

# POLICY BRIEF 05

In response to the United Nations Global Digital Compact (Zero Draft, 1 April 2024)

## Governing Emerging Technologies

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This policy brief is part of a six-part series produced by students participating in the Erasmus+ blended-intensive program “Digital Constitutionalism and the UN Global Digital Compact” hosted at the University of Bremen.

Between March and June 2024, around 30 students and ten instructors worked to build and put to work transversal skills in a transnational research-based learning and policy-engaged learning setting. As part of the program, students worked together for a week at the University of Bremen and participated in the European Dialogue on Internet Governance (EuroDIG) 2024 policy conference.

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## Executive Summary

With the evolution of digital technologies and increasing internet access globally, there is a simultaneous rise in threats such as **dissemination of disinformation, illegal content or propaganda, and digital repression**. The 2023 Freedom on the Net report highlights a 13-year consecutive decline in global internet freedom, with various nations enacting restrictive laws under the guise of national security. These laws impact both internet intermediaries, who are expected to navigate a complex web of national and international regulations, and users' experiences online. **The Global Digital Compact (GDC)** addresses these challenges, emphasizing the need for accurate information and democratic treatment online. It suggests that both states and digital companies should enhance transparency and user awareness, particularly in crisis situations. However, the implementation of these commitments faces barriers due to differing national approaches to digital governance and the risk of companies prioritizing their interests over human rights. Additionally, issues arise from the involvement of companies in the sanctioning process, which may lead to biased enforcement. Our recommendations include enhancing cooperation and accountability, addressing organizational disinformation, company responsibilities and state-level actions.

## Introduction to the problems and context

With the widespread evolution of digital technologies, internet access is steadily growing across the world, but so are threats related to the creation and circulation of disinformation, dissemination of illegal or extremist contents, propaganda, false news, as well as, on the other hand, digital repression, censorship and surveillance.

Under such circumstances policymakers, legislators and regulators around the globe appear eager to regulate digital content, to combat illegal online activities and to grant access to relevant, reliable and accurate information so as to create a favorable online ecosystem. We must acknowledge, however, how addressing these critical issues is a delicate practice, risks undermining the standards provided by international human rights and the rule of law, and can easily lead to situations of excessive repression and discrimination against individuals and alternative sources of information.

Broadly speaking, Internet freedom is significantly threatened around the world. According to the 2023 Freedom on the Net report by Freedom House, Global internet freedom declined for the 13th consecutive year, and over the past few years both democratic and authoritarian countries (often under the claim of national security) have considered or actually enacted laws to restrict access to online services and social media platforms, and moderate online content or services. (Funk, n.d.)

In this context, internet intermediaries are pressured to regulate content with reference to a variety of jurisdictions, and governments expect them to comply with national laws that, in turn, align in varying levels with international human rights regulations, which becomes even more problematic when it comes to non-liability regimes. There are many cases where some online activities, speeches or behaviors, and the ways in which they are moderated, can be considered appropriate under national laws, yet forbidden according to other existing standards.

The issue at stake here is that these growing requirements imposed by laws and regulations both across Europe and the globe, demand companies to intervene unrealistically quickly to tackle unlawful activities and disinformation online, and to take decisions about what content can and cannot be posted on their sites. Although pushing for a free and secure Internet, such requirements can still serve as an amplifier of digital repression, by having implications on freedom of expression and information as provided by Article 19 of the UN's Universal Declaration of Human Rights, hereinafter the UDHR, (United Nations General Assembly, 1948, p. 5). We must recognize therefore how new technologies, even when strongly regulated, could still amplify digital repression, making censorship, surveillance, and the creation and spread of disinformation easier, faster, cheaper, and more effective.

An excessive reliance on self-regulation by private companies or governments, risks exposing people's rights to a variety of threats, and, especially with the growing use of automated tools to regulate online controversies, a decrease in resources and control in the tech sector could exacerbate this deficiency.

Governments around the world are both underestimating and instrumentalizing the crucial impact of the policies governing the legal liability of intermediaries on users' rights, including freedom of expression, freedom of association, and the right to privacy.

It thus appears essential to demand for new and practical approaches centered around principles such as transparency, proportionality, and accountability both on the side of platforms and governments.

## Critique of current situation and alternative options

In the Zero Draft document of the Global Digital Compact project, the problem of disinformation is addressed in Cluster 4.5 -information integrity- which acknowledges the importance of access to relevant, reliable and accurate information. In particular, this section states that tolerance and respect should be guaranteed in the online world and that information should be treated democratically.

The GDC addresses current issues involving the manipulation and influencing of information through digital technologies and emphasizes that these problems should first be identified and then combated. The aim is to reduce disinformation and manipulation while respecting human rights and freedom of expression.

To this end, digital content should be addressed and used in school curricula, and public service media and consistent media should be promoted. Especially in crisis situations, information should be distributed faster and better.

GDC sees the task not only in the duties of states, but also in the duties of social media platforms and digital technology companies. These should improve transparency, for example by writing terms of use and guidelines in local languages so that users can make informed decisions when using media. They should also give researchers access to data so that a basis can be created for dealing with misinformation and disinformation. In addition, AI-generated material should be labeled or a process for authenticating material should be created.

Starting from this standpoint expressed in the GDC Zero Draft it is relevant to mention how these highly promising and optimistic commitments inevitably raise questions about possible barriers and challenges in the implementation of the actual document that will be issued in September 2024. Working on these aspects is crucial to ensure that the Compact will produce the envisaged positive outcomes in terms of digital cooperation and inclusivity and that an open, safe and secure digital space will be granted.

