

CONTENT REGULATION IN THE DIGITAL AGE

CONCEPT NOTE FOR JUNE 2018 HUMAN RIGHTS COUNCIL REPORT

Private companies facilitate an unprecedented global sharing of information and ideas. Social and search platforms in particular have become primary sources of news and information (and disinformation) for hundreds of millions of people. With that role they have also become gatekeepers of expression that may excite passions and knowledge – or incite hatred, discrimination, violence, harassment, and abuse. Their impact on the right to seek, receive, and impart information raises two sets of fundamental questions:

1. Which *standards* do platforms apply to content under their Terms of Service? How do the standards that currently operate compare to international human rights law? Do these company standards vary according to the jurisdiction where they are accessed? Does the development of standards draw from public, user or other stakeholder input? Do the standards provide meaningful protection for freedom of opinion and expression?
2. What *processes* do platforms implement when evaluating whether content violates standards (i.e., terms of service)? What processes have companies developed to deal with government requests for content regulation? How do companies conduct content flagging and takedowns, appeals and remedies, user notification, and transparency reporting? What role does automation or algorithmic filtering play in regulating content? What steps should platforms, government actors, and others take to ensure that these processes establish adequate safeguards for freedom of expression?

These questions underlie some of the most urgent challenges to freedom of expression on private platforms today. The spread of “extremist” content online has triggered legislative and corporate responses that may address serious national security and public order threats but may also limit political discourse and activism. The scourge of online gender-based violence has prompted uneven and excessive regulation that not only fails to address its root causes, but also threatens legitimate content. The perceived urgency to address misinformation through ‘fake news’ and online propaganda has generated global confusion about what counts as false or misleading – and who decides.

Governments have a duty to adopt laws and approaches dealing with content regulation consistent with human rights law and to refrain from undue interferences with digital expression. But private actors increasingly regulate expression independently of governments, under standards and processes that are often unclear, and in the shadow of public authorities’ (and the public’s) demands. Terms of service, “community standards,” and other private frameworks adopted by platforms have a profound impact on the freedom of expression of users and deserve human rights scrutiny.

The Special Rapporteur has reported twice to the United Nations Human Rights Council on private sector responsibilities in digital space: by mapping the Information and Communications Technology (ICT) sector in his [2016 report](#) and by evaluating questions pertaining to the digital access industry in his [2017 report](#). His June 2018 report will focus on search and social media

companies and identify and address priority issues and concerns through the following principal approaches (in addition to research and analysis):

Company visits: The Special Rapporteur plans to visit social media and search companies worldwide, those grappling with the challenges of online content regulation at global and national levels. Visits will aim to develop information about company standards, processes, and concerns.

Submissions: The Special Rapporteur also seeks written submissions from States, civil society, companies, academics, the technical community, and other interested individuals (see below).

Consultations: The Special Rapporteur plans to conduct civil society consultations focusing on thematic and regional concerns around content regulation.

The Special Rapporteur plans to issue a report to the Council on platform content regulation in June 2018, including recommendations about appropriate private company standards and processes and the role that States should play in promoting and protecting freedom of opinion and expression online. Further relevant reporting and information gathering is likely through 2018 and 2019 on the subject.