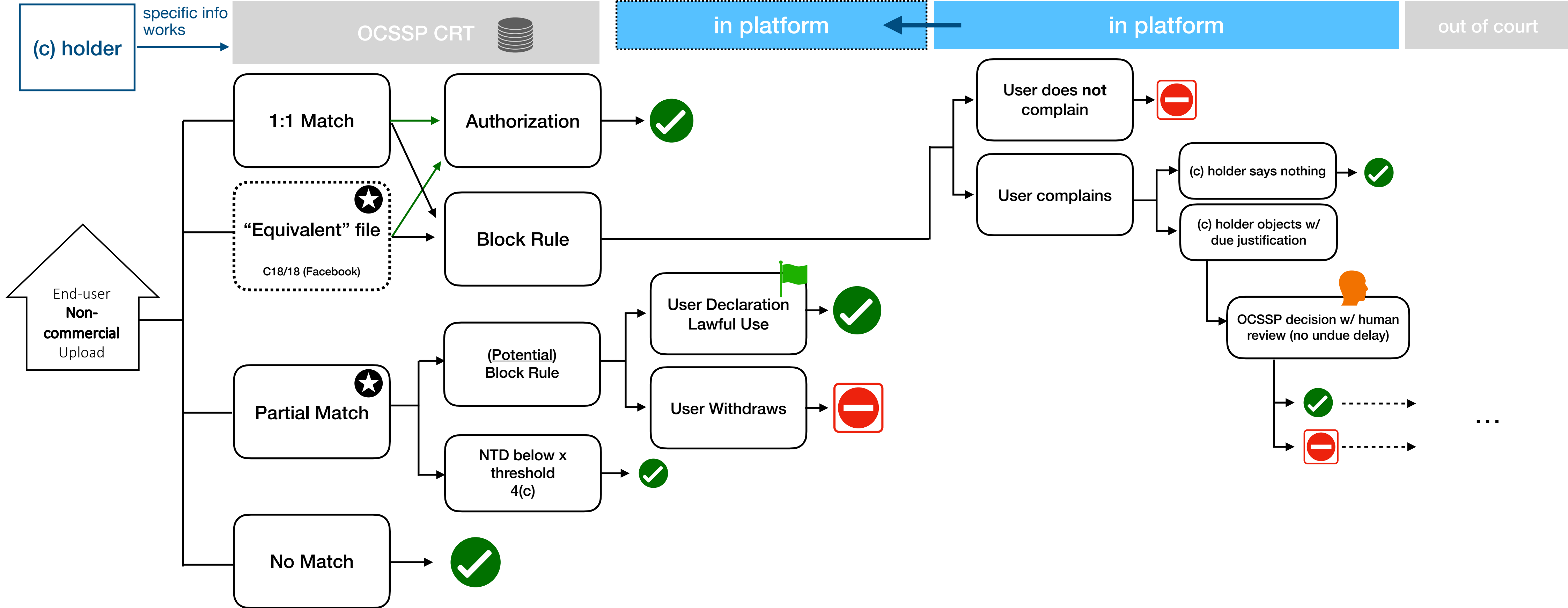




**1 size does not fit all OCSSPs + art 17 does not mandate it!**

**Preventive Measures & User Rights**  
17(4)(b) and (c) — 17(7)

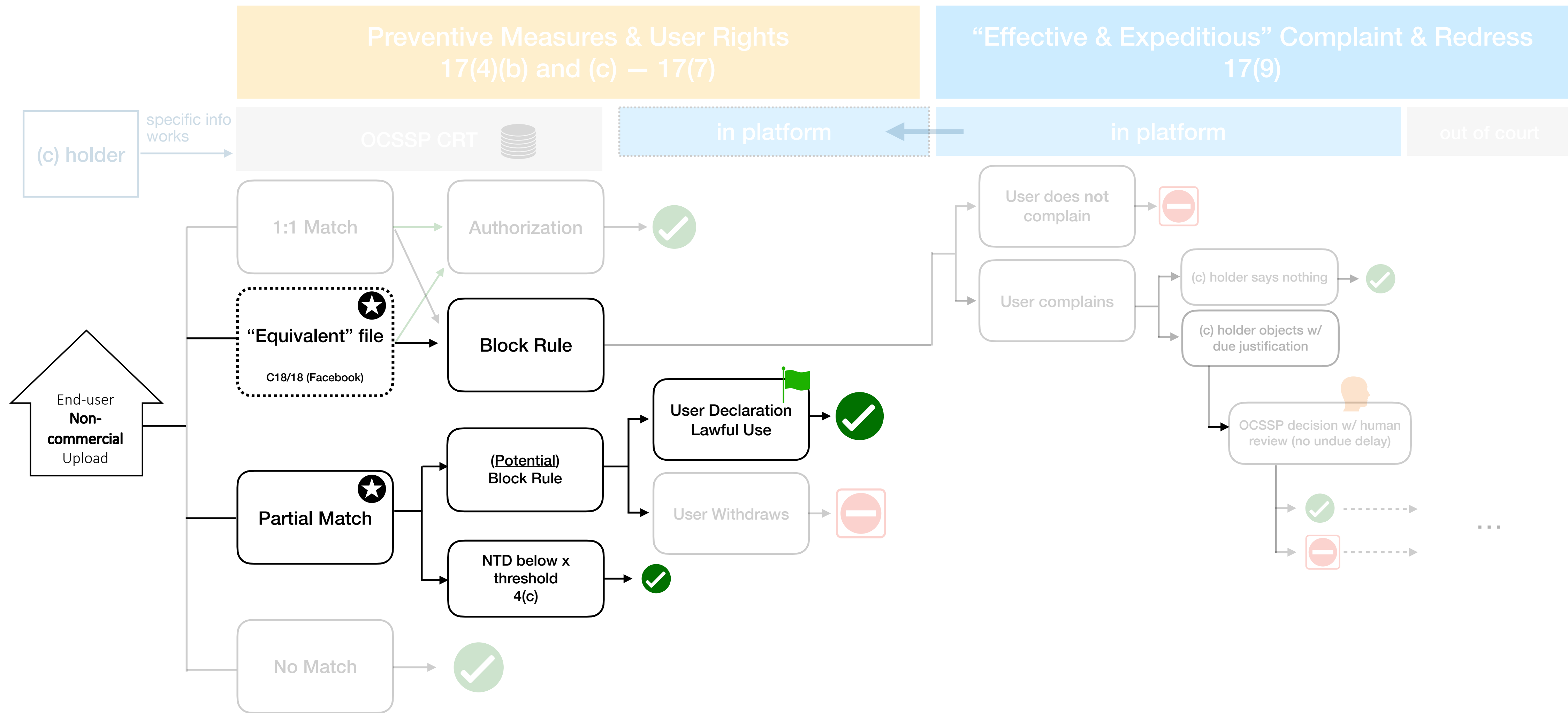
**“Effective & Expedient” Complaint & Redress**  
17(9)



- Uploaded content available to public on platform
- Uploaded content blocked - not available to public on platform

**Equivalent file:** narrow interpretation (e.g. high percentage similarity, limited to certain types of works CRTs are suitable for, attention to differences in national laws) // **Partial Match:** block rules in this scenario should arguably be “duly justified” (difficult to do ex ante for partial matches); is 17(4)(b)(c) sufficient legal basis for blocking most partial matches?

**1 size does not fit all OCSSPs + art 17 does not mandate it!**



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## Some References

see also: <https://www.ivir.nl/employee/quintais/>

- João Pedro Quintais, Giancarlo Frosio, Stef van Gompel, P. Bernt Hugenholtz, Martin Husovec, Bernd Justin Jütte, Martin Senftleben, *Safeguarding User Freedoms in Implementing Article 17 of the Copyright in the Digital Single Market Directive: Recommendations from European Academics*, 10 (2020) JIPITEC 277 para 1. <https://www.jipitec.eu/issues/jipitec-10-3-2019/5042>
- Husovec, Martin and Quintais, João, *How to License Article 17? Exploring the Implementation Options for the New EU Rules on Content-Sharing Platforms* (October 1, 2019). Available at SSRN: <https://ssrn.com/abstract=3463011> or <http://dx.doi.org/10.2139/ssrn.3463011>
- Quintais, João, *The New Copyright in the Digital Single Market Directive: A Critical Look* (October 14, 2019). *European Intellectual Property Review* 2020(1). Available at SSRN: <https://ssrn.com/abstract=3424770> or <http://dx.doi.org/10.2139/ssrn.3424770>
- Christina Angelopoulos, João Pedro Quintais, *Fixing Copyright Reform: A Better Solution to Online Infringement*, 10 (2019) JIPITEC 147 para 1. <https://www.jipitec.eu/issues/jipitec-10-2-2019/4913>
- Quintais, João, *Untangling the Hyperlinking Web: In Search of the Online Right of Communication to the Public*. *J World Intellect Prop.* 2018;1–36; Amsterdam Law School Research Paper No. 2018-16; Institute for Information Law Research Paper No. 2018-02. Available at SSRN: <https://ssrn.com/abstract=3199733> and <https://onlinelibrary.wiley.com/doi/abs/10.1111/jwip.12107>