



Digital Inclusion and Internet Content Governance

IACHR Inter-American Commission on Human Rights

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SPECIAL RAPPORTEUR FOR FREEDOM OF EXPRESSION

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Digital Inclusion and Internet Content Governance

**Office of the Special Rapporteur for Freedom of Expression
of the Inter-American Commission on Human Rights**

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On June 4, 2024, the report was approved by an absolute majority and includes a reasoned dissenting opinion by Commissioner Stuardo Ralón Orellana. In accordance with the provisions of Article 19.2 of the Rules of Procedure of the IACHR, this vote is included at the end of the document.

Contents

Executive summary	1
Introduction	3
CHAPTER I: Deterioration of Public Debate	5
CHAPTER II: Universal Internet Access and Digital Literacy	16
CHAPTER III: Online Content Governance	36
Conclusions and recommendations	70
Reasoned opinion	73

Executive summary

1. This report has been prepared by the Office of the Special Rapporteur for Freedom of Expression (SRFOE) of the Inter-American Commission on Human Rights (IACHR) and reflects to the resolution issued at the fifty-second regular session of the General Assembly of the Organization of American States (OAS), held in Lima, Peru, from October 5 to 7, 2022, and the consequent resolution of the fifty-third regular session, held in Washington, D.C., United States, June 21-23, 2023.¹ In these resolutions, the OAS asked the Office of the Special Rapporteur to prepare a report analyzing the current situation of digital accessibility and inclusion, focusing particular attention on digital literacy and civic skills and online content moderation, in the context of international human rights law.²
2. The digital era has particularly reshaped the dynamics of freedom of expression and access to information. The internet, which initially emerged as a promising platform for the democratization of access to information, now faces significant challenges that jeopardize its ability to serve as a free, open, and inclusive space.³ This report addresses these challenges, considering the crucial role and potential of the internet for the effective realization of human rights and the promotion of democratic societies, as well as the risks associated with its governance.⁴
3. Since its inception, the internet has offered new opportunities for the expansion of freedom of expression. However, its evolution has also witnessed the emergence of new barriers and threats to this fundamental right.⁵ Inequalities in access to digital technologies, coupled with the concentration of control in a few platforms, have created an urgent need to develop international standards that promote a more inclusive and equitable approach.
4. The Inter-American Commission and its Office of the Special Rapporteur for Freedom of Expression have paid special attention to the guarantees of the effective enjoyment of freedom of expression and other human rights on the internet and have expressed their views on several occasions. Notably, in 2021, the IACHR and its SRFOE warned that freedom of expression on the internet is at an inflection point in the hemisphere, characterized by a deterioration of public debate, the need to reconcile content moderation processes and mechanisms with democratic and human rights standards, and a shortage of digital literacy.⁶ In response, the IACHR initiated the Dialogue of the Americas on Freedom of Expression on the Internet, a multi-stakeholder dialogue process involving member States, civil society organizations, academia, and the private sector.⁷

¹ OEA, AG/RES. 2991 (LII-O/22), Promoción y Protección de los Derechos Humanos, sección XX, para. 9; OEA, AG/RES. 003 (LIII-O/23), Promoción y Protección de los Derechos Humanos, sección IX.

² OEA, AG/RES. 2991 (LII-O/22), Promoción y Protección de los Derechos Humanos, sección XX, para. 9; OEA, AG/RES. 003 (LIII-O/23), Promoción y Protección de los Derechos Humanos, sección IX.

³ OCDE, *Rights in the digital age: Challenges and Ways Forward*, diciembre 2022; ONU, *Mapping and addressing threats to civic space online*, 10 de junio de 2023; ONU, *Hate Speech Is Spreading Like Wildfire on Social Media*, comunicado de prensa SG/SM/19578, 14 de mayo de 2019; Human Rights Watch, *Digital Disruption of Human Rights*, 25 de marzo de 2016.

⁴ CIDH, Relatoría Especial para la Libertad de Expresión, *Libertad de expresión e internet*, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 diciembre 2013.

⁵ CIDH, Relatoría Especial para la Libertad de Expresión, *Libertad de expresión e internet*, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 diciembre 2013; CIDH, Relatoría Especial para la Libertad de Expresión, *Estándares para una internet libre, abierta e incluyente*, OEA/Ser.L/V/II. CIDH/RELE/INF.17/17, 15 de marzo de 2017.

⁶ CIDH, *La CIDH advierte un punto de inflexión de la libertad de expresión en internet y convoca a diálogo en la región*, Comunicado de prensa no. 26/21, 5 de febrero de 2021.

⁷ El *Diálogo de las Américas sobre Libertad de Expresión en Internet* inició con una fase de consulta pública que incluyó encuestas y al menos 25 foros de discusión públicos con la participación de la academia, el sector privado, la sociedad civil y los Estados. Se recibieron 38 respuestas. Los aportes de los Estados a través de las encuestas se realizaron en el eje de moderación de contenidos, lo cual denota su atención en este tema particular. A ello se suman 27 entrevistas a personas expertas en los temas, y 108 aportes recibidos a los centros de conocimiento en diversos formatos. Estos insumos están disponibles en la página web del Diálogo de las Américas disponible en español, inglés y portugués. En la segunda fase, la RELE conformó el Comité ad hoc del Diálogo de las Américas integrado por cuatro personas, en representación de los sectores público, privado y sociedad civil: Observacom, Red en Defensa de los Derechos Digitales (R3D), Asociación Latinoamericana de internet (ALAI), y el gobierno de Chile a través de la misión permanente de Chile ante la OEA, quienes dieron especial seguimiento y apoyo a la elaboración del presente informe a través de distintas participaciones orales y escritas con la RELE. Paralelamente, la Relatoría entabló otros canales de escucha a distintos actores. En el marco de la IX Cumbre de las Américas, la Relatoría organizó el panel "Transformación digital: derechos humanos e internet", y formó parte del proceso de diseño del Plan Estratégico de la CIDH 2023-2027, que culminó con la creación del programa P19 Promoción de los Derechos Humanos en el ambiente digital y uso de las tecnologías. Además, el Diálogo realizó al menos 25 eventos sobre libertad de expresión en internet y temas relacionados, como los

5. This report is based on principles of international human rights law, and seeks to provide clear normative guidance for member States and other stakeholders in promoting an internet that is truly accessible to all persons, without discrimination. This analysis by the Special Rapporteur has incorporated inputs from diverse actors, including States, academia, and representatives of the technology sector, reflecting a comprehensive and multifaceted perspective on the issues under discussion.⁸
6. The purpose of this report is twofold: first, to highlight the critical importance of ensuring access to the internet as a fundamental means for the exercise of freedom of expression; and second, to propose a content governance framework that respects and promotes international human rights standards. In doing so, the report acknowledges and addresses the significant challenges presented by both misinformation and corporate content moderation policies, both of which can have profound impacts on society and democracy.
7. In short, this report not only offers a diagnostic assessment of current problems, but also suggests proactive ways to ensure that the digital space continues to be an open and democratic forum, facilitating constructive dialogue and the effective exercise of human rights. Through this work, the Office of the Special Rapporteur for Freedom of Expression reaffirms its commitment to promoting a digital environment that is safe, inclusive, and respectful of the dignity and rights of all people.
8. The Office of the Rapporteur is grateful for the input received during the preparation of this report, both from OAS member States⁹ and civil society organizations,¹⁰ as well as the members of the Ad Hoc Committee of the Dialogue of the Americas on Freedom of Expression on the Internet, formed by the organizations Observacom, Red en Defensa de los Derechos Digitales (R3D), ALAI and the Government of Chile, whose active participation during the process was appreciated. The Office of the Rapporteur is especially grateful to the organization El Veinte for its valuable contributions to the drafting of this report.

temas de inclusión, regulación de plataformas digitales y de contenidos online, violencia en línea y desinformación. Entre los eventos se encuentran espacios regionales y globales, en los cuales la Relatoría organizó y/o participó.

⁸ La Relatoría también recopiló información a través de la participación en RightsCon 2022 y 2023, en la Novena Cumbre de las Américas y en la visita realizada a Silicon Valley con representantes de Estados Miembros de la OEA.

⁹ La Relatoría agradece los aportes y la participación de los Estados de Argentina, Bolivia, Canadá, Chile, Colombia, Costa Rica, Estados Unidos, Ecuador, El Salvador, Guyana, Honduras, México, Panamá y Uruguay, durante el proceso del Diálogo de las Américas.

¹⁰ La Relatoría agradece los aportes de las organizaciones Asociación Civil Comunicación para la Igualdad, Asociación por los Derechos Civiles (ADC), Artículo 19 México y Centroamérica, Atypical Group El Salvador/ Red Iberoamericana "El Derecho Informático" La Asociación de Tecnología, Educación, Desarrollo, Investigación, Comunicación (TEDIC), Fundación Karisma, Derechos Digitales, Intervozes, Usuarios Digitales, Centro de internet y Sociedad de la Universidad del Rosario, Centro Internacional de Estudios Políticos y Sociales de Venezuela, Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE), Linterna Verde, Red Femenina de Cuba, Abogados sin Fronteras Canadá, Observatorio Latinoamericano de Regulación, Medios y Convergencia (Observacom), R3D, IPYS Venezuela, Instituto EducaDigital, CódigoSur, Fundación Datos Protegidos, Electronic Frontier Foundation, Asociación Iberoamericana de Protección de Datos y Ciberseguridad, Equality Now, El Instituto Interamericano de Derechos Humanos, la Red de Apoyo Camagüey del Observatorio Cubano de Derechos Humanos, Iglesia Católica de Montevideo, Berkman Klein Center for Internet & Society (academia), la Universidad Galileo, la Universidad Mariano Gálvez (academia), el Observatorio de la Discapacidad de la Universidad Nacional de Quilmes de Argentina, Twitter, Meta, Mozilla, Wikimedia, Freedom House, Unesco, The Datasphere Initiative (Carolina Rossini) y SocialTIC.

Introduction

9. The internet is an essential tool for the storage and dissemination of information, the exchange of ideas, and the supply of public and private goods and services. This has created an inextricable relationship between the internet and human rights, in terms of both the promotion and the potential limitation and violation of those rights.¹¹
10. In a context in which informational power is increasingly concentrated in the hands of States and business enterprises, it has emerged as a vital area for the provision of various services, labor intermediation, and communication. Companies providing online apps and services not only offer technological and data infrastructure but also wield significant influence on social and economic dynamics and the shaping of public opinion.
11. This phenomenon, known as “platformization,”¹² reveals a worrying trend toward the concentration of critical decisions in the hands of a few economically powerful players. The dominance of a few large players in the technology sector limits opportunities for the emergence and sustainability of smaller companies and competition in innovation and the development of new technologies. This has adverse impacts on diversity in the communication infrastructure and on the freedoms of internet users.¹³
12. The current model of centralization and orientation to a digital transformation focused on global expansion, without considering the development of technologies that integrate a diversity perspective, may result in the adoption of tools and technological decisions that fail to reflect the diversity of gender, culture, nationality, racial identity, and other characteristics and identities of users. This approach limits the possibilities of developing a truly autonomous, diverse, and plural digital ecosystem.
13. Democratic societies should continue to aspire to a free internet, governed by a wide variety of actors, that delivers equitable technical capabilities and universal digital skills, and that has sufficient infrastructure and accessibility. However, the concentration of governance in a few actors could result in an exclusionary digital transformation. As the Economic Commission for Latin America and the Caribbean (ECLAC) has cautioned, “certain risks must be considered, for example, that the platform economy may reinforce the concentration of power in a few transnational corporations to the detriment of the region’s economic and social development, and deepen pre-existing gaps and inequalities.”¹⁴
14. Digital transformation has exacerbated the fragmentation of public debate and created a more polarized and hostile digital space, particularly for groups historically marginalized from public debate and their voices. This phenomenon is not occurring in isolation, but is a reflection of violent and exclusionary dynamics in societies.¹⁵
15. Therefore, in this report, the Office of the Special Rapporteur invites reflection on internal corporate governance, which influences public speech and social interactions. It also calls

¹¹ TEDH, Case of Editorial Board of Pravoye Delo and Shtekel v. Ukraine, App. No. 33014/05, Sentencia de 5 de mayo de 2011, párr. 63.

¹² T. Poell, D. Nieborg, D. & J. van Dijck, *Plataformización*, Revista Latinoamericana de Economía Y Sociedad Digital, 2022.

¹³ Rahman, K. Sabeel, *Regulating Informational Infrastructure: internet platforms as the new public utilities*, Georgetown Law and Technology Review, 2018.

¹⁴ Cepal, *La igualdad de género y la autonomía de las mujeres y las niñas en la era digital. Aportes de la educación y la transformación digital en América Latina y el Caribe*, 2023.

¹⁵ CIDH, Relatoría Especial para la Libertad de Expresión, Mujeres periodistas y libertad de expresión, CIDH/RELE/INF.20/18, 31 de octubre de 2018.

on private companies to affirm their commitment to democracy by adopting internal control mechanisms for decision-making that may impact human rights.

16. From their initial conception to the present day, the internet and digital technologies have established themselves as crucial infrastructures and tools for development. This report is situated at a time when new perspectives are emerging toward the decentralization of the web—with Web 3.0 at the center of the debate.¹⁶ In this regard, the SFROE recalls that, despite conflicts of interest and asymmetries, the essence of the internet is its potential to be a tool for empowering citizens and strengthening democratic societies.¹⁷
17. Progress has been made in terms of freedom of expression, but it is not sufficient to meet the emerging challenges in the digital environment. While the Office of the Special Rapporteur has pointed out that human rights must also be ensured in the virtual environment, it considers that certain regulations need to be adapted to address the particularities of digital technologies. It is also crucial to reinforce existing inter-American standards and establish concrete legal obligations for States and business enterprises to ensure the protection of human rights online.
18. All stakeholders in internet governance must commit to developing a free, safe, and inclusive internet for users, under conditions of equality and nondiscrimination, in order to maximize its potential. Conditions must be created and users must be equipped with skills and tools to consume information and develop civic skills in online interactions.¹⁸
19. The task of the Office of the Special Rapporteur in this consolidation of the right to freedom of expression and other related rights is to promote inter-American standards in this area, advocate for their implementation under domestic laws, and strengthen the capacity of States and civil society organizations responsible for promoting the exercise and scope of these rights, as well as to urge business enterprises to commit to adopting best practices on protection, respect, and remedy. To this end, it will take into account the standards of the inter-American human rights system and international human rights law, as well as other sources of international law provided for in multisectoral forums on the subject. Ideally, these standards and recommendations can be harmonized with legislation, regulatory models, administrative and judicial decisions, public and private policies, and the roadmaps of civil society and academia for advancing the promotion of freedom of expression on the internet.
20. Based on this context, this report addresses three thematic sections: (i) deterioration of public debate; (ii) universal access and digital literacy; (iii) and content governance. Finally, the report formulates conclusions and recommendations for States.

¹⁶ BBC, [Qué es la Web3 y cómo podría transformar internet](#), 10 enero 2022.

¹⁷ Jack M. Balkin, [Digital speech and democratic culture: A theory of freedom of expression for the information society](#), Law and Society Approaches to Cyberspace, Routledge, 2017.

¹⁸ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una Internet Libre, Abierta e Incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

CHAPTER I:

Deterioration of Public Debate

Regional context and the role of digital platforms

22. The growth of social media platforms and the new facets of the public sphere in this context—for example, the use of social media by political leaders and government institutions or the rapid, large-scale proliferation of speech—has given rise to both progress and challenges in relation to freedom of expression. As the IACHR has recognized, the internet is one of the technologies that has done the most to enhance the exercise of freedom of expression, since it has turned millions of passive recipients of information into active participants in the public debate.¹⁹ Therefore, human rights standards must also be observed in the digital sphere, since, as stated in a 2011 Joint Declaration, “freedom of expression applies to the Internet, as it does to all means of communication.”²⁰
23. On one hand, the internet is seen as a more pluralistic and accessible environment, in the sense that more people have easier access to content and forums for expression; on the other, it can be a catalyst for hate speech and disinformation,²¹ not only because of its broad accessibility but also because of the anonymity it affords.²² This includes, for instance: speech that aims to question democratic institutions, their processes, and work, which can grow in volume and scale without consideration for verified and verifiable information; speech that could exacerbate or encourage discrimination and violence; and statements that challenge the enforcement of court decisions or that have the potential to foster disregard for democratic processes, such as electoral results, without unequivocal evidence to support it.
24. Advances in digital technologies have brought new dilemmas, such as the challenges posed by the speed with which information is produced and distributed, the volume of information generated by the exponential multiplication of sources, and the ability of information to spread horizontally and “go viral” on this decentralized network, along with the ability to target messages to very specific demographic segments.²³ These practices are detrimental to news consumption, create inequality, and harm citizens’ perception of politics.
25. The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted that some of the challenges regarding the manipulation of information are conceptual. Disinformation, propaganda, and hate speech share characteristics such as amplification through digital technology, increasing focus on civilian populations, and detrimental consequences for human rights and democracy.²⁴ At

¹⁹ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet Libre, Abierta e Incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 81.

²⁰ Relator Especial de las Naciones Unidas (ONU) sobre la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relator Especial por la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relator Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y Pueblos (ACHPR). Declaración Conjunta sobre Libertad de Expresión e internet. 2011.

²¹ OAS, Office of the Special Rapporteur for Freedom of Expression, Guide to guarantee freedom of expression in the face of deliberate disinformation in electoral contexts, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, October 2019, p. 13.

²² TEDH, Case of Delfi AS v. Estonia. App. No. no. 64569/09, Sentencia del 10 de octubre de 2013.

²³ OEA, Relatoría Especial para la Libertad de Expresión, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, Octubre de 2019, p. 13-14.

