A HUMAN RIGHTS APPROACH TO ONLINE CONTENT REGULATION

Freedom of opinion and expression

2018 thematic report to the Human Rights Council of the Special Rapporteur on freedom of opinion and expression

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- Special Rapporteur on freedom of expression



ONLINE CONTENT REGULATION

How are States and companies regulating expression on social media and other internet platforms, and what human rights concerns do these practices raise? The report examines the human rights obligations of States to ensure an enabling environment for online expression, and provides a roadmap for companies to adopt approaches to content moderation that are rooted in human rights standards.

CHALLENGES

Restrictions on online expression are on the rise: States are introducing a range of measures to both directly censor online expression and to increase pressure on companies to restrict content on their platforms.

Commercial rules on content moderation are too vague: despite improvements in transparency reporting, company policies on hate speech, "extremist" content and other complex areas of expression remain vague and inconsistently enforced.

A HUMAN RIGHTS APPROACH

Human rights law provides an authoritative global standard for ensuring freedom of expression online: under human rights law, States are obliged to ensure that restrictions on online expression are lawful, necessary and proportionate. Human rights law also gives companies the tools to develop policies and processes that respect democratic norms and counter unlawful demands from States.

Transparency, transparency, transparency: in addition to transparency reporting by companies, "rule-making" transparency and "decisional" transparency are also critical.

Local engagement is key: given their global impact, companies should open themselves up to meaningful local engagement and accountability. They must find ways to integrate the feedback and input of local users throughout their operations.

"Fakenews and online extremism are problematic, but onerous criminal penalties for platforms and users are not the answer. States should focus on protective regulation that maximizes corporate transparency and judicial review of content removals."

Recommendations to companies:

Guiding principles

A rights-based approach to commercial content moderation begins with rules rooted in human rights standards, continues with rigorous human rights impact assessments for product and policy development, and moves through operations with ongoing assessment, reassessment and meaningful public and civil society consultation. The Guiding Principles on Business and Human Rights, along with industry-specific guidelines developed by civil society, intergovernmental bodies, the Global Network Initiative and others, provide baseline approaches that all Internet companies should adopt.

Transparency

Companies must embark on radically different approaches to transparency at all stages of their operations, from rule-making to implementation and development of "case law" framing the interpretation of private rules. Transparency requires greater engagement with digital rights organizations and other relevant sectors of civil society and avoiding secretive arrangements with States on content standards and implementation.

Accountability

Given their impact on the public sphere, companies must open themselves up to public accountability. Effective and rights-respecting press councils worldwide provide a model for imposing minimum levels of consistency, transparency and accountability to commercial content moderation. Third-party non-governmental approaches, if rooted in human rights standards, could provide mechanisms for appeal and remedy without imposing prohibitively high costs that deter smaller entities or new market entrants.

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"All segments of the ICT sector that moderate content or act as gatekeepers should make the development of industry-wide accountability mechanisms... a top priority."

- Special Rapporteur on freedom of expression

Recommendations to States:

Abolish criminal penalties

States should repeal any law that unduly criminalizes or restricts expression, online or offline.

Impartial rule-making

Smart regulation, not heavy-handed viewpoint-based regulation, should be the norm, focused on ensuring company transparency and remediation to enable the public to make choices about how and whether to engage in online forums. States should only seek to restrict content pursuant to an order by an independent and impartial judicial authority, and in accordance with due process and standards of legality, necessity and legitimacy. States should refrain from imposing disproportionate sanctions, whether heavy fines or imprisonment, on Internet intermediaries, given their significant chilling effect on freedom of expression.

Avoid proactive monitoring/filtering

States and intergovernmental organizations should refrain from establishing laws or arrangements that would require the "proactive" monitoring or filtering of content, which is both inconsistent with the right to privacy and likely to amount to pre-publication censorship.

Judicial review

States should refrain from adopting models of regulation where government agencies, rather than judicial authorities, become the arbiters of lawful expression. They should avoid delegating responsibility to companies as adjudicators of content, which empowers corporate judgment over human rights values to the detriment of users.

Transparency

States should publish detailed reports on all content-related requests issued to intermediaries and involve genuine public input in all regulatory considerations.

"Social media companies should move away from generic, self-serving «community guidelines» and incorporate relevant principles of human rights law into content moderation standards."

- Special Rapporteur on freedom of expression

