



# 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 work and 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 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. Others gather information, assist searches, facilitate commercial transactions. Importantly, they may carry out several functions in parallel, including those that are not merely intermediary. For instance, 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 to their intermediary and other functions respectively.

## Shared responsibility

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, **internet intermediaries have their own responsibility to respect human rights**, independently from that of states. States and intermediaries therefore have to work together.

## Rule of law-based approach

The **Recommendation on the roles and responsibilities of internet intermediaries** (CM/Rec(2018)2) is a unique guideline shaping a rule of law-based policy for the relationship between state authorities and intermediaries and their respective human rights obligations and responsibilities, on- and off-line. It outlines the following main elements of such approach.

### ✓ **Legality and respect for human rights**

States have **the ultimate obligation to protect human rights** in the digital environment, also by introducing relevant regulation. All regulatory frameworks, including self- or co-regulatory, should include effective oversight mechanisms to comply with that obligation.

Internet intermediaries should in all their actions respect the internationally recognised human rights of their users and of other parties who are affected by their activities. They should carry out **regular due diligence assessments** of their compliance with their human rights duties and responsibilities.

### ✓ **Legal certainty, transparency, accountability**

All laws should be clear and sufficiently precise to enable intermediaries, users and affected parties to regulate their conduct. Any legislation should **clearly define the powers granted to public authorities** in relation to internet intermediaries and provide safeguards against arbitrariness.

All internet intermediaries' terms of service, community standards and policies shall be **publicly available in clear, plain language and accessible formats**. Intermediaries should provide meaningful public information about the operation of automated data processing techniques and should regularly publish **transparency reports** about human rights interferences.

### ✓ **Safeguards for freedom of expression**

Any demand by state authorities to intermediaries that could lead to a restriction of the right to freedom of expression must be

preceded by a careful **evaluation of the possible impact** on this freedom and meet the requirements of Article 10 of the European Convention on Human Rights.

Internet intermediaries should respect the rights of users to receive, produce and impart information, opinions and ideas. Any content restriction measures, including those resulting from a State request, should be implemented using **the least restrictive means**.

### ✓ **Safeguards for privacy and data protection**

Any demand by state authorities to intermediaries that interferes with the right to privacy must be prescribed by law, pursue a legitimate aim, and be used only when it is necessary and proportionate in a democratic society.

The processing of personal data by internet intermediaries 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 for 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.

Internet intermediaries should make available – online and offline – effective remedies and **dispute resolution systems** that provide prompt and direct redress in cases of grievances.

## Other related work and standards

The comparative study on **"Blocking, filtering and take-down of illegal internet content"** (2015) examines law and practice in 47 member States regarding restrictive measures, including in the fields of defamation, protection of copyright, fight against child sexual abuse and combating terrorism. The **Guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation** (adopted by the Steering Committee for Media and Information Society (CDMSI) in May 2021) is the newest tool for policy-makers in addressing online content issues.

The Committee of Ministers **Declaration on the manipulative capabilities of algorithmic processes** (2019) warns about the risks for democratic societies resulting from the possible use of machine learning tools to manipulate and control not only economic choices, but also social and political behaviours. The **Recommendation on human rights impacts of algorithmic systems** (CM/Rec(2020)1) provides guidelines regarding the design, development and deployment of algorithmic systems to ensure human rights protection.

In 2017, the Council of Europe launched a general **framework for partnership with internet companies** and their representative associations, which enables them to participate in an array of the Organisation's activities and to sit side-by-side with governments when shaping digital policies. Currently, 25 actors from the industry have joined this framework.

The Council of Europe **expert committee on freedom of expression and digital technologies** has finalised a draft recommendation on the impacts of digital technologies on freedom of expression, while the **expert committee on combating hate speech** has developed guidance on a comprehensive approach to addressing hate speech, including in the online environment. Both documents will be submitted to the Committee of Ministers for adoption in early 2022.