²⁴ ONU, Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, La desinformación y la libertad de opinión y de expresión durante los conflictos armados, A/77/288, 12 de agosto de 2022, párr. 12.

the same time, all three concepts contain some degree of manipulation, deception, or distortion and seek to create confusion and delegitimize or discredit factual information.²⁵

26. In the area of online freedom of expression, a layer of complexity is added due to the ability to amplify speech and the aggravation of preexisting violence in the analog environment. According to information presented to the SRFOE, the rise of speech is accelerated by the business model of social media platforms, which may find polarization and social conflict functional—and even profitable—to the extent that their design may be partly oriented toward maintaining and increasing the users’ attention and keeping it on the platforms.²⁶
27. The inputs received by the SRFOE throughout the process of the Dialogue of the Americas on Freedom of Expression on the Internet highlighted that when the flow of information on social media follows the logic of confirmation bias, the confrontation of ideas is lacking.²⁷ Navigating this environment can mean non-conscious and non-diverse participation in the public discourse, influenced mostly by suggested content.²⁸ The user stops searching for information and becomes sought after by content linked and organized with identity variables and biases similar to those of the user. The lack of plurality in the content generated by the mechanisms of digital platforms means it is unable to counteract risky content that is contrary to human rights, journalism, education, health, and democratic institutions in general. In this way, favorable conditions have been created for the dissemination of speech that attacks democracy and the rule of law.
28. In terms of the deterioration of public debate, there is growing concern about the behavior of leaders in the hemisphere—especially political leaders. This behavior plays a role in the erosion of democracy through loose, inflammatory, or heated speech, based on unverifiable information against democratic institutions, civil society, and the discrediting of the public arena.²⁹ These kinds of speech have undermined the credibility and outreach capacity of the leading voices of a democracy, compounding the sustainability crisis in journalism,³⁰ the declining influence and authority of academia and science,³¹ and the erosion of public trust in government health and electoral institutions.³² In this regard, the Joint Declaration on Politicians and Public Officials and Freedom of Expression states that “politicians and public officials play an important role in shaping the media agenda, public debate and opinion and that, as a result, ethical behaviour and attitudes on their part, including in their public communications, is essential for promoting the rule of law, the protection of human rights, media freedom and intercultural understanding, and for ensuring public trust in democratic systems of governance.”³³
29. It is challenging, but necessary, to conduct more in-depth studies on the possible causality between such speech and the occurrence of the facts. In any case, the Inter-American

²⁵ ONU, Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, La desinformación y la libertad de opinión y de expresión durante los conflictos armados, A/77/288, 12 de agosto de 2022, párr. 12.

²⁶ Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, [Entrevista “Automated content moderation still biased against the same groups that are designed to protect”](#), Prof Thomas Davidson, 2021; Entrevista “Disinformation and freedom of expression: a look from the asymmetries of the digital ecosystem”, Prof Kristina Wilfore, 2021.

²⁷ Relatoría Especial para la Libertad de Expresión, Contribución al Diálogo de las Américas sobre Libertad de Expresión en internet, 2021.

²⁸ C. R. Sunstein, [#Republic: Divided Democracy in the Age of Social Media](#), Princeton University Press, 2018.

²⁹ OEA, Relatoría Especial para la Libertad de Expresión, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, 2019.

³⁰ Relator Especial de las Naciones Unidas (ONU) sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y Cooperación en Europa (OSCE), Relator Especial para la Libertad de Expresión de la Organización de los Estados Americanos (OEA) y Relator Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana sobre Derechos Humanos y de los Pueblos (CADHP), 2018, Declaración Conjunta sobre la independencia y la diversidad de los medios de comunicación en la era digital, 2018.

³¹ CIDH, Pandemia y Derechos Humanos en las Américas, Resolución 1/2020.

³² Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, La libertad de expresión online, la protección de datos y la salvaguardia de los procesos electorales, Entrevista a Gerardo Icaza.

³³ Relator Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial para la Libertad de Expresión por la Organización de los Estados Americanos (OEA) y Relator Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR) para la Libertad de Expresión y el Acceso a la Información en África, Declaración conjunta sobre líderes políticos, personas que ejercen la función pública, y libertad de expresión, 2021.

Court has noted how contexts of symbolic violence fostered by State entities and actors can hinder the exercise of political rights, freedom of expression, and freedom of assembly,³⁴ a consideration that becomes fundamental in the Inter-American context, where the relationship between these and other rights and the principle of democracy is recognized and emphasized.³⁵ This is closely related to the duty of State authorities to speak on matters of public interest within a set of parameters that respect and protect democratic rights and principles.³⁶

30. In turn, some actors use a variety of coordinated actions to take advantage of the dissemination, reach, and storage of information posted on social media to flood the public square with content favorable to their particular interests.³⁷ Those who engage in speech that advocates violence on ethnic, national, or religious grounds, or against any group of people, are more likely to find tools for their organization and growth on these platforms. This stands in contrast to the timid response measures of democratic societies in view of the risk posed by the exponential growth of hate speech encouraging violence against vulnerable groups of people. At the same time, this coordinated activity is increasingly presented as an important indicator of disinformation campaigns.³⁸
31. In this scenario it is important to recognize that, “While individual posts may not seem too problematic in isolation, when coordination and amplification are carried out, a ‘virtual mob’ launches an operation that, over time, can lead to serious threats” to human rights.³⁹ At the same time, the proliferation of distorted or false information and hate speech, as well as the opportunistic exploitation of weaknesses such as discrimination on the basis of gender, race, or religion, also take advantage of “flash points,” such as elections, pandemics, and other prominent newsworthy events, to achieve greater influence.⁴⁰ In this regard, the Joint Declaration on Politicians and Public Officials and Freedom of Expression establishes that States should not “engage in or finance coordinated inauthentic behaviour or other online influence operations which aim to influence the views or attitudes of the public or a section of the public for party political purposes.”⁴¹ The Office of the Rapporteur also highlights local court decisions establishing the responsibility of political actors to promote online public debate that does not resort to strategies of coordinated violence in the context of campaigns.⁴²
32. We now have digital tools such as generative artificial intelligence; content recommendation algorithms based on protected social characteristics gleaned from the monitoring of personal data on user habits and behaviors; algorithms designed by non-diverse teams that remove, prioritize, and reduce the reach of content and boost content that drives greater engagement; and targeted advertising that tends to deepen preexisting biases and convictions. These tools have not only shaped users’ experiences and the

³⁴ Corte IDH, Caso Integrantes y Militantes de la Unión Patriótica Vs. Colombia, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 27 de julio de 2022, Serie C No. 455, párr. 325.

³⁵ Corte IDH, Caso Integrantes y Militantes de la Unión Patriótica Vs. Colombia, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 27 de julio de 2022, Serie C No. 455, párrs. 304-316.

³⁶ Corte IDH, Caso Integrantes y Militantes de la Unión Patriótica Vs. Colombia, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 27 de julio de 2022, Serie C No. 455, párr. 406.

³⁷ Tim Wu, *Is the First Amendment Obsolete?*, Knight First Amendment Institute at Columbia University, 2017.

³⁸ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, A/78/288, 7 de agosto de 2023, párr. 60.

³⁹ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, A/78/288, 7 de agosto de 2023, párr. 61.

⁴⁰ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, A/78/288, 7 de agosto de 2023, párr. 61.

⁴¹ Relator Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial para la Libertad de Expresión por la Organización de los Estados Americanos (OEA) y Relator Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR) para la Libertad de Expresión y el Acceso a la Información en África, Declaración conjunta sobre líderes políticos, personas que ejercen la función pública, y libertad de expresión, 2021.

⁴² Corte Constitucional de Colombia, Sentencia T-087, 28 de marzo de 2023.

information environment, but have also made it easier for extremist, misleading, or hate speech and violence in general to increase in volume, amplification, and replication.⁴³

33. The SRFOE has also noted that the wide dissemination capacity of social networks has served as a tool to stigmatize the media, journalists, social and political leaders, and civil society organizations.⁴⁴ The platform environment facilitates behaviors such as “doxing”⁴⁵ and the harassment of journalists, activists, Afro-descendants, women, Indigenous people and people of diverse identities.⁴⁶ In particular, online attacks on women journalists have been considered one of the most serious threats to safety and gender equality. These are violent, coordinated, sexualized, and malicious attacks that inflict very real psychological harm, undermine public interest journalism, bury women’s careers, and deprive society of important voices and perspectives.⁴⁷
34. The development of digital technologies has raised concerns about democratic deliberation and the dignity of users, including the increased potential for the amplification of violent speech or speech that encourages violence on social networks; the “echo chambers” that, by grouping similar thoughts and isolating different ideas, make it difficult for people to recognize that there are other angles to the conversation; and the use of coordinated inauthentic behavior aimed at attacking opposing political ideologies or groups with protected characteristics.⁴⁸
35. Hate speech that is amplified on social networks is especially troublesome, as it can have a chilling effect or facilitate offline violence and discrimination.⁴⁹ The consequences of unchecked online hate and discrimination can be harmful, and this is amplified when it involves “unknown speakers, with coordinated bot threats, disinformation and so-called deep fakes, and mob attacks.”⁵⁰
36. The expansion of the opportunities and advantages promoted by technology to involve more people in day-to-day activities has been met, on the part of the States of the Americas, with the lifting of restrictive environments that affect economic and social development and the fundamental principles and values of the democratic system recognized by the OAS Charter, which must also be safeguarded online.⁵¹ In some States, the internet is seen as a forum where surveillance and censorship should be increased. This has led to the persecution of various groups that help to uphold democracy and the

⁴³ UNESCO, Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas, 2023, Prefacio.

⁴⁴ CIDH, Relatoría Especial para la Libertad de Expresión, Relatoría Especial manifiesta preocupación por estigmatización y violencia contra periodistas en Colombia, Comunicado de prensa R106/17, 26 de julio de 2017; CIDH, CIDH rechaza campaña de estigmatización en Nicaragua, Comunicado de prensa no. 118/19, 16 de mayo de 2019.

⁴⁵ Doxing es la práctica de recopilar y publicar en línea información personal, privada o identificable sobre personas sin su consentimiento, con el objetivo de exponerlos a amenazas o intimidación. Aunque el doxing puede estar dirigido a cualquier individuo cuando se utiliza como táctica de hostigamiento digital, frecuentemente afecta de manera acentuada a quienes participan activamente del debate público o con un alto perfil de notoriedad pública, como periodistas, activistas, personas defensoras de derechos humanos, y mujeres que participan de la vida política. El doxing y las amenazas pueden implicar efectos severos de autocensura, llevando a las personas a eliminar su presencia y perfiles en línea, o a reducir su visibilidad y la actividad digital. Ver [Alliance for Universal Digital Rights & Equality Now, Doxing, digital abuse and the law](#), 27 de febrero de 2024. Sin embargo, esta Oficina resalta que la difusión de información sobre personas públicas también puede ser utilizada como una manifestación de protesta. En algunos contextos, puede constituir un mecanismo de escrutinio público para demandar la transparencia gubernamental o para revelar información de interés público, en situaciones donde se denuncian irregularidades del poder público. Por ello, las medidas legales contra el doxing (también llamadas “leyes anti-doxing”) han sido criticadas por su vaguedad y textura abierta, lo que puede llevar a una aplicación arbitraria de la ley o ser utilizadas como herramientas para suprimir las expresiones de disidencia y la oposición política. Ver: Harvard, [Should doxing be illegal?](#), 3 de septiembre de 2021; Anne Cheung, [Doxing and the Challenge to Legal Regulation: When Personal Data Become a Weapon](#), The Emerald International Handbook of Technology-Facilitated Violence and Abuse, 2021. Al respecto, esta Oficina ha señalado que es necesario diferenciar el ejercicio de la crítica a un funcionario público de aquellas expresiones que no tienen el mismo nivel de protección en el sistema interamericana de derechos humanos. Ver CIDH, Resolución 64/2023, Medidas Cautelares No. 576-21. José Domingo Pérez y su núcleo familiar respecto a Perú, 8 de noviembre de 2023, párr. 79.

⁴⁶ CIDH, Resolución 42/2023, Medidas Cautelares N° 341-23, Gustavo Andrés Gorriti Ellenbogen respecto de Perú, 24 de julio de 2023; Resolución 64/2023, Medidas Cautelares No. 576-21 José Domingo Pérez y su núcleo familiar respecto a Perú, 8 de noviembre de 2023; Resolución 55/2021, Medida cautelar No. 576-21 José Domingo Pérez Gómez y su núcleo familiar respecto de Perú, 25 de julio de 2021; CIDH, Relatoría Especial para la Libertad de Expresión, La RELE expresa su preocupación por la tolerancia institucional a la divulgación de datos personales de periodistas en México, Comunicado de prensa N° R046/24, 6 de marzo de 2024.

⁴⁷ ONU, Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, Fortalecimiento de la libertad de los medios de comunicación y de la seguridad de los periodistas en la era digital, A/HRC/50/29, 20 de abril de 2022, párrs. 30 y 31.

⁴⁸ Jorge Aguirre Sala, Los desafíos de la transformación digital de la democracia, Recerca, p. 8.

⁴⁹ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, A/74/486, 9 de octubre de 2019, párr. 41.

⁵⁰ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, A/74/486, 9 de octubre de 2019, párr. 40.

⁵¹ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet Libre, Abierta e Incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

rule of law, such as women, human rights defenders, journalists, politicians, academics, and others with a public profile.⁵²

37. In the area of inclusion and accessibility, training deficits in the operation, use, and ownership of the internet and ICTs widen the digital divide for traditionally marginalized groups, such as people with disabilities, Indigenous peoples, women, LGBTQ+ people, and Afrodescendants.⁵³ The adoption of technological solutions in various areas, based on the monitoring, modulation, and commercial exploitation of human behavior without the user's knowledge is another factor that undermines the self-determination of users.⁵⁴ For example, reproductive health apps for women jeopardize their privacy and power of agency.⁵⁵
38. The use of social networking platforms by children and adolescents poses certain challenges to their safety, integrity, and health. In the digital environment, children are exposed to an array of risks ranging from services that are poorly designed for them to sexual exploitation and abuse.⁵⁶ Studies also show the impact of social media on the mental health of this population. While it can be positive at times, social media use can also have negative impacts such as an increased tendency toward depression or anxiety and even self-harm or suicide.⁵⁷
39. In this regard, legislative efforts have been made that may affect freedom of expression. In the United States, the Kids Online Safety Act (KOSA)⁵⁸ and the Protecting Kids on Social Media Act⁵⁹ are being considered. Organizations have warned about the potential of both bills to silence conversations of public interest, limit children's access to important resources, and impose content moderation rules.⁶⁰
40. Limited access to digital tools, coupled with a lack of programs for the development of online civic skills, prevents the full enjoyment of fundamental rights such as work, education, health, political participation, privacy, and freedom of expression. This situation has deepened preexisting structural inequalities.⁶¹ At the same time, literacy tools that enable the informed, conscious, and critical use of digital technologies have not kept pace with their development. Effectively integrating technology into communities requires significant financial and educational investments as well as incentives that maximize its potential to strengthen the exercise of rights.
41. The lack of educational policies—both public and private—for the proper use of devices and the protection of rights at stake on the internet has excluded many sectors of the population, such as the elderly, those with low literacy levels, or those with disabilities. It has also had an impact in terms of understanding the implications of the internet's architecture and governance for human rights. The absence of educational proposals and an effective collaborative process to develop these solutions seems to have created a digital society that often cannot discern between reliable and manipulated information, understand the importance of protecting personal data, and recognize how their daily

⁵² ONU, Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, Fortalecimiento de la libertad de los medios de comunicación y de la seguridad de los periodistas en la era digital, A/HRC/50/29, 20 de abril de 2022.

⁵³ UNESCO, *Sociedad digital: brechas y retos para la inclusión digital en América Latina y el Caribe*, 2017.

⁵⁴ Antoinette Rouvroy, Yves Pouillet, *The right to informational self-determination and the value of self-development: Reassessing the importance of privacy for democracy.* "Reinventing data protection", Springer, Dordrecht, 2009, ps. 45-76.

⁵⁵ DeJusticia, *Aborto, privacidad y apps de menstruación ¿Qué puede salir mal?*, 18 de agosto de 2022.

⁵⁶ UNESCO, *Seguridad de los niños en línea: minimizando el riesgo de la violencia, el abuso y la explotación en línea*, octubre de 2019.

⁵⁷ Cirujano General de los Estados Unidos, *Social Media and Youth Mental Health*, 2023.

⁵⁸ Congreso de Estados Unidos, Kids Online Safety Act, S.1409, <https://www.congress.gov/bill/118th-congress/senate-bill/1409>

⁵⁹ Congreso de Estados Unidos, *Protecting Kids on Social Media Act, S.1291*, Introducida el 26 de abril de 2023.

⁶⁰ ACLU, *Revised Kids Online Safety Act is an Improvement, but Congress Must Still Address First Amendment Concerns*, 27 de febrero de 2024; EFF, *La Ley de Protección de Menores en las Redes Sociales es una terrible alternativa a KOSA*, 28 de agosto de 2023.

⁶¹ CIDH, *Pandemia y Derechos Humanos en las Américas*, Resolución 1/2020.

experience can be exploited in the digital realm, or recognize the potential abuses of the deployment of these resources by the State and private entities.⁶²

42. In addition to the literacy deficit, access and connection to technologies around the world and in the Americas is extremely unequal. According to the International Telecommunication Union, 63 percent of people in the world are connected.⁶³ In Latin America and the Caribbean, 74 percent of individuals use the internet.⁶⁴ The digitization process of the private sector and governments is not occurring at the same rate as the expansion of access. The result has been the widening of gaps in all facets of the lives of unconnected people, given that more and more goods and services are available exclusively online.
43. More recently, the digital ecosystem—which is not “a virtual reality, but a real virtuality,”⁶⁵—has brought the progress of the internet of things and the metaverse. In this context, it is foreseeable that new extended reality technologies, such as virtual reality and augmented reality (VR/AR),⁶⁶ will pose additional challenges to content moderation, digital inclusion, and literacy, introducing new forms of digital violence, and, therefore, restrictions to freedom of expression and other human rights. In a world of extended reality,⁶⁷ a content moderator would not only have to monitor the content that people post, but also their feelings, movements, and bodily expressions at an even higher speed, thus expanding the scope and demands of this interpretative work to the behaviors, environments, and symbology that encodes human interaction as a whole.
44. This is expected to become even more complex in the future because users react physiologically and psychologically to virtual reality experiences as if they were happening to them in physical environments. This has had more severe repercussions in situations involving gender-based violence, racism, and other abusive behaviors, considering the greater potential for harm.⁶⁸ This type of moderation also poses a challenge in terms of individual privacy and risks of discrimination, since the criteria and methods of observation will involve searching for and evaluating behavioral patterns and biometric data.
45. In this context, in view of the challenges posed by the spread of disinformation, hate speech, stigmatization, and the lack of access and digital literacy, the SRFOE is also concerned about the place of social media platforms in the deterioration of public debate. Digital platforms currently do not function as mere transmitters of information, but make crucial decisions on the circulation of information and ideas through their content curation and moderation activities, and can therefore undermine public debate.⁶⁹
46. Platforms organize and prioritize content for users, thus determining its visibility.⁷⁰ This form of content targeting based on individual preferences and beliefs has created “bubbles” that deepen extremist or sensationalist interests.⁷¹ In many cases, the main digital platforms—within the framework of their moderation and curation rules—also

⁶² Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, Nota de concepto, 2021.

⁶³ ITU, [Global Connectivity Report 2022](#), 2022.

⁶⁴ Banco Mundial, [Individuals using the internet \(% of population\) - Latin America & Caribbean](#).

⁶⁵ Manuel Castells, [El impacto de internet en la sociedad: una perspectiva global](#), 2020.

⁶⁶ La realidad aumentada es una tecnología que integra señales captadas del mundo real (típicamente video y audio) con señales generadas por computadores (objetos gráficos tridimensionales); las hace corresponder para construir nuevos mundos coherentes, complementados y enriquecidos – hace coexistir objetos del mundo real y objetos del mundo virtual en el ciberespacio-. Lizbeth Heras Lara y José Luis Villarreal Benitez, [Realidad Aumentada: una tecnología en espera de usuarios](#), 10 de agosto de 2004.

⁶⁷ Conjunto de realidades generadas con medios digitales y combinadas con componentes del espacio real. José Luis Rubio Tamayo, [Realidad extendida, interactividad y entornos inmersivos 3d: Revisión de la literatura y proyecciones](#), Actas Icono, 2019.

⁶⁸ Georgetown Law Technology Review, [Meet the new “verse, same as the old verse: Moderating the metaverse](#), Mayo de 2022.

⁶⁹ Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, Nota conceptual sobre Moderación de Contenidos, 2021.

⁷⁰ Article19, [Manual de moderación de contenidos y libertad de expresión](#), 2023.

⁷¹ Christopher Wylie, [Mindf*ck: Cambridge Analytica y el complot para romper Estados Unidos](#), Casa aleatoria, 2019.

prioritize profit, using algorithms to promote the consumption and viewing of harmful content such as hate speech and disinformation.⁷²

47. Due to the platforms' own needs, large-scale content moderation and curation is commonly done through the use of technical solutions. This can result in the removal of protected speech or, as mentioned above, in speech not protected by international standards on freedom of expression being allowed to remain.⁷³ This is because the automated systems lack the capacity to identify nuance or the context in which speech is embedded.⁷⁴ These shortcomings of the automated systems are derived not only from the systems that remove content from the platforms, but also from those that prioritize or flag content, as they do not identify the cultural, political, or linguistic circumstances in which the speech occurs.⁷⁵
48. On the flipside of the business models, policies, and practices of some digital platforms, State responses to some of these problems have also resulted in silencing, criminalization, surveillance, and the propagation of public narratives incompatible with human rights and democracy, all of which converge in the strengthening of information control.⁷⁶ The restrictive trends observed are: the blocking of platforms or entire websites; cybercrime legislation inconsistent with inter-American standards; the criminalization of behaviors that are aggravated by the use of the internet; the imposition of disproportionate liability regimes on intermediaries; and the increasing deployment of surveillance technology and arbitrary orders to remove content from platforms. This has resulted in new violations of rights that were supposed to be protected from market abuses in the digital world.⁷⁷
49. Impact on human rights and democratic systems
50. The deterioration of public debate affects the exercise of the right to freedom of expression and public debate, particularly in discussions related to security, health, and electoral systems, among other topics. The SRFOE considers that these effects highlight the challenges of developing the internet and digital communication with an eye to democracy and the interests and rights of users.
51. The implications for the right to freedom of expression are reflected in greater inequality and censorship, in relation to both its collective and individual dimensions. While the internet and social media platforms have affected the ability of individuals to receive, seek, and disseminate information,⁷⁸ the scenario described above has led to content moderation measures that limit the dissemination of speech protected by freedom of expression.⁷⁹ In the same vein, online violence, stigmatization, and the proliferation of hate speech have resulted in increased self-censorship, discrimination, and the exclusion of certain actors from public debate.⁸⁰ Both the Inter-American Court and the Inter-

⁷² Amnistía Internacional, [Myanmar: Facebook's systems promoted violence against Rohingya; Meta owes reparations](#), 29 de septiembre de 2022.

⁷³ R3D y ALSur, [La moderación de contenidos desde una perspectiva interamericana](#), marzo de 2022.

⁷⁴ R3D y ALSur, [La moderación de contenidos desde una perspectiva interamericana](#), marzo de 2022.

⁷⁵ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/73/348, 29 de agosto de 2018, párr. 29.

⁷⁶ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párrs. 13 - 21.

⁷⁷ Relator Especial de las Naciones Unidas (ONU) para la Libertad de Opinión y de Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial de la Organización de Estados Americanos (OEA) para la Libertad de Expresión y Relatora Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP), Declaración Conjunta del Vigésimo Aniversario: Desafíos para la Libertad de Expresión en la Próxima Década, elaborado por expertos en libertad de expresión, 2019.

⁷⁸ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 81.

⁷⁹ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 92.

⁸⁰ UNESCO, [Online violence against women journalists: a global snapshot of incidence and impacts](#), 2020.

American Commission have addressed how the absence of environments conducive to freedom of expression can lead to self-censorship among broad groups of society.⁸¹

52. The right to freedom of expression requires guarantees of plurality and diversity for its full exercise.⁸² Restrictions on the freedom to seek information, intimidation, and online threats lead users to leave digital environments and withdraw from public deliberation.⁸³ This particularly affects historically marginalized populations, while deepening existing inequalities.
53. Inadequately representative and participatory internet designs have resulted in asymmetries in the opportunities for speech; and, therefore, in the partial or total exclusion from public conversations of certain groups of people, such as women, transgender and nonbinary people, Indigenous people, and Afrodescendants, among other groups. In addition, certain State practices have been observed to function as a mechanism to intimidate users for speaking out critically or carrying out journalistic or human rights work that runs counter to the government's interests. This has limited access to information and the potential for public debate. The region also lacks regulatory frameworks for telecommunications and freedom of expression that are compatible with the current reality of digital technologies.⁸⁴
54. At the same time, the Office of the Rapporteur notes that violations of the rights to freedom of expression and access to information have been especially pronounced in certain scenarios, particularly those contexts related to elections and public health.
55. UNESCO has identified that electoral disinformation is a risk to electoral processes that has the potential to impact the entire territory of the Americas, in addition to presenting serious challenges for the electoral authorities of each country.⁸⁵ Press investigations have also recently noted the existence of consulting firms that sell campaign strategies for spreading disinformation online.⁸⁶
56. The abuse of platforms by leaders has negative consequences for public debate, as shown by some recent events in the region, including the storming of the U.S. Capitol on January 6, 2021;⁸⁷ acts of violence against pre-candidates and candidates and other leaders or supporters of different political movements in the Mexican elections in 2021;⁸⁸ the escalation of violence and social polarization after Peru's presidential elections in 2021;⁸⁹ and the storming of the headquarters of Brazil's three branches of government on January 8, 2023.⁹⁰ The common thread in all these events is that they were preceded by disinformation campaigns and escalated by speech that tolerated the use of violence against people and institutions of the rule of law.⁹¹

⁸¹ Corte IDH, Caso Leguizamón Zaván y otros Vs. Paraguay, Fondo, Reparaciones y Costas, Sentencia de 15 de noviembre de 2022, Serie C No. 473; CIDH, Relatoría Especial para la Libertad de Expresión, Zonas Silenciadas: Regiones de alta peligrosidad para ejercer la libertad de expresión, CIDH/RELE/INF.16/17, 15 de marzo de 2017, párr. 27.

⁸² Corte IDH, Caso Kimel Vs. Argentina, Fondo, Reparaciones y Costas, Sentencia de 2 de mayo de 2008, Serie C No. 177, párr. 57.

⁸³ UNESCO, [Online violence against women journalists: a global snapshot of incidence and impacts](#), 2020.

⁸⁴ Al respecto, la representación del Estado de Chile ante la OEA informó que no cuenta con una modernización de sus leyes o marcos normativos y/o regulatorios en materia de comunicación digital, como tampoco de su Ley sobre las Libertades de Opinión e Información y Ejercicio del Periodismo, Ley N°19.733, la cual continúa estando desactualizada en relación con el contexto actual.

⁸⁵ UNESCO, [Cómo contrarrestar la desinformación electoral: guía práctica para organizaciones y cuerpos electorales](#), 2022.

⁸⁶ Chequeado, [La opaca historia de Fernando Cerimedo, el consejero de la derecha trumpista sudamericana](#), 31 de julio de 2023.

⁸⁷ CIDH, Resolución 48/2023, Medidas Cautelares No. 574-23 Cesar Bernardo Arévalo de León y Karín Herrera Aguilar respecto de Guatemala, 24 de agosto de 2023.

⁸⁸ CIDH, [La CIDH llama a México a prevenir y sancionar hechos de violencia en próximo proceso electoral](#), Comunicado 138/21, 27 de mayo de 2021. En este comunicado la Comisión alertó sobre la creciente ola de violencia en contra de personas dirigentes o militantes de partidos políticos en México.

⁸⁹ CIDH, [La CIDH expresa preocupación por reportes de actos de hostigamiento y mensajes estigmatizantes que alientan la discriminación en el contexto electoral en Perú](#), Comunicado 155/21, 22 de junio de 2021. La Comisión expresó su preocupación por hostigamientos y mensajes estigmatizantes que alentaron la discriminación en el contexto electoral en Perú. Particularmente, indicó la existencia de expresiones denigrantes y estigmatizantes que alentaban la discriminación y prácticas de doxing.

⁹⁰ CIDH, [La CIDH repudia los ataques contra la institucionalidad democrática en Brasil](#), Comunicado 006/23, 23 de enero de 2023. La Comisión rechazó los hechos ocurridos el 8 de enero de 2023, y resaltó que aquellos no se produjeron de manera aislada, sino en un contexto de tensión social, violencia política y desinformación.

⁹¹ Sobre lo anterior, la CIDH ha enfatizado que "en los últimos años, se han registrado algunos procesos de desacreditación de las instituciones democráticas por parte de sectores inconformes con los resultados en las urnas. Estas acusaciones han sido instrumentalizadas para generar inestabilidad, y promover juicios políticos y otros tipos de acciones que buscan la destitución de personas que ocupan cargos de elección popular, sin observar el principio de legalidad o las garantías del debido proceso. Igualmente se ha observado

57. In this context, the Office of the Rapporteur highlights the role of political parties and candidates for public office, who should promote high-quality public debate, especially during election periods. The SRFOE recognizes that, as the European Court of Human Rights has held, political parties “represent their electorate, draw attention to their preoccupations and defend their interests. Accordingly, interferences with the freedom of expression of a politician who is a member of an opposition party (...) call for the closest scrutiny.”⁹² However, the right to represent the citizenry also includes a framework of responsibility, which presupposes substantive knowledge of the various democratic processes and the laws that govern them, in addition to the symbolic duty to serve as ethical examples, given their prominent place in the public eye.⁹³
58. It is necessary to build political party systems and foster electoral norms and customs that encourage political parties to promote legitimacy and trust in democratic institutions. Political parties must refrain from promoting disinformation campaigns, discrimination, hatred, and intolerance, whether by themselves or through third parties. This includes the duty to not only refrain from promoting them voluntarily, but also to diligently verify that this is not done involuntarily, that their leaders do not support such campaigns, and that party members and activists reject such practices.⁹⁴
59. In the context of Covid-19, “the figures show that, like scientific knowledge about the disease, disinformation has also evolved throughout the pandemic.”⁹⁵ Disinformation surrounded issues ranging from protective measures, vaccination schedules, and possible treatments for the virus. This strategy was used, for example, to discourage vaccination by promoting false information about adverse reactions,⁹⁶ to promote treatments not indicated for the virus,⁹⁷ and to discourage the use of protective measures.⁹⁸ The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression pointed out that individuals and communities “cannot protect themselves against disease when information is denied to them, when they have diminished trust in sources of information, and when propaganda and disinformation dominate the statements of public authorities.”⁹⁹ The SRFOE warned about pandemic misinformation as a risk to the ability of States to “design and implement efficient public health responses and the consequences for public health of the dissemination of false guidance and ineffective or even harmful remedies.”¹⁰⁰
60. The phenomenon of disinformation about the pandemic prompted regulatory initiatives restricting freedom of expression. In this regard, the SRFOE noted that “these types of direct restrictions on freedom of expression in response to the pandemic that seek to deter the spread of disinformation by imposing disproportionate or unnecessary limitations in a democratic society should be rejected since they have a negative impact on the search for, dissemination and [receipt] of information of high public interest during a global

en algunos países, la afectación a la independencia de los poderes del Estado para la permanencia de un determinado grupo político”. CIDH, [CIDH llama a proteger la institucionalidad democrática y garantizar elecciones libres](#), Comunicado 203/2022, 15 de septiembre de 2022.

⁹² TEDH, *Case of Incal v. Turkey* Strasbourg, 9 de junio de 1998, párr. 46.

⁹³ Wilhelm Hofmeister, *Os partidos políticos e a democracia: seu papel, desempenho e organização em uma perspectiva global*, 2021, p. 184.

⁹⁴ OEA, Relatoría Especial para la Libertad de Expresión, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, Octubre de 2019, p. 48.

⁹⁵ CLIP, [Cómo la desinformación sobre Covid-19 infectó a América Latina](#), 23 de marzo de 2023.

⁹⁶ Por ejemplo: Colombiacheck, [Las vacunas genéticas están en prueba y no se conocen los efectos específicos en ADN](#); UOL/ Lupa, [É falso que Eriksen tomou vacina da Pfizer antes de parada cardíaca durante jogo da Eurocopa](#), 14 de junio de 2021; Bolivia Verifica, [No hay evidencia que demuestre que pilotos vacunados fallecieron en pleno vuelo](#), 31 de octubre de 2021.

⁹⁷ For example: Aos Fatos, [Vitamina C com zinco não previne nem trata sintomas do novo coronavírus](#), February 4, 2020.

⁹⁸ Por ejemplo: Ecuador Chequea, [Uso prolongado de mascarilla causa hipoxia](#), 5 de mayo de 2020.

⁹⁹ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Las pandemias y la libertad de opinión y de expresión, A/HRC/44/49, 23 de abril del 2020, párr. 5.

¹⁰⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Desinformación, pandemia y derechos humanos, diciembre de 2022, párr. 25.

health crisis.”¹⁰¹ The pandemic provided the backdrop for surveillance activities on social networks with State participation directed against artists, academics, businesspeople, and political opponents, which in some cases led to arbitrary arrests.¹⁰²

61. In this context, the platforms’ content moderation practices gave priority to official speech coming from global and local health authorities.¹⁰³ The platforms faced considerable dilemmas such as disinformation originating from official sources, e.g., government officials.¹⁰⁴
62. Freedom of expression and privacy rights are undermined by State surveillance, which inhibits citizen participation in the public square. This disproportionately affects human rights defenders and journalists.¹⁰⁵ When State intervention encourages or even incites surveillance and monitoring, the authorities sometimes request and accelerate extrajudicial content removal processes.¹⁰⁶ Disproportionate actions by public officials or authorities in the digital sphere, such as blocking critical users, have also been documented.¹⁰⁷ These practices deprive users of information and oversight of the actions of those officials, and they prevent access to information of high public interest.
63. It may also be a common practice for intelligence authorities to collect information on the internet and social media platforms, for example, through contracts between State authorities and private parties to “parameterize” social media users, which turns out to be “monitoring online activity to profile groups of people.”¹⁰⁸ In other countries, public tenders have been issued to contract for the tracking and monitoring of social networks in an effort to “evaluate the impact of official measures and user opinions.”¹⁰⁹ However, it is estimated that these initiatives could provide opportunities for the surveillance of journalists, human rights defenders, and other civil society actors.
64. THE SRFOE warned that these cyber-patrolling techniques—aimed at the proactive monitoring of social media content—seek to remove information related to social protest and the image of authorities and public forces.¹¹⁰ The powers assumed by the States to check and classify content as “true” or “false” is very worrying when the categorized information deals, for the most part, with the actions of State security forces.¹¹¹ Meanwhile, civil society organizations have documented practices in which government agencies—with serious implications for the right to privacy—buy data from intermediary companies, including location data, browsing histories, or other data that could be used in criminal or civil proceedings.¹¹²
65. These issues of exclusion and punishment, discrimination, surveillance, and public and private silencing show that, in the tech world, control of the digital experience lies with a few dominant public and private actors. Hence, the products, practices, and corporate

¹⁰¹ CIDH, Relatoría Especial para la Libertad de Expresión, Desinformación, pandemia y derechos humanos, diciembre de 2022, párr. 29.

¹⁰² CIDH, Informe Anual 2020, Informe de la Relatoría Especial para la Libertad de Expresión, OEA/Ser.L/V/II Doc. 28, 30 de marzo de 2021, párrs. 17 y 50.

¹⁰³ Las grandes plataformas intermediarias del momento—Google, Facebook y Twitter, especialmente—han actuado en ese sentido. Ver Reuters Institute, Universidad de Oxford, [How the coronavirus pandemic is changing social media](#), 6 de julio de 2020 (“Social media companies’ immediate response was to proactively promote health-related information from sources which it deemed more reliable”). Cuando uno busca “coronavirus” en Google el resultado es una página especial con información de fuentes confiables, incluyendo medios de comunicación, información agregada de acuerdo a la ubicación del usuario, información de autoridades sanitarias locales, etcétera. Sería difícil, por esa vía, llegar a información falsa. Facebook y Twitter, por su parte, también han actuado en el marco de la pandemia. En el caso de Facebook, la búsqueda del término también lleva a un Coronavirus (COVID19) Information Center con acceso a consejos y fuentes oficiales de información. Ver: Meta, [COVID-19 Information Center](#).

¹⁰⁴ CIDH, Relatoría Especial para la Libertad de Expresión, Desinformación, pandemia y derechos humanos, diciembre de 2022, párr. 42.

¹⁰⁵ Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, [Aporte de la organización Derechos Digitales al Foro sobre Deterioro del Debate Público](#).

¹⁰⁶ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párrs. 19 y 20.

