

## Background note: Case studies on the role of Internet intermediaries in promoting freedom of expression on Internet

### Promote freedom of expression on Internet

UNESCO, as enshrined in its Constitution, promotes the “free flow of ideas by word and image”. The UNESCO Constitution extends to enable a free, open and accessible Internet space as part of promoting comprehensive freedom of expression both online and offline. UNESCO’s mission and mandate reflects Article 19 of the Universal Declaration on Human Rights, as well as the Windhoek Declaration on a Free, Pluralistic and Independent Media endorsed by our General Assembly in 1995. The Tunis Agenda for the Information Society also designates UNESCO as the Action Line Facilitator for “Ethical dimensions of the information society” (C10) and “Media” (C9). UNESCO works as the dedicated agency within the wider UN family to promote online freedom of expression and any associated rights, including the right of access to information and press freedom. Broadly, UNESCO works consultatively with various stakeholders, with the aim of finding common ground and building consensus.

In particular, UNESCO has a specific role of promoting good practices with regards to the protection of freedom of expression; additionally, UNESCO seeks to raise awareness when issues arise that elicit restrictions or compromises of freedom of expression, whether direct or indirectly through “chilling” or undermining confidence in freedom of expression. When such actions are conducted with clarity by intermediary actors independent of the state and in a credible self-regulatory mode, they help minimize the possibility of interventions by governmental authorities. This avoids opening the door to politically-interested suppression of speech by a given government.

UNESCO’s interest in these areas is evident through past research in the UNESCO Series on Internet Freedom. In 2011, it published a book titled [\*Freedom of connection, freedom of expression: the changing legal and regulatory ecology shaping the Internet\*](#)<sup>1</sup> compiled primarily by Professor William Dutton of the Oxford Internet Institute. This publication is now available in English, French and Arabic. Moreover, at the Internet Governance Forum in 2012, UNESCO launched a new publication on how privacy issues impact on freedom of expression in cyberspace. Titled [\*Global survey on Internet Privacy and Freedom of Expression\*](#)<sup>2</sup>, the study was

---

<sup>1</sup> <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/freedom-of-connection-freedom-of-expression-the-changing-legal-and-regulatory-ecology-shaping-the-internet/>

<sup>2</sup> <http://www.unesco.org/new/en/communication-and-information/resources/publications-and-communication-materials/publications/full-list/global-survey-on-internet-privacy-and-freedom-of-expression/>

produced by a range of experts such as Andrew Puddephatt and Dixie Hawtin, and is also available in English, French and Arabic.

Issues such as preserving online freedom of expression and the free flow of information were at the heart of the WSIS+10 Review Meeting that UNESCO hosted from 25 to 27 February 2012. Throughout the Review, world leaders, along with high-level participants from governments, the private sector, NGOs, civil society and other groups, debated the important linkages between Internet Intermediaries and freedom of expression. The content of the meeting and the recommendations from the discussions have all contributed to the development of this research project.

As the international community starts preparing for the next phases of the WSIS Review (WSIS+10), stakeholders continue to debate about the importance of freedom of expression and free flow of information in the cyber-space. For example, freedom of expression is a key consideration in the broader debate about Cyber-Security and online Privacy. Expected outcomes of this study will provide the Internet community with practical recommendations that can contribute to developing better industry practices while harmonizing and elevating the protection of users in line with international standards on freedom of expression.

If broadly supported, the recommendations can have a concrete impact on Internet intermediaries' and users' behaviours.

### **Promote freedom of expression on Internet: Why Internet intermediaries matter?**

Internet intermediaries play a unique role in linking authors of content and audiences. They have a critical role in either protecting or jeopardizing end user rights to free expression, given their function in capturing, storing, searching, sharing, transferring and processing large amount of information, data and user-generated content comments, blogs or citizen-journalism posts. This role is particularly prominent with search engines and internet-service providers (ISPs), hosting providers, cloud computing services, online social networks and media houses.

