Recommendations of the OSCE and Council of Europe Conference on Internet Freedom

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On 5 February 2018, the Conclusion and Recommendations from the Internet Freedom Conference 2017 were published. The event was co-organised by Austrian Chairmanship of the Organization for Security and Co-operation in Europe (OSCE), and the Czech Chairmanship of the Council of Europe Committee of Ministers. The conference was entitled "Internet Freedom: The Role and Responsibilities of Internet Intermediaries", and was held in Austria in October 2017.

The four sessions of the conference concerned four interrelated questions: the current state of Internet freedom across the participating states of the OSCE and COE member states regarding Internet intermediaries; the role of social media and search engines in shaping the public sphere; the way in which intermediaries are determining the unlawful nature of third-party content; and alternatives for developing a legal and policy framework that ensures Internet freedom, including liability exemptions and content moderation via transparent procedures.

The conference resulted in general recommendations on the subject matter and more specific recommendations to the states and to the intermediaries. Among the general recommendations are: (a) states have to engage with intermediaries to ensure the application of human rights and freedoms online and offline; (b) states, the private sector and civil society have to consider the scope of intermediaries' duties and responsibilities and how to reflect them in laws protecting citizens and enabling a dynamic Internet environment; (c) regulations must be read in the light of the commitment of all Council of Europe member states and OSCE participating states to the protection of human rights and freedoms; and (d) the approach to Internet freedom should remain a holistic one, with the need to balance Internet freedom against other rights and freedoms. States should learn from best practices, including the implementation of the indicator-based Internet Freedom reporting model by the Council of Europe in its 2016 Recommendation (see IRIS 2016-5/2).

One of the many recommendations to the states is that new laws be assessed in the light of their human rights impact. Moreover, States need to explore the practices of intermediaries before making policy decisions. Secondly, states should engage with the Office of the OSCE Representative on Freedom of the

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Media and the Council of Europe and implement the recommendations made by these institutions. Thirdly, applying traditional media law to intermediaries' functions cannot be effective - laws must be tailored to those functions and normative approaches must be graduated and differentiated. Fourthly, intermediaries cannot be assigned the role of "judges" regarding the legality of content. There must be decisions from national authorities and a clear judicial process. Fifthly, law enforcement cooperation with intermediaries needs to be refined in order to overcome administrative, communicative and legal hurdles. States need to establish and support digital literacy and media literacy programmes.

Lastly, intermediaries should expand their capability to strike a balance between human rights and the fundamental freedoms of involved parties. Intermediaries should act as transparently as possible - the use of algorithms is not enough. Moreover, decisions either on implementing national enforcement decisions or voluntarily taking down content should be taken on the basis of predictable and transparent rules, due process and other applicable procedural guarantees. Notably, the general rule of liability exceptions for hosted content should not change. However, the model of notice-and-action should be refined by adding minimum content requirements and standardised flagging processes, including the possibility for affected parties to challenge over-removals. Moreover, content liability should have a graduated approach. This could be based either on the activity of the provider or the type of content in dispute. Openness regarding the design and use of algorithm decision-making should be used to counter unintentional side-effects.

Organization for Security and Co-operation in Europe (OSCE) and Council of Europe (COE), Key Conclusions and Recommendation - Conference on Internet Freedom "The Role and Responsibilities of Internet Intermediaries", 5 February 2018

https://rm.coe.int/osce-coe-internet-conference-2017-report/1680785d71

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