¹⁰⁷ Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, [Aporte de la organización Derechos Digitales al Foro sobre Deterioro del Debate Público](#).

¹⁰⁸ Dejusticia, [Inteligencia estatal en internet y redes sociales: el caso colombiano](#), 2 de enero de 2023.

¹⁰⁹ CIDH, Informe Anual 2021, Informe de la Relatoría Especial para la Libertad de Expresión, OEA/Ser.L/V/II Doc. 64 rev. 1, 26 de mayo de 2022, párr. 54.

¹¹⁰ CIDH, Informe Anual 2021, Informe de la Relatoría Especial para la Libertad de Expresión, OEA/Ser.L/V/II Doc. 64 rev. 1, 26 de mayo de 2022, párr. 264.

¹¹¹ CIDH, Informe Anual 2021, Informe de la Relatoría Especial para la Libertad de Expresión, OEA/Ser.L/V/II Doc. 64 rev. 1, 26 de mayo de 2022, párr. 54; CIDH, Observaciones y recomendaciones de la visita de trabajo de la CIDH a Colombia realizada del 8 al 10 de junio de 2021.

¹¹² Freedom House, [Freedom on the net 2022, Countering an Authoritarian Overhaul of the internet](#).

policies seen in the context of social networks—which extend to search engines and other digital platforms—as well as the regulatory, judicial, public policy, or other measures taken by States, have adversely affected freedom of expression, public deliberation, and the effective enjoyment of human rights online, further curtailing users’ autonomy and highlighting the need to establish legal frameworks that hold the dominant actors to account without backtracking on the democratizing potential of the internet.

CHAPTER II:

Universal Internet Access and Digital Literacy

67. Challenges of inclusion, use, and ownership of digital technologies: universal internet access and digital divides
68. The internet enables access to services, the exercise of rights in the digital space, and the social, economic, and democratic development of States. Faced with accelerated technological changes and their effects, urban societies that access the internet begin to depend on it to communicate, coexist, and take ownership of information and communication technologies (ICTs) in order to create innovative technological solutions, generate income, enjoy public services, and participate in civic space, among other facets of daily life. Digital technologies and the internet are capable of responding to urban, social, and economic challenges, and have great potential to be harnessed by diverse communities to drive social innovation and creativity and to ensure human rights and social justice. However, achieving these capabilities on a broad scale requires universal access to ICTs.
69. Access to ICTs is a multifaceted concept that involves different levels of relationship between people and technologies. According to the IACHR, the principle of “universal access” refers to the need to guarantee connectivity and access to the internet infrastructure and other ICT services that is universal, ubiquitous, equitable, truly affordable, and of adequate quality, all throughout the State’s territory.¹¹³
70. This is a principle that dialogues with the concept of the digital divide, understood as the “gap between people with effective access to digital and information technologies, in particular the Internet, and those with very limited or no access at all.”¹¹⁴ Therefore, the digital divide is not only related to the unavailability of infrastructure to access the internet, but also to “the quality, information, and knowledge needed to be able to make use of this tool and benefit from it.”¹¹⁵ It is not only a question of a possible connection point, but also of its quality, capacity, and stability. This connection must, in turn, be coupled with sufficient devices for the intended use and the digital skills of the users. Infrastructure, devices, and literacy are variables that, when brought together, make up a good part of the conditions for technology to be a catalyzing instrument for the exercise of human rights.
71. Barriers to access affect social and economic development in the countries of the Americas and limit access to information and opportunities to participate in public debate.¹¹⁶ The lack of universal access to the internet and ICTs, as the IACHR has stated, “affects, deteriorates, or delays the guarantee of all human rights that are [now] totally or partially exercised by this means.”¹¹⁷
72. Limited use, skills, and access to the internet result in the unequal enjoyment of rights among individuals and groups participating in public debate and in unequal access to available sources of knowledge, which may also be limited by vulnerability factors such

¹¹³ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013, párr. 16.

¹¹⁴ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Frank La Rue, A/HRC/17/27, 16 de mayo de 2011, párr. 61.

¹¹⁵ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

¹¹⁶ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013.

¹¹⁷ CIDH, Guía SACROI Covid N° 3, *¿Cómo promover el acceso universal a internet durante la pandemia de COVID-19?*, 2021.

as gender, socioeconomic status, gender identity, or racial identity and ethnicity. The lack of universal access also limits access to content and the opportunities for all people to freely engage with and understand the information that flows through digital platforms. People and communities with limited internet access are most adversely affected in terms of their ability to contribute content and interact.¹¹⁸

73. As the Inter-American Court of Human Rights has noted, “the State must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering [information] pluralism.”¹¹⁹ Therefore, access policies should provide conditions for users to participate in the public debate and, in turn, to navigate the content to which they are exposed with informed discernment. In doing so, users should not feel restricted or inhibited from providing information and interacting freely with the issues they are interested in, which may or may not be of public interest. From the perspective of the inter-American human rights system, universal access is an indispensable basis for the development of the internet.¹²⁰
74. Within the OAS, several commitments have been undertaken to promote universal access to ICTs. The resolution adopted at the 52nd regular session of the General Assembly addresses the “Promotion and protection of human rights online.” It calls on the States to “to promote universal and affordable internet access to enhance the use of information and communications technology in order to promote the full enjoyment of human rights for all,” promoting digital literacy and “ensuring equal opportunities and access to technology, particularly for Indigenous peoples, Afro-descendant communities, women, adolescents and girls, older adults, persons with disabilities, and other historically marginalized groups, as well as groups in vulnerable situations.”¹²¹ The resolution also urges States to promote efforts to develop technical and civic digital skills so that internet users can critically engage with information online.¹²²
75. During the Ninth Summit of the Americas, the member States adopted the Regional Agenda for Digital Transformation, which affirms the need for regional cooperation to “bridge the digital divide and skills gaps, and promote the responsible and ethical use of digital technologies.” The commitments undertaken by the States of the Americas notably include the following:
 - i. Encourage the development of national plans or strategies on digital transformation and innovation that also promote the secure, responsible, and lawful use of digital technologies, in line with international standards. Encourage, in particular, such action with respect to persons with disabilities or with specific
 - ii. needs, as well as members of groups that have been historically marginalized, discriminated against, and/or in vulnerable situations, as well as all women and girls, taking into account their diverse conditions and situations, in a manner consistent with national legislation and international law, to broadly use digital platforms.¹²³

¹¹⁸ CIDH, Pobreza y derechos humanos en las Américas, OEA/Ser.L/V/II.164 Doc. 147, 7 de septiembre de 2017.

¹¹⁹ Corte IDH, Caso Kimel Vs. Argentina, Fondo, Reparaciones y Costas, Sentencia de 2 de mayo de 2008, Serie C No. 177, párr. 57; Caso Fontevecchia y D’Amico Vs. Argentina, Fondo, Reparaciones y Costas, Sentencia de 29 de noviembre de 2011, Serie C No. 238.

¹²⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.LV/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

¹²¹ OEA, AG/RES. 2991 (LII-O/22), Promoción y Protección de Derechos Humanos, sección XX.

¹²² OEA, AG/RES. 2991 (LII-O/22), Promoción y Protección de Derechos Humanos, sección XX.

¹²³ OEA, IX Cumbre de las Américas, Programa Regional para la Transformación Digital, 2022.

76. This reinforces previous commitments aimed at reducing digital divides in the region and inspires the continuity and adoption of new measures and policies in the Americas.¹²⁴ More recently, the OAS and Fundación ProFuturo launched the report “Digital Education in the Americas: Best Practices to Inspire,” which maps experiences and best practices focused on supporting school programs to improve learning by using innovative pedagogical and technological resources. Its systematization of initiatives has not only been useful during the pandemic, but can also contribute to the recovery and strengthening of student learning in the post COVID-19 crisis era.¹²⁵
77. In this report, the Office of the Rapporteur highlights two of the different objectives that universal access can serve. The first of these objectives is to promote universal access as a means of facilitating equitable conditions that allow people to meet their labor, economic, cultural, and social needs.¹²⁶ This includes, for example, encouraging an active role in contributing to, evaluating, and interacting with online content. Second, universal access must equip people with the knowledge, attitudes, and skills needed to take full advantage of technological advances. This includes not only the direct benefit of these technologies but also the ability to understand their responsible use and to demand that States and private companies create and maintain digital spaces that are free, safe, and inclusive, in keeping with internationally recognized human rights principles.¹²⁷
78. The SRFOE therefore underscores that the principle of universal access presupposes the development of connectivity and access to the technology needed for its use. It also entails access to the greatest possible amount of information available on the network and the development of digital literacy. As a whole, the principle aims at maintaining and constantly improving the overall conditions for all people to have the opportunity to access technologies and other rights.¹²⁸
79. Omitting this multidimensional approach to universal access relegates people to a limited place, generally linked to a role of minimal information consumption. There, people use technologies—in the best of cases—exclusively for entertainment purposes, while missing opportunities to develop their autonomy by using public services, creating diverse content, interacting in public debate, accessing justice, expanding educational and work opportunities, amplifying complaints of human rights violations, participating in demonstrations, exercising artistic expression and other human rights and freedoms by taking advantage of technological progress.¹²⁹
80. Universal access creates the conditions for a greater diversity of voices, experiences, opinions, and knowledge in the digital environment, as well as for the sharing of content of public interest and with a human rights approach.¹³⁰ The Office of the Special Rapporteur reiterates that including people traditionally excluded from public conversations in the digital space is fundamental for the diversity of online content, interactions, communities, and services.¹³¹

¹²⁴ OEA, Asamblea General, AG/RES.2440, Desarrollo de las telecomunicaciones en la región para reducir la brecha digital, Aprobada en la cuarta sesión plenaria, celebrada el 4 de junio de 2009; Comisión Interamericana de Telecomunicaciones, Agenda de conectividad para las Américas, Plan de Acción de Quito, 25 de noviembre de 2003; Cumbre mundial sobre la sociedad de la Información, Declaración de principios, 12 de mayo de 2004, párr. 66.

¹²⁵ Organización de los Estados Americanos y Fundación ProFuturo, Educación Digital en las Américas: Buenas Prácticas para Inspirar, 2023.

¹²⁶ Sanders CK, Scanlon E., *The Digital Divide Is a Human Rights Issue: Advancing Social Inclusion Through Social Work Advocacy*, *Journal of Human Rights and Social Work*, 19 de marzo de 2021.

¹²⁷ ONU, *Digital Space and Human Rights*; CIDH, Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, Alfabetización Digital: Nota conceptual, 2022.

¹²⁸ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013.

¹²⁹ CIDH, Guía SACROI Covid N° 3, *¿Cómo promover el acceso universal a internet durante la pandemia de COVID-19?*, 2021.

¹³⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013.

¹³¹ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares de libertad de expresión para una radiodifusión incluyente, OEA/Ser.L/V/II CIDH/RELE/INF. 3/09, 30 diciembre 2009, párr. 79.

81. It is imperative to develop enabling conditions for the exercise of the right to freedom of expression. This means facilitating the deployment of community technologies and ensuring the effective participation of diverse communities on the platforms. The internet, with its unique ability to facilitate public debates at local, national, regional, and global levels simultaneously, stands out as an essential tool in this context. However, the lack of universal access, including inadequate connectivity, the unavailability of appropriate devices, and poor digital skills, limits this potential. This can cause the digital conversation to center on broader issues, reducing the impact and relevance of local public debates and minimizing the participation of certain communities.

Connectivity

82. In terms of connectivity, access involves various elements that enable people to connect and make use of technology and its benefits. This includes, but is not limited to, coverage. The IACHR has stated that “Speed, stability, affordability, language, local content, and accessibility for persons with disabilities are core elements of access.”¹³²
83. The report Meaningful Connectivity by A4AI measures internet access in four relevant dimensions to assess: (i) regular internet use, with a minimum threshold of daily use; (ii) the availability of an appropriate device, with a minimum threshold of access to a smartphone; (iii) enough data, with a minimum threshold of an unlimited broadband connection at home or a place of work or study; and (iv) a fast connection, with a minimum threshold of 4G mobile connectivity.¹³³ The Office of the Rapporteur considers that this framework could be used as a benchmark for measuring connectivity.
84. This Office recalls that it interprets “high speed” under the Alliance for Affordable Internet meaningful connectivity standards, according to which high speed is unlimited broadband or 4G mobile connectivity.¹³⁴ It is therefore essential to develop an adequate infrastructure to enable meaningful connectivity; that is, it should be available, accessible, relevant, affordable, secure, reliable, and empowering for the user, and it should lead to positive impacts on the enjoyment of rights.¹³⁵
85. The SRFOE also emphasizes that a necessary and crosscutting condition for connectivity is net neutrality. Access to information on the internet is possible due to the circulation of data packets through the network. In this regard, the plurality and diversity of the information that users can access depends on the free flow of data without discrimination based on content, origin, destination, service, terminal, or application.¹³⁶ Service providers responsible for transmitting data may not establish any blocking or interference measures that favor one set of data over another.
86. Net neutrality is a principle according to which “[t]here should be no discrimination in the treatment of Internet data and traffic, based on the device, content, author, origin and/or destination of the content, service or application.”¹³⁷ It is a principle for the realization of access to information that allows the user to receive, send, or search for information freely

¹³² CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

¹³³ A4AI, *Meaningful Connectivity – unlocking the full power of internet access*, sin fecha.

¹³⁴ A4AI, *Meaningful Connectivity – unlocking the full power of internet access*, sin fecha.

¹³⁵ Partner2Connect, International Telecommunication Union, *Action Framework*, 2022.

¹³⁶ Derechos Digitales, *Neutralidad de red en América Latina: Reglamentación, aplicación de la ley y perspectivas*, 2017.

¹³⁷ Relator Especial de las Naciones Unidas (ONU) sobre la Promoción y Protección del derecho a la Libertad de Opinión y de Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relatora Especial de la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relatora Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP), Declaración conjunta sobre libertad de expresión e internet, 1 de junio de 2011, Punto 5 (a).

and, as such, is a condition for exercising freedom of expression on the internet in the terms of Article 13 of the American Convention. As the Inter-American Court has noted, measures must be adopted to prevent the establishment of private controls from generating a violation of freedom of expression.¹³⁸

87. Therefore, aside from the provision of sufficient data through the internet, connectivity is enabled by the daily availability of smartphones or other devices at home, at work, or at school, so people who are connected can effectively carry out basic activities in their everyday lives.¹³⁹ In the past, television's ability to convey messages in an audiovisual format and to connect viewers with content in the privacy of the home were seen as critical to the impact of this technology.¹⁴⁰ This is replicated and far surpassed with the mobile internet, as people now have a constant connection that in some cases has been equated to an extension of the individual.¹⁴¹
88. Limited data packet connections, low-capacity devices, and the occasional or intermittent availability of devices make it difficult for individuals to store and consult documents or files of interest at any time and to participate in video calls. They also restrict their ability to upload and download content for specific activities, such as applying for a job, joining social protests, or learning about public safety guidelines during a crisis, for example. Connectivity and device range limitations therefore compromise routine internet use and its potential for basic work, learning, commercial transactions, health, access to information, and other activities. These factors affect social, economic, and political inclusion in communities or territories where access to such services is necessary for development.
89. The Office of the Rapporteur notes that the expansion of connectivity is one of the central points in the access policies adopted in the region. In Chile, the Ministry of Education created the TIC Enlaces program in 1992 to reduce technology access disparities between public and private schools by providing better access in public schools. As a result, in 2008, 87 percent of public schools had access to ICT.¹⁴² In addition, in 2021 the Ministries of Transport and Telecommunications (MTT) and Education (Mineduc) launched the "Connectivity for Education 2030" project, which seeks to improve internet access in about 10,000 schools and gradually increase connection speeds by late 2029.¹⁴³ In terms of legislation for the protection of human rights online, Chile has enacted Law 20.453, prohibiting interference, discrimination, and restriction of users' right to "use, send, receive, or offer any lawful content, application, or service through the internet, as well as any other type of lawful use or activity carried out through the network."¹⁴⁴
90. In Colombia, starting in 2010, the Vive Digital plan provided subsidies for broadband, fiber optics expansion, financial assistance for economically vulnerable families to acquire devices, and the installation of community internet access centers. It also offered training at various levels, including basic digital skills development, the use of social media for entrepreneurship, and digital content development.¹⁴⁵ In 2020, the Constitutional Court held that access to the internet is included within the right to education as a public service,

¹³⁸ Corte IDH, La Colegiación Obligatoria de Periodistas (Arts. 13 y 29 Convención Americana sobre Derechos Humanos), Opinión Consultiva OC-5/85 del 13 de noviembre de 1985, Serie A No. 5, párr. 48.

¹³⁹ A4AI, Alliance for Affordable internet, *Advancing Meaningful Connectivity: Towards Active & Participatory Digital Societies*, 2022.

¹⁴⁰ TEDH, Case of Centro Europa 7 S.R.L. and Di Stefano Vs. Italy, App. No. 38433/09, Sentencia del 7 de junio de 2012, párr. 132.

¹⁴¹ ONU, *Más del 75% de la población mundial tiene un teléfono celular y más del 65% usa el internet*, 26 de diciembre de 2023.

¹⁴² GSMA, *Connected Society Inclusión digital en América Latina y el Caribe*, 2016.

¹⁴³ Gobierno de Chile, Ministerio de Educación, *Gobierno lanza "Conectividad para la Educación 2030" que conectará a 10.000 colegios del país con internet de alta velocidad*, 2020.

¹⁴⁴ Congreso Nacional de Chile, Ley núm. 20.453 sobre el principio de neutralidad en la red para los consumidores y usuarios de internet, 26 de agosto de 2010, art. 24 H a).

