



18 March 2011

Committee of Experts on New Media
Media and Information Society Division
Directorate General of Human Rights and Legal Affairs - DG-HL
Council of Europe
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Summary

ARTICLE 19 welcomes the efforts of the Committee to provide guidance and recommendations on search engines and social networks to ensure that human rights are respected.

Executive Director
Dr Agnès Callamard

We believe that the guidelines are a good start but should be strengthened to ensure that companies that offer search engines and social networks act in a more transparent manner and provide better protection of users' rights of freedom of expression when providing access to information and collecting personal data.

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Introduction

ARTICLE 19 welcomes the opportunity to respond the Draft Recommendations and Guidelines on protection of human rights with regard to search engines and the draft Recommendations and Guidelines on the measures to protect and promote respect for human rights with regard to social networking services.

Honorary Member
Aung San Suu Kyi (Burma)

We share the concerns of the committee on the future impact of both services on human rights including the right of freedom of expression.

ARTICLE 19
Research and Information
Centre on Censorship

ARTICLE 19, the Global Campaign For Free Expression (ARTICLE 19) is an independent human rights organisation based in London, which works around the world to protect and promote the right to freedom of expression and the right to freedom of information. It takes its name from Article 19 of the Universal Declaration of Human Rights. ARTICLE 19 monitors threats to freedom of expression in different regions of the world, as well as national and global trends, develops long-term strategies to address them and advocates for the implementation of the highest standards of freedom of expression, nationally and globally. It frequently intervenes in cases before the European Court of Human Rights and other international and domestic

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Article 19 of the Universal Declaration of Human Rights:

'Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers'

tribunals on issues of freedom of expression. ARTICLE 19 is a recognised observer to the Council of Europe and has worked with the secretariat, the Council of Ministers, and the Parliamentary Assembly on FOE issues for over 20 years.

Search engines and transparency

As the Committee rightly notes, search engines are a crucial aspect of the user's experience in being able to seek and receive information available on the internet.

We support the committee's recommendation that search engines must provide an adequate level of transparency on how they select and rank information. However, we do not believe that transparency by itself is adequate.

We also believe that search engines, especially those that hold a dominant position in their market, should also not be allowed to discriminate against information providers, for commercial or other reasons. Thus, results should be based only on non-biased reasons rather than on payments or agendas.

Collection of information about users

As an organization dedicated to promoting freedom of expression, we also recognize the importance that the protection of personal information has in promoting freedom of expression. Our work in countries with authoritarian or totalitarian systems has found that the monitoring of individuals who are seeking information often has a chilling effect on those persons and leads to self-limiting of access to information for fear of disclosure. In the specific case of the media, the collection of information about the net activities of journalists and what queries they are making on search engines can have a profound effect on their ability to gather information and protect their sources and methods.

Thus, we believe that the unnecessary collection of personal information about users' activities, either by search engines for commercial reasons or by telecommunications providers under data retention laws, and the retention of that information for an extended duration has a negative effect on both Article 8 and Article 10 rights. We recommend that the collection of personally identifiable information which is not strictly necessary for the service should be limited and that the maximum duration for retaining of such information, including IP addresses, should be limited to no more than one month. We also support the development and promotion of services and tools to allow for anonymous access to information.

Blocking and filtering

Generally, filtering or blocking internet content are severe types of censorship. When conducted by search engines, such measures can effectively cut off public knowledge and access to the information in violation of the Article 10 rights of both the provider and the reader.

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Thus, filtering and blocking should only be allowed in the most limited circumstances. As recommended by the international special mechanisms on freedom of expression in 2005:

Filtering systems which are not end-user controlled - whether imposed by a government or commercial service provider - are a form of prior-censorship and cannot be justified. The distribution of filtering system products designed for end-users should be allowed only where these products provide clear information to end-users about how they work and their potential pitfalls in terms of over-inclusive filtering.¹

We believe that any filtering or blocking should not be allowed without a proper legal process as required under Article 10(2). It should also be done in a manner which provides the provider adequate process to contest it prior to its imposition. Other non-limiting mechanisms should also be considered. For example, sites which offer legally-permissible, but controversial materials, may be flagged to identify concerns for parents, if that service should be offered, but should still be indexed like any other content.

We also support requirements that any filtering or blocking should be transparent to the user. Thus, any blocked site should be accompanied by a notice explaining why it has been blocked, who requested it and the legal justification. Users should also have the ability to challenge limits to their access to information.

Protection of children against harmful content

ARTICLE 19 recognises the importance of protecting children against harmful content and behaviour. As noted above, we wish to emphasise that online content and behaviours can only be limited as allowed by Article 10 of the ECHR.

We support the recommendations that emphasize informing users, providing mechanisms for reporting unlawful materials and behaviours, and measures for preventing cyber-bullying.

We agree that age-differentiated access raises numerous freedom of expression problems. Children have a right of access to information and expression and determining what is appropriate is difficult to based on only on age. We believe that parents should play a primary role in working with children to ensure that they are using the services in an appropriate manner.

User control of information.

¹ Joint Declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression, 21 December 2005. <http://www.article19.org/pdfs/igo-documents/three-mandates-dec-2005.pdf>

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As a freedom of expression organization, we recognize that social networks can play an important role in political debate and organizing, as was seen recently in Tunisia and Egypt.

However, it is also increasingly being recognized that the same networks are used to identify and track individuals to limit their freedom of expression in many countries, including in CoE member states.² Thus, it is crucial that users have strong controls over the information that is collected and is publicly available.

We support recommendations that give users strong control over the access to their personal information. Social networks should not be allowed to change their terms of services and defaults to make the information available when it was previously private. We also support the ability of users to anonymously access and provide information. We note recently concerns that real name policies are used in arbitrary manner, often against cyber-dissidents who need to protect their identities or face harsh sanctions.

Summary

ARTICLE 19 welcomes the recommendations from the Committee. We recommend that recommendations be revised to require that companies that provide social networking and search engine services should be more transparent, be prohibited from discriminating against content, require that blocking and filtering are only allowed with legal authority consistent with Article 10, and that users are given stronger protections over the collection and use of their personal information.

ARTICLE 19 would be glad to provide further assistance and information on your draft report and the subject area generally.

Yours sincerely,

David Banisar
Senior Legal Counsel

² See e.g. Blowing Up in Their Facebook, Transitions Online, 9 March 2011. Available at <http://www.tol.org/client/article/22231-blowing-up-in-their-facebook.html>