

Freedom of Expression Online – The Role of Internet Intermediaries

This summary describes a forthcoming report to be published jointly by UNESCO, the Internet Society, and the Open Society Foundations. It was written and edited by an international team of researchers led by Rebecca MacKinnon and Allon Bar of the Ranking Digital Rights project and produced by the Center for Global Communication Studies at the University of Pennsylvania's Annenberg School for Communication.

Executive summary

As an international intergovernmental organization with a global remit that promotes universal values, UNESCO has proposed a conceptual framework of Internet ‘universality’ according to which respect for four core principles is a precondition for the Internet to be universal: human rights, openness, accessibility; and multi-stakeholder participation. The four can be summarized by the mnemonic R – O – A – M (Rights-based, Open, Accessible, Multi-stakeholder driven).¹ This report addresses challenges for realizing the first principle, human rights. Freedom of expression is a universal human right that applies equally to the internet as to the offline world.²

The goal of this report is to shed light on how internet intermediaries – services that mediate online communication and enable various forms of online expression – both foster and restrict freedom of expression across a range of jurisdictions, circumstances, technologies, and business models.

All of the intermediaries studied in this report are operated by companies. According to the UN Guiding Principles for Business and Human Rights, states have the primary duty to protect human rights, businesses have a responsibility to respect human rights, and both must play a role in providing remedy to those whose rights have been violated.³

The report’s authors have applied this ‘protect, respect, and remedy’ framework to the policies and practices of companies representing three intermediary types (internet service providers, search engines, and social networking platforms) across ten countries. The three case studies highlight challenges and opportunities for different types of intermediaries to respect online freedom of expression.

¹ http://www.unesco.org/new/en/communication-and-information/resources/news-and-in-focus-articles/all-news/news/open_consultation_on_unesco_new_concept_internet_universality

² http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/20/8

³ www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Findings

Operations of internet intermediaries are heavily influenced by the legal and policy environments of states, but they do have control over many areas of policy and practice affecting online expression. At the same time, research findings also highlight the extent to which state policies, laws, and regulations are – to varying degrees - poorly aligned with their duty to facilitate and support intermediaries’ respect for freedom of expression.

CASE 1: Internet Service Providers (fixed line and mobile) - Vodafone (UK, Germany, Egypt), Vivo/Telefônica Brasil (Brazil), Bharti Airtel (India, Kenya), Safaricom (Kenya) Across jurisdictions, stakeholders interviewed highlighted the importance of ISPs and their key role in enabling expression. At the same time, ISPs can be a single point of failure for expression online particularly when content or entire services are filtered (blocked from being accessed by the user) or networks are shut down locally or nationally. Because ISPs must be physically present in a country in order to provide service and operate, the extent to which they facilitate or restrict freedom of expression is most directly affected by laws, regulations, and government actions compared to the other intermediaries studied. Findings include:

- Governments and companies offer even less transparency about restrictions of user expression made by and through ISPs than about policies and practices related to privacy and surveillance. This includes filtering and network shutdowns. “Self-regulatory” filtering processes suffer from questions about public accountability in their decision making about what content to restrict.
- Levels of transparency on matters related to privacy and surveillance are very low. Respect and protection of privacy by companies and governments is an enabler of freedom of expression.⁴ Yet some companies studied do not have publicly available privacy policies for their core services. Data protection practices varied widely in tandem with whether or not countries had data protection laws. Few companies make an effort to be transparent about how they respond to government requests, or speak up for their users, even in relatively open political and press environments.
- It is nonetheless notable that with the emergence of an initiative called the Telecommunications Industry Dialogue, Vodafone and to a more general degree Telefonica have made public commitments to respect user rights, advocate for users with governments, and be more transparent.

CASE 2: Search Engines - Google (USA, EU, India, China, Russia), Baidu (China), Yandex (Russia) Search engines are a principal means by which internet users find and access information. Thus their policies and practices affecting what content can or cannot be found online has major implications for freedom of expression. Search engines’ policies and practices related to content restriction and manipulation are shaped by their

⁴ www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session27/Documents/A.HRC.27.37_en.pdf

home jurisdictions and to varying degrees by other jurisdictions in which they operate. Findings include:

- Differences in ISP filtering regimes have a strong influence on how, and to what extent, search engines restrict their own search results. For example, due to substantial difference in the technical and legal characteristics of filtering in Russia and China, Yandex and Baidu have very different restriction practices, and Google has taken different approaches to the two markets (remaining in Russia as of August 2014 but removing its operations from China since 2010).
- The stricter the intermediary liability regime in a given jurisdiction, the more likely content will be removed either proactively by the company or upon request by authorities without challenge. Without government transparency, company transparency reports (published by Google, only of the three search engines studied) are the only way for users to know the extent and nature of requests being made.
- While search engines carry out content restriction on government request, they also restrict or modify search results for many other self-regulatory reasons.

CASE 3: Social Networking Platforms - Facebook (USA, Germany, India, Brazil, Egypt), Twitter (USA, Kenya), Weibo (China), iWiW (Hungary) Social networking platforms have significantly lowered the threshold for individuals to publish content that can reach large audiences. For the two platforms with international user bases, researchers identified tensions between the companies' own policies and practices and governments' laws and regulations. The policies and practices of the more domestically focused platforms more closely mirror home governments' expectations and requirements. Findings include:

- 'Transparency reports' published by Facebook and Twitter reveal the extent to which intermediary liability regimes affect the volume of government requests that companies receive for user data and content restriction. The reports also demonstrate that a large percentage of government requests around the world lack sufficient legal validity to justify company compliance.
- Even in countries with strict liability it is possible for a company to take some steps to inform users when content is restricted, and to take some basic measures related to privacy and security.
- Companies are now much more transparent about how they respond to government requests than they are about the nature and volume of content restricted through their own enforcement of private 'terms of service.'
- Given the significant amount of personal information collected by social networking platforms, these companies carry a special responsibility to take steps

to anticipate harms to users' privacy with implications for freedom of expression, and to take steps to mitigate them.

Recommendations:

The report recommends specific ways that intermediaries can improve respect for internet users' right to freedom of expression. It also offers recommendations for states to support and facilitate intermediaries' respect for users' rights. Key recommendations include:

- **Adequate legal frameworks and policies:** Laws and regulations governing intermediaries should be consistent with international human rights norms including the right to freedom of expression;
- **Multi-stakeholder policy development:** Laws, regulations and **governmental** policies, as well as **corporate** policies and rules, should be developed in consultation with all affected stakeholders
- **Transparency:** This is important for legitimacy and public trust in public as well as private governance, to demonstrate that governance and enforcement actions are in compliance pre-specified principles, rules and conditions.
- **Privacy:** Protecting internet users' right to privacy via intermediaries is essential for the flourishing of freedom to expression.
- **Accountability in self-regulation:** Intermediaries' private rules and accompanying enforcement processes, as well as government-supported efforts by companies to collectively self-regulate, should be consistent with human rights norms including the right to freedom of expression and should adhere to core principles of accountability, transparency and due process.
- **Remedy:** It should be possible for people to report grievances and obtain remedy from private intermediaries as well as from government authorities, including national-level human rights institutions.
- **Public information and education:** Governments and companies have an obligation not only to explain but consult with stakeholders on their laws and rules. They also have an obligation to educate users about their rights so that Internet users can understand and effectively exercise their rights; recognize when their rights have been restricted, violated, or otherwise interfered with; and know where and how to report grievances and seek remedy.
- **Global accountability mechanisms:** New structures such as the multi-stakeholder Global Network Initiative and the industry-organized Telecommunications Industry Dialogue have begun to have an impact on concrete commitments by companies to respect user rights and implement relevant policies and practices. Stakeholders concerned with protecting online freedom of

expression should consider how to support and broaden global mechanisms that strengthen and support intermediaries' ability to respect internet users' rights, particularly in the area of self-regulation and co-regulation.