¹⁴⁵ Gobierno de Colombia, Ministerio de Tecnologías de la Información y las Comunicaciones, Plan Vive Digital Colombia, *Puntos Digitales*, 2018.

and therefore must be guaranteed on a programmatic and progressive basis, which also entails a duty to ensure continuity of service.¹⁴⁶ Later, in 2023, the Constitutional Court ruled that internet access was a fundamental right and an instrument for the realization of constitutional guarantees. In other words, the State must ensure the service and refrain from establishing illegitimate restrictions on the dissemination of information online.¹⁴⁷

91. In Costa Rica, the government launched the National Telecommunications Development Plan in 2015, seeking to universalize access to telecommunications services in districts where investment cost of infrastructure installation and maintenance makes the provision of these services financially unprofitable. This plan aimed to promote broadband, social inclusion, citizen empowerment, and open, convenient, and transparent electronic government. These objectives were invoked as bonding and empowering factors for individual and collective capacities and the productive transformation of the various sectors of the Costa Rican economy, in the search for a fairer, more equitable, and prosperous society.¹⁴⁸
92. In Brazil, the National Broadband Plan instituted in 2010 seeks to expand internet access in the country, particularly in the most underserved regions, increasing network coverage areas and reducing costs based on terms of engagement with telecommunications companies.¹⁴⁹ One of the universalization initiatives implemented in Brazil is the installation of community networks, which are collaborative networks developed under a bottom-up model by groups or individuals who devise, develop, and manage the new network infrastructure.¹⁵⁰ With the same theme of universal access, the Brazilian government established that the winners of the 5G auction would invest R\$ 3.1 billion for connectivity in public schools¹⁵¹ as part of the Programa de Inovação Educação Conectada.¹⁵²
93. Uruguay's digital inclusion policies are part of a set of initiatives on the information society, including the establishment of the Agency for Electronic Government and Information Society Management in 2005,¹⁵³ which is now the Agency for Electronic Government and the Information and Knowledge Society (AGESIC).¹⁵⁴
94. In Mexico, the government has established a National Digital Strategy (2019-2024). Within this framework, the priority program "Internet for All" is part of the "Economy" axis of the 2019-2024 National Development Plan (PND), which seeks to bring internet and cell phone technology to the entire national population, broadening financial inclusion and ensuring the provision of social welfare programs directly to beneficiaries. This program consists of using the State's own infrastructure to carry out, with economic efficiency, a social project that is not very attractive from a commercial standpoint, but for which the State is responsible.¹⁵⁵
95. In El Salvador, the 2020-2030 Digital Agenda includes four areas of work: (i) digital identity; (ii) innovation, education, and competitiveness; (iii) modernization of the State; and (iv) digital governance. The actions coordinated by the Department of Innovation include the

¹⁴⁶ Corte Constitucional de Colombia, [Sentencia T 030 de 2020](#), 29 de enero de 2020.

¹⁴⁷ Corte Constitucional, [Sentencia T 372 de 2023](#), 20 de septiembre de 2023.

¹⁴⁸ Gobierno de Costa Rica, Ministerio de Ciencia, Innovación, Tecnología y Comunicaciones de Costa Rica, Informe Técnico N° MICITT-DEMT-DPPT-003-2021 III Informe del seguimiento de las metas del PNDT 2015-2021, 31 de diciembre de 2020.

¹⁴⁹ Gobierno de Brasil, Agência Nacional de Telecomunicações, [Plano Nacional de Banda Larga](#), 2020.

¹⁵⁰ Gobierno de Brasil, Agência Nacional de Telecomunicações, [Plano Nacional de Banda Larga](#), 2020.

¹⁵¹ Gobierno de Brasil, Agência Nacional de Telecomunicações, [Compromissos de Abrangência do Leilão do 5G](#), 2022.

¹⁵² Gobierno de Brasil, Ministério da Educação, [Educação Conectada](#), sin fecha.

¹⁵³ Gobierno de Uruguay, Agencia de Gobierno Electrónico y Sociedad de la Información y del Conocimiento (Agesic), [Creación y Evolución Histórica](#), sin fecha.

¹⁵⁴ Ana Laura Rivoir, Innovación para la inclusión digital. El Plan Ceibal en Uruguay, 2009.

¹⁵⁵ Gobierno de México, [internet para tod@s](#).

National Connectivity Plan, which seeks to ensure internet access for the entire population, with special attention to rural and vulnerable areas. The Department of Innovation has developed a work plan together with UNICEF to give continuity to the Connectivity Project for Schools in the Coastal Zone. Likewise, the Institutional Program for Universal Access to Educational Technologies has placed technological tools in the hands of students and teachers to ensure educational continuity, including a program to provide computers and internet service to children and adolescents in El Salvador who attend a public school or institute.¹⁵⁶

96. In Guyana, the State highlighted the following initiatives:
97. “One Laptop per Family Program”: a program launched in January 2011 with the objective of providing information and communications technology to tens of thousands of Guyanese families at home. This program was launched by the government that took office after the May 2015 elections.
98. Internet access (and other ICT services) for schools and public sector institutions: The Government of Guyana has focused on expanding its national broadband landscape, implementing its own broadband network in 2015. Internet access is now provided to over 600 educational institutions across Guyana (early childhood, primary, secondary, secondary, tertiary, and vocational schools and colleges). More than 3,000 ICT services (internet access, IP telephony, software development and maintenance, cloud services, etc.) are being provided throughout the public sector.
99. In addition to government policies, the availability of resources from telecommunications funds to finance digital inclusion is a necessary measure to universalize internet access and promote a secure and less costly digital space. Several countries have adopted this measure, including Chile, Peru, and Brazil. In Chile, the Telecommunications Development Fund (FDT) finances connectivity initiatives,¹⁵⁷ promoting access in schools, libraries, and health centers and is financing the “Connectivity for Education 2030” plan. Peru’s Telecommunications Investment Fund (FITEL) finances multimedia courses to facilitate the creation of local content and the development of micro-entrepreneurs with ICT support.¹⁵⁸ In Brazil, the strategic objectives of the Fundo de Universalização dos Serviços de Telecomunicação (FUST) for 2022-2027 include providing Brazilian public schools—especially those outside urban areas—with broadband internet access at a speed appropriate to their activities and to expand personal mobile service coverage, with 4G technology or higher, in rural and urban areas that lack service.¹⁵⁹ It also finances policies such as the 2023 National Digital Education Policy (PNED).¹⁶⁰
100. The Office of the Rapporteur also highlights some regional and global initiatives carried out by other stakeholders. The United Nations International Children’s Emergency Fund (UNICEF) and the International Telecommunications Union (ITU) created the GIGA program in 2019.¹⁶¹ This initiative that seeks to finance internet inclusion, and is based on the assessment that the lack of connectivity means fewer opportunities and information for children to learn and develop. It was noted that 96 percent of the 2.7 billion people who remain offline are in developing countries. The GIGA program seeks to connect schools in different parts of the world to bring children and adolescents into the digital

¹⁵⁶ Gobierno de El Salvador. Agenda Digital 2020-2030.

¹⁵⁷ Gobierno de Chile, Subsecretaría de Telecomunicaciones, [Fondo de Desarrollo de Telecomunicaciones](#), sin fecha.

¹⁵⁸ GSMA, [Connected Society: Inclusión Digital en América Latina y el Caribe](#), 2016.

¹⁵⁹ Gobierno de Brasil, Ministério das Comunicações, [Fust estabelece objetivos estratégicos até 2027](#), 2022.

¹⁶⁰ Gobierno de Brasil, Presidência da República, Secretaria-Geral Subchefia para Assuntos Jurídicos, [Lei nº 14.533/23](#), 2023.

¹⁶¹ Giga, [About us](#), 2019.

environment, thus promoting digital literacy. The agencies provide support to governments in obtaining funds to develop infrastructure and, ultimately, connect schools. UNICEF and ITU support the entire connectivity program cycle, from project planning to service quality monitoring, and assist in the development of regulatory frameworks and market conditions for the rollout of internet service providers. In the Americas, GIGA provided input for discussions on the approval of funds in Brazil to promote connectivity in general and in schools in particular.¹⁶²

101. At the global level, the International Telecommunication Union (ITU), in cooperation with the Office of the United Nations Secretary-General’s Envoy on Technology, also launched the Digital Partner2Connect coalition in 2021, a multi-stakeholder partnership to promote connectivity and digital transformation in vulnerable communities in least developed countries, small island developing States, and developing countries.¹⁶³ The coalition brings together actors from academia, government, civil society, the private sector, and international and regional organizations. It aims to mobilize resources to invest in connectivity, promote best practices and experiences, and foster transparency and accountability in these projects by monitoring their progress and outcomes.
102. Both initiatives are in line with the United Nations goal of “achieving a more open, free, and secure digital future for all;”¹⁶⁴ and with the UN Secretary General’s priorities set out in the Roadmap for Digital Cooperation, which include building institutional capacities and rights, promoting human rights in the digital sphere, and ensuring that all people have safe, meaningful, and affordable access to the internet by 2030.¹⁶⁵
103. The Groupe Speciale Mobile Association (GSMA), a global organization focused on mobile telephony and mobile connectivity, has a Connected Society program, which works with the mobile industry, technology companies, the development community, and governments to increase access to and adoption of the mobile internet, focusing on underserved populations in developing markets.¹⁶⁶ The organization also mobilizes funds to promote innovation and digital inclusion through its GSMA Innovation Fund, which drives infrastructure build-out in rural areas.¹⁶⁷ The GSMA also offers training courses in technology and telecommunications for regulators and policymakers.¹⁶⁸
104. Notwithstanding the aforementioned efforts, the Office of the Rapporteur underscores the considerable digital divide that persists in the region—including in terms of connectivity. According to figures from the International Telecommunication Union (ITU), as of 2023, 13 percent of the population of the Americas lacked internet access.¹⁶⁹ Problems related to the connectivity issue include insufficient coverage, unequal distribution, unaffordable broadband prices, unavailability of devices in homes, and accessibility gaps that prevent daily internet use.¹⁷⁰ For populations in situations of socioeconomic vulnerability, and in some regions, especially in rural areas and small municipalities, these limitations are more pronounced.¹⁷¹

¹⁶² Giga, [Connect](#), 2019.

¹⁶³ Partner2Connect Digital Coalition, [International Telecommunications Union](#).

¹⁶⁴ Partner2Connect Digital Coalition, [Annual Report](#), 2022.

¹⁶⁵ ONU, [Hoja de Ruta para la Cooperación Digital A/74/821](#), 2020.

¹⁶⁶ GSMA, [GSMA Connected Society Overview](#), sin fecha.

¹⁶⁷ GSMA, [Connected Society Innovation Fund for Rural Connectivity](#), sin fecha.

¹⁶⁸ GSMA, [GSMA Capacity Building](#), sin fecha.

¹⁶⁹ UIT, [Measuring digital development: Facts and figures](#), 2023.

¹⁷⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013.

¹⁷¹ CEPAL, [La igualdad de género y la autonomía de las mujeres y las niñas en la era digital: aportes de la educación y la transformación digital en América Latina y el Caribe](#), 2022.

- 105.** In Latin America and the Caribbean, the GSMA report *The State of Mobile internet Connectivity 2022* indicates that 57 percent of people who have mobile coverage do not use it.¹⁷² Contributors to the digital divide reportedly include the absence of relevant content in particular contexts and in languages spoken by the local people, coupled with difficulties in accessibility and affordability, lack of cultural relevance, low connection quality, and lack of digital skills.¹⁷³ Accessible language and the participatory programming and design of technologies, diversity and plurality criteria, and leadership of the beneficiary communities are determining factors in advancing meaningful connectivity as they make technologies compatible with social demands and result in the effective use of the internet.¹⁷⁴
- 106.** Considering that for 40 percent of the population, the cost of mobile ownership is on average 17 percent of income—and as high as 40 percent of income in some cases¹⁷⁵—the pricing structure can also hinder internet access to the point of making it impossible for certain sectors of society.¹⁷⁶ According to the 2015 GSMA Intelligence Consumer Survey, the majority of non-internet users come from the bottom of the social pyramid and live in rural areas.¹⁷⁷
- 107.** These gaps make it even more onerous to connect vulnerable groups¹⁷⁸ who face differential restrictions due to economic, geographic, language, culture, gender, sexual orientation, disability, and age. The lack of access to or understanding of the use of technologies has curtailed the enjoyment of rights, such as work, income, education, health, political participation, privacy, and freedom of expression, widening preexisting disparities.¹⁷⁹ In this connection, poverty, level of schooling, and geographic location are factors that deepen the gaps in access to and use of the internet and technology.¹⁸⁰ In turn, the connectivity limitations of vulnerable groups have an impact on social mobility, since access to the internet offers the potential to generate opportunities and income.¹⁸¹
- 108.** The IACHR and the SRFOE have observed that, since 2015, people between 15 and 29 years of age have used the internet seven to nine times more than people over 60.¹⁸² Therefore, they have called on States to accelerate policies for universal, high-quality internet access and to promote education and support for older persons in the development of digital competencies and skills with a human rights perspective.¹⁸³ Low accessibility and digital literacy gaps among older persons is thus another challenge that deserves attention.¹⁸⁴
- 109.** To overcome the digital divide in connectivity, the SRFOE recommends that investment models in infrastructure and spectrum management should be diversified and sustainable—in financial terms and in terms of compatibility with local cultural values—in order to promote equitable coverage in the different territories.¹⁸⁵ The provision of high-speed internet is an indispensable and basic requirement for the realization of rights and,

¹⁷² GSMA, *The State of Mobile internet Connectivity 2022*, 2022.

¹⁷³ GSMA, *The State of Mobile internet Connectivity 2022*, 2022.

¹⁷⁴ UNESCO, *Internet Universality: A Means Towards Building Knowledge Societies and the Post-2015 Sustainable Development Agenda*, 2013.

¹⁷⁵ GSMA, *Connected Society: Inclusión Digital en América Latina y el Caribe*, 2016.

¹⁷⁶ Relator Especial de las Naciones Unidas (ONU) para la Libertad de Opinión y de Expresión, el Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, la Relatora Especial de la Organización de Estados Americanos (OEA) para la Libertad de Expresión y la Relatora Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP), *Declaración Conjunta del Décimo Aniversario: Diez Desafíos Clave para la Libertad de Expresión en la próxima década*, 2010.

¹⁷⁷ GSMA, *Connected Society: Inclusión Digital en América Latina y el Caribe*, 2016.

¹⁷⁸ CEPAL, *La igualdad de género y la autonomía de las mujeres y las niñas en la era digital: aportes de la educación y la transformación digital en América Latina y el Caribe*, 2022.

¹⁷⁹ CEPAL, *La igualdad de género y la autonomía de las mujeres y las niñas en la era digital: aportes de la educación y la transformación digital en América Latina y el Caribe*, 2022.

¹⁸⁰ CIDH, *Pobreza y derechos humanos en las Américas*, OEA/Ser.L/V/II.164 Doc. 147, 7 de septiembre de 2017.

¹⁸¹ Victor Saavedra, Daniel Ospina Celis, Juan Carlos Upegui, Diana C. León, *Desigualdades digitales: Aproximación sociojurídica al acceso a internet en Colombia*, Dejusticia, 2021.

¹⁸² CIDH, *La CIDH y su RELE llaman a los Estados a adoptar medidas para reducir las brechas digitales de las personas mayores*, Comunicado de prensa No. 259/21, 1 de octubre de 2021.

¹⁸³ CIDH, *La CIDH y su RELE llaman a los Estados a adoptar medidas para reducir las brechas digitales de las personas mayores*, Comunicado de prensa No. 259/21, 1 de octubre de 2021.

¹⁸⁴ Guillermo Sunkel y Heidi Ullmann, *Las personas mayores de América Latina en la era digital: superación de la brecha digital*, 2019.

¹⁸⁵ OCDE, *Aprovechar al máximo la tecnología para el aprendizaje y la formación en América Latina*, 2020.

therefore, the universalization of coverage is an essential criterion and a crosscutting component of any economic and social development plan.

- 110.** In a region with high rates of income inequality and poverty as is the case in the Americas, bridging the digital divide and expanding connectivity requires that connection prices be reasonable and proportionate. As noted by the UN, “more attention must be given to digital inclusion so that people in developing countries who are now totally dependent on social media platforms and messaging applications for connectivity (through zero rating) can have meaningful, free, open, interoperable, reliable and secure access to the Internet.”¹⁸⁶
- 111.** The expansion of network coverage in rural and socioeconomically vulnerable areas must be coupled with pricing conditions compatible with the economic development of those sectors, as well as innovative models of public-private partnerships where attractive market conditions exist for companies.¹⁸⁷ At the same time, subscribing to internet services cannot jeopardize the family income or basic living conditions of a household, and its enjoyment should not entail giving up other social rights. Therefore, the Office of the Special Rapporteur underscores the need to adopt an appropriate pricing regime in the region with effectively accessible internet plans.¹⁸⁸
- 112.** Promoting universal access to ICTs also requires integrated policies involving the various State bodies and reforms at different levels. In countries where the high tax burden on internet services is an additional barrier for the most vulnerable groups and, therefore, a factor that widens disparities, tax reduction can be an effective measure for digital inclusion.¹⁸⁹ Proposals of this type have been considered in Mexico.¹⁹⁰ Other factors such as the formation of monopolies in broadband provision are determinants in low internet use in places where, despite coverage, costs remain prohibitive.¹⁹¹ It is also important for States to explore community networks as viable and efficient alternatives, especially in areas where public investment and private commercial interest are limited.¹⁹²
- 113.** In some parts of the Americas there is the possibility of creating and offering zero-rated data plans.¹⁹³ As reported in the Dialogue of the Americas, the high prices that are a barrier to access in the most socioeconomically vulnerable segments of the population have led to the expansion of free internet offers in the region that allow for access to certain apps or content to the detriment of others.
- 114.** This could potentially perpetuate or widen digital divides, given the vast plurality of options for developing multiple facets of people’s individual and social interests. Access through zero rating considerably reduces that plurality and potential to fragments of the network that, while important, are precarious. If access to the internet for vulnerable individuals or communities is limited to what the zero rating provider decides, it also restricts what users can potentially take advantage of beyond what the zero rating provider is willing to offer. There is also evidence that, in some countries, zero rating policies have led to a misunderstanding of what the internet is, confusing it with the limited experience of free applications. Although these plans are presented as a tool to

¹⁸⁶ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, La desinformación y la libertad de opinión y de expresión, A/HRC/47/25, 13 de abril de 2021.

¹⁸⁷ OCDE, *Aprovechar al máximo la tecnología para el aprendizaje y la formación en América Latina*, 2020.

¹⁸⁸ ONU, *Hoja de Ruta para la Cooperación Digital*, A/74/821, 2020.

¹⁸⁹ GSMA, *Digital Inclusion and Mobile Sector Taxation in Colombia*, 2016.

¹⁹⁰ Senado de la República de México, *En el Senado proponen eliminar impuestos a servicios de telecomunicaciones*, 17 de septiembre de 2021.

