

Mandate of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

REFERENCE:
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10 December 2018

Dear Mr. Dorsey,

I have the honour to address you in my capacity as Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, pursuant to Human Rights Council resolution 34/18.

I am writing in connection with information I have received regarding account actions against Twitter users for posting or sharing Kashmir-related content. According to the information received, Twitter has withheld users' tweets and accounts when they have participated in discussions concerning Kashmir on the platform. Affected users receive notifications that either inform them that their "account [or tweet] has been withheld in India in response to a legal demand," or that their "account [or tweet] has been withheld ... based on local law(s)." According to Twitter Rules and policies, users receive the former notification if "Twitter was compelled to withhold the original tweet [or account] in response to a valid legal demand, such as a court order." Users received the latter notification if Twitter withholds a tweet or account based on local law "in response to a report filed through specific support intake channels." Affected users include Kashmiri journalists and activists.

According to Twitter's Removal Requests report, India has made 144 removal requests, of which 800 accounts were specified, from July 2017 to December 2017. The report states that of the 144 removal requests, Twitter withheld seventeen accounts and thirty-two tweets in the same period. From January 2017 to June 2017, India made 104 removal requests, but Twitter did not withhold any accounts or tweets during that period. From July to December 2016, India made 96 removal requests, and Twitter again did not withhold any accounts or tweets. Thus, from the information I have received, it seems that Twitter may have begun to accede to government demands for content and account removals since July 2017. The reasons for this shift are unclear.

I am mindful of the challenges that Twitter and other technology and media companies face in providing platforms that facilitate and expand communication and access to information. In recent years, India has expanded the scope of its censorship tools and efforts, at the expense of individual rights to freedom of expression, access to information, freedom of association and other fundamental human rights. Indian restrictions put you in the position – likely reluctantly – of having to mediate between your users, Indian citizens and Indian law. Indeed, at the top of the Removal Requests report Twitter states, "With hundreds of millions of Tweets posted every day around the world, our goal is to respect user expression, while also taking into consideration applicable local laws."

At the same time, Twitter has a responsibility to respect the human rights of its users. Indeed, in an interview with WIRED, you have stated that, “[W]e believe our purpose is to serve the public conversation. And that does take a stance around freedom of expression as a fundamental human right.” According to international standards and best practices, the responsibility to respect freedom of expression should, at a minimum, include a duty to “engage in prevention and mitigation strategies that respect principles of internationally recognized human rights to the greatest extent possible when faced with conflicting local law requirements.”¹ In particular, legal demands should be interpreted and implemented as narrowly as possible, to ensure the least possible restriction on expression.² Furthermore, when Twitter receives problematic requests, it should “seek clarification or modification; solicit the assistance of civil society, peer companies, relevant government authorities, international and regional bodies and other stakeholders; and explore all legal options for challenge.”³

Given these standards, and in keeping with my mandate to investigate key freedom of expression challenges worldwide, I have the following questions about Kashmir-related removal requests and decisions:

1. Since July 2017, how many court orders that the government of India has issued concern the removal of Kashmir-related tweets or accounts that have posted Kashmir-related content? How many of these requests were complied with?
2. Since July 2017, how many removal requests issued by law enforcement and other government agencies concern the removal of Kashmir-related tweets or accounts that have posted Kashmir-related content? How many of these requests were complied with?
3. Since July 2017, what legal, policy or other analysis led Twitter to withhold tweets or accounts in response to government removal requests, particularly those requests pertaining to Kashmir-related content? How has this analysis changed from its decision to not withhold any tweets or accounts pursuant to government removal requests before July 2017?
4. What strategies has Twitter adopted to prevent or mitigate content or account removal requests that are inconsistent with international human rights standards, particularly for requests pertaining to Kashmir-related content? In particular, did Twitter object to, raise concerns or otherwise resist the application of Indian law, whether in individual removal cases or in the development of applicable laws or regulations?
5. In assessing whether to withhold Kashmir-related tweets or accounts that have posted Kashmir-related content, how did Twitter take into account

¹ Human Rights Council, Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, David Kaye (“A/HRC/38/35”), [A/HRC/38/35, para. 11.](#)

² *Id.*, para. 50.

³ *Id.*, para. 51.

India's obligations under the International Covenant on Civil and Political Rights, and its own responsibilities under international instruments such as the UN Guiding Principles on Business and Human Rights?

6. Did Twitter consider options other than withholding tweets and accounts to protect the rights of Twitter users in and outside of Kashmir? For example, did Twitter seek to reduce the number or types tweets and accounts that were withheld?
7. Has Twitter attempted "to notify affected users of any third-party requests to withhold their content via the email address associated with the affected Twitter account(s) and/or through a notification within the Twitter app" as Twitter aims to do in every case of withholding tweets or accounts?
8. How does Twitter make such decisions about whether to withhold content in the face of government requests? Apart from your General Counsel and her team, which other divisions participate in such decision-making?

Thank you very much for your engagement on this critical issue. I address these questions not as a judge of Twitter's choices in this situation but as part of my effort to understand, and thereafter report to UN bodies, the state of freedom of expression worldwide. I stand ready to provide you and your team with further information about my mandate and would be pleased to have further discussion about these issues at your convenience.

I would like to inform that, in due course, and in keeping with my own commitment to transparency in the work of my mandate, a copy of this letter will be made available publicly and posted on the website page for the mandate of the Special Rapporteur on the right to freedom of expression: (<http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>). This communication, as well as any response received, will also subsequently be made available in the communications reporting [website](#) and the usual report to be presented to the Human Rights Council.

A copy of this letter will be sent to the Permanent Mission of India to the United Nations Office at Geneva and other international organizations in Switzerland, in line with our interest in transparency in businesses operating in Member States.

Please accept, Mr. Dorsey, the assurances of my highest consideration.

David Kaye
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression