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Guidance Note on the Prioritisation of Public Interest Content Online

adopted by the Steering Committee for Media and Information Society (CDMSI) at its 20th plenary meeting, 1-3 December 2021

Summaryⁱ

Platforms, intermediaries and States are establishing 'regimes of prominence' which determine who sees what content online.

These regimes have a potential for promoting trusted news and authoritative information, as well as for widening the diversity of content consumed online. They can, however, also be exploited for censorship or propaganda, so they have implications for democracy and human rights.

States should act to make public interest content more prominent, including by introducing new obligations for platforms and intermediaries, and also impose minimum standards such as transparency.

Introduction

1. With the shift of media and information to the internet, search, discovery, and ranking functions have become powerful determinants of access to content. Search providers, social networks, video user interfaces and app stores are increasingly seen as gatekeepers, gaining control of the online media environment, influencing what content is found and accessed online. The design features and algorithmic decisions of such platforms and other relevant internet intermediaries (“platforms and intermediaries”)ⁱⁱ can promote content by making it more discoverable or prominent on a device or user interface. Practices of prioritisation are embedded in the search functions, recommender systems, newsfeeds, and other forms of content curation of these platforms and intermediaries. When specific content is prioritised and thereby made prominent and more discoverable, it gains increased reach, a potentially wider audience and/or is more likely to be accessed by a specific target group.ⁱⁱⁱ
2. A prominence regime is the prevailing framework of rules which establishes to what extent platforms and intermediaries can, or should prioritise certain forms of content over others, and under what conditions of transparency, accountability, and liability.
3. Currently, online content curation practices and related prioritisation decisions are not covered by a harmonised Europe-wide regulatory framework. A few national frameworks have been put in place but only apply to a limited set of digital intermediary services. Also, the Audiovisual Media Service Directive (AVMSD) 2018/1808/EU allows the European Union member states to take measures to ensure appropriate visibility for audiovisual media services of general interest.^{iv}
4. Prioritisation practices of platforms and intermediaries have significant cultural, political, and economic implications. In many cases, prioritisation is based on purely commercial considerations, but in some it is claimed that the public interest is taken into account. Notably, prioritisation of trusted news and authoritative information over other forms of content is promoted by platforms and intermediaries as well as States in response to mis- and disinformation. Prioritisation of public interest content can also mitigate the process of digital fragmentation, or proliferation of increasingly partisan content to the detriment of a shared sense of truth and common narratives, and help restore trust in public information, including public health messaging.
5. Prioritisation can be applied to promote media diversity and pluralism, a key goal of European media and communication policies and a necessary condition for the effective exercise of the right to freedom of expression and information. It can furthermore advance an ethics of truth seeking and open deliberation in the evolving media systems of European democracies. If they are not deployed with care, however, content prioritisation practices could do more harm than good to European democracy, human rights and pluralism.^v The specific risks are listed below.
6. The principles in this document offer a checklist of reference points to guide States and public authorities, platforms and intermediaries, media actors, and civil society organisations as they seek to shape, deploy and/or monitor content prioritisation and develop human rights risk assessment frameworks and codes of conduct. While the principles concern media sector as a whole, and even more generally communication in the public sphere, the focus of this guidance note is primarily on news and information content. Furthermore, the principles should apply particularly strictly to platforms that are more dominant, given their reach, scale, and influence.

How prioritisation can impact democracy and human rights

7. If States or powerful political, economic, or other groups, including intermediaries, promote particular information sources over others, this can give them the ability to manipulate the public agenda and frame public debate about their own policies and practices, which undermines the watchdog function of media in a democracy and trust and legitimacy of government.
8. Just as online content moderation (downgrading or removal) by platforms and intermediaries can result in private censorship^{vi} that undermines the right to freedom of expression, so too can prioritisation offer great potential propaganda power which must be monitored and checked.

Automated private censorship and propaganda, in the sense of information promoting a political agenda, are closely related because up-ranking some content obscures other content. Furthermore, if prioritisation is withdrawn, this can not only silence, but also deprive of revenue purveyors of alternative voices and messages.