¹⁹¹ PNUD, *Acceso y uso de internet en América Latina y el Caribe*, 2022.

¹⁹² Internet Society, *Community networks — networks built, managed, and used by local communities — are cornerstones of the internet Society’s work*.

¹⁹³ OBSERVACOM, *El 72.5% de los operadores de la región ofrece planes de «zero rating»*, 2016.

provide greater access,¹⁹⁴ they have the effect of providing partial or targeted access to certain parts of the internet or to the services of large platforms with greater market share.

- 115.** This situation affects the individual and collective dimensions of freedom of expression, as people have fewer possibilities to browse content and access services and opportunities. Civil society organizations have noted that the practice of price discrimination in the provision of apps has favored the spread of disinformation, since zero-rated apps are channels used by those who turn to disinformation, and zero-rated plans are reported to restrict users' access to sources of opinions and knowledge that help to identify and combat disinformation.¹⁹⁵
- 116.** In the Americas, high internet prices and the aforementioned gaps create dynamics in which commercial zero rating measures become the only connection opportunity for some people. Access in socially and economically vulnerable sectors should be geared toward the totality of the internet in the shortest possible time, so that zero rating alternatives are exceptional and temporary, so that people in vulnerable situations are not forced to let their internet experience be determined by their ability to pay. Plans should be created to ensure full access to the internet without endangering users' financial stability or forcing them to accept periods with restricted access to certain content, services, or apps.
- 117.** States have the power to regulate technologies and are called upon to update their legislation in line with governance standards, in order to have an adequate legal framework that prevents any actor, including the State, from violating the principle of net neutrality. This is linked to the State's duty to "adopt the necessary measures, among others, the approval of legislation wherein the content is compatible with Article 13 of the American Convention and with the jurisprudence" of the inter-American system.¹⁹⁶
- 118.** The Inter-American Telecommunication Commission's Agenda for Connectivity in the Americas states that "[t]he infrastructure plan should find innovative means of extending access, including identifying locations suitable for public access. Those might include schools, government offices, post offices, barracks, or dedicated telecenters, etc. Appropriate resources will have to be found to ensure ongoing development of community access points, telecenters, etc., and for providing more, and more sophisticated, services to citizens."¹⁹⁷
- 119.** In addition, the State should go beyond providing a competitive market and become part of the service provision chain to diversify the model, expand public infrastructure, and close affordability, coverage, access to information, and communication gaps.¹⁹⁸ The universal service funds and the investment of State-owned companies in the deployment of fiber optics, for example, have the potential to extend connectivity to different geographical areas.¹⁹⁹
- 120.** Community networks play a unique and essential role in advancing meaningful connectivity and bridging the digital divide, as they provide community-managed internet

¹⁹⁴ Access Now, *Zero rating: a global threat to the open internet*, 2016.

¹⁹⁵ Julia D'Agostini, *Zero rating e desinformação: a relação entre a precariedade do acesso à internet no Brasil e a disseminação de conteúdos enganosos*, Lapin, 2021.

¹⁹⁶ Corte IDH, *Caso Gomes Lund y otros ("Guerrilha do Araguaia") Vs. Brasil*, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 24 de noviembre de 2010, Serie C No. 219, párr. 228.

¹⁹⁷ OEA, Comisión Interamericana de Telecomunicaciones, *Agenda de Conectividad para las Américas*, 2003.

¹⁹⁸ UNESCO, *Sociedad digital: brechas y retos para la inclusión digital en América Latina y el Caribe*, 2017.

¹⁹⁹ A4AI, *Fondo de Servicio Universal en América Latina y el Caribe*, 2021.

infrastructure at lower costs than large telecommunications companies and penetrate areas that are unprofitable for operators.²⁰⁰

121. Social management and collective ownership of infrastructure that are adapted to communities' needs, transparency, and participation help to make them democratizing tools.²⁰¹ Considering their role in enabling digital opportunities for social and political participation and in a community's economic development, community networks should be part of national plans for digital inclusion and telecommunication regulatory frameworks, with specific provisions to encourage the development of technical and institutional capacities and conditions of access to the spectrum for the provision of service.²⁰²
122. Language is another determining factor in digital inclusion in the region. The Inter-American Court has stressed that the right to freedom of expression necessarily entails the right of individuals to use the language of their choice to express themselves,²⁰³ and the European Court of Human Rights has noted the importance to freedom of expression of individuals being able to receive cultural, entertainment, and informational content in their own language.²⁰⁴ However, in Latin America and the Caribbean, less than 30 percent of the content on the internet is in the local language.²⁰⁵
123. Although the majority of the population in the Americas speaks Spanish, Portuguese, and Indigenous languages, most content online is available only in English.²⁰⁶ Due to the low level of second language learning in some communities and the intrinsic cultural differences within each language, the language limitation ends up becoming a new layer of exclusion by restricting internet use. Approximately 40 million people in Latin America speak Indigenous languages and for some this is their first language.²⁰⁷ The linguistic gap of the Indigenous population, characterized by the lack of relevant content in their native languages, increases the social marginalization of these groups, as well as the risk of disappearance of some native languages. In this regard, the Inter-American Court has held that there is a "right of Indigenous peoples to be represented in the different media, especially by virtue of their distinctive ways of life, their community relations and the importance of the media for these communities."²⁰⁸
124. The Office of the Special Rapporteur also recognizes that ensuring universal access to the internet and other technologies, as well as cultural and informational diversity and pluralism, requires that local content be available on the internet and in different languages, including Indigenous languages, in the Americas. Furthermore, it notes that achieving the media plurality and diversity essential to the exercise of freedom of expression requires States and companies to make efforts to allow different cultures to express themselves online. Multilingualism is relevant for the production of local content.²⁰⁹
125. Foreign content translated into the local language is frequently incompatible with the social particularities of the region or does not provide information and knowledge

²⁰⁰ Marianne Díaz Hernández, *Marcos Regulatorios para las Redes Comunitarias*, Derechos Digitales, 2018.

²⁰¹ Internet Society, *Redes Comunitarias en América Latina: Desafíos, Regulaciones y Soluciones*, 2018.

²⁰² Marianne Díaz Hernández, *Marcos Regulatorios para las Redes Comunitarias*, Derechos Digitales, 2018.

²⁰³ Corte IDH, *Caso López Álvarez Vs. Honduras, Fondo, Reparaciones y Costas*, Sentencia de 1 de febrero de 2006, Serie C No. 141, párr. 164.

²⁰⁴ TEDH, *Case of Khurshid Mustafa and Tarzibachi v Sweden*, App. No. 23883/06, Sentencia del 16 de diciembre de 2008, párr. 44.

²⁰⁵ GSMA, *Connected Society: Inclusión Digital en América Latina y el Caribe*, 2016.

²⁰⁶ Internet Society, *¿Cuáles son los idiomas más utilizados en internet?*, 2023.

²⁰⁷ UNESCO, *Sociedad digital: brechas y retos para la inclusión digital en América Latina y el Caribe*, 2017.

²⁰⁸ Corte IDH, *Caso Pueblos Indígenas Maya Kaqchikel de Sumpango y otros Vs. Guatemala, Fondo, Reparaciones y Costas*, Sentencia del 6 de octubre de 2021, Serie C No. 440, párr. 92.

²⁰⁹ UNESCO, *Recomendación sobre la promoción y el uso del plurilingüismo y el acceso universal al ciberespacio*, 2003.

relevant to the context of the user. The internet is often used as a forum for discussion about the conditions and coexistence of a community, where it is essential that content be produced and promoted in the languages of the communities and by the communities themselves so that individuals feel comfortable connecting and interacting through their opinions.²¹⁰ Meaningful connectivity measures should provide the opportunity for different groups to take ownership of technologies to highlight local demands, and they should lend themselves to local forms of sociability, economy, and culture.²¹¹

- 126.** The lack of accessibility to technological services and the unavailability of differential resources for people with disabilities on official government websites and private platforms also exacerbate barriers to social and democratic participation. On average, people with disabilities are nearly five times less likely to be online than people without disabilities.²¹²
- 127.** Adopting special measures to ensure equitable access to the internet for people with disabilities and sectors that have been historically excluded or subject to discrimination²¹³ should also be part of a policy that aims to significantly reduce the gap and promote universal internet access. Along these lines, tools such as the Web Content and Accessibility Guidelines (WCAG),²¹⁴ the documents published by the PUEDA Project – For an Accessible Digital Environment,²¹⁵ as well as the United Nations Strategy for Disability Inclusion,²¹⁶ are relevant initiatives for creating online spaces accessible to all people under fair and equitable conditions, a consideration that requires further study in the context of the inter-American system.
- 128.** Article 9 of the International Convention on the Rights of Persons with Disabilities (CRPD) emphasizes that digital accessibility includes ensuring access for persons with disabilities, on an equal basis with others, to information and communication technologies and systems. This means including persons with disabilities in the development, design, and all stages of production of technologies and providing accessibility mechanisms that enable individuals belonging to such groups to fully participate in digital services and platforms.
- 129.** Gender is another determining factor in the composition of digital divides. The inequality between men and women in the use of ICTs can be observed globally. Worldwide, in 2022, 62 percent of men used the internet, compared to 57 percent of women.²¹⁷ This is due, in part, to the fact that access to the internet is associated with employment and gender roles that often assign domestic activities to women.²¹⁸
- 130.** Structural gender inequalities create barriers to technology access for girls and women, which in turn limits their access to learning and information, especially in households where only one device is available. In these cases, the use of the device by boys or men in the home tends to be favored, which undermines the opportunities for women and girls to participate in economic, educational, entertainment, and cultural activities.²¹⁹ This

²¹⁰ UNESCO, *Media and information literacy: policy and strategy guidelines*, 2013.

²¹¹ Jenny Teresita Guerra, Marcela Suárez Estrada, Teresa Cerrato Pargman, Construyendo soberanía digital en América Latina: un análisis de las iniciativas de cuatro colectivos sociales, Chasqui: Revista Latinoamericana de Comunicación, 2022.

²¹² UNESCO, *Sociedad digital: brechas y retos para la inclusión digital en América Latina y el Caribe*, 2017.

²¹³ Relator Especial de las Naciones Unidas (ONU) sobre la Promoción y Protección del derecho a la Libertad de Opinión y de Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relatora Especial de la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relatora Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP), Declaración conjunta sobre libertad de expresión e internet, 1 de junio de 2011.

²¹⁴ Web Accessibility Initiative, *Resumen de los estándares de accesibilidad de W3C*, 2021.

²¹⁵ Asociación por los Derechos Civiles (ADC), *Elaboración de Productos Accesibles en el Entorno Digital - Guía Práctica*, sin fecha.

²¹⁶ ONU, *Estrategia de las Naciones Unidas para la Inclusión de la Discapacidad*, 2019.

²¹⁷ ITU, *Bridging the gender divide*, 2023.

²¹⁸ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/76/258, 30 de julio de 2021, párr. 34.

²¹⁹ CEPAL, *La igualdad de género y la autonomía de las mujeres y las niñas en la era digital: aportes de la educación y la transformación digital en América Latina y el Caribe*, 2022.

situation helps to accentuate gender gaps, affecting the autonomy and independence of women and girls.

- 131.** In addition, it has been observed that women are less likely than men to publish their opinions or sell or advertise a product or service online, which is related to women’s concerns about harassment.²²⁰ Therefore, connectivity policies should contain elements of digital security and incentives for the production of content by women and girls, under a gender perspective.

Digital literacy

- 132.** In addition to ensuring connectivity, States should focus their efforts on “educational efforts to promote the ability of everyone to engage in autonomous, self-driven and responsible use of the Internet.”²²¹
- 133.** Digital literacy is “the set of skills, knowledge, and attitudes required by an individual to functionally develop within the information society, and its objective is for people to acquire the knowledge and the skills to use technology efficiently, developing new social and financial opportunities within their social framework.”²²²
- 134.** In today’s context, where artificial intelligence plays an increasingly prominent role in streamlining processes for people’s daily lives, it is crucial to recognize both its benefits and the risks it may present to human rights, in particular freedom of expression and privacy. As such, the SRFOE highlights the importance of people understanding how artificial intelligence systems work and their potential impacts on human rights.²²³
- 135.** The Dialogue of the Americas showed that digital literacy should include the development of civic skills and be aimed at all ICT and internet users on an equal footing. To this end, it proposes advancing in progressive categories of literacy: (i) “Access,” which focuses on basic tool management skills; (ii) “Understand,” which involves critical content analysis skills and the protection of rights on digital platforms; and (iii) “Create,” focused on generating content and technologies that are culturally relevant and respectful of human rights.²²⁴
- 136.** The SRFOE also suggests developing sequential skills that facilitate digital learning: operational, formal, information, communication, content creation, and strategic skills. Each is vital for navigating and producing content in the digital environment.²²⁵
- 137.** The “access” category comprises “operational skills” and “formal skills” related to competencies of self-confidence and interaction with technologies; skills for handling digital media tools such as navigation bars, buttons, or links; and skills for orientation and navigation in digital structures such as hypertext.²²⁶

²²⁰ World Wide Web Foundation, *Women’s Rights Online, Closing the digital gender gap for a more equal world*, 2020.

²²¹ Relator Especial de las Naciones Unidas (ONU) sobre la Promoción y Protección del derecho a la Libertad de Opinión y de Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relatora Especial de la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relatora Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP), Declaración conjunta sobre libertad de expresión e internet, 1 de junio de 2011, punto 1 (f).

²²² CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013; CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

²²³ UE, Consejo Europeo, Comisionado por los Derechos Humanos, *Unboxing artificial intelligence: 10 steps to protect human rights*, 2019.

²²⁴ Relatoría Diálogo de las Américas, *Alfabetización Digital: Nota conceptual*, 2022.

²²⁵ Jan Van Dijk y Alexander Van Deursen, *Digital Skills. Unlocking the information society*, Basingstoke, Palgrave Macmillan, 2014.

²²⁶ Debora Burin et al., *Desarrollos recientes sobre Habilidades Digitales y Comprensión Lectora en Entornos Digitales*, 2016.

- 138.** The “understanding” category includes “information skills” and “communication skills,” providing the basis for autonomously discerning the content to which one is exposed and guiding community interaction. It involves skills to search, select, and critically assess information, as well as to encode and decode messages on different platforms and participate in social networks and online communities.²²⁷ “Understanding” also includes the ability to handle digital devices, use internet and artificial intelligence apps, take measures for one’s own privacy and security, and know and mitigate risks of violence and the quality of the information disseminated.²²⁸
- 139.** It is essential for digital literacy to include awareness of the impact of technologies on human rights, such as privacy and informational self-determination, as well as education on the critical consumption of information.²²⁹ The Office of the Rapporteur emphasizes that States have a general obligation to ensure human rights education under the American Convention on Human Rights and other international instruments. Educational institutions should develop curricula that integrate human rights education and digital technologies in an interdisciplinary manner and throughout all educational cycles, including perspectives on gender equality, ethnicity, race, child protection, and intersectionality.²³⁰
- 140.** In turn, UNESCO recommends that public policies on media and information literacy be formulated to articulate crosscutting strategies with a focus on: (i) collaboration, (ii) human rights, (iii) empowerment, and (iv) knowledge societies, with special attention to universal access, multiculturalism, education, and freedom of expression with a gender perspective.²³¹
- 141.** The SRFOE underscores that risks can arise in educational settings due to the lack of information and training on the use of digital tools and data protection, resulting in security and privacy issues, especially for children.²³² The increase in the contracting of private educational technologies (“EdTechs”) without due transparency in the management of personal data has led to disproportionate behavioral monitoring and ad targeting practices, affecting informational self-determination and limiting the free and autonomous participation of young people in public deliberation. Profiling and targeting children for advertising purposes through the use of EdTech platforms in classrooms overlooks the vulnerability of children on the internet and creates discriminatory contexts. It should also be noted that children’s limited autonomy demands that society and institutions pay attention to the various forms of online violence against children, including potential sexual abuse and exploitation, which affect their development opportunities.
- 142.** The “create” category includes the “content creation skills” and “strategic skills” needed to produce content, services, or apps that respect intellectual property rights and licenses for use, as well as to use the information obtained to achieve individual, collective, or social goals. This involves competencies in content development, integration of prior knowledge, programming, and other technical skills.
- 143.** It is crucial to recognize the need for literacy on artificial intelligence tools at various levels, considering their growing influence on media pluralism and the quality and

²²⁷ Debra Burin et al., *Desarrollos recientes sobre Habilidades Digitales y Comprensión Lectora en Entornos Digitales*, 2016.

²²⁸ Comisión Europea, *Marco europeo de competencias digitales DIGCOMP*, 16 de diciembre de 2020.

²²⁹ UNESCO, *Ciudadanía alfabetizada en medios e información: pensar críticamente, hacer clic sabiamente*, 2023.

²³⁰ UNESCO, *Políticas digitales en educación en América Latina: tendencias emergentes y perspectivas de futuro*, 2022.

²³¹ UNESCO, *Media and information literacy: policy and strategy guidelines*, 2013.

