



ROLES AND RESPONSIBILITIES OF INTERNET INTERMEDIARIES

Internet intermediaries play an increasingly important role in modern societies. Their actions influence the choices we make, the way we exercise our rights, and how we interact. Through their market dominance, some platforms control the principal modes of public communication. What role do they play? How do they impact human rights, democracy and the rule of law? What are their corresponding duties and responsibilities?

The Council of Europe has developed human rights-based guidelines to help member states address this challenge.

Brief overview of the Council of Europe's standards on the roles and responsibilities of internet intermediaries

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INTERNET INTERMEDIARIES

Who are internet intermediaries?

The term ‘internet intermediaries’ refers to a wide, diverse and rapidly evolving range of service providers that **facilitate interactions on the internet between natural and legal persons**. Some connect users to the internet, enable processing of data and host web-based services, including for user-generated comments. Others gather information, assist searches, facilitate the sale of goods and services, or enable other commercial transactions. Importantly, they may carry out several functions in parallel, including those that are not merely intermediary. Internet intermediaries also moderate and rank content, mainly through algorithmic processing, and they may perform other functions that resemble those of publishers. As a result, different regulatory frameworks can apply, respectively, to their intermediary roles and to their other functions.

Shared obligations of states and internet intermediaries

It is primarily **the obligation of states** to make sure that laws, regulations and policies applicable to internet intermediaries safeguard the human rights and fundamental freedoms of users effectively. At the same time and in line with the UN Guiding Principles on Business and Human Rights however, **internet intermediaries have the responsibility to respect** the internationally recognised **human rights** of their users and of third parties affected by their activities. States and intermediaries therefore have to work together.

The higher the impact and the potential damage inflicted on rights by internet intermediaries, the greater the precautions they must employ when designing, developing and deploying their tools and services.

Legality

Any request, demand or other action by public authorities addressed to internet intermediaries must, in line with the European Convention on Human Rights, be **prescribed by law**, be exercised within the limits of the law and constitute a **necessary and proportionate measure in a democratic society**. All regulatory frameworks, including co- or self-regulatory frameworks should have **effective oversight** mechanisms.

The process of enacting legislation applicable to internet intermediaries should be transparent and inclusive. The relevant legislation should be **accessible, foreseeable and precise**. It should be interpreted, applied and enforced without discrimination.

Safeguards for freedom of expression

Any **demand** to internet intermediaries to restrict access to content must meet the requirements of Article 10 of

the European Convention on Human Rights. State authorities should carefully evaluate the possible, including unintended, impact on freedom of expression of any measure and should apply the least intrusive means. State authorities should also ensure that effective redress mechanisms are available and adhere to applicable procedural safeguards.

Any **interference by intermediaries** with the free flow of information and ideas should be based on clear and transparent policies and be limited to specific legitimate purposes, as determined by law, through instruction by a competent authority, or in accordance with the company’s own content restriction policies or codes of ethics. When restricting access to content in line with their own content-restriction policies, intermediaries should do so in a transparent and non-discriminatory manner.

Use of personal data

Intermediaries should **not disclose personal data to a third party** unless required by law or requested to do so by a judicial or other competent authority, whose decisions are subject to judicial review and who has determined that disclosure is consistent with law.

Intermediaries should limit the processing of users’ personal data to what is necessary to achieve a clearly **defined purpose, which is explicitly and clearly communicated to all users** in a proactive manner.

The **processing of personal data** must be **based on the free, specific, informed and unambiguous consent** of the user, with respect to the specific purpose, or on another legitimate basis defined in the Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention 108).

Effective remedy

States should guarantee **access to effective judicial and non-judicial procedures against all alleged violations** of the European Convention on Human Rights in the digital environment by internet intermediaries or third parties.

Transparency/Accountability

All terms of service agreements, community standards and policies shall be **publicly available in clear, plain language** and accessible formats. Users shall be notified in advance of all changes in relevant policies.

The **process of drafting** and applying terms of service should be transparent, accountable and inclusive.

Intermediaries should provide meaningful public **information about the operation of automated data processing techniques**, including the operation of micro-targeting algorithms that facilitate searches based on user profiling.

Intermediaries should regularly **publish transparency reports** that provide clear and meaningful information on all restrictions to the free and open flow of information and ideas.