Third Annual Meeting of the IGF Dynamic Coalition on Platform Responsibility

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The annual meeting of the DCPR was structured in two segments. The included two short presentations by Mr. Toby Mendel, Executive Director at the Centre for Law and Democracy, on CLD´s 2016 Recommendations for Responsible Tech, and by Mr. Luca Belli, Senior Researcher at Center for Technology and Society of the Fundação Getulio Vargas, presenting the findings of CTS´s Terms of Service and Human Rights Project. The first segment was followed by a discussion with participants. The second segment analysed recent trends and developments about governmental pressures on intermediaries to behave "responsibly". This discussion included an overview of the responsibilisation of internet intermediaries in current legislative proposals, co-regulatory measures (such as the recently adopted EU Code of Conduct on Hate Speech) and the evolving Council of Europe framework for intermediary responsibility.

Featured speakers included:
- Megan Richards, Principal Adviser, DG CONNECT, Eu ropean Commission
- Wolfgang Schultz, Research Director at the Humbolt Internet Institute and Chair of the CoE expert group on internet intermediaries;
- Karmen Turk, Lecturer at the University of Tartu and member of the CoE expert group on internet intermediaries;
- Ilana Ullman Ranking Digital Rights

1st segment

Toby Mendel highlighted the differences between the CLD's 2016 Recommendations for Responsible Tech and the 2015 DCPR Recommendations on Terms of Service and Human Rights. The CLD Recommendations cover themes such as transparency, content and privacy. He stressed the need for regulation to provide clear standards for privacy and data protection.

Luca Belli presented the results of a research developed on the Center for Technology and Society concerning Terms of Service and Human Rights, which explores the degree of compliance with of human rights protection of the ToS of 50 online platforms.. He stated that ToS are not only the basis of a relationship between user and platform, but also but also a private ordering that puts the

platform in a position of private sovereign. It is a judicial power, because they can decide when to take down a content; it is also an executive power, because they can implement the rules defined before.. ToS were analyzed in three categories: freedom of expression, privacy protection and rule of law and due process. The general conclusions were:

- the documents are vague and include very technical terms
- it is not easy to identify the documents that regulate the relationships between the author and the user, because sometimes they are not well referenced
- the documents do not provide the necessary information to create an informed consent.
- Only 70% of the analysed platforms allow users to notice when there is an abusive content, but only 48% notify the content owner.
- Only 32% of the platforms allow anonymous or pseudonymous use,.
- 66% of the platforms explicitly state that will keep on tracking users in other websites.
- 80% of the platforms state that third party can monitor the user when using their platform, but does not say who are these parties and which kinds of data will be provided.
- Only 30% of the platforms commit to notify when ToS are modified
- Only 26% of the platforms include conditions that are waiver for class actions.
- 86% of the platforms establish exclusive jurisdiction, usually in California.

Questions from the audience

1. How they have been taking b2b relations into account?
2. The Internet has been built on private property and the alternative to that is worse. There is a risk that the governance model only protects users from "good" countries.
3. Is there an alternative to the opt out? How does it affect the business model?
4. Opt out on privacy. How should you pay for human rights?
5. The private sector should be able to edit their own standards as long as it's not politically or ideologically based. Commentary.
6. Don't companies have a responsibility to stay in business? If a company took all the recommendations, it could be out of the market. How to balance it with the economic costs?

2nd segment

Megan Richards briefly commented the regulatory role on intermediaries in Europe. She argued that their position is constrained by competition laws and directives for specific sectors. The background studies on online platforms' market have led the Commission to refrain from regulating so far, for the theme is too complex. Nonetheless, there has been advancements on the definition of codes of conducts. The one related to protection of children online had no objections. The other one,

concerning illegal hate speech websites was a bit controversial, specially in the US. The companies now have to follow a series of procedures to fight against hate speech.

Wolfgang Schultz presented the preliminary discussions of the CoE expert group on internet intermediaries. In the group meetings they first topic was human rights dimension of computational data processing, mostly algorithms. They were as well worried with requests to take down of contents and government monitoring. State transparency and access to an effective remedy is also an issue the group wishes to explore in the meetings. Finally, he mentioned the struggle on the definition of the term "intermediary" and the choice of the type of approach the group will deliver (general or directed to specific types of intermediaries).

Karmen Turk briefly described the new decisions from the Court of Human Rights and the CoE's directives. She highlighted the 2015 decision from the ECHR in Delfi, that changed the liability paradigm in Europe. She criticized both the Code of Conduct for being too vague, and the new directive on Copyright for being potentially in contrast with privacy protections set by article 15 of the eCommerce directive.

Ilana Ullman presented some of the results of the Corporate Accountability Index from Ranking Digital Rights, a project that aims to create global standards on how ICT should respect freedom of expression and privacy. The project evaluated 22 companies on the basis of indicators such as governance, privacy and freedom of expression. According to the results, there are no real winners: the highest score was 65%. It became apparent that users are left out in the dark about many practices affecting freedom and privacy: even for researchers it was often difficult to find documentations. The report points out that every company do at least something well and that transparency reporting is becoming more of a standard practice. However, she mentions that no evaluated company includes reporting on removals that result from ToS violations. Finally, the research showed that all companies can improve their performance in the short to medium term, even without regulatory changes in their contexts.

Some questions remain open:
1. Hate speech code of conduct. If there are no courts involved in most of the takedown notices, how can we guarantee that the content is in fact illegal?
2. What is the responsibility of platforms when facing terrorist issues? Such responsibility could easily be distorted into censorship.
3. Some provisions on consumer protection will impact business models. This consideration has to be kept that in mind when talking about regulation.