

Contribution Dutch Government

4 February 2016

Request Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression as follow-up to Human Rights Council Resolution 25/2

Issue-areas

Actors in ICT-sector

The Dutch Government is interested to explore further possibilities on policy in this area. Currently there is no formal opinion on which actors in the ICT-sector implicate freedom of expression and opinion. Preliminary ideas are that the activities of any private company that enable public expression on the World Wide Web in form of posts (blogs, tweet, etc.) implicate these freedoms. These are media platforms (from newspapers online to social media and message boards). Search engines enable collection of information to form an opinion and are hence related to the freedoms. Private communication is not specifically about expression opinions in the open and therefore the implication on the freedoms of companies offering a platform for private messaging is less clear. Enablers of the internet like exchanges and hosting companies are vital to the functioning of the Internet and therefore implicate the freedoms. Providers of cloud services do not necessarily implicate freedom of expression and opinion as a cloud could be perceived as archive.

Legal and policy issues concerning the ICT-sector

The Dutch Government is aware of the need to think about how rules can be made more flexible and more future-proof in response to changing economic and social dynamics and commits itself to actively seeking out those situations where innovation is being impeded by regulations. A letter sent to the Dutch House of Representatives elaborates this commitment, specifically addressing the rise of digital platforms and the collaborative economy. More research and thinking is ongoing to address the use of Big Data in relation to privacy protection by the summer of 2016 at the latest.

Human rights principles or obligations of the private sector

Dutch policy on business and human rights is based on the following key documents:

- The United Nations Guiding Principles on Business and Human Rights which were unanimously endorsed by the UN Human Rights Council on 16 June 2011. The government regards the UN Guiding Principles as an integral part of its foreign and human rights policy, putting them into practice is an important priority for the Netherlands. This is also a key priority for the Netherlands during the current presidency of the European Union.
- The Dutch National action plan on business and human rights published by the Ministry of Foreign Affairs in December 2013. The guiding principle is that businesses have a social responsibility to apply the same human rights norms both in the Netherlands and elsewhere.¹
- The OECD Guidelines for Multinational Enterprises. The Netherlands actively promotes the OECD Guidelines and wants Dutch companies to be aware and compliant with these guidelines.

These non-binding policy documents have no specific focus on private corporates in the ICT-sector. No decision has been taken about whether IT-companies touch upon freedom of expression and opinion and in that case, whether explicit regulation and guidelines should be considered.

¹ <https://www.rijksoverheid.nl/documenten/publicaties/2014/01/30/national-action-plan-on-business-and-human-rights>

Nevertheless, the Netherlands devote specific attention for technology companies and compliance to human rights standards when technological products could also be used for purposes that contrast with freedom of expression and opinion like surveillance of internet users or blocking internet applications. Also in the area of export controls of dual use products a human rights element could play a bigger role, focus would have amongst others surveillance technology. The Netherlands aims to stimulate the discussion with EU member states on how to develop policy in this area.

Other remarks

The Council of Europe has established a Committee of experts on Internet Intermediaries (MSI-NET) under the Steering Committee on Media and Information Society (CDMSI). The Netherlands proposed Ben Wagner as external expert to participate in this committee that will prepare a draft recommendation on Internet intermediaries and prepare a study on human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications.

Further Reading

- WRR report 'The public core of the Internet. An international agenda for Internet governance' <http://www.wrr.nl/en/publicaties/publicatie/article/de-publieke-kern-van-het-internet-1/>
- AIV report 'The Internet. A global free space with limited state control' <http://aiv-advies.nl/download/5cd0ea7e-79d2-4ba5-8832-2b06b117f317.pdf>
- FOC working group 3 report on 'privacy and transparency online' <https://www.freedomonlinecoalition.com/wp-content/uploads/2015/10/FOC-WG3-Privacy-and-Transparency-Online-Report-November-2015.pdf>