

A framework for analysing disinformation laws and policies from a human rights perspective

Under international human rights law, any restriction on the information that people are able to search for, receive or impart must meet three tests: it must (i) have a legal basis, (ii) pursue a legitimate aim, and (iii) be necessary and proportionate to achieving that aim.

Here are the key questions to ask when looking at proposals to tackle disinformation:

1

Does the policy include any restrictions on particular forms of speech or content? If so, are these restrictions set out in law?

Restrictions which have no legal basis will not comply with international human rights law and standards.

2

Is there clarity over the precise scope of the law?

There should be sufficient clarity in the scope of the law or the policy so that an individual should reasonably be able to know what is and is not restricted. General prohibitions based on vague or ambiguous ideas such as “false news” or “non-objective information”, for example, would fail this test.

3

Is speech or content restricted only where it is in pursuance of a legitimate aim?

Restrictions on freedom of expression must pursue one of the aims set out in Article 19(3) of the ICCPR: to protect the rights or reputations of others, to protect national security, public order, public health or morals.

4

Do any restrictions in the law account for instances where the individual reasonably believed the information to be true?

A person should not be held liable for disseminating false or misleading information without if they reasonably believed the information to be true or accurate. There should only be liability if the person knew that it was not true, and intended to cause harm.

5

Are determinations of whether speech or content is disinformation made by an independent and impartial judicial authority?

An independent and impartial judicial authority may refer to a court, judge, or other entity that makes objective decisions without external pressure. A government Minister or officers would not be considered an independent and impartial judicial authority.

6

Are any responses or sanctions proportionate?

A response or sanction will be proportionate only when it goes no further than is absolutely necessary to prevent or limit the harm that has occurred or might occur. Heavy fines and the blocking of websites are likely to be disproportionate responses, unless the harm caused was significant.

7

Are intermediaries liable for third party content?

Intermediaries should only be liable for third party content where (a) an intermediary specifically intervenes in that content; or (b) an intermediary refuses to obey an order adopted in accordance with due process guarantees by an independent, impartial, authoritative oversight body (such as a court) to remove it, and they have the technical capacity to do so.