OHCHR Accountability and Remedy Project III
Global Partners Digital Submission

About Global Partners Digital

The advent of the internet – and the wider digital environment – has enabled new forms of free expression, organisation and association, provided unprecedented access to information and ideas, and catalysed rapid economic and social development. It has also facilitated new forms of repression and violation of human rights, and intensified existing inequalities.

Global Partners Digital is a social purpose company dedicated to fostering a digital environment underpinned by human rights and democratic values. We do this by making policy spaces and processes more open, inclusive, and transparent, and by facilitating strategic, informed, and coordinated engagement in these processes by public interest actors.

Introduction

The critical role that online platforms play when it comes to the exercise of the right to freedom of expression is increasingly recognised.[1] With around half of the global population (and rising) now connected to the internet, more and more people are turning to online spaces in order to communicate, and seek and receive information, particularly in societies where censorship and other restrictions on freedom of information limit opportunities in the "offline" world. The ability for individuals to communicate via these online platforms means that the freedom of expression they enable often acts as a gateway for other rights, such as the rights to association and peaceful assembly, and the right to education.

These online spaces are, however, largely created and managed by a small number of private companies. And as David Kaye, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted,

> "*The contemporary exercise of freedom of opinion and expression owes much of its strength to private industry, which wields enormous power over digital space, acting as a gateway for information and an intermediary for expression.*"[2]

The power that these online platforms have over what their users can and cannot say, and in their ability to prohibit particular forms of speech, behaviour and activity, means that the decisions they make can have significant impacts upon their users' human rights. While often overlooked when compared to other sectors, online platforms have the ability to cause serious adverse impacts upon the human rights of their users, particularly around the right to freedom of expression and other human rights thereby enabled. As such, it is critical to ensure that any examination into non-state based grievance mechanisms recognises both the need to ensure

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[1] There is no universal definition of "online platform" and, indeed, a variety of terms are used to refer to tech companies who provide services to individuals. For the purpose of this submission, we use the term "online platforms" to refer to those tech companies whose focus is on providing services allowing users to interact with each other, primarily via creating, sharing and accessing content, particularly social media and search platforms.

[2] UN Human Rights Council, *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, UN Doc. A/HRC/32/38, 11 May 2016, Para 2.

that online platforms provide grievance mechanisms, and the specificities around what effective grievance mechanisms look like when it comes to online platforms.

In this submission, we look at how considerations relating to online platforms and freedom of expression could be considered in the ARP III project's workstreams. Many of the issues relating to non-state based grievance mechanisms are the same, or similar, to other sectors and other human rights. As such, this submission focuses on the specificities around online platforms and freedom of expression that raise issues which might not be considered elsewhere.

Work stream 1: Ways to meet the "effectiveness criteria" of Guiding Principle 31

In our White Paper, "A Rights-Respecting Model of Content Regulation by Platforms",[3] we set out proposals for how online platforms should undertake content moderation in a way consistent with their responsibility under the UN Guiding Principles (UNGPs) to respect human rights, particularly the right to freedom of expression. As part of these proposals, we looked specifically at the development and implementation of grievance and remedial processes, and how these could be done in a manner consistent with Principles 31 of the UNGPs.

UNGP 31(a) Legitimate

There is a particular challenge for online platforms around ensuring that grievance mechanisms are legitimate – and, indeed, a challenge more broadly when it comes to respecting freedom of expression. This challenge stems from the fact that affected individuals cannot be easily identified due simply to being based in a particular location (such as near the company's physical sites or operations) or belonging to a particular group. Anyone who uses the online platform can be potentially affected, meaning that for online platforms operating globally, this could be up to billions of people all across the world. The company running the platform, however, may only have a single base, and limited on the ground engagement with users. As such, there are particular challenges and considerations involved when online platforms are developing their grievance mechanisms, since involving relevant stakeholders – including users – is critical to ensuring that those mechanisms have legitimacy.

Online platforms therefore need to give careful consideration as to how they will ensure that the voices of affected users can be reflected and incorporated in the design of the grievance mechanism and – where appropriate – its implementation. The types of relevant stakeholders and groups best able to provide this input will vary depending on the platform, but are likely to include the following:

- Experts in freedom of expression generally (such as academics or human rights organisations)
- Groups advocating on behalf of particular vulnerable or marginalised groups, such as women, children, persons with disabilities, LGBTI individuals, and ethnic and religious groups
- Linguistic experts
- Law enforcement agencies
- Experts in terrorism and radicalisation
- Psychologists

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[3] Global Partners Digital, *A Rights-Respecting Model of Content Regulation by Platforms*, May 2018, available at: https://www.gp-digital.org/wp-content/uploads/2018/05/A-rights-respecting-model-of-online-content-regulation-by-platforms.pdf.

