



Chairmanship of the Czech Republic
Council of Europe
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Présidence de la République tchèque
Conseil de l'Europe
Mai – Novembre 2017

INTERNET FREEDOM CONFERENCE

THE ROLE AND RESPONSIBILITIES OF INTERNET INTERMEDIARIES

Conference co-organised by the Austrian Chairmanship of the OSCE and the Czech Chairmanship of the Council of Europe Committee of Ministers

13 October, 2017

Hofburg, Vienna

The Organization for Security and Co-operation in Europe (OSCE) and the Council of Europe enjoy overlapping geographical remits: the 47 member States of the Council of Europe are also amongst the 57 participating States of the OSCE. Both organisations promote an understanding of internet freedom that is rooted in the international obligations and responsibilities of their respective participating and member States, particularly those drawn from the International Covenant on Civil and Political Rights ("ICCPR"), the European Convention on Human Rights ("ECHR") and the OSCE commitments as well as other relevant standards.

According to the standards of both organisations, states should take action to ensure that the Internet remains an open and public forum for freedom of opinion and expression, and that the same rights that people have offline are equally protected online. As a result, Council of Europe member states and participating States of the OSCE should create an enabling environment for the exercise of rights, in particular freedom of expression, freedom of peaceful assembly and association, the right to private and family life, and access to an effective remedy in case of alleged violations of human rights online. Over recent years, a common understanding has been reached that in order to meet these standards more active engagement by all stakeholders in promoting Internet freedom in Europe and globally, including by periodical evaluation of the state of play, is needed.

Internet intermediaries play an important role in the digital ecosystem as gateways to information and facilitators of the exercise of freedom of expression, freedom of assembly and association, the right to education, access to knowledge and culture, participation in public and political debate and in democratic governance. Therefore, all regulation and policies applicable to intermediaries have a direct impact on Internet freedom.

The current regulatory framework generally shields intermediaries which host or store content from liability for third party content, when certain conditions are met, notably expeditious removal or disabling of access to information or services upon notice of their illegal nature. However, there is an increasing concern among political leaders and the public

across the OSCE and Council of Europe regions about the perceived increase in illegal content and activity online. Through a range of regulatory and self-regulatory frameworks

Internet intermediaries are increasingly demanded or expected “to do more” about illegal content and activity online. In particular, they are asked to play a proactive role in addressing online “hate speech”, depictions of child-abuse, terrorism-related or copyright-infringing material, and other unlawful content. Senior political figures have recently called on social media companies to prevent the spread of false information, which is feared to dominate the public debate ahead of upcoming elections in some OSCE and Council of Europe States. In response, some intermediaries are deploying technological solutions to counter the concerns raised.

The significance of all these developments is that there is pressure building upon Internet intermediaries to further control online content. In this respect Internet intermediaries are not only expected to remove illegal content upon orders from relevant authorities, but also they are increasingly incentivised to assess themselves whether certain content is illegal or not. Essentially, they are being tasked with the balancing of the human rights and fundamental freedoms of the parties involved. The assignment of such a role to intermediaries risks leading to restrictions of freedom of expression which fall short of the requirements of legality, necessity in a democratic society, and proportionality with a legitimate aim.

The Conference will bring together key stakeholders to examine current questions concerning the regulation of Internet intermediaries as gatekeepers to the exercise of freedom of expression online. Given that the needs of society in the digital age are shifting and the role of Internet intermediaries is expanding there is a need to consider more deeply the scope of their duties and responsibilities. This should be done, however, against a commitment to the protection of fundamental human rights and freedoms online, particularly the freedom of expression “regardless of frontiers”, and the rule of law.

The objective of the Conference is to engage in critical conversations about the implications of the digital space for the role and responsibilities of Internet intermediaries. In doing so, the intention is to raise questions about the nature and scope of the responsibilities of intermediaries, their role and their relationship with state and other non-state actors, including traditional media actors and civil society organizations. While we do not expect conclusions on all questions, we will raise awareness of the fact that the regulatory choices of today will have a profound impact on the future of Internet freedom.

