

# **The Relevance of International Human Rights Law in Considering the Role of Social Media and Internet Companies in Responding to Violent Online Extremism**

Panel on “Human Rights Law, Accountability and Extremist Content” at  
Vox-Pol Workshop on the Role of Social Media and Internet Companies  
Responding to Violent Online Extremism

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## 1. Introduction

- A recognition of relevance of IHR law in discussions on how to respond to extremism?
- Joint Statement of EU Ministers for Interior and Justice issued in wake of Paris attacks:
  - “safeguarding [the Internet], in scrupulous observance of fundamental freedoms, a forum for free expression, in full respect of the law” (15 January 2015)
- Absence of HR experts at meetings between social media companies and EU on anti-extremism (8 October 2014)
- Concerns about HR/FoE/FoM record of states, US allies in emerging counter-extremism/counter-radicalisation policy following White Summit on Countering Violent Extremism (February 2015)
  - See Al-Jazeera Opinion by Amnesty International USA Executive Director, Steven W Hawkins or Blog post by CPJ Advocacy Director, Courtney Radsch

## 2. IHR legal framework: value

- Context, framework, indication of states obligations, including on FoE + relationship with other rights (eg equality/non-discrimination, freedom of religion/belief, privacy) and interests (eg national security)
  - Also relevant for non-state actors, including social media companies dealing with national laws implementing or not those obligations
- An amount of normative clarity
- Substantive and detailed interpretations of rights developed over time
  - last 5 years especially significant re: IHRL on FoE
- Refocuses debate on individuals: dignity and agency

Adapted from Philip Alston, “Two Words that Scare the Bank”

*The Washington Post*, 7 November 2014

### 3. Principles of IHRL on freedom of expression

- **Article 19 Universal Declaration of Human Rights, 1948**
- **Article 19 International Covenant on Civil and Political Rights, 1966** (168 states ratified, legally bound to implement it through their domestic laws and policies):

**Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.**

**Article 19 (2) ICCPR**

## (a) Scope

- **General Comment No 34 (2011) of Human Rights Committee**, authoritative interpretation of meaning of Article 19 ICCPR
- In terms of scope, Article 19 ICCPR protects all forms of electronic and internet-based modes of expression
- At same time, emphasises states should “take into account developments” in information technology and how impacted upon communications

## **(b) Restrictions**

**The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:**

**(a) For respect of the rights or reputations of others;**

**(b) For the protection of national security or of public order (ordre public), or of public health or morals.**

### **Article 19 (3) ICCPR**

- Restrictions must
  - must be narrowly tailored + must not put right into jeopardy
  - i.e. meet the three part test in that they must (i) be provided by law; (ii) pursue a legitimate aim; and (iii) must conform with test of necessity and proportionality

**43. Any restrictions on the operation of websites, blogs or any other internet-based, electronic or other such information dissemination system, including systems to support such communication, such as internet service providers or search engines, are only permissible to the extent that they are compatible with paragraph 3. Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with paragraph 3. It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.**

**46. States parties should ensure that counter-terrorism measures are compatible with paragraph 3. Such offences as “encouragement of terrorism” and “extremist activity” as well as offences of “praising”, “glorifying”, or “justifying” terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression.**

## **(c) Responsibilities on social media and Internet companies for content**

- **Joint Declaration on Freedom of Expression and the Internet 2011**, the four special rapporteurs on freedom of expression/media recommended:
  - **No one should be liable for content produced by others when providing technical services, such as providing access, searching for, or transmission or caching of information;**
  - **Liability should only be incurred if the intermediary has specifically intervened in the content, which is published online;**
  - **SPs and other intermediaries should only be required to take down content following a court order, contrary to the practice of notice and takedown.**



- **Report of UN Special Rapporteur on Freedom of Expression, Frank La Rue to the Human Rights Council, May 2011:**

**Censorship measures should never be delegated to a private entity, and [...] no one should be held liable for content on the internet of which they are not the author. Indeed, no State should use or force intermediaries to undertake censorship on its behalf.**

- Contd
- Intermediaries should:
  - **only implement restrictions to these rights after judicial intervention;**
  - **be transparent about measures taken with the user involved and, where applicable, with the wider public;**
  - **provide, if possible, forewarning to users before implementing restrictive measures;**
  - **strictly minimise the impact of any restrictions to the specific content involved**
- There is also the need for effective remedies for affected users, including the possibility of appeal using procedures to be provided by the intermediary and by a competent judicial authority

### **(d) Rabat Plan of Action on “hate speech”**

- Relevant for discussion on “extremism” since counter-extremism policies justified in similar terms to anti-“hate speech” on basis of rights of others, including equality/non-discrimination, bodily integrity etc and “hate speech” and “extremism” sometimes seen as overlapping “evils”
- Rabat Plan of Action based on credible inter-regional multi-stakeholder processes involving UN HR bodies, states, NGOs academia
- Provides closest definition of what is “incitement” in international law under Article 20(1) ICCPR and consequent obligations/responsibilities of states and non-state actors, including IGOs and media
- **Article 20(1) ICCPR**

**Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.**

- RPA Sets a high threshold for restrictions on freedom of expression on grounds under IHR law especially Article 20(1) ICCPR
- Recognition that whether or not speech is on internet would be a factor in considering the “extent of the speech act”, one part/criterion in a 6 part test in assessing whether speech should be criminalised by states as “incitement
- Recommendations to combat “hate speech” through legal (including anti-discrimination legislation) and non-legal/policy tools (measures to promote intercultural dialogue)
- Recommendations focus on states but also speak to media, highlighting moral and social *responsibilities* (through self-regulation) to combat discrimination and promote intercultural understanding), and do not distinguish on off-line/online media
- Though no recommendations for intermediaries as such, such responsibilities may also be applicable to intermediaries

## 4. Conclusion

- SR on FoE (2011) report still benchmark from IHRL point of view in this area
- But more to come under new SR on FoE, David Kaye ...
- **Speech to UN General Assembly, 23 October 2014**, sets out his priorities for mandate including role of internet companies

**Non-state actors often play a dominant role on the internet today, even in those countries where the government exercises substantial control and regulation. My predecessors and many others have addressed corporate responsibility issues, and I intend to build on their work. For instance, what set of best practices should govern those internet actors with a major footprint in social media, commerce, news, and other subjects? What responsibilities are owed users and customers where privacy interests and expression intersect? ... How can actors implement these policies while avoiding violations of freedom of expression? What are the appropriate reactions of commercial actors when governments demand compliance with rules that are inconsistent with the freedom of expression or other rights that implicate expression.**

## Useful resources

- Human Rights Committee, General Comment No 34, CCPR/C/GC/34, 11 September 2011
- Report of the Special Rapporteur to the Human Rights Council on key trends and challenges to the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet, A/HRC/17/27
- Report of the Special Rapporteur to the General Assembly on the right to freedom of opinion and expression exercised through the Internet A/66/290
- Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, Appendix in the Annual Report of the United Nations High Commissioner for Human Rights, A/HRC/22/17/Add.4, 11 January 2013
- ARTICLE 19, *Internet Intermediaries, Dilemma of liability* (2013)  
[http://www.article19.org/data/files/Intermediaries\\_ENGLISH.pdf](http://www.article19.org/data/files/Intermediaries_ENGLISH.pdf)
- ARTICLE 19, *Policy Brief: Prohibiting incitement to discrimination, hostility or violence*, December 2012  
<http://www.article19.org/data/files/medialibrary/3548/ARTICLE-19-policy-on-prohibition-to-incitement.pdf>