A detailed botanical illustration background featuring various plants, flowers, and leaves. The drawings are in black and white, showing intricate details of the flora. Some parts are labeled with numbers and letters, such as 'Fig. 1', 'Fig. 2', 'Fig. 7', 'Fig. 14', 'Fig. 15', 'Fig. 16', 'Fig. 17', 'Fig. 18', 'Fig. 19', 'Fig. 20', 'Fig. 21', 'Fig. 22', 'Fig. 23', 'Fig. 24', 'Fig. 25', 'Fig. 26', 'Fig. 27', 'Fig. 28', 'Fig. 29', 'Fig. 30', 'Fig. 31', 'Fig. 32', 'Fig. 33', 'Fig. 34', 'Fig. 35', 'Fig. 36', 'Fig. 37', 'Fig. 38', 'Fig. 39', 'Fig. 40', 'Fig. 41', 'Fig. 42', 'Fig. 43', 'Fig. 44', 'Fig. 45', 'Fig. 46', 'Fig. 47', 'Fig. 48', 'Fig. 49', 'Fig. 50', 'Fig. 51', 'Fig. 52', 'Fig. 53', 'Fig. 54', 'Fig. 55', 'Fig. 56', 'Fig. 57', 'Fig. 58', 'Fig. 59', 'Fig. 60', 'Fig. 61', 'Fig. 62', 'Fig. 63', 'Fig. 64', 'Fig. 65', 'Fig. 66', 'Fig. 67', 'Fig. 68', 'Fig. 69', 'Fig. 70', 'Fig. 71', 'Fig. 72', 'Fig. 73', 'Fig. 74', 'Fig. 75', 'Fig. 76', 'Fig. 77', 'Fig. 78', 'Fig. 79', 'Fig. 80', 'Fig. 81', 'Fig. 82', 'Fig. 83', 'Fig. 84', 'Fig. 85', 'Fig. 86', 'Fig. 87', 'Fig. 88', 'Fig. 89', 'Fig. 90', 'Fig. 91', 'Fig. 92', 'Fig. 93', 'Fig. 94', 'Fig. 95', 'Fig. 96', 'Fig. 97', 'Fig. 98', 'Fig. 99', 'Fig. 100'.

The DSA Trusted Flagger Regime and Its  
Interplay with Article 17 CDSMD  
in the Aftermath of CJEU, *Poland*:  
A Promising Model?

Eleonora Rosati

April, 7th 2023

# Contents

- The rationale of trusted flaggers: from practise to statutory recognition
- How the DSA trusted flaggers regime will be relevant to Article 17 CDSMD
- Is the EU approach bound to become a global standard?



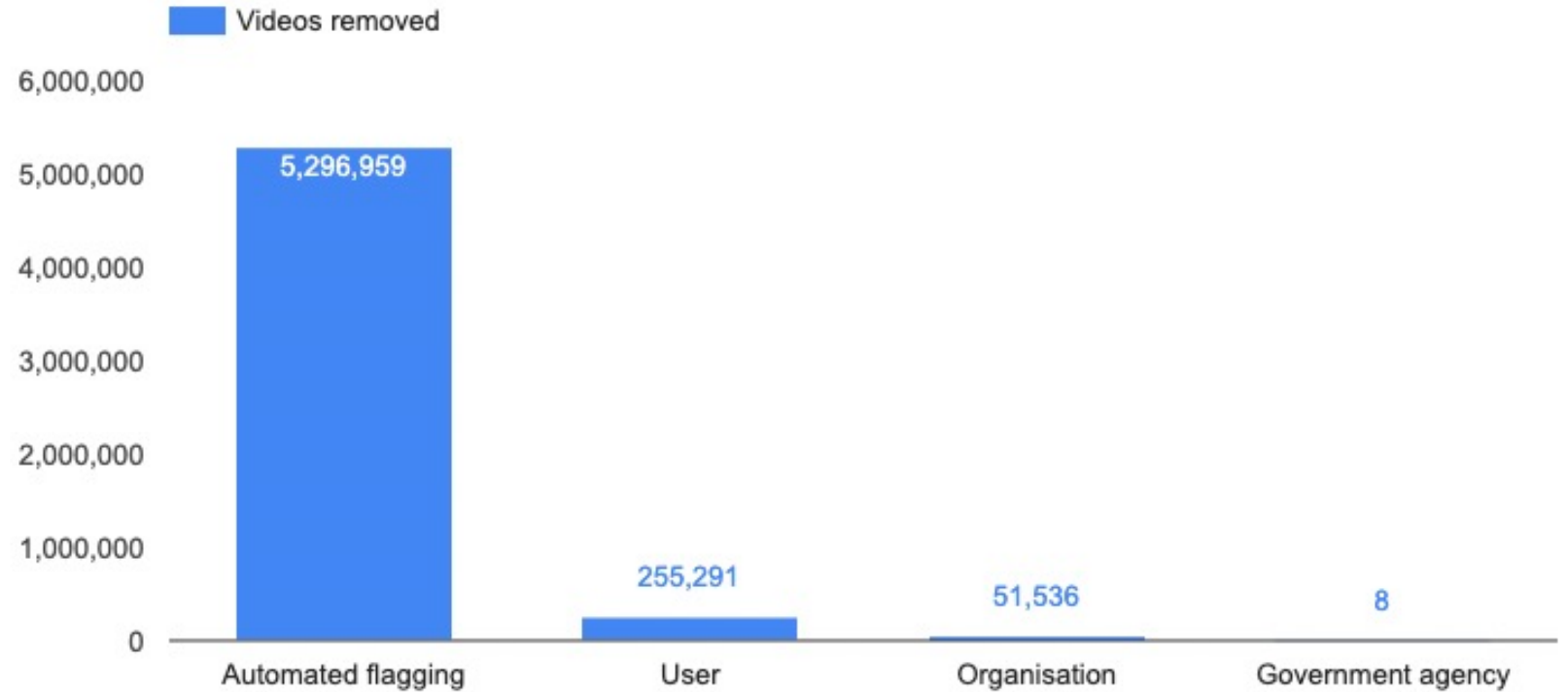
The rationale of trusted flaggers:  
from practise to statutory recognition