²³² UNESCO, *Minding the data: protecting learners’ privacy and security*, 2022.

reliability of information on the internet. States should implement training on the functioning of these tools and their impact on human rights, aimed at designers, public entities, and the general public, including the education sector. This literacy training should not be limited to the functioning of these tools, but should cover possible human rights impacts and their mitigation.²³³

- 144.** During the Dialogue of the Americas, the Office of the Rapporteur observed some initiatives aimed at developing digital literacy, including civic skills development. For example, in Uruguay, in 2020, AGESIC adopted a digital citizenship strategy to enhance the skills of citizens to make safe, responsible, critical, and participatory use of the digital environment. Representatives of more than 20 organizations, public and private institutions, academia, international agencies, and civil society organizations are involved in this strategy.
- 145.** The SRFOE also notes that the projects supported by Partner2Connect (International Telecommunication Union (ITU), in cooperation with the Office of the United Nations Secretary-General’s Envoy on Technology) in the region include “Imagina Si,” a digital inclusion project aimed at children from Indigenous communities in Mexico, Argentina, and Colombia, which seeks to help them develop digital skills, connect with peers from other Indigenous communities in the region, and, ultimately, amplify their voices so that their languages, ideas, and cultures can gain global exposure.²³⁴
- 146.** Deutsche Welle, through the DW Akademie center, has a Media and Information Literacy (MIL) project with a human rights approach in Mexico, Central America, and Bolivia. This initiative seeks to influence formal and continuing education with the inclusion of MIL in the school curriculum through the systemic training of educational personnel; to influence the media, through media production and training of journalists; and to shape innovation, through scientific research and experimental knowledge generation.²³⁵
- 147.** In Guatemala, the DW has sought to incorporate MIL into the school curriculum of the first years of middle school in the distance learning system of the Guatemalan Institute of Radio Education. In Bolivia, it provided support for 26,500 children to access education during the pandemic, with the MIL project “Radio Escuela.” In Mexico, it promoted multisectoral coordination through RedAmi; and in El Salvador, it integrated MIL into the curriculum of the Universidad Centroamericana José Simeón Cañas (UCA) and the Monica Herrera School of Communication.
- 148.** The Office of the Rapporteur has also been informed of policies and practices aimed at training and education for ICT development. Bolivia has the Centers for Training and Technological Innovation (CCIT), which are well-equipped technological laboratories that operate mostly in rural areas of the country. The CCITs provide training in robotics for children and young people, repair of cell phones and other devices, training for teachers, women entrepreneurs, and others, depending on the characteristics of each municipality. These spaces are also designed to carry out research and technological production in a decentralized manner.²³⁶
- 149.** At the same time, the State of Guyana reported that in 2022 it launched the Guyana Coders initiative, in partnership with the United Arab Emirates (UAE). Through this initiative, up to

²³³ UE, Consejo Europeo, Comisionado por los Derechos Humanos, [Unboxing artificial intelligence: 10 steps to protect human rights](#), 2019.

²³⁴ ITU, Partner2Connect Digital Coalition, [Annual Report](#), 2022.

²³⁵ DW Akademie, [Alfabetización Mediática e Informativa \(AMI\)](#), 2023.

²³⁶ Gobierno de Bolivia, [Información de Agetic](#), sin fecha.

150,000 Guyanese citizens and others throughout the Caribbean will be trained in how to code (in a three-year certification program).²³⁷

- 150.** In Colombia, under the 2018-2022 ICT Plan “El Futuro Digital es de Todos” (“The Digital Future Belongs to Everyone”) promoted the expansion of infrastructure and included the “Por TIC Mujer” initiative, which focuses on training, the empowerment of women in tech, and promotion of women’s digital entrepreneurship.²³⁸ The relevance of developing human skills in ICTs is noted in the national regulatory frameworks. Article 3 of Law No. 1341 of 2009, which creates the National High Speed Connectivity Project, states that “the training of human talent in these technologies and their crosscutting nature are pillars for the consolidation of information and knowledge societies.”²³⁹
- 151.** The Office of the Rapporteur notes that these types of initiatives are a best practice for opening spaces for the strengthening of technological sovereignty, innovation, and the reduction of digital divides at the national level. Creating opportunities for the design and deployment of social technologies—including internet infrastructure provided by community networks—supports effective participation in public conversations in the social environment where citizens live, as their deployment is based on the social practices and cultures of the community.
- 152.** However, initiatives focused on technical training to enable citizens to autonomously develop software, apps, and platforms, as well as those aimed at training to develop civic skills for the use of technologies, are essential. Digital literacy should not be limited to training in the technical handling of devices, nor should it be limited to the presentation of basic internet concepts.
- 153.** The SRFOE notes a quantitative and qualitative difference between the reports received on policies and practices aimed at developing connectivity in the States and those aimed at digital literacy. Concerns have been raised in the hemisphere that advances in connectivity are not part of a comprehensive approach to internet access, which has an impact on the persistence of gaps in usage, availability of culturally diverse content, and technology skills.²⁴⁰
- 154.** The low levels of digital skills and competencies puts Latin America and the Caribbean at a disadvantage compared to other regions, affecting not only the state of democracy and participation in public life through information exchange, but also productivity and social and economic development.²⁴¹ In the era of communication through platforms and the “datafication” of processes, digital literacy is a determining factor for the full exercise of rights in virtual environments, including through users’ critical and autonomous participation and their free discernment.²⁴²
- 155.** In view of the above, the SRFOE emphasizes that States should ensure that curricula at all levels of the education system include digital literacy for the development of civic skills as an explicit objective.²⁴³ To ensure the implementation of such measures, States have the obligation to establish and maintain an independent, transparent, and effective system

²³⁷ Gobierno de Guyana, [Guyana Coders Initiative](#), sin fecha.

²³⁸ Gobierno de Colombia, Ministerio de Tecnologías de la Información y las Comunicaciones, [Por TIC Mujer](#), 2022.

²³⁹ Gobierno de Colombia, Gestión normativa. Función Pública, [Ley 1341 de 2009](#).

²⁴⁰ ONU, Encuesta de las Naciones Unidas sobre el Desarrollo del Gobierno Electrónico 2022: el futuro del gobierno digital, diciembre de 2022.

²⁴¹ ILO, [An update on the youth labour market impact of the COVID-19 crisis](#), 2021; Iliana Vaca-Trigo y María Elena Valenzuela, [Digitalización de las mujeres en América Latina y el Caribe: acción urgente para una recuperación transformadora y con igualdad](#), Documentos de Proyectos (LC/TS.2022/79), CEPAL, 2022.

²⁴² La “dataficación” de procesos refiere a la recopilación, análisis e intercambio sistemático de datos y los resultados de estos procesos.

²⁴³ La Relatoría Especial de la ONU sobre la promoción y protección del derecho a la libertad de opinión y de expresión ha señalado que la alfabetización digital “debe ser parte de los planes de estudios escolares nacionales e involucrar a personas jóvenes y mayores”.

to verify whether education is truly oriented toward the objective of digital literacy for the development of civic skills. States should also ensure that digital literacy plans and programs exist outside the formal education system, such as in the workplace, supporting the digital transition of employment through differentiated approaches in the sectors most vulnerable to automation processes. Programs should include training, education, and efforts to raise awareness of the management and operation of digital tools, artificial intelligence tools, and their positive and negative impacts on human rights.²⁴⁴

- 156.** States are called upon to work with a clear, specific, and measurable competencies approach in national, regional, or local curricula that teach by levels the variables of access, understanding, and creation developed in this report, without prejudice to other competencies or variables that complement digital literacy educational efforts for the development of civic skills.²⁴⁵
- 157.** At a minimum, States should adopt a national education strategy that provides tools and study experiences in content monitoring, consumption, and distribution; online security and privacy, in particular the handling and protection of personal data; human rights in the face of disinformation; hate speech and gender, sexual, and other suspect categories; freedom of expression and the media; the use and impacts of artificial intelligence; virtual and augmented reality; robotics; and the internet of things.²⁴⁶ The promotion of human rights education should be understood in conjunction with digital literacy, in order to provide users with more resources to confront speech advocating violence, hate speech, and misinformation.
- 158.** Furthermore, digital literacy is only fully guaranteed if it considers the interaction with other factors and underlying gaps in society, such as those of access to information and knowledge, gender, ethnicity, age, race, territory and socioeconomic vulnerability, among others. It is understood that “the underlying definition of what it means to be digitally literate and have digital access has to be based on the fundamental premise that everyone should have an equal opportunity to become empowered through ICT.”²⁴⁷
- 159.** Due to the dynamics of violence, discrimination, and exclusion that affect women, nonbinary and LGBTQ+ people, Indigenous peoples, Afrodescendants, and people with disabilities in the Americas, digital literacy measures only fully meet their objective if they include components of human rights education and gender, racial, and ethnic perspectives, as well as specific approaches to accessibility. Therefore, States should ensure the crosscutting right to equality and nondiscrimination when designing, implementing, monitoring, and evaluating public policies on digital literacy for the development of civic skills.
- 160.** For example, in terms of digital aptitude and its relation to gender inequalities, digital literacy restrictions among women create a new layer of vulnerability. The SRFOE notes the low access and lack of mastery of digital skills among women, which reflect problems of social inclusion in the region, are derived to some extent from structural factors related to equal opportunities and discrimination.²⁴⁸

²⁴⁴ CEPAL, [La igualdad de género y la autonomía de las mujeres y las niñas en la era digital: aportes de la educación y la transformación digital en América Latina y el Caribe](#), 2022.

²⁴⁵ CEPAL, [Un camino digital para el desarrollo sostenible de América Latina y el Caribe](#), 2022.

²⁴⁶ Algunas referencias que pueden ser utilizadas por los Estados son el Marco de Competencias Digitales para los Ciudadanos de 2022 y el Marco de Referencia de Competencias para la Cultura Democrática del Consejo de Europa.

²⁴⁷ ONU, [Hoja de Ruta para la Cooperación Digital A/74/821](#), 2020.

²⁴⁸ UNESCO, [Sociedad digital: brechas y retos para la inclusión digital en América Latina y el Caribe](#), 2017.

- 161.** The collection of women’s personal data on digital platforms—combined with a limited understanding of digital tools—gives rise to surveillance practices and the sharing of personal data, imposing restrictions on their autonomy. Examples include anti-abortion ads targeting women who go to abortion clinics, the sharing of this data with public investigative authorities, and targeted ads based on period tracking apps.²⁴⁹
- 162.** Such a scenario, in addition to harming women’s informational self-determination, has a potential chilling effect on women’s participation in online discussion forums.²⁵⁰ Other problems include intimidation and restrictions on the dissemination of content relevant to women through gender disinformation, misogynistic speech, doxing, and content moderation measures designed and implemented on the basis of gender stereotypes.²⁵¹ Together, these factors also trigger self-censorship in women who refrain from speaking out about their rights due to the risks involved in these moderation scenarios.
- 163.** The inclusion of women and girls in the digital environment, as well as the promotion of self-managed technological initiatives, are necessary measures to diversify the space for public discourse and to enable the dissemination of narratives and social practices specific to these groups, especially in light of the dissemination of technologies with gender biases in their design,²⁵² strengthening their presence and autonomy and helping to confront patriarchal narratives online.
- 164.** There is a specific need for literacy programs focused on vulnerable groups, which face various cumulative barriers throughout their lives and, therefore, are not reached through policies that cover a broad spectrum of beneficiary sectors.
- 165.** The Office of the Special Rapporteur notes that digital literacy policies should be “proactively” promoted and supported by “States, internet intermediaries, and civil society organizations.”²⁵³
- 166.** States should promote greater understanding among the public and private sectors, as well as the general public, of the use of artificial intelligence tools along with an awareness of the human rights risks involved in the design and implementation of these tools.²⁵⁴
- 167.** Companies should devise an overall digital literacy strategy for users to develop civic skills, using the inputs offered in this report and involving all product development teams. While it is not up to private companies to replace the primary responsibility of the State in this area, they should complement this objective.
- 168.** This is closely related to the standards developed in the next chapter of this report. For example, companies should make it easy for users to understand how their human rights are enabled and affected, including the role of literacy in the enjoyment of freedom of

²⁴⁹ Privacy International, *No Body’s Business But Mine: How Menstruation Apps Are Sharing Your Data*, 2019.

²⁵⁰ OEA, Comité Interamericano contra el Terrorismo (CICTE) y Comisión Interamericana de Mujeres (CIM), *La violencia de género en línea contra las mujeres y niñas : Guía de conceptos básicos, herramientas de seguridad digital y estrategias de respuesta*, 2021.

²⁵¹ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, Justicia de género y libertad de opinión y expresión, A/HRC/47/25, 30 de julio de 2021.

²⁵² Relatora Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, la Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, el Relator Especial para la Libertad de Expresión de la Organización de Estados Americanos (OEA) y la Relatora Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP) para la Libertad de Expresión y el Acceso a la Información, Declaración Conjunta sobre libertad de expresión y justicia de género, 3 de mayo de 2022.

²⁵³ Relatora Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, la Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, el Relator Especial para la Libertad de Expresión de la Organización de Estados Americanos (OEA) y la Relatora Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP) para la Libertad de Expresión y el Acceso a la Información, Declaración Conjunta sobre libertad de expresión y justicia de género, 3 de mayo de 2022.

²⁵⁴ ONU, *La inteligencia artificial requiere una gobernanza basada en los derechos humanos*, 30 de noviembre de 2023.

expression, access to information, privacy and personal data, and other relevant rights. This goes hand in hand with providing easy-to-understand information to their users about the criteria and ways in which content curation or content removal algorithms work, as well as providing effective opportunities for users to decide what kind of information they do or do not wish to receive. Such practices support the self-determination of individuals by preserving users' right to privacy and data protection, since individuals may often object to business models that involve collecting and monitoring personal data.

169. Lastly, the Office of the Rapporteur emphasizes that States should ensure access to information on everything related to the objective of digital literacy for the development of civic skills. Consequently, States have the obligation to ensure the exercise of this right through prompt and adequate responses to requests for information, proactive information production and disclosure, and free and timely public access to statistics, databases, and other relevant sources of information on digital literacy for the development of civic skills and the exercise of human rights online by various groups in society.

CHAPTER III: Online Content Governance

Content moderation: defining challenges

- 171.** In its report on Freedom of Expression and the Internet (2013), the Office of the Rapporteur referred to the internet as a unique instrument to a unique tool for incrementally extending its enormous potential to broad sectors of the population.²⁵⁵ At that time, the Office noted how “the internet offers space for strengthening the exchange of information and opinions.”²⁵⁶
- 172.** In its report on Standards for a Free, Open and Inclusive Internet (2016), the Office of the Rapporteur established that the inclusive and sustainable distribution of the various social and human rights benefits of the internet requires policies and practices that must be based on respecting and ensuring human rights, in particular the right to freedom of expression, which facilitates and enables the exercise of other rights on the internet.²⁵⁷
- 173.** The success of the internet has made it a forum where diverse positions and information flow on a daily basis. In the same way as in analog environments, the internet is a space for the circulation of speech that entails risks and can have adverse effects on the exercise of human rights and democracy. However, the internet’s capacity for exponential dissemination in terms of size, speed, and reach carries with it the potential for such speech to have impacts that are difficult to predict and that were not considered in the past.
- 174.** The SRFOE has already highlighted that the twenty-first century has seen a paradigm shift in the flow of information, characterized by the speed with which information is now produced and distributed, the volume of information generated thanks to the exponential multiplication of sources, and the capacity for information to expand horizontally in a “viral” manner in this decentralized network, coupled with the ability to target messages to very specific demographic segments.²⁵⁸ The UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has said that “digital technology has enabled pathways for false or manipulated information to be created, disseminated and amplified by various actors for political, ideological or commercial motives at a scale, speed and reach never known before.”²⁵⁹
- 175.** Likewise, according to the UN Special Rapporteur, disinformation “tends to thrive where human rights are constrained, where the public information regime is not robust and where media quality, diversity and independence is weak.”²⁶⁰ The SRFOE has underscored the concern that exists at the regional and global level regarding the spread of

²⁵⁵ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013, párr. 10.

²⁵⁶ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013, párr. 11.

²⁵⁷ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 2.

²⁵⁸ OEA, Relatoría Especial para la Libertad de Expresión, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, Octubre de 2019, p. 13.

²⁵⁹ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, La desinformación y la libertad de opinión y de expresión, A/HRC/47/25, 13 de abril de 2021, párr. 2.

²⁶⁰ ONU, Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Irene Khan, La desinformación y la libertad de opinión y de expresión, A/HRC/47/25, 13 de abril de 2021.

disinformation with an impact on democracy, especially in emergency contexts such as the COVID-19 pandemic.²⁶¹

- 176.** Electoral contexts are ripe for the online manipulation of public opinion due to the intense polarization of narratives on issues of public interest and the potential for amplification of the political speech of the actors involved.²⁶² The sensitivity of electoral periods and the special protection that inter-American law affords to political speech due to its relevance to democratic deliberation, can lead to tensions with distorted narratives about the electoral process.²⁶³ In this regard, the diversity of digital media and the plurality of information are essential to ensure free and fair elections. The SRFOE highlights the importance of the internet in electoral contexts, as well as the risks associated with harmful speech and the use of online tools to exacerbate political conflicts, practices that can undermine citizen security and limit participation in political debate.²⁶⁴
- 177.** In addition, the propagation and virality of hate speech on the internet and its influence in the physical world have prompted an increase in regulatory proposals to restrict such content online.²⁶⁵ Such speech threatens fundamental rights such as freedom of expression, human dignity, equality, personal safety, and life, and can lead to systemic and high-impact violence against individuals and communities.²⁶⁶
- 178.** This type of speech can foster discriminatory, intolerant, and violent digital environments, restricting participation in the digital public space and affecting victims' ability to seek, receive, and disseminate information online. This leads to imbalances in the plurality of information and communicative diversity on the internet.²⁶⁷ In this regard, the SRFOE has indicated that inequality in relation to certain groups results in their exclusion from public debate and, subsequently, in greater vulnerability to intolerance, prejudice, and marginalization. In the opinion of the UN Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the consequences of the dissemination of hate speech online is also the responsibility of private businesses, which "have an enormous impact on human rights, particularly but not only in places where they are the predominant form of public and private expression, where a limitation of speech can amount to public silencing or a failure to deal with incitement can facilitate offline violence and discrimination."²⁶⁸
- 179.** In this context, the SRFOE observes that the breadth and vagueness of the term "hate speech" in different measures promoted by States poses challenges to international human rights law standards, since overly-broad and vague restrictions on freedom of expression may result in restrictions that are incompatible with Article 13 of the ACHR.²⁶⁹ In the inter-American human rights system, "States are only mandated to prohibit hate speech in certain circumstances, this is, when the speech constitutes 'incitements to lawless violence or to any other similar action against any person or groups of persons on any grounds including those of race, color, religion, language, or national origin' (Article

²⁶¹ CIDH, Relatoría Especial para la Libertad de Expresión, Desinformación, pandemia y derechos humanos, OEA/Ser.L/V/II, CIDH/RELE/INF.25/23, diciembre de 2022.

²⁶² UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023.

²⁶³ CIDH, Relatoría Especial para la Libertad de Expresión, Marco Jurídico Interamericano sobre el derecho a la libertad de expresión, OEA/Ser.L/V/II, CIDH/RELE/INF. 2/09, 30 diciembre 2009, párr. 33 y siguientes; OEA, Relatoría Especial para la Libertad de Expresión, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, Octubre de 2019.

²⁶⁴ Article19, *Manual de moderación de contenidos y libertad de expresión*, 2023.

²⁶⁵ The Future of Free Speech, *Global Handbook on Hate Speech Laws*, 2020.

