

MEDIA & COPYRIGHT CONFERENCE

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/ Hadopi: a former authority dedicated to regulate online copyright protection

Launched in 2009, merged in 2022 with Audiovisuel Superior Council to create the Arcom

3 missions

To encourage the development of the legal offer and observe the legal and illegal use of works

To protect such works from infringements of said rights committed on electronic communications networks

To regulate and monitor digital rights management (DRM)

→ A French exception: an independant administration to regulate DRM (Digital rights management)

/ Hadopi / Arcom may be seized in the context of a dispute settlement procedure when a digital right management prevents interoperability or restricts the benefit of certain exceptions listed in the French intellectual property code (Articles L.331-29, L.331-30 and L.331-31 of the IPC).

/ Dispute resolution procedures for digital rights management within Hadopi (1/3)

Implementation of the disability exception (2016)

- Request from an association representing visually impaired professionals
 - Need to access online books from a publisher
- solution found to ensure the transmission of the files without the risk of illegal usage

Dispute resolution procedures for digital rights management measures within Hadopi (2/3)

Private copy exception of TV broadcasts via remote access (Molotov, 2020)

- Request from a private user of Molotov TV, a nPVR service
- Complain about restrictions of online copies of TV broadcasts
 - ➔ Rejection of the request to order company Molotov TV to extend its offline viewing mode.
 - ➔ risk that such an obligation would interfere with the normal exploitation of the works and be unjustifiably prejudicial to the legitimate interests of rights holders.

Dispute resolution procedures for digital rights management within Hadopi

Lack of interoperability of software resulting from the implementation of a technical protection measure (Cosmos, 2021)

- Request from a software company
 - Impossibility to access an online database, due to online password
- Rejection of the request as Hadopi not competent

A newly integrated regulator competent for audiovisual and digital communication



Hadopi

**Law of 12th June
2009**

Independent public authority entrusted with the mission of tackle online piracy of copyright-protected content

CSA
CONSEIL SUPÉRIEUR DE L'AUDIOVISUEL

**Law of 30th
September
1986**

Independent audiovisual regulatory authority

Arcom

**Law of 25th
October 2021**

Merger of Hadopi with the CSA to create an independent authority in charge of regulating audiovisual and digital content

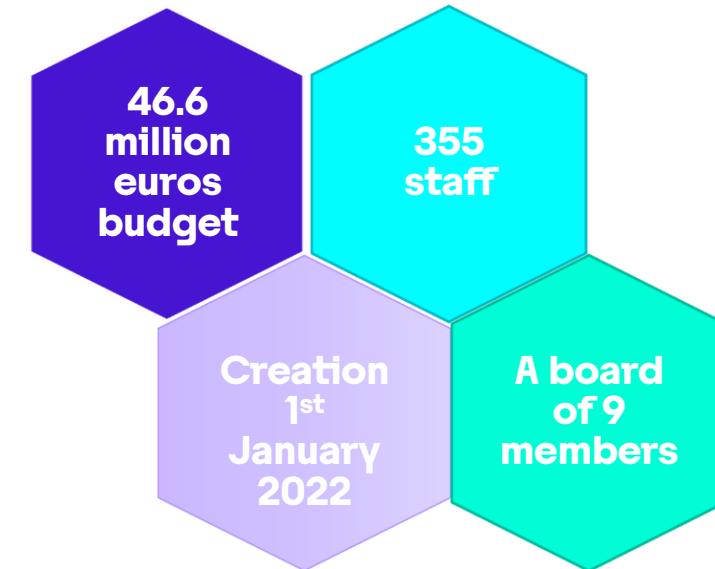
Arcom's missions : from audiovisual regulation to platforms regulation, combating online piracy, fake news and hate speech, and protecting minors



The missions

- ▶ Defend creation and its actors
- ▶ Carry out studies at the service of the general public and professionals
- ▶ Participate in the development of a safer internet
- ▶ Allow access to a pluralist audiovisual offer, respectful of rights and freedoms

Key figures



/A new possibility within Arcom

The implementation of the Article 17 of the Copyright directive: a dispute resolution capacity in case of disagreement between online contents sharing platform and rightholders or internet users.