UNESCO is interested in how the services provided by such actors impact freedom of expression. While intermediaries may enable freedom of expression in powerful ways, they also face distinct challenges including:

- a) addressing content that may be illegitimate in terms of international standards<sup>3</sup>;
- b) content that is illegal in terms of national laws or internationally enforceable law;
- c) content that is legal but merits certain restrictions; and

---

<sup>3</sup> The Universal Declaration of Human Rights; International Covenant on Civil and Political Rights; General Comment 10 [19], Article 19 of the Human Rights Committee; General Comment 11 [19], Article 20 of the Human Rights Committee.

d) content that is offensive in the eyes of some but that does not justify restriction.

The issue of freedom of expression as faced by Internet intermediaries can be complex since it is intertwined with many other concerns such as security, privacy, and etc. These issues should be addressed in this study inasmuch as they directly affect freedom of expression in particular cases.

As UN Rapporteur on freedom of expression Frank La Rue pointed out in his *Report on the promotion and protection of the right to freedom of opinion and expression* (2011)<sup>4</sup>: “Given Internet intermediaries’ unprecedented influence over how and what is circulated on the Internet, States have increasingly sought to exert control over them and to hold them legally liable for failing to prevent access to content deemed to be illegal.”

According to Google’s recent transparency report<sup>5</sup>, more than 1,000 requests have been received to remove items like YouTube videos or other content from its search results. Twitter’s biannual Transparency Report predicts that government inquiries will continue to grow over the coming months and years.<sup>6</sup> However, beyond these two reports, there is relatively little information about intermediaries’ responses to issues such as content take-down requests, disclosing information regarding the identities of authors of content, blocking, filtering, etc. More broadly, there is limited public knowledge about what kinds of policies and practices exist within different intermediary institutions when freedom of expression issues come into play, and whether these practices are in accordance with the agreed international normative standards. The opaqueness of processes for addressing users’ content often provoke controversy and can jeopardize the reputation and commercial interests of many online actors who mediate this content. The principle of legal non-liability of internet intermediaries has been widely advocated, including the Internet Governance Forum. Within this framework, even though Internet intermediaries are usually business entities, their commercial interests can still in principle be aligned with international standards of free expression.

While States have primary responsibility to enable and enforce human rights, the UN Special Rapporteur Mr Frank La Rue underscores that corporations also have a responsibility to respect human rights, which means that they should act with due diligence to avoid infringing the rights of individuals. In his recent [report on the promotion and protection of opinion and expression dated 17 April 2013](#), the UN Rapporteur underlined the urgent need to further study new

---

<sup>4</sup>Frank La Rue: Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/a.hrc.17.27_en.pdf)

<sup>5</sup> <http://www.google.com/transparencyreport/>

<sup>6</sup> <https://transparency.twitter.com/>

modalities of surveillance and to revise national laws regulating these practices (including those related to intermediaries) in line with human rights standards.

Work has been done by the Global Network Initiative (GNI) in relation to setting out principles that respect freedom of expression in cyberspace. As observed in<sup>7</sup> GNI's report (2013) "[Opening the lines: a call for transparency from governments and telecommunications companies](#)", any form of intercept and blocking can involve a potential human rights infringement such as freedom of expression, and intermediaries have an inherent interest in avoiding such infringement.

In a similar vein, several initiatives have been launched by Brazil, U.S, OECD and the European Commission to promote human rights principles on Internet. The OECD Council recommendation on principles for Internet policymaking (2011)<sup>8</sup> focuses on the need to "promote and protect the global free flow of information". In the EC report on "[UN Guiding Principles on Business and Human Rights](#)", it shows that the right to freedom of expression and privacy is widely impacted by most ICT Sectors particularly in the network and web-based companies.

Alongside all these outputs, there is specific value in collecting and analyzing empirical evidence on actual practices concerning freedom of expression issues. Such an exercise can help promote more awareness amongst the public, policy makers and the various intermediary organisations themselves with regard to the issues of monitoring, surveillance, blocking, privacy-anonymity and take-down of content, and developing best practice recommendations.

---

<sup>7</sup> <http://www.globalnetworkinitiative.org/>

<sup>8</sup> OECD: Recommendation of the Council on Principles for Internet Policy Making.  
<http://www.oecd.org/sti/ieconomy/49258588.pdf>