

## **General comments on the overall draft 2.0 Guidelines**

The Internet Society Brazil Chapter, hereinafter called ISOC Brazil, welcomes the opportunity to submit this contribution to the Draft 2.0 of the Guidelines for regulating digital platforms.

ISOC Brazil is the Brazilian chapter of the Internet Society, and therefore is the vehicle that brings domestically the promotion and discussion of the principles advocated by the Internet Society, as well as its major activities and positions. The organization has more than a thousand active members in Brazil from diverse backgrounds: the technical community involved in the technological development of the Internet and its operation; the business community involved in Internet infrastructure and operation (such as access providers) and content development (such as media and applications companies); civil society organizations and individuals that are active in the promotion of various digital rights associated to the Internet; and the academic communities from different areas that carry out research on the development and use of the Internet and its social and economic impacts (such as Law, Social Sciences, Media, Political Sciences, Sociology and Computing).

The Internet Society supports and promotes the development of the Internet as a global technical infrastructure, a resource for enriching people's lives, and a force for good in society. In the ISOC Brazil Chapter, especially because of recent political developments in our country, we are concerned with the policies that govern content moderation, especially considering the right to freedom of expression. As a challenging subject, we are pleased to contribute to the debate, although not exhaustively, hoping to build a regulatory model for regulating platforms.

Our recommendations below are based on the discussions held in the Internet Responsibility Working Group of the ISOC Brazil Chapter, summarized in the "10 Recommendations on the Brazilian Model of Intermediary Liability" [1] , and aligned with the model in force provided by Brazilian Federal Law 12.965/2014, also known as the Brazilian Internet Bill of Rights or "Marco Civil da Internet".

The UNESCO Guidelines are comprehensive and reflect best practices on content moderation and platform regulation. As proposed, we advocate for the importance of multistakeholder participation in developing regulatory models to guarantee the balance between the interests of all those involved and the preservation of innovation and technological development. However, policy measures should consider existing services and utilities' inherent distinctions and particularities, their legal nature, economic scale, and position in the digital ecosystem. Such multidimensional asymmetries among digital players should be considered to guide the

development of legal guarantees and to mitigate the risks of legal obsolescence and obstacles to innovation.

We understand that regulating the internet application layer is essential and urgent. However, it is also necessary to ensure that such models maintain the principles that govern the internet infrastructure, protecting it from splitting into isolated networks that do not interconnect or interoperate efficiently. Moreover, as mentioned in our Recommendation 7, "Laws and regulations shall not target any specific business or activity developed by Internet Applications Providers, in order to avoid legal obsolescence caused by the rapid evolution of Internet technologies and business models."<sup>[1]</sup>

We also noted special provisions for "crisis events" in the UNESCO Guidelines. Events such as the covid-19 pandemic and the invasion of the Palácio do Planalto in Brazil led us to consider how to define "crisis events." Thus, a framework would be helpful to establish baseline criteria that could trigger specific measures by governments and platforms but also protect users from the vigilantism and repression usually associated with emergency crisis measures. Many countries have been abusing the concept of "crisis event" to repress opposition to governments. Moreover, it could end up attributing to a single actor a highly discretionary control over what may or may not be subject to moderation in social networks, including the ability to apply severe punishments to companies based on a lobbyist distortion.

In the same vein, we emphasize that it is essential that the fight against illegal content on the Internet does not jeopardize the security of users, and, therefore, strong encryption is vital to keep online data and communications private and secure. Even democratic regimes, such as the EU and UK, have proposed measures, for instance for fighting child online abuse, that are not compatible with strong end-to-end encryption and thus with user privacy.

In addition, we understand that accountability on the Internet gives users the assurance that organizations and institutions they interact with are directly or indirectly acting in a transparent and fair way. In an accountable Internet, entities, services, and information can be identified and the organizations involved will be held responsible for their actions. The proposed Guidelines creates a mandatory standard of measures that must be adopted by social media companies, including requirements for transparency and user responsiveness with likely positive effects. However, regarding actual moderation practices, it would be significantly more difficult to hold companies accountable if they fail to moderate harmful content that is not foreseen in an exhaustive list, such as disinformation. Therefore, offenses to rights committed on social media, but not listed in the respective terms of use for example, could occur relatively freely, so that providers would not only be discouraged, but prevented by law from making any efforts to mitigate these violations. Distrust of the veracity and safety of information from this source, leading to the identification of cyberspace as a dangerous and violent environment, may

profoundly weaken the possibility of defending the Internet against assaults that could harm the search for its aspirational state, especially in relation to its trustworthiness and accountability of Internet agents. As the average citizen loses confidence in the global network of networks as a force for good, it becomes much easier to implement regulations or technological interference that negatively affects the core of the Internet as we know it today and the aspirational state we hope it will reach. Thus, the implied legal prohibition on moderating content related to misinformation, bullying, and other actions detrimental to digital human rights or the public interest is extremely troubling.[2]

We reinforce the importance of the Unesco consultation process and the effort to conduct the debate. We welcome further discussions on how to apply these guidelines to promote an open, globally-connected, secure, and reliable internet.

#### References:

[1] Available at <https://isoc.org.br/uploads/download/137>

[2]

<https://www.internetsociety.org/resources/doc/2022/internet-impact-brief-proposals-to-regulate-content-moderation-on-social-media-platforms-in-brazil/>