A previous evaluation made by Hadopi

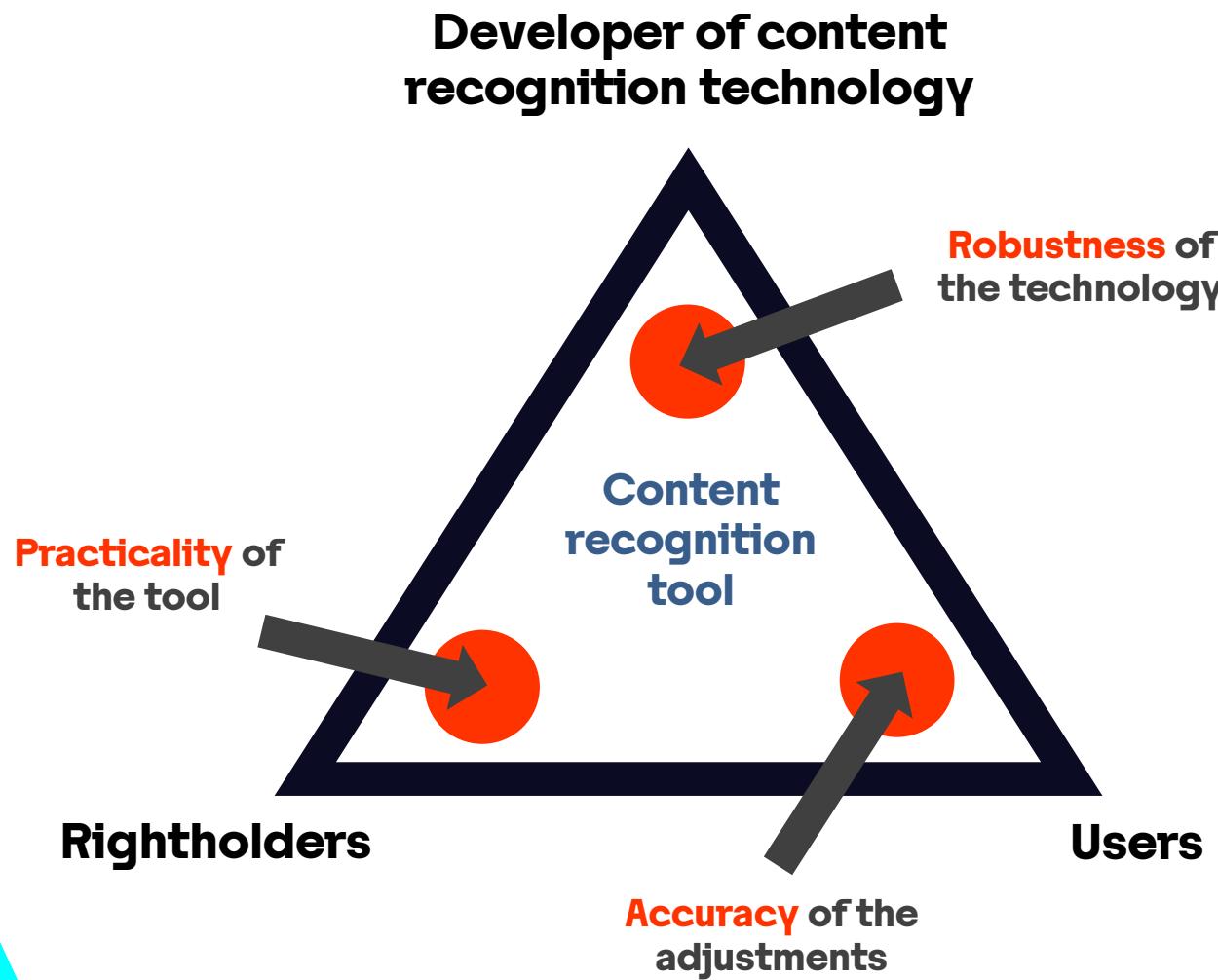
On April 1, 2019, a joint mission on content recognition tools has been initiated in France, with a triple objective:

- Make an up-to-date inventory of the existing tools (especially the ones that are used by online contents sharing platform).
- Evaluate the efficiency of such tools.
- Make recommendations in relation to the transposition of the directive.