UNGP 31(b) Accessible

Ensuring that grievance mechanisms are accessible should, in some ways, be more straightforward for an online platform than for other sectors since those very platforms, which are available to users, can themselves provided the grievance mechanism. As with grievance mechanisms generally, online platforms should consider barriers which may exist for a user to appeal decisions and engage in the grievance mechanism, such as language or disability. Global online platforms with users from across the world might need to be pay particular attention to language as a barrier, since the mechanism will need to be available to users using a vast array of languages.

Specifically, online platforms should make clear on those platforms how a user can challenge a decision which has been made to remove content or to suspend their account. Users should always be informed when their content has been removed or their account suspended. When informing the user, clear information should be given on how the user can appeal the decision.

UNGP 31(c) Predictable

The grievance and remediation process should be made public. This means that online platforms should set out publicly what the review process is if a user challenges a decision to remove content or to suspend their account, and ensure that this information is easily accessible to users on their platform. The information should also set out an indicative timeframe and what the available remedy (or remedies) will be if the appeal is successful (bearing in mind the suggestions noted below in relation to UNGP 31(f).

UNGP 31(d) Equitable

Equity requires aggrieved parties to have access to expertise, advice and information so that they can engage in grievance mechanisms on fair terms. In order to be equitable, online platforms should inform users with full reason why they have taken action which could restrict someone's right to freedom of expression, such as taking down content or suspending their account. This is a particularly important element given that, unlike "offline" adverse human rights impacts, users may not even be aware that their right to freedom of expression has been restricted by an online platform's decision. However, it also raises challenges for online platforms since the decisions which restrict freedom of expression may not have been taken by a human, but through an automated decisionmaking process, such as an algorithm or artificial intelligence. Informing a user as to why the online platform has made the decision may require the platform to explain how its algorithms operate.

UNGP 31(e) Transparent

Online platforms should ensure that users who appeal against decisions to remove content or suspend their account are informed about the progress of the appeal at regular intervals. More broadly, online platforms should consider publishing regular information on their grievance and remedial mechanisms. Such information could include the number of grievances raised, how they were dealt with, and what remedies (if any) were provided.

UNGP 31(f) Rights compatible

Platforms should ensure that the available remedies if a user is successful in appealing a decision are effective. This can be challenging when it comes to restrictions on freedom of expression, as compensation - a traditional form of remedy for adverse human rights impacts - is unlikely to be effective. Instead, the reinstatement of removed content or a suspended account may be the most effective. However, others, such as a public apology, a guarantee of non-repetition, or a review/reform of a particular policy or process, may also need to be considered.

It is particularly important for online platforms to be aware of the risks that remedies could themselves, constitute an adverse impact on users' human rights – particularly the right to privacy – and to ensure that this is considered: for example, public apologies about inappropriate or mistaken decisions should not identify the user concerned without their consent, or otherwise interfere with their privacy.

UNGP 31(g) A source of continuous learning

With grievance and remedial mechanisms still a new concept to online platforms, feedback and dialogue is particularly important to help ensure that these mechanisms are continually developed to meet the needs of users and other potentially impacted groups and individuals. Online platforms should regularly review the frequency, patterns and reasons for appeals against the removal of content or the suspension of accounts, to identify whether any steps need to be taken in reviewing or reforming internal policies and processes to avoid future inappropriate or mistaken decisions.

UNGP 31(h) Based on engagement and dialogue

Online platforms should ensure that they engage in regular dialogue with users and other relevant stakeholder groups once the grievance mechanism has been established in order to identify any barriers to continued confidence.

Work stream 5: meaningful stakeholder involvement in the design and implementation of remedial outcomes

As well as being an important part of ensuring compliance with the UNGPs, there are a number of benefits that come with engaging with stakeholders to design, implement and review an online platform's grievance and remedial mechanisms. These include building trust in the process and making the outcome more legitimate (see above under UNGP 31(a)). However, as noted above, stakeholder engagement by online platforms raises particular challenges that do not exist for companies whose effects are only felt by individuals in particular locations (such as near a company's site). An online platform which operates globally may have millions of potential users scattered around the world, but very few bases making engagement particularly difficult.

