

General Terms of Reference: case studies on the role of Internet intermediaries in promoting freedom of expression on Internet

Research will be commissioned into case studies which are issues- and practices-based and which focus on a range of thematic areas of relevance to freedom of expression. These include practices concerning content blocking, take-down, disclosure of user identity or other data, and the effectiveness of individual institutional or sector-wide self-regulation to protect freedom of expression. Depending on the thematic relevance, each case study should address one or multiple intermediaries and might cross cut with several categories as identified below (names are indicative). An alternative could be a concentration on only two or three of the following categories.

1. Internet search engines and portals (Google, yahoo!, MSN, Baidu, Sina.com, etc.)
2. Social media networks (Twitter, YouTube, Facebook, Sina Weibo, etc.)
3. Online media with user-generated content (BBC, Al Jazeera, CNN, online newspapers, etc).
4. ISPs, including Telecommunication, cable and mobile operators (Verizon, AT&T, free.fr, Orange, T-mobile, Nokia)
5. Data processing, web hosting providers and cloud computing services, including big data hosts and Domain Name Registries (Navisite, Akamai, ICANN, Register.com, Verizon)

The specific institutions to be researched will be selected based on a number of criteria, such as access, international reach of the organisation, and diversity of models as regards freedom of expression. The study will likely focus on entities where significant operators are headquartered including the United States of America, China, Europe (France, Germany, and the United Kingdom in particular), Brazil, Kenya and India.

The research is not intended to create a representative or quantitative sample, but is limited to qualitative case studies based on public accessible information and on interviews to be conducted or documentation made available. From these, broader findings can be extrapolated. The research will include some background information about the regulatory contexts in which intermediary actors operate, with the main focus being on how they operate within the regulatory framework. The study will seek to document internal codes of practice to supplement the case-studies of application which show how these practices are interpreted and implemented.

The research will seek to inventory the most pertinent kinds of information that attract restrictions (legitimate and illegitimate) as regards freedom of expression. Examples are: meta-data, specific user identity, personal usage patterns, hate-speech, defamatory speech, and political speech. The main focus will be on the general kinds of standards at play (or the

absence thereof), as embedded in the actions taken regarding the kind of information that public authorities or private actors are targeting.

The benchmark for evaluating the activities of the various intermediaries will be the existing international standards, which generally define the criteria for the legal and legitimate limitations of freedom of speech. These standards exclude violations of the right to free expression by specifying that limitations are only justifiable if they meet the conditions of:

- Legitimate purpose (eg. public health, national security, etc.);
- Necessity and proportionality of any limitation;
- Rule-based and transparent processes for limitations.

A recent elaboration of these which can assist in the structuring of the research can be found at www.necessaryandproportionate.org. The final product will include an analysis of the extent to which various case-study practices comply with these principles. It will extrapolate specific recommendations that may provide concrete guidance to other intermediary actors as to how to uphold freedom of speech in regard to international standards when facing pressures to limit it.

The research will take stock of work done in the area by OECD and the World Association of Newspapers, amongst others, and be careful not to duplicate. The aim is to produce new insights, and to approach existing data from a UNESCO perspective.

The research will, as far as possible, be done with direct communication with industry, civil society and governments, and these actors will be requested to share their information and views on the particular case study at hand.

Multistakeholder Advisory Committee

Given the complexity of the subject, it is recommended that a research venture establish an advisory committee which is composed of men and women experts from all regions including developing countries, for providing inputs and comments at each stage of the research. The Advisory Committee should be multi-stakeholder in character, bringing together governmental, industry, technical and civil society. The role of the Committee will be to guide the scientific and administrative development of the study. Its input may be required to make suggestions at different stages of the project, help raise funds or present the study's findings publicly.

Outputs and results

The results of this project will make a unique contribution in promoting Internet intermediaries' role on promoting online freedom of expression through

- bringing together empirical data that establishes concretely the current state of intermediary practice in selected instances;
- being part of wider efforts to maintain the Internet as a haven for free expression online by enabling conducive public policy making;
- promoting good practice in regard to self-regulation (aligned to international standards) as a viable alternative to either state-based regulation or the co-option by governments of private entities into imposing illegitimate restrictions on freedom of expression;
- producing practical recommendations for how Internet intermediaries can meet international standards that respect the normative and fundamental value of free speech.

The results of this project will be a set of recommendations which can be endorsed by stakeholders and help inform and advise users, governments and industry actors who are intermediaries and bring to light an international set of principles for good practices. We hope that these will be adopted as a result of this research and analysis. The medium term goal is to raise awareness regarding the state of freedom of expression, and empower actors to resist taking false short-cuts, and disproportionate or inconsistent actions, when there are pressures and procedures that could violate this fundamental human right.

Research findings will possibly be presented at WSIS and Internet Governance Forum (IGF) events in 2014. The final research will likely be published as part of UNESCO's Series on Internet Freedom and, budget permitting, translated to all six UN official languages, which will inform UNESCO's 195 Member States and other international policy makers on intermediaries-related policy making to promote online freedom of expression.

UNESCO's reputation as a prestigious and influential intergovernmental organization with a mandate and track-record on free expression will give strong credibility to the research. In addition, UNESCO's networks will enable its widespread dissemination through its 58 field offices across five continents. A series of implementation activities and follow-on seminars will be arranged subsequently to ensure maximum awareness of the study.