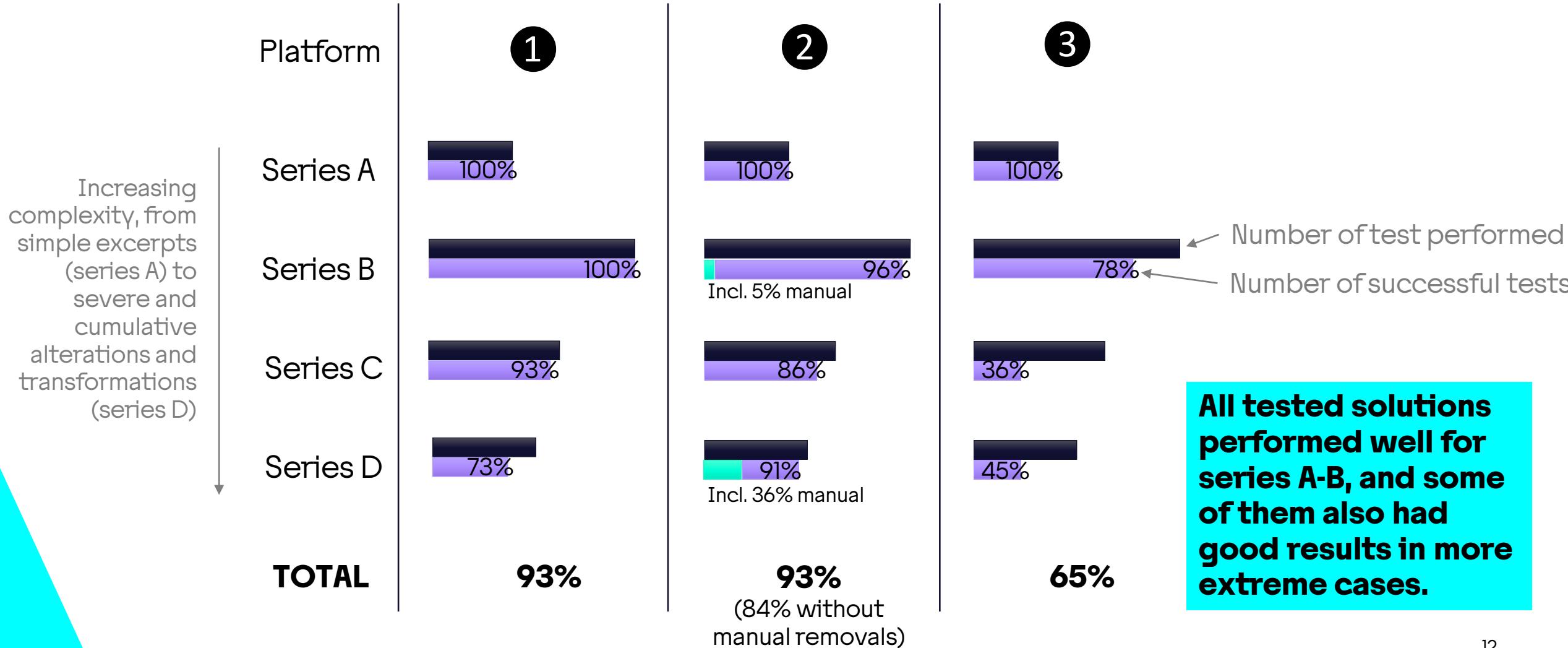
→ The mission gathered for the first time representatives and experts from the Higher Council on Literary and Artistic Property (CSPLA), the Authority for the Dissemination of Works and the Protection of Rights on the Internet (Hadopi) and the National Centre for Cinema and the Moving Image (CNC).