9. Concerns also arise over the potential decline of media diversity and pluralism and particularly of users' exposure to diverse content. By selecting content and prioritising it, platforms and intermediaries take on some of the functions so far reserved to media. Commercial personalised search and content recommendation algorithms may lead users, apparently voluntarily, to access less diverse content. Without appropriate incentives in place, this tendency can be exacerbated by a recommender system based on the need for engagement with advertising. Interface design, and search and discovery functions that are primarily driven by an interest to maximise user engagement, rather than ensuring audiences' diverse consumption of content may also impact negatively on engagement with public interest content.
10. Prioritisation of content can also pose a threat to citizens' autonomy and lead to perpetuation of inequalities. Communicative resources and competencies are not equally distributed and tend to reflect pre-existing patterns of inequality, as a result of which prominence regimes may result in some groups, for example older or younger groups, being less able to make informed choices. Unevenly distributed behavioural nudges and technological design can influence users' choices and the types of content that surfaces on their searches, feeds, and interfaces, perpetuating uneven patterns of user empowerment and disempowerment.
11. The design and technologies of platforms and intermediaries contributes to prioritisation practices that reinforce deep structural imbalances between content providers and dominant platforms and intermediaries. This especially impacts national, regional and local media organisations including public service media (PSM) and community media which do not have the scale, resources, and capacity to negotiate effectively with platforms and intermediaries. These imbalances are especially important in smaller media systems. Asymmetries in power between the internet companies and content providers reliant on them can have particularly negative repercussions on the financial sustainability of national, regional, and local players relying on advertising revenues.
12. As they design policies and legal reforms that deploy regimes of prominence, States, platforms and intermediaries can face profound conflicts of interest. Apart from enforcing restrictions which pursue a legitimate aim within the meaning of Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5, the Convention), States may have an interest in promoting information that praises their policies, or in suppressing information considered as politically unacceptable. These conflicts of interest do not have to be intentionally or consciously acted upon by platforms and intermediaries or public authorities to harm democracy: a loose or opaque notion of what constitutes "responsible" communication, or "the public interest", can result in an antidemocratic chilling of speech by platforms and intermediaries, or the perception of such, which erodes confidence in the trustworthiness of information and undermines trust in democracy.
13. Therefore, to the extent that human or automated judgements are being made about which content published online should be deemed worthy of interest and more widely distributed, relevant norms and principles of media independence and media pluralism should apply to those judgements. Prominence regimes require careful balancing with the aim of ensuring that everyone can express their opinions while also able to access, discover and be reached by a variety of sources and content.

Relevant Council of Europe standards

14. The basis for the good practice principles to be followed in the development of prominence regimes is to be found in the existing Council of Europe standards relating to freedom of expression and information, media freedom and media pluralism, as well as the emerging framework of principles for AI.^{vii}

15. Prominence regimes should take into consideration the standards stemming from Article 10 of the Convention. Freedom of expression has a fundamental role in imparting information and ideas of general interest, which the public is moreover entitled to receive. This undertaking is grounded in the principle of media pluralism, of which the State is the ultimate guarantor and which requires, as part of the State's positive obligation to ensure effective exercise of freedom of expression, a regulatory framework aiming to ensure plurality of media types and diversity of content.^{viii}

Good practice principles for States and public authorities for the regulation of prominence regimes

16. States should encourage, as part of their positive obligations under Article 10 of the Convention, the introduction of new non-commercial prominence regimes that meet the standards set out in paragraph 25 (i) – (vi) below. This includes support for the development of independent and participatory initiatives by platforms and intermediaries, media actors, civil society, academia, and other relevant stakeholders that seek to improve users' exposure to diversity of media content online, as set out in Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership (paragraph 2.5.).
17. States may, where necessary, introduce appropriate and proportionate measures to ensure prominence of public interest content online, in line with the principles set out in this Guidance note. States should refrain from obliging platforms and intermediaries to carry specific pieces of content or specific information that these States deem to be of public interest, deferring to independent third parties, such as independent national media regulatory authorities or equivalent bodies, self-regulatory bodies or independent media, in determination of what constitutes public interest content and in assigning responsibilities to various platforms and intermediaries concerned. Regulations related to the determination of public interest content and assignment of responsibilities can also be adopted by co-regulatory mechanisms, where appropriate, and should in any event involve the participation of platforms and intermediaries, media actors, civil society, and other relevant stakeholders, to meet the requirements of openness and inclusiveness. Determination of public interest content should be based on clear, non-discriminatory, viewpoint neutral, transparent, and objectively justifiable criteria.
18. Compliance with the state-mandated responsibilities of platforms and intermediaries should be subject to oversight. This could be ensured by means of regular reporting by the relevant platforms and intermediaries about how policies and decisions relating to prominence regimes are made. The oversight function could be entrusted to independent national media regulatory authorities or equivalent bodies, or to responsible co-regulatory mechanisms, which should have the necessary powers and resources to carry out their remit in an effective, transparent, and accountable manner.
19. State-mandated requirements regarding the determination of public interest content and/or assignment of responsibilities should be framed in general terms to allow platforms and intermediaries a considerable margin of discretion as to the implementation and especially the development of more detailed criteria to determine public interest content and design prominence regimes serving the public interest. If these are developed, this should be done through initiatives open to multi-stakeholder participation as set out in paragraph 25 below.
20. States should be open and transparent in their own communications, particularly as regards the necessity of separating and clearly labelling advertising, public announcements, general communications, and emergency communications. States should publish clear guidance on how these different forms are governed online and not seek prominence for party or candidate-specific messages.
21. The principle of separation between State and platforms and intermediaries should be respected. States should be legally restrained from obliging that their own statements and communications, including those of parliaments and governments or those of other public bodies, are made