DRAFT PROGRAMME

8:30 Registration of Participants

9:15 Opening session

Florian Raunig, Head of Taskforce, Austrian OSCE Chairmanship

Richard Kadlcak, Special Envoy for Cyber Space, MFA of the Czech Republic

Jan Kleijssen, Director, Information Society and Action against Crime Directorate, CoE

Harlem Désir, OSCE Representative on Freedom of the Media

10:00 Introduction

Dr. Matthias Kettemann, University of Frankfurt/Main

10:15 Session I

Taking stock of Internet freedom: the performance of states and intermediaries

This session will take stock of the state of Internet freedom across the OSCE and Council of Europe states. Drawing on the reports of civil society organisations on the matter, it will discuss the role of transparent assessment of states' performance with respect to the promotion of Internet freedom. Attention will also be paid to the question how far intermediaries are currently through their policies meeting human rights standards, on freedom of expression and privacy in particular

Moderator: Thomas Schneider, Ambassador and Director of International Affairs, Swiss Federal Office of Communication (OFCOM), Federal Department of the Environment, Transport, Energy and Communications (DETEC)

Speakers: Yaman Akdeniz, Professor, Istanbul Bilgi University
Walter Berka, Professor, University of Salzburg
Karmen Turk, Media law attorney
Xianhong Hu, Division for Freedom of Expression and Media Development, UNESCO

11:45 Coffee Break

12:00 Session II

Social media and search engines – global scale editors?

Social media and search engines are increasingly becoming the main distributors of news and information. Their role in shaping the public sphere is ever more pervasive, powerful and concentrated. How do they exercise this role? Should they subscribe to the same ethical principles as the media? What is the role of algorithms in determining the access to news and information and what are the associated challenges from the perspective of a free and informed debate, the flow of information and democratic values more generally?

Moderator: Tarlach McGonagle, Institute for Information Law, University of Amsterdam

Speakers: Alexandria Walden, Google
Elena Sherstoboeva, Associate Professor of the Higher School of Economics, Moscow
Ingrid Brodnig, Digital Ambassador of Austria to the EU
Maximillian Schubert, EUROISPA

13:00 Lunch break

14:30 Session III

Determining the unlawful nature of third-party content – what does it mean in practice?

Under a number of regulatory and self-regulatory initiatives intermediaries are asked to take measures to prohibit or restrict "hate speech", terrorism-related content, content harmful to minors, and copyright infringing content. This essentially involves determination of/judgment over the unlawful nature of the contested content. How are intermediaries making their determinations? Are these being made by humans or through automated processes? Are they equipped to balance fundamental human rights and freedoms and relevant societal interests at stake? What does it mean for the separation of powers? With such an extensive power over various areas of content regulation, what are the consequences for internet freedom and in the governance of the Internet?

Moderator: Ben Wagner, Assistant Professor, Vienna University of Economics and Business

Speakers: Niels Lestrade, Project Manager National Police Intelligence Unit Netherlands
Dan Shefet, Attorney
Arzu Geybullayeva, freelance journalist
Andy O'Connell, Facebook (tbc)

16:00 Session IV

An adequate legal and policy framework for securing Internet freedom

What is the legal and policy framework within which intermediaries can best secure human rights online, particularly the rights to freedom of expression and privacy? According to international standards, internet intermediaries should be exempted from liability for third-party content on the grounds of providing a robust environment for Internet freedom. Should this position be shifted today given the apparent increase in political and public pressure on intermediaries to remove illegal or harmful content posted by users, particularly forms of expression which are labelled as "hate speech" or "extremist content"?

Moderator: Gabrielle Guillemin, Article 19

Speakers: Joe McNamee, EDRi
Robert Spano, Judge, European Court of Human Rights
Daniel Holznagel, Federal German Ministry of Justice and Consumer Protection
Irene Roche-Laguna, DG Connect, European Commission

17.30 Closing session

Rapporteur: Dr. Matthias Kettemann, University of Frankfurt/Main

Closing Remarks: NN

18:00 **Reception** at the Federal Chancellery of Austria