Assessment of content recognition tools



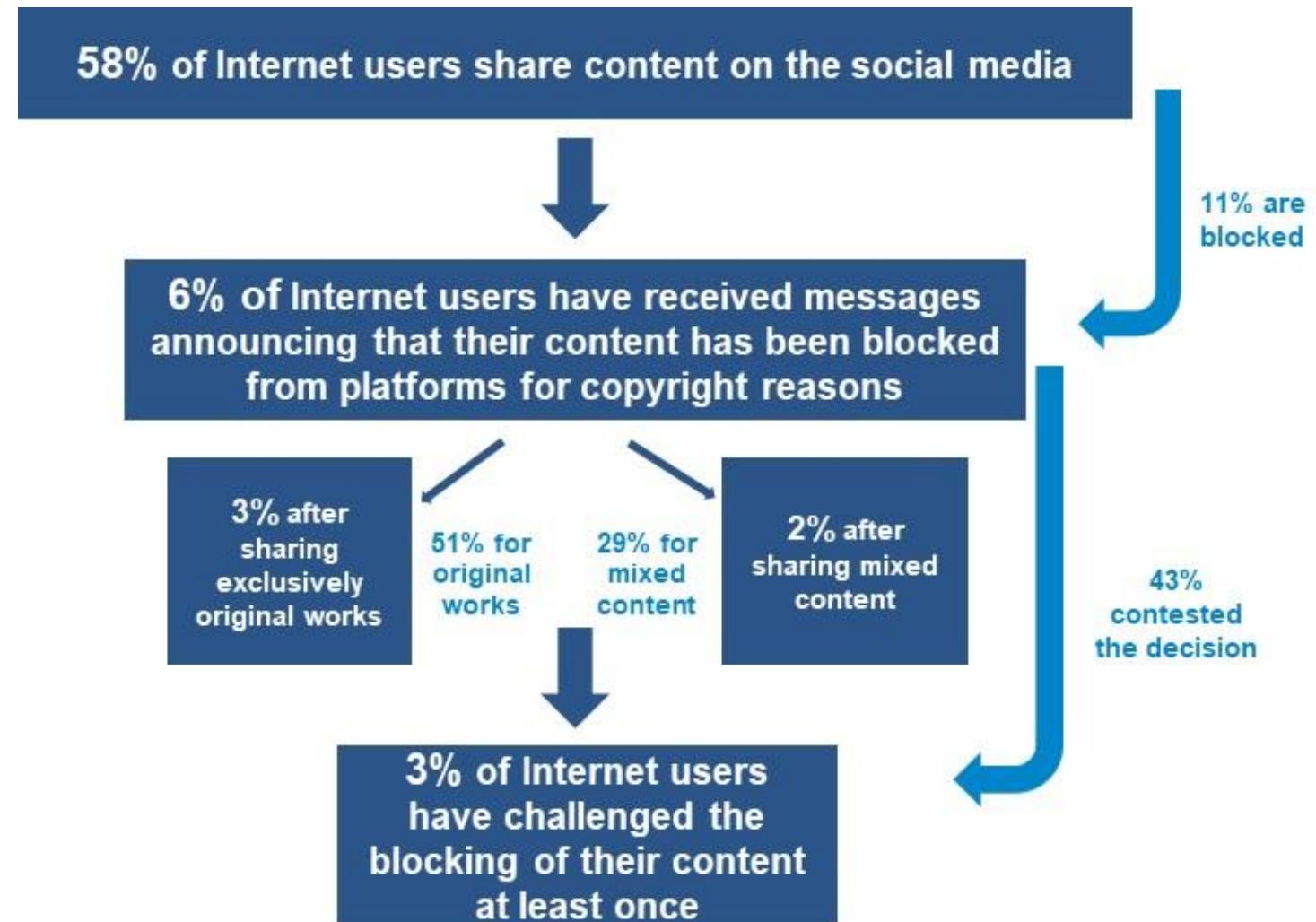
- The **capability** and the **robustness** of the technology are just one face of the content recognition tools' assessment.
- For complete evaluation, the following aspects must also be observed:
 - The **functionalities** offered to rightholders and the **practicality** of their implementation.
 - The **accuracy** that rightholders demonstrate in the way they **use** tools, taking into account copyright exceptions.

Robustness of the technology (for audiovisual contents)