Firstly, despite the common and shared commitment by the United Nations Member States, it still remains difficult to foresee how these points will be implemented and respected by all the contracting parties despite the different approaches in terms of digital governance and sovereignty. In the creation of a common agenda like the one envisioned by the GDC, for common principles to work and to be

agreed upon, the only feasible option is to tackle issues through a broad approach leaving space for interpretation and several -legit- lines of application.

Although on the one hand this method allows for an agreement to be reached, and to delineate basic principles of conduct for all member states and involved stakeholders, on the other hand it promotes a form of commitment which appears inadequate and insufficient with respect to the challenges created by the current technological advancements. In the context of disinformation, freedom of expression and content regulation online, uniform penalties or sanctions are needed, and the introduction of an independent monitoring unit or moderator needs profound scrutiny and consideration.

Also, problems could arise when companies are included in the sanctioning process, as companies can incorporate their own interests in dealing with misinformation and censorship. This leads back to the idea of a neutral authority with control functions.

Taking a look at the legal landscape of content moderation it is worth mentioning some existing regulations that aim to address such challenges, in ways which may or may not be consistent with the position expressed in the GDC.

In the U.S., the Communications Decency Act (CDA) governs content moderation practices together with the First Amendment, which, on the other hand, protects the right of platforms to choose to host speech, or not, without interference from the government. (A Look at Content Moderation Regulations Around the Globe, 2022.).

In the EU, major social media platforms have adopted a “Code of Conduct” aimed at fighting hate speech, the “Strengthened Code of Practice on Disinformation” to limit the diffusion of fake news, as well as the “Digital Services Act” to prevent illegal and harmful activities online. In this context, Germany’s Network Enforcement Act, or NetzDG law, approved in 2017 represents a key amendment for combating hate speech on the internet but also a very controversial one, criticized as unconstitutional, in particular with regard to free speech, and as not user-friendly by Human Rights Watch. Following this line, Venezuela, Australia, Russia, India, Kenya, the Philippines, and Malaysia have passed their own laws or have proposed laws similar to the German example and at least three countries – Russia, Singapore, and the Philippines – have directly cited the German law as a positive example as they contemplate or propose legislation to remove “illegal” content online.

Assuming that the fight against disinformation envisioned in the GDC would be applied, these regulations will still define the actual position of states, and activities of censorship and repression could still also occur by falsely labeling information as misinformation. It also remains difficult to implement sanctions, as these are United Nations Security Council sanctions against individual entrepreneurs. Google's "Project Owl", for example, has set itself the task of eliminating fake news, which resulted in a drastic reduction in sources (APC, 2018, p. 5).

Under such circumstances we acknowledge how challenging defining proper approaches that respect both territorial sovereignty and accountability between the member states become, yet we believe that the position expressed in the draft of the GDC lacks the required nuanced understanding of this "give and take" between platforms and governments control of content; as well as a more basic human rights-centred guideline that would allow Article 19 of the UDHR to be used as a benchmark for dealing with disinformation, removal of content, and requirement of non-interference.

## Recommendations

The policies governing the legal liabilities and powers of internet intermediaries have an impact on users' rights, including freedom of expression, freedom of association, and the right to privacy. Governments should make sure that liability regimes enable companies to respect their users' rights. We believe principles such as transparency, proportionality, due process, and accountability should underpin all policies related to such content requests.

Referring to the Zero Draft of the GDC we believe that certain common recommendations are needed so to ensure that such line will be respected:

- Defining adequate and practical restrictions and responses against the spread of disinformation, dissemination of illegal or extremist contents, propaganda, false news, while committing to refrain from the establishment of binding laws or arrangements that would require a "proactive" monitoring or filtering of content that could lead to overbroad censorship of users' speech.

- Articulating and developing practical policies that Internet companies should adopt, in line with human rights law, intergovernmental bodies positions, and industry-specific standards developed by experts and civil society.
- Enhancing cooperation between member states and committing to the principles of transparency and accountability in all procedural stages related to online content regulation, from rule-making to implementation and development of policies.
- Promoting the development of third-party non-governmental approaches rooted in human rights standards to monitor practices of content regulations and finding a way of keeping the parties accountable in cases of breaches of users' rights.

## References

*Section 230 and Other Content Moderation Laws Across The Globe*. (n.d.). Online Censorship. Retrieved May 17, 2024, from <https://www.onlinecensorship.org/pages/cda-230>

A Look at Content Moderation Regulations Around the Globe. (2022, December 15). TELUS International. Retrieved May 16, 2024, from <https://www.telusinternational.com/insights/trust-and-safety/article/content-moderation-regulations>

Content Regulation in the Digital Age. Submission to the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression by the Association for Progressive Communications (APC). (2018). Association for Progressive Communications.

<https://www.ohchr.org/sites/default/files/Documents/Issues/Opinion/ContentRegulation/APC.pdf>

Bayer, J., Bitiukova, N., Bard, P., Szakács, J., Alemanno, A. & Uszkiewicz, E. (2019).

Disinformation and Propaganda - impact on the functioning of the rule of law in the EU and its

Member States. Funk, A. (n.d.). The Repressive Power of Artificial Intelligence. Freedom House.

Retrieved May 15, 2024, from <https://freedomhouse.org/report/freedom-net/2023/repressive-power-artificial-intelligence>

Universal Declaration of Human Rights. (1948). United Nations General

Assembly. <https://www.un.org/sites/un2.un.org/files/2021/03/udhr.pdf>

Zero Draft. (2024). Global Digital Compact. United Nations Secretary-General's office.

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