



Comments by
OSCE Representative on Freedom of the Media Harlem Désir,
Internet Freedom Conference:
“The role and responsibilities of Internet Intermediaries”,
Opening Session
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Mr. Chair, dear Clemens Koja,
Dear Representatives of the Federal Chancellery of Austria and of the Czech Republic,
Chairmanship of the Council of Europe,
Dear Ambassadors,
Dear experts,

Ladies and Gentlemen,

The defence and the promotion of freedom of expression on the Internet, including through social media, has become one of the most important activities of my Office. I am therefore very grateful to see that this conference brings together our two inter-governmental organisations, the Council of Europe and the OSCE. They are, in our region, the most important organisations in the field of human rights.

This conference is not only a sign of the level of cooperation and exchange between the OSCE and the Council of Europe but also a sign of the urgency of this issue in terms of fundamental freedoms.

The Internet has become part of our life, within two decades. We even tend to take it for granted, and forget how it created an unprecedented new forum for exchange, for dialogue, for business, and for information. And today we can't even think about freedom of expression without the Internet. Thousands of new media have started in the past twenty years thanks to Internet including in countries where there was little or no press freedom.

But we have been confronted, in the past years, with a backlash of this extraordinary open space: the dissemination of degrading and illegal content, of extremism and hate speech, of attacks and threats such as against female journalists, and also terrorist content and propaganda. They can impact directly on democracy, peace and cohesion of societies.

In response, there is an increasing pressure of states on intermediaries, to counter the circulation of such offensive material, through the adoption of new laws and policies which can meet legitimate goals, but can also affect the open and free Internet as we have known it so far.

As a matter of fact states, after having been in disarray in front of , in an open and uncontrolled Internet space, we now see the states stepping up their efforts to impose liability or to apply all kinds of pressures on intermediaries to force them to take responsibility for third-party content.

To adapt to this new situation, the intermediaries have developed their own procedures and terms of service, partly out of their sense of responsibility but also to avoid excessive legislation and judicial action against them. As a consequence, we are entering again in unknown territory with a reversal from what has been a very libertarian culture towards the risk of a very arbitrary and opaque one.

Another reason for the urgency of the discussion of the role of intermediaries and of regulatory options is the rapid technological change that affects the nature of “internet intermediaries”.

Innovation accelerates their concentration and domination, changes their offer, their algorithms and their terms of service. And the only thing which is certain is that we don't fully realize the implications of this change.

In each country, the distribution of, and access to information depend now for most citizens on very few actors. They hold in their hands a huge power of distribution of information and content. Their monopoly is becoming so strong that they are in a way more powerful than the Church before the printing press was invented. Facebook started in 2004, and has over 2 billion users today. Youtube, which means Google, is becoming the first TV-channel for young people worldwide. The online space, which is a privatized space, is almost entirely in their hands and Mark Zuckerberg and his colleagues have become our global editors in chief. Within a few years, intermediaries have become the gatekeepers to the exercise of fundamental human rights, like freedom of expression and information in the online space.

They choose what can be viewed and what will not. Facebook deletes 66.000 posts per week and the procedure is everything but transparent. Much of this is entirely justified and involves hate speech but there is also other content, including articles by journalists. Sometimes they are deleted on request by national governments. This is very concerning and leads to a key question: how safe is media freedom in the hands of intermediaries, when there is such an opacity on the rules and procedures?

The success of intermediaries gave them a huge responsibility, and everybody has asked for this. But now we discover that much responsibility in too few hands is as much of a problem as irresponsibility in the same few hands.

The exercise of this responsibility also relies on the regulation put in place by states and the international community. The objectives must be that the Internet remains an open space for public debate; that the privacy of users is respected; that bloggers and citizen journalists can work freely; and that net neutrality is guaranteed.

Authorities, intermediaries and providers also have to cooperate to bridge the digital divide among population groups and foster general access to the Internet, and easy access for all to information of public interest and to government-held information.

These are the main objectives, firmly based on international obligations.

From the perspective of the OSCE, we have to bear in mind the framework of OSCE participating States' commitments. They serve to reinforce international legal obligations under Articles 19 of the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

They include, most notably the Helsinki Final Act of 1975, in which the participating States decided to “act in conformity with the purposes and principles of the Universal Declaration and “make it their aim to facilitate the freer and wider dissemination of information of all kinds”. They have reaffirmed this commitment in many texts afterwards.

In 2004, in the same year when Facebook started with a handful of students at Harvard, the OSCE participating States pledged to “ensure that the Internet remains an open and public forum for freedom of opinion and expression, as enshrined in the Universal Declaration of Human Rights, and to foster access to the Internet both in homes and in schools.”

In 2015, the OSCE participating States emphasized the role of the media in encouraging pluralistic debates, and noted the need to fully respect the right to freedom of opinion and expression, in particular also in communication efforts aimed at countering violent extremist messages.

A very important point here is that any decision addressed to intermediaries establishing restrictions or ordering the takedown of Internet content should be adopted according to law, by judicial or other independent adjudicatory authorities following due process and with full respect to the principles of necessity and proportionality.

That implies that these rules and decisions should avoid negative impact on access to information. And what we certainly don't need is the development of a variety of content and liability regimes that differ among different areas of the world, thus fragmenting the Internet and damaging its universality.

It has become a human right to have access to the Internet and its services, and to be free to use it. The defense of this online right is the extension of the defense of the universal right to freedom of expression and freedom of the media offline.

That's why we need an international discussion on this issue which includes not only the States and the Internet intermediaries, but also civil society, media actors, the press, and the international organizations. We need a multi-stakeholder approach to internet governance, like the Internet Governance Forum, to design the regulation of Internet and on the principles which should guide this regulation.

The first of these principles is the respect of international treaties and obligations regarding freedom of expression and the restrictions which can only be exceptions defined according to the Rule of Law.

The second is the transparency of the rules and procedures of these regulations, which cannot just rely on private actors' decisions, defined in black boxes and must on the contrary be submitted to public debate.

The third is the existence of appeal mechanisms and a clear oversight role of the judiciary.

The fourth is the objective of maintaining a global, secure, free and open Internet and to avoid a fragmented Internet, compartmentalized behind national borders, which will be a restricted Internet.

That is why this meeting with the contributions of high level experts is so important. And I look very much forward to the contributions of today's speakers and participants at this conference.

Thank you very much.