

DYNAMIC COALITION ON PLATFORM RESPONSIBILITY

Report of the annual DCPR meeting, held at the 2015 IGF

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MEETING OVERVIEW

The 2nd meeting of the Dynamic Coalition on Platform Responsibility took place on November 11th, 2015. Its main purpose was to present and debate the "Recommendations on Terms of Service and Human Rights", an output document developed by DCPR members through a consultation process over the year 2015. The document is a result of the inputs obtained from a number of stakeholders throughout the DCPR mailing list and the dedicated participatory platform of the IGF.¹ The main recommendations were included into 10 different Idea Rating Sheets, utilized in order to receive feedback by the entire IGF Community.²

The meeting was introduced by two keynotes, addressing issues such as transparency, fairness and the situation of imbalance between users and platform operators. President of the French Digital Council Benoit Thieulin affirmed the importance of not equating digital governance to inertia, and urged to address a number of Internet Governance issues at the international level. To that end, he drew attention to the concept of “platform loyalty” as fundamental to promote user trust, as described in the recommendations of the French Digital Council. Furthermore, he called for some form of collective intelligence aimed at fostering transparency and giving visibility to online platform practices.

UN Special Rapporteur on the Right to Privacy Joseph Cannataci evoked the idea of platforms as “parallel universe”, with autonomous rules, which may disregard the restrictions imposed in different jurisdictions. He emphasized that technical solutions enabled by the use of specific hardware or software have the potential to foster the full enjoyment of fundamental rights such as privacy. Touching upon the issue of effectiveness of protection, he stressed that online platforms may also generate trust within their “parallel

¹ The DCPR Recommendations on terms of Service and Human Rights can be accessed at <http://review.intgovforum.org/igf-2015/dynamic-coalitions/dynamic-coalition-on-platform-responsibility-dc-pr/>

² The DCPR Idea Rating Sheets can be found at <http://www.intgovforum.org/cms/surveys>

universe”, as it has been shown, for instance, by the platform eBay in offering a quick, easy and affordable dispute resolution system.

a. Presentation of the Recommendations on Terms of Service & Human Rights

The meeting continued with DCPR coordinators explaining the participatory process that led to the elaboration of the Recommendations as well as their content. The document, aimed to promote responsible behaviour on the part of the platforms, with regard to the respect of platform users’ human rights. Particularly the Recommendations departed from the analysis of existing human rights documents, from which both minimum standards (“shalls”) and best practices (“shoulds”) were identified. In particular, the document focused on the three human rights to due process, privacy and freedom of expression. DCPR coordinators then succinctly explained how those three main subjects formed part of the responsibility of online platforms.

b. High Level panel Discussion

The discussion of the High Level panel Discussion began with the intervention of Patrick Penninckx, from Council of Europe Information Society Department. Penninckx stressed that the conformity of platforms’ terms of service with human rights standard constitutes a central concern for the Council of Europe, whose 47 member states recently adopted the Recommendations on a Guide on Human Rights for Internet Users. He also suggested that the European Court of Human Rights is still searching for guidance on the role that platforms should play, and for this reason, the cooperation of the Council of Europe with the Fundação Getulio Vargas on its “Terms of Service & Human Rights” project is particularly important to provide guidance for judges and platforms themselves. Aside from looking closely at intermediaries and service providers over the next 2 years, the Council of Europe has foreseen in its forthcoming its Internet Governance strategy to establish a platform for discussion between Internet companies, states and various associations on issues such as model contractual clauses, and principles of accountability and transparency for the processing of personal data.

Subsequently, Veridiana Alimonti, from the Brazilian NGO Intervozes, praised the recommendations made by DC PR, drawing a parallel with the Brazilian framework.

Alimonti explained the Brazilian provisions concerning the transparency and fairness of the contractual clauses that consumers are presumed to have agreed upon. She also suggested incorporating specific guidance to prevent abuse of copyright takedown requests, and to consider a revision of the recommendation of requiring further consent for the provision of new services –implying that this should be a minimum standard (“shall”) rather than a best practice (“should”).

The last panelist, Marcel Leonardi, from Google, presented the view of the private sector, in particular about the strive between clarity in terms of service and the need to conform to local legislation, as well as to respect confidentiality agreements and protect trade secrets. He also called attention to the fact that the DCPR Recommendations seem to mainly target big companies, and that those recommendations could inhibit innovation among small businesses. Finally, while commenting on the insufficient incorporation of the inputs by the private sector on the issue of consent for data collection, aggregation and use, he commended the DCPR work as an important step forward in the debate.

The roundtable ended with a discussion around the relationship between the respect of privacy and responsibility.

CONCLUSIONS AND FUTURE STEPS

The document received positive and constructive feedback, both within and outside the meeting including in the context of the IGF’s main session for Dynamic Coalitions, where the abovementioned Idea Rating Sheets were opened for comments. Accordingly, a next step for the DCPR will be to incorporate this feedback into a more comprehensive document. In addition, the confirmation by the Council of Europe of the importance of providing guidance online intermediaries in concrete forms as described in its Internet Governance Strategy creates a clear opportunity for the DCPR to develop concrete suggestions that may be taken into account by both national and international policy-making processes. As stated by Penninckx, better self-regulation of providers “is the way forward”.

Furthermore, consensus emerged amongst participants and panelists with regard to the need for further multistakeholder dialogue and to the benefit that initiatives such as the DCPR may have in fostering better comprehension and inter-stakeholder cooperation. To this latter extent, the DCPR has been considered as a valuable platform for future synergies aimed at the elaboration of further policy suggestions.