prominent by platforms and intermediaries except under public emergencies as defined by Article 15 of the Convention and interpreted in the case law of the European Court of Human Rights.

22. States should ensure that media and information literacy is sufficiently funded. Platforms and intermediaries should support States in ensuring, through funding, transparency and service design, sufficient understanding of what determines content prioritisation including for specific vulnerable groups.
23. Respect for these standards of transparency, openness, and oversight, and for the existing Council of Europe standards of freedom of expression, media freedom and independence should be taken into account when reaching judgements on the treatment of platforms and intermediaries in other realms of public policy. In addition, platforms and intermediaries which through their wide geographical reach and user engagement act as significant gateways for the dissemination of news and other media content may have obligations for a higher standard of transparency of recommendation systems.

Good practice principles for platforms and intermediaries in designing prominence regimes

24. As a general principle, search providers and social networks, media including streaming, video on demand providers and other relevant platforms and intermediaries should reflect on the social impact of the design of their services. They should work together with civil society, media actors and other stakeholders and public authorities to design a prominence regime that serves the public interest and is compliant with human rights requirements, such as freedom of expression, and its corollaries, such as the right to impart and obtain information, media plurality and the prohibition of discrimination. User interfaces and content recommendation algorithms should be designed to protect media pluralism and uphold the principles of democracy, the rule of law and human rights, in line with the principles set out in the paragraphs below^{ix}.
25. Where appropriate, platforms and intermediaries should develop prominence regimes in accordance with requirements for identifying public interest content set out in paragraph 17 of this Guidance note. These regimes of prominence should be developed and applied in accordance with the conditions of transparency, fairness, non-discrimination, and accountability set out below, also as a condition to benefit from the support of civil society and public authorities.
 - (i) Prioritisation practices should be subject to **requirements of transparency**:
 - a. of the **criteria / standards** for defining public interest content. Platforms and intermediaries should publish clear guidelines on what criteria / standards are applied, in addition to any state-mandated requirements, to identify issues of public interest for the purpose of prioritising content and why specific content is selected. These standards should be applied without discrimination based on viewpoint.
 - b. of the **process of selection** of content deemed worthy of prioritisation. Platforms and intermediaries should disclose broadly how the criteria / standards are used for determinations of public interest and by whom or what.
 - c. of **outcomes of prioritisation processes**. Reporting on content promotion and its impact on audiences for given sources, types and examples of content is necessary to maintain trust. Platforms and intermediaries should commit to transparency and self-reporting regarding the effects on consumption produced by the algorithmic implementation of prioritisation practices. This can entail monthly and annual reporting of views of public interest content compared with other content, for example, and comparison of viewing on prioritised content and non-prioritised.
 - (ii) Prominence regimes should also be held to a standard of **explainability**. The criteria, process and outcomes of prioritisation processes need to be proactively explained in ways

that allow understanding of why and how prioritisation decisions are reached and deserve public trust.

