

CONTENT REGULATION AND HUMAN RIGHTS

RECOMMENDATIONS

LEGALITY

- Law/rule-making should be done openly, in a participatory manner that allows for diverse and expert inputs, based on empirical analysis, and accompanied by impact-assessments.
- To the extent substantial rule-making authority and discretion is delegated to independent bodies, create robust oversight and accountability mechanisms to ensure that such bodies act pursuant to the public interest and consistent with international obligations.
- Ensure public laws are “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly.”
- More appropriate are approaches that establish clear limiting criteria and leave the determination of when those criteria are met to a judge.
- Clearly and precisely define what is prohibited, as well as who can be held responsible for failing to enforce the prohibition.
- Set clear expectations for responsible company action with regard to reports of illegal content.
- Ensure the law requires transparency, oversight, and remedy so as to avoid “confer[ring] unfettered discretion for the restriction of freedom of expression on those charged with its execution.”

LEGITIMACY

- Ensure that content that is prohibited falls within one of the enumerated “legitimate purposes” in ICCPR Art. 19(3).
- Ensure that controversial and offensive content is not prohibited simply because it makes certain audiences uncomfortable.
- Ensure that content that is allowed in analog contexts is also permitted in digital form.

NECESSITY

- Provide empirical support or argumentative clarity to establish “a direct and immediate connection between the expression and the threat.”
- Conduct careful, public, participatory deliberation to ensure laws are appropriate to achieve their protective function, are the least intrusive

instrument amongst those which might achieve their protective function and are proportionate to the interest to be protected.

- Carefully consider which types of private services at which layers in the technology stack are most appropriately positioned to address the specific concern(s) at issue.
- Accommodate a diverse range of business models and capacities. Consider how requirements may impact start-ups and smaller entities, as well as any unintended impacts they could have on competition policy.
- Provide clear guidance as to the precise characteristics of content and circumstances that require prompt or significant action.
- Articulate standards for appropriate content moderation based on traditional rule-of-law concepts such as transparency, due process, and remedy.
- Allow for variation and experimentation in approach, including “quarantining” and “downranking” of content. Provide means to guard against intentional misuse and unintentional consequences of content removal measures, including appeal and remedy mechanisms.
- Ensure robust remedial mechanisms for users whose content is restricted in order to avoid incentivizing self-censorship and over-removal. Build periodic reviews or reauthorizations into the law, in order to ensure that it remains relevant and consistent with evolving norms and technologies.

PRIVACY

- Think creatively about how to facilitate accountability for those who violate the law, while continuing to strengthen privacy protections for all.
- Recognize that anonymity and pseudo-anonymity can help vulnerable users protect themselves from harassment.
- Recognize the value of strong encryption in protecting users, ICT services, and the ICT ecosystem.
- Ensure that authorities meet due process obligations and evidentiary thresholds before requesting sensitive user data.