However, there are also opportunities that exist when it comes to stakeholder engagement by online platforms. The platform itself can be used as a mechanism for engagement, and the data collected by online platforms about their users can be used to help inform that engagement. Here, we set out some questions online platforms should consider so as to ensure meaningful stakeholder involvement in the design and implementation of grievance and remedial mechanisms.

Question	Initial steps for all online platforms	More advanced steps for larger online platforms
Who are the users of my platform and what does this mean in terms of potential issues?	The platform should consider its audience and any particular groups for whom the platform is designed, or who use it in practice, such as children or particular interest groups.	The platform should undertake a review of any data which indicates the characteristics of the platform's audience.
Have any particular issues already come up?	The platform should review any feedback from users or other affected groups in relation to content	The platform should undertake a review of the implementation of its content moderation policies

Question	Initial steps for all online platforms	More advanced steps for larger online platforms
	moderation policies or decisions, as well as any existing grievance or remedial mechanisms. The platform should also review any assessment it has itself undertaken in relation to its content moderation policies and decisions, as well as any existing grievance or remedial mechanisms, in order to identify potential issues.	and decisions, incorporating both qualitative and quantitative assessments, as well as any existing grievance or remedial mechanisms.
Who are the external stakeholders that need to be involved in this process?	If the platform has not identified potential external stakeholders to involve, it could consider consulting industry peers that have already developed a grievance and remedial mechanism, those behind sector-based multistakeholder initiatives who have experience of advising companies in a similar position, and business associations. Note that not all stakeholders need to be involved in every discussion. Relevant stakeholders are those with a direct interest and expertise in the issue at hand, who can contribute credible and constructive input and engagement to the process. Stakeholders can be involved more fully through, for example, the creation of a multistakeholder committee (or similar body) to collaborate throughout the process of developing grievance and remedial mechanisms.	The platform should also consider involving socially responsible investors, clients, civil society experts, consumers, campaign groups, academics and community groups (including potential end users). The platform should take into consideration the voices of marginalised communities; and pay special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation, bearing in mind the different risks that they may face. Those who participate from each sector should be diverse in terms of ethnicity, socio-economic group, gender and otherwise as appropriate to the scope of the platform.
How can my platform consult and communicate with users and other affected stakeholders?	The platform should review any existing means by which it, formally or informally, consults with its users. This	After determining which stakeholders or groups should be involved in the process, the platform should

Question	Initial steps for all online platforms	More advanced steps for larger online platforms
	could include mailing lists, feedback forms, or conversations with user groups.	analyse what further steps could be taken to involve these groups, such as by building a relationship with civil society organisations which represents the group, or particular experts in the issues identified.
Is the process sufficiently open and transparent so that consultees can meaningfully engage?	The platform should use existing communications and publicity channels to raise awareness of the process of developing grievance and remedial mechanisms. The platform should also consider how users and other interested stakeholders can input into the finalisation of the grievance and remedial mechanisms. This could include: • A dedicated online survey or questionnaire which allows for comment on proposals • Organising meetings, in person or virtually, for feedback to be provided	The platform could consider developing a consultation document, which should be as short and simple as possible. It should: • be clear what questions are being asked; • limit the number of questions to those that are necessary; • be easy to understand and easy to answer; and • set the rules as clearly as possible, including the period of consultation, and the information targeted for different groups (if applicable). The platform should consider engaging stakeholders in a way that suits them, considering how the language, time zone, and period of the consultation may affect different stakeholders: for example, holidays in different geographical locations. If there are different impacts, the platform should take appropriate mitigating action, such as prior discussion with key interested parties or extension of the consultation deadline beyond the holiday period.
Are the mechanisms available in appropriate	The platform should consider using existing	The platform should translate the mechanisms

Question	Initial steps for all online platforms	More advanced steps for larger online platforms
languages and formats such that all users can understand them?	language translation tools to enable users who speak other languages to be able to understand the mechanisms.	into all major languages used on the platform. The platform should also consider plain language or other formats for users with particular needs, such as learning difficulties.
Are users sufficiently informed of the mechanisms?	The platform should use existing communications and marketing tools to inform all users of new mechanisms and when they come into force. This could include a notification when users log on to the platform.	