In addition to transparency and explainability, prominence regimes should be independent and open to external involvement, oversight and audit, according to the following conditions:

- (iii) **Independence** of decision-making about prominence from State, political, and economic interests. Legal and operational separation of the development and deployment of automated systems supporting prominence regimes and individual prominence decisions from advertising should be guaranteed. Where possible, there should be structural and operational separation between the commercial and strategic elements of the business, and the cultural and political parts that are involved in judgements about the public interest. Platforms and intermediaries that select and prioritise content should be independent and accountable for their decisions and actions to the public and their users through oversight structures allowing for effective audits.
- (iv) **Openness and inclusiveness** of both the processes of setting standards of public interest content and the standards themselves. The principle of openness should apply to all content standards including those of PSM and educational, cultural, professional, and other bodies on a non-commercial basis. Where possible, independent third parties and other external experts should be involved in these processes just as they are for illegal and harmful content, provided that they abide by the principles of transparency and are subject to oversight mechanisms set out in paragraph (v). PSM and trusted journalism initiatives for example can provide authentication of trustworthy-content alongside their flagging of non-trustworthy content. Civil society, media actors and users can be involved in the assignment of prominence benefits.
- (v) **Oversight**, and accountability. Prominence regimes should be subject to regular review by independent national media regulatory authorities and the wider public. Transparency and openness should be designed in a way that facilitates voluntary **audit of prioritisation** in the public interest against published criteria and human rights impact assessments where appropriate. Platforms and intermediaries should work actively with industry wide co- and self-regulatory bodies and independent third parties to ensure effective audit, including of whether prioritisation reinforces existing patterns of discrimination or introduces new ethnic, gender, social, and racial biases and inequalities. An efficient appeal procedure for prioritisation and deprioritisation should be established. Courts should bear the ultimate responsibility for ensuring compliance of the prioritisation decisions with the applicable human rights and the rule of law standards, for example to prevent discrimination on prohibited grounds as defined in Article 14 of the Convention or to ensure fair competition.
- (vi) **Opt Out**. Prominence regimes have the potential to operate as propaganda and private censorship; thus, various actors should be able to opt out:
 - a. Content providers should be able to opt out of prominence regimes.
 - b. Users should have the option of making an informed decision to opt out of prominence through personalisation or switching.
 - c. Defaults and opt-out rates should be subject to reporting and transparency.
- (vii) **Appeal**. Platforms and intermediaries should be able to challenge prominence obligations if they breach fundamental rights. The final decision should be for an independent regulator or court.

ⁱ This summary is indicative and introductory. For clarifications refer to the relevant section.

ⁱⁱ These are described in the Council of Europe Study [Prioritisation Uncovered: The Discoverability of Public Interest Content Online](#). Eleonora Mazzoli and Damian Tambini (2020).

ⁱⁱⁱ See [Prioritisation Uncovered](#). Mazzoli and Tambini. (2020, Council of Europe).

^{iv} Article 7a of the revised AVMSD recognises the new ways of content distribution and gives the member states the possibility to take measures to ensure the appropriate prominence of audiovisual media services of general interest. So far, few States have chosen to avail themselves of this possibility.

^v See [Prioritisation Uncovered](#). Mazzoli and Tambini. (2020, Council of Europe).

^{vi} Council of Europe Guidance Note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation.

^{vii} Council of Europe standards relating to freedom of expression and information, media freedom and media pluralism are based on Article 10 of the Convention as interpreted by the European Court of Human Rights. Furthermore, detailed standards have been formulated in numerous Committee of Ministers' recommendations to member States, notably R(97)21 on the media and the promotion of a culture of tolerance; CM/Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector; CM/Rec(2007)15 on measures concerning media coverage of election campaigns; CM/Rec(2007)3 on the remit of public service media in the information society; CM/Rec(2011)7 on a new notion of media; CM/Rec(2013)1 on gender equality and media; CM/Rec(2014)6 on a Guide to human rights for Internet users; CM/Rec(2016)1 on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality; CM/Rec(2016)4 on the protection of journalism and safety of journalists and other actors; CM/Rec(2016)5 on Internet freedom; CM/Rec(2018)1 on media pluralism and transparency of media ownership; CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, and CM/Rec(2020)1 on the human rights impacts of algorithmic systems. As regards the emerging framework for AI, see the Council of Europe [Feasibility study on a legal framework on AI design, development and application based on Council of Europe standards](#), adopted by the Ad-Hoc Committee on Artificial Intelligence (CAHA). See also the European Commission [Guidelines for Trustworthy AI](#).

^{viii} Specific guidance on state interventions and support measures involved in developing media regulatory frameworks can be found in Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership.. The See also ECtHR, *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, ECHR 2012.

^{ix} Recommendations of the Committee of Ministers to member States CM/Rec(2016)3 on Human Rights and Business, CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries, and CM/Rec(2020)1 on the human rights impacts of algorithmic systems, as well as the UN Guiding Principles on Business and Human Rights.