# Notice-and-takedown and trusted flaggers in

the UK: DCA, HNV, TFL, and the role of the UK government

## Videos removed, by source of first detection

This chart shows the volume of videos removed by YouTube, by source of first detection (automated flagging or human detection). Flags from human detection can come from a user or a member of YouTube's [Trusted Flagger](#) programme. Trusted Flagger programme members include NGOs and government agencies that are particularly effective at notifying YouTube of content that violates our community guidelines.



Jul 2022 - Sept 2022

Include automated flagging

- But how big of a role do TF play in terms of content removal?

# The 'institutionalization' of trusted flaggers in the DSA (Article 22)

Rationale	Eligibility	Status recognition	Obligation
<ul style="list-style-type: none"><li>• Make action against illegal content quicker and more reliable (Recital 61)</li></ul>	<ul style="list-style-type: none"><li>• Particular expertise and competence in detecting, identifying and notifying illegal content + work in diligent, accurate and objective manner + independence from platform</li><li>• Only entities (not individuals)</li><li>• Can be public, semi-public, private entities, NGOs, industry associations</li><li>• Private entities and individuals can conclude bilateral agreements with platforms</li></ul>	<ul style="list-style-type: none"><li>• Digital Service Coordinator of MS where applicant established</li><li>• Must be recognized by all platforms targeted by DSA</li></ul>	<ul style="list-style-type: none"><li>• (at least) Annual reporting obligation related to notices submitted (to whom, what for, and resulting action)</li><li>• Suspension of TF status during investigation stemming from significant number of imprecise/inaccurate/unsubstantiated notices</li></ul>

How the DSA trusted flaggers regime will be relevant to Article 17 CDSMD

# Where trusted flaggers come in: Article 17(4)(b)-(c)

4. If no authorisation is granted, online content-sharing service providers shall be liable for unauthorised acts of communication to the public, including making available to the public, of copyright-protected works and other subject matter, unless the service providers demonstrate that they have:

- (a) made best efforts to obtain an authorisation, and
- (b) made, in accordance with high industry standards of professional diligence, 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
- (c) acted 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 made best efforts to prevent their future uploads in accordance with point (b).

- G Spindler, 'The Liability system of Art. 17 DSMD and national implementation – Contravening prohibition of general monitoring duties?' (2019) 10 JIPITEC 344, p. 367
- M Leistner, 'European copyright licensing and infringement liability under Art. 17 DSM-Directive compared to secondary liability of content platforms in the U.S. – Can we make the new European system a global opportunity instead of a local challenge?' (2020) 2 Zeitschrift für Geistiges Eigentum 123, pp. 198-201.
- E Rosati, *Copyright in the Digital Single Market. Article-by-Article Commentary to the Provisions of Directive 2019/790* (Oxford University Press, 2021), pp. 340-341

# The CJEU *Poland* ruling (C-401/19)

1. ACR technologies and filtering tools must be capable of adequately distinguishing between unlawful and lawful content
2. Users have rights
3. OCSSPs shall be led to make content unavailable under Article 17(4)(b) and (c) upon condition that rightholders provide them with the relevant and necessary information
4. No general monitoring obligation (independent assessment)
5. Procedural safeguards
6. Stakeholder dialogues and fair balance





Is the EU approach bound to become a global standard?

# If not a global standard ...

- Targeting approach in both CDSMD and DSA
- Proof of targeting (Recital 8)
  - Language
  - Currency
  - Possibility of ordering products or services
  - Relevant top-level domain
  - App in local app store
  - Local advertising or advertising in a EU language
  - Customer relations (e.g., language)



Thanks for your attention!

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