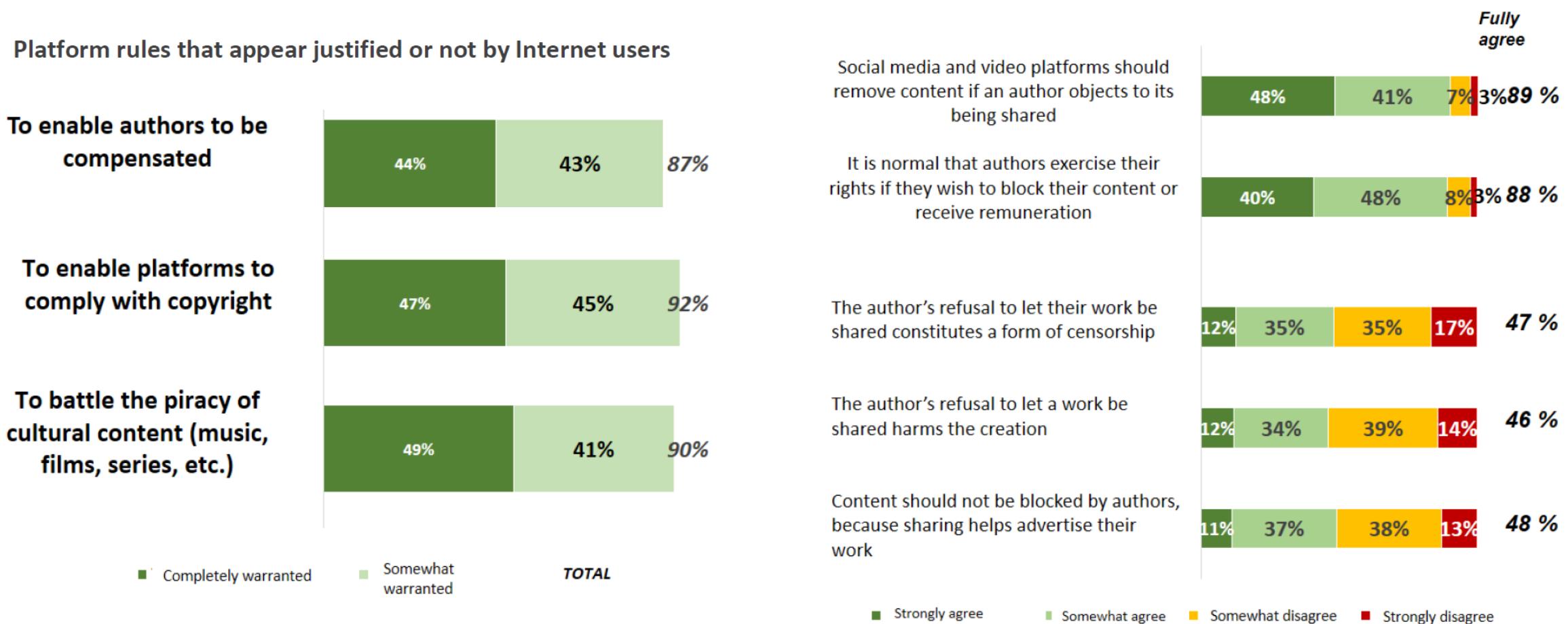


/Accuracy of the adjustments

3% of internet users have challenged the blocking of their content at least once



A good social acceptance of rules implemented by the content online-sharing platforms



A new role for Arcom

Order n°2021-580 of May 12, 2021 was issued in application of Article 34 of the law of December 3, 2020 on various provisions of adaptation to European Union law in economic and financial matters.

An evaluation under process

Launch in 2022 of a new evaluation based on two questionnaires sent to rightholders and online content sharing platforms.

Three tasks

Assessment of content recognition tools

Encouraging cooperation between rights holders and online content-sharing service provider

Dispute settlement between online content-sharing service provider and rightholders or internet users

/ Dispute resolution

« Without prejudice to their right to refer the matter to the judge, the user or the right holder may refer the matter to the Regulatory Authority for Audiovisual and Digital Communication in the event of a dispute concerning the action taken by the service provider in response to the user's complaint.

The Regulatory Authority for Audiovisual and Digital Communication shall proceed in accordance with the provisions of Article L. 331-32. However, in the absence of conciliation within a period of one month from the date of referral, it shall have a period of two months from the date of referral to make its decision. Where the urgency or the nature of the case so warrants, the chairman of the authority may reduce these time limits. In the event of an injunction, it shall prescribe the appropriate measures to ensure the blocking or removal of a work uploaded or the lifting of such blocking or removal.» (Art. L. 137-4.-IV – CPI (Intellectual property code)

In case of disagreement between the platform and an internet user or a rights holder, the latter can seize Arcom which :

- Attempt a conciliation between the parties within one month.**
- If not, the authority has a period of two months from the referral to make its decision. In this case, it will prescribe the appropriate measures to ensure the blocking or withdrawal of a work uploaded or the lifting of such a blocking or withdrawal.**

Until now: no ask for alternative dispute resolution within the Article 17 context (1/2)

For individual users

- Very limited number of internet users blocking
- Internet users have a good understanding of the measures taken by online content-sharing platform to protect copyright

→ A need to assure the balance between the application of copyright protection and the validity of existing exceptions, especially when it comes to short quotes and parodies, caricatures and pastiches.

Until now: no ask for alternative dispute resolution within the Article 17 context (1/2)

For rightholders

Two different situations

- Music and audiovisual rightholders have signed licensing agreements with main online content-sharing platforms
 - an essential means for spreading their content
 - Recognition tools, available on main platforms, are rather efficient and enable to monetize/block contents.
- For other sectors (books, images), current situation is not yet advanced enough to arise dispute resolutions:
 - Recognitions tools not available or not efficient enough
 - Licencing agreements less developed

→ New challenges are linked with new platforms without recognition tools (like Telegram) and new kind of rightholders (like video artists or YouTubers) who produce new king of contents.

→ A work still under process



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