²⁶⁶ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Discurso de odio en línea, A/74/486, 9 de octubre de 2019.

²⁶⁷ UNESCO, *Countering Online Hate Speech*, 2015.

²⁶⁸ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Discurso de odio en línea, A/74/486, 9 de octubre de 2019.

²⁶⁹ CIDH, Violencia contra Personas LGBTI, OAS/Ser.L/V/II.rev.2 Doc. 36, 12 noviembre de 2015, párr 224.

13.5 of the American Convention).²⁷⁰ In other cases, any type of restriction must be consistent with the provisions of Article 13.2 of the American Convention.²⁷¹

- 180.** The rapid development of internet communications has also brought new actors that play a significant role in the dissemination of online content. This Office reflected on this aspect in its Guide to Guarantee Freedom of Expression regarding Deliberate Disinformation in Electoral Contexts (2019), indicating that intermediaries operating on the internet act as “traffic control nodes” that make “decisions [with] a significant impact on the public debate.” However, the Office of the Rapporteur warned at that time about government initiatives that recognize the role of platforms in the dissemination of content and take a repressive approach to it. In this regard, the SRFOE remarked, among other things, on the principle that has guided the inter-American position on the liability of intermediaries since its 2013 report, which calls on States to avoid establishing “regulatory frameworks that hold intermediaries responsible for content produced by third parties.”²⁷²
- 181.** Internet intermediaries range from service providers to search engines, and include social networking platforms, e-commerce platforms, and web servers.²⁷³ Given the importance of intermediaries in the flow of information and communication in the public square, the intermediary liability regime takes on an important role in democratizing the internet and promoting and protecting freedom of expression.²⁷⁴
- 182.** A decade ago, the debate surrounding the liability of intermediaries for content transmitted through their services was focused mainly on the role of these actors in the transmission of the content.²⁷⁵ At that time, the issue was whether intermediaries should be held responsible for the content generated by their users,²⁷⁶ which led to a regional consensus among civil society actors, digital rights defense organizations, and international organizations on the non-liability of intermediaries for third-party speech.²⁷⁷ In recent years, the discussion has shifted toward the role played by digital platforms in shaping public debate and the need for greater transparency and accountability in the implementation of internal standards and respect for human rights in relation to content moderation and curation.
- 183.** With the progress of technology and of service and business modalities, digital platforms no longer act as mere conduits of information shared by users.²⁷⁸ Nowadays, intermediaries also organize and prioritize the information available to users, adjusting its visibility to their habits and certain business criteria.²⁷⁹ This business model is aimed at increasing direct online engagement.²⁸⁰ The use of behavioral profiling to target content based on an individual’s preferences and beliefs, thereby increasing their engagement on

²⁷⁰ CIDH, *Violencia contra Personas LGBTI*, OAS/Ser.L/V/II.rev.2 Doc. 36, 12 noviembre de 2015, párr. 225.

²⁷¹ CIDH, *Violencia contra Personas LGBTI*, OAS/Ser.L/V/II.rev.2 Doc. 36, 12 noviembre de 2015, párr. 226.

²⁷² CIDH, *Relatoría Especial para la Libertad de Expresión*, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, Octubre de 2019.

²⁷³ ONU, *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión*, Frank La Rue, A/HRC/17/27, 16 de mayo de 2011; UNESCO, *Fostering Freedom Online: The role of internet intermediaries*. Unesco Series on internet Freedom. internet Society, 2014.

²⁷⁴ ONU, *Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión*, Frank La Rue, A/HRC/17/27, 16 de mayo de 2011.

²⁷⁵ Article19, *Intermediarios de internet: Disyuntiva por la atribución de responsabilidad civil y penal*, 2013.

²⁷⁶ Article19, *Intermediarios de internet: Disyuntiva por la atribución de responsabilidad civil y penal*, 2013.

²⁷⁷ Relator Especial de las Naciones Unidas (ONU) sobre la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relator Especial por la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relator Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y Pueblos (ACHPR). Declaración Conjunta sobre Libertad de Expresión e internet, 2011; CIDH, *Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet*, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013; CIDH, *Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente*, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017; Fundación Karisma y Fundación para la Libertad de Prensa, *Recomendaciones para la garantía de los derechos humanos en una ley que regule la responsabilidad de intermediarios de internet en Colombia (Ley Lleras)*, 2014; Asociación por los Derechos Civiles (ADC), *Libertad de Expresión en el Ambito Digital El estado de situación en América Latina*, 2019.

²⁷⁸ Pew Research Center, *Views of social media and its impacts on society*, 2022.

²⁷⁹ Article19, *Manual de moderación de contenidos y libertad de expresión*, 2023.

²⁸⁰ Article19, *Manual de moderación de contenidos y libertad de expresión*, 2023.

the platform, has resulted in the formation of “bubbles” that intensify extremist or sensationalist interests.²⁸¹

- 184.** The exercise of freedom of expression these days faces a particular challenge in the definition of rules on what can or cannot be received or disseminated on social networks under the content policies or community standards of private companies. These companies, usually referred to as digital platforms, make crucial decisions in their content moderation or curation about the circulation of information and ideas, which ultimately affects the public conversation online.²⁸²
- 185.** The internal regulations of digital platforms thus affect freedom of expression, access to information, and due process in different ways, while at the same time addressing—in their own terms—the growing trends of disinformation, hate speech, and online violence that affect women, LGBTI+ people, Afrodescendants, and other vulnerable groups to a greater extent. Given that a number of human rights are at stake in online public debate, the rules that shape it must be public and pre-established, and they must be enforced with respect for procedural guarantees.²⁸³
- 186.** Platforms also play an important role in organizing the public debate in a way that is usable by the public. If not for the moderation and curation work of the platforms, their users’ feeds would be flooded with spam and irrelevant content or, in many cases, content that is incomprehensible or harmful to the recipients.²⁸⁴ This work is therefore highly relevant to the public debate and has implications for the collective and individual dimensions of freedom of expression.
- 187.** There is no single definition of content moderation or content curation. For the purposes of this report, the Office of the Rapporteur uses definitions from the Dialogue of the Americas process and from documents put out by civil society organizations specializing in the subject. Thus, content moderation is defined as the organized practice of screening content generated and viewed by users and posted on digital platforms. There are different types of content moderation: pre-moderation,²⁸⁵ post-moderation,²⁸⁶ reactive moderation,²⁸⁷ distributed moderation,²⁸⁸ and automated moderation.²⁸⁹ The process can be done, for example, by the direct action of a person (the moderator acting as an agent of the platform) or by automated processes based on artificial intelligence tools together with the processing of large amounts of user data. A decision to host or not to host content may involve taking down content permanently or temporarily, across the entire platform or in relation to certain groups of users in a specific geographic area, or affecting accounts of users under different modalities.²⁹⁰ Moderation may also include actions such as tagging content, providing extra information about a publication, or demonetizing publications, among many others.²⁹¹

²⁸¹ Christopher Wylie, *Mindf*ck: Cambridge Analytica y el complot para romper Estados Unidos*, Casa aleatoria, 2019.

²⁸² Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, *Nota conceptual de la Moderación de Contenidos*, 2021.

²⁸³ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

²⁸⁴ ACLU, *Gonzalez v. Google: Brief of American Civil Liberties Union, American Civil Liberties union of Northern California, and Daphne Keller as Amici Curiae in Support of Respondent*, 2023.

²⁸⁵ Moderación de contenidos de revisión previa a la publicación. Véase al respecto: R3D y ALSur, *La moderación de contenidos desde una perspectiva interamericana*, marzo de 2022.

²⁸⁶ Moderación de contenidos de revisión previa a la publicación. Véase al respecto: R3D y ALSur, *La moderación de contenidos desde una perspectiva interamericana*, marzo de 2022.

²⁸⁷ Moderación de contenidos realizada por la plataforma y activada por petición de terceros, generalmente por medio de denuncias de las y los usuarios de las plataformas. Véase al respecto: R3D y ALSur, *La moderación de contenidos desde una perspectiva interamericana*, marzo de 2022.

²⁸⁸ Moderación de contenidos realizada por las y los usuarios, sin requerir intermediación de la plataforma.

²⁸⁹ Moderación de contenidos realizada mediante sistemas automatizados basadas mecanismos algorítmicos de Machine Learning. Véase al respecto: Article19, *Manual de moderación de contenidos y libertad de expresión*, 2023.

²⁹⁰ Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, *Nota conceptual de la Moderación de Contenidos*, 2021.

²⁹¹ M. Singhal, C. Ling, P. Paudel, P. Thota, N. Kumarswamy, G. Stringhini, y S. Nilizadeh, *SoK: Content moderation in social media, from guidelines to enforcement, and research to practice*, IEEE 8th European Symposium on Security and Privacy (EuroSP), 2023.

- 188.** Content curation is defined as automated decisions about the reach, ranking, promotion, or visibility of content. Platforms usually curate content based on personalized recommendations for user profiles.²⁹² To the extent that certain content is favored, curation can end up amplifying or reducing the reach of certain speech.²⁹³
- 189.** According to public information and reports received by the Office of the Special Rapporteur, the criteria for the operation of automated content moderation systems are opaque, as are the platforms’ decisions to remove or prioritize certain content or suspend accounts.²⁹⁴ For example, policy changes are often disclosed through platform blog posts and are not updated in the relevant section of the community standards or norms.²⁹⁵ Even when users may be aware of the terms and community standards, there is a common lack of understanding and clarity about the processes of removal, labeling, declassification, or demonetization of content, and other content moderation decisions of the platforms.²⁹⁶ In this regard, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has referred to platforms as “ enigmatic regulators, establishing a kind of ‘platform law’ in which clarity, consistency, accountability and remedy are elusive.”²⁹⁷
- 190.** In addition, content moderation and curation decisions are determined by the business models, operations, and internal procedures of internet companies. It has been reported that numerous major digital platforms prioritize profit, using algorithms to promote the consumption and viewing of harmful content, including hate speech and disinformation.²⁹⁸
- 191.** Automated systems that classify, prioritize, or flag content often have problems sufficiently identifying the different circumstances and particularities in which content is couched—such as the cultural, linguistic, political, social, and economic characteristics of the persons sending or receiving messages—which has led to failures in the enforcement of policies that have the potential to silence and exclude certain voices.²⁹⁹ Algorithms, fed by data that provides examples of speech that should be subject to removal or reach reduction, cannot differentiate these characteristics.³⁰⁰ This makes it challenging to have a pluralistic information ecosystem. The SRFOE notes that the Inter-American Court of Human Rights has found that the reduction of voices and relevant points of view widens existing gaps within society and “attacks pluralism as an essential element of freedom of expression and democracy.”³⁰¹
- 192.** In this context, the Office of the Rapporteur takes note of civil society’s concerns regarding restrictions on content generated by journalists or human rights defenders who speak out on critical or controversial issues in the public debate, and regarding the high volume of content that incites violence, discrimination, disinformation, and online harassment against women and LGBTI+ persons.³⁰² This has a differentiated impact on the right to

²⁹² Article19, [Manual de moderación de contenidos y libertad de expresión](#), 2023

²⁹³ Access Now, [26 recomendaciones sobre gobernanza de contenido: una guía para legisladores, reguladores y encargados de políticas empresariales](#), 2020.

²⁹⁴ Los problemas relacionados con el uso de la inteligencia artificial y con utilización de algoritmos que posibilitan o favorecen el deterioro del debate público están relacionados con varios factores, como a una falta de transparencia sobre qué datos se utilizan para generar la segmentación de contenidos y sobre la definición de estos criterios.” Aporte de la organización Derechos Digitales al primer set de preguntas sobre deterioro del debate público, en el marco del Diálogo de las Américas, 2021; ver también Lima Monteiro, Artur Pericles et al., *Armadilhas E Caminhos Na Regulação Da Moderação De Conteúdo (Traps and Ways Forward in Regulating Content Moderation)*, 2021.

²⁹⁵ Por ejemplo: Meta, [Actualización sobre nuestro abordaje al contenido político en Instagram y Threads](#), 9 de febrero de 2024; YouTube, [Upcoming and recent ad guideline updates](#), enero de 2024.

²⁹⁶ Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, [Observaciones derivadas de la Encuesta sobre Moderación de Contenidos](#), 2021.

²⁹⁷ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 1.

²⁹⁸ Amnistía Internacional, [Myanmar: Facebook’s systems promoted violence against Rohingya; Meta owes reparations](#), 29 de septiembre de 2022.

²⁹⁹ Article19, [Manual de moderación de contenidos y libertad de expresión](#), 2023.

³⁰⁰ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/73/348, 29 de agosto de 2018, párr. 29.

³⁰¹ Corte IDH, Caso Bedoya Lima y otra Vs. Colombia, Fondo, Reparaciones y Costas, Sentencia de 26 de agosto de 2021, Serie C No. 431, párr. 113.

³⁰² Article19, [Content Moderation and Freedom of Expression: Bridging the Gap between Social Media and Local Civil Society](#), junio de 2022.

freedom of expression of persons belonging to these populations.³⁰³ Notably, the Inter-American Court has found that situations of structural discrimination, and the potential factors that may lead to victimization due to these structural considerations, can undermine human rights guarantees.³⁰⁴

- 193.** Large-scale content moderation and curation, often implemented through technical solutions, can result in the removal of protected speech, as well as in speech not protected by international standards on freedom of expression being allowed to remain.³⁰⁵ This is because the automated systems lack the capacity to identify nuance or the context in which speech is embedded.³⁰⁶
- 194.** This problem is caused in part by the lack of diversity of the teams in charge of designing the codes and feeding the databases. In this regard, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression has noted that “[t]he setting of rules by social media platforms through community guidelines and moderation by algorithms is not objective. It reflects the biases and worldviews of the rule-setters, who tend to be typically from the specific sociocultural context of Silicon Valley: racially monochromatic and economically elite.”³⁰⁷ This leads to simplistic³⁰⁸ or biased³⁰⁹ responses, such as reducing the visibility of the profiles of activists³¹⁰ and journalists who are Afrodescendant or Indigenous.³¹¹ It also means that the private actors in charge of regulating public debate are concentrated in a few countries and their business models reflect practices and experiences that are often unrelated to the sociocultural and political scenarios in which public debate takes place. This poses risks to the public interest in a region like the Americas, marked by significant socioeconomic inequalities and recurrent institutional crises.

Content governance in the Americas

- 195.** Threats to democratic institutions and public safety, as well as the proliferation of violent speech and disinformation on social networks, have led to intense regulatory reactions from digital platforms in the region.³¹² Some initiatives have been taken that, while seeking to present solutions to social problems accentuated by the platforms’ design, may undermine the integrity of the digital environment and the principles of openness, neutrality, and plurality. Thus, these proposals are faced with the challenge of mitigating phenomena harmful to public discourse, such as the spread of hate speech and disinformation, in a way that safeguards the right to freedom of expression.

³⁰³ Thiago Dias Oliva, Antonialli Dennys Marcelo, and Alessandra Gomes, *Fighting hate speech, silencing drag queens? artificial intelligence in content moderation and risks to lgbtq voices online*, Sexuality & culture, 2021.

³⁰⁴ Corte IDH, *Caso de los Empleados de la Fábrica de Fuegos de Santo Antônio de Jesus y sus familiares Vs. Brasil*, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 15 de julio de 2020, Serie C. No. 407, párr. 190.

³⁰⁵ R3D y ALSur, *La moderación de contenidos desde una perspectiva interamericana*, marzo de 2022.

³⁰⁶ R3D y ALSur, *La moderación de contenidos desde una perspectiva interamericana*, marzo de 2022.

³⁰⁷ ONU, *Informe de la Relatora Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión*, Irene Khan, Justicia de género y libertad de opinión y expresión, A/76/258, 30 de julio de 2021, párr. 84.

³⁰⁸ *Relatoría Especial para la Libertad de Expresión, Diálogo de las Américas, Automated content moderation still biased against the same groups that are designed to protect*, 2021.

³⁰⁹ E. Llansó, J. van Hoboken, J. P. Leerssen & J. Harambam, *Artificial Intelligence, Content Moderation, and Freedom of Expression*, *Transatlantic Working Group on Content Moderation Online and Freedom of Expression*, 26 de febrero de 2020.

³¹⁰ “En el caso de las bajadas de contenido o ataques a periodistas o personas defensoras de derechos humanos, las organizaciones de la sociedad civil suelen actuar como intermediarias ante las plataformas. Sin embargo, este tipo de información no siempre es fluida o accesible democráticamente para todas las personas posiblemente afectadas”. IFEX-ALC, *Insumos enviados en el marco del Diálogo de las Américas de la Relatoría Especial para la Libertad de Expresión*, 2021.

³¹¹ En relación con las tecnologías emergentes donde también se encuentran la creación de algoritmos, la problemática radica en que la programación de estos está construidas desde una visión o identidades que desdibujan o se muestran apáticos ante los contextos y realidades donde son aplicables, así también aplicando una visión heteropatriarcal. La suma de violencias que enfrentan los grupos y poblaciones en situación de mayor vulnerabilidad, incluida la remoción de contenidos, contribuyen a generar un clima de exclusión, censura, autocensura y apatía social en el entorno digital. Lo anterior sienta las bases para un ecosistema en línea que refuerza la dinámica de poder existente, dejando a las comunidades tradicionalmente marginadas en riesgo de ser invisibilizadas y sobreexpuestas a más violencia.” Artículo 19, *Oficina de México y Centroamérica*, *Insumos enviados en el marco del Diálogo de las Américas de la Relatoría Especial para la Libertad de Expresión*, 2021.

³¹² Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE) de la Universidad de Palermo, *La regulación de internet y su impacto en la libertad de expresión en América Latina*, marzo de 2018.

- 196.** These proposals must face the challenge of mitigating phenomena harmful to public discourse, such as the spread of hate speech and disinformation, in a manner respectful of the right to freedom of expression. However, the Office of the Rapporteur notes that State responses to these phenomena often provide for unnecessary or disproportionate restrictions, with tendencies toward criminalization and censorship.³¹³ Many legislative proposals in the region are reactive and insufficiently debated, running the risk of limiting freedom of expression and other human rights online.³¹⁴ In particular, the Office of the Rapporteur considers that urgent solutions often ignore the complexity and cross-border nature of digital challenges, making it difficult to create regional or international agreements with a multi-stakeholder approach.
- 197.** In the global context of content governance, the Americas are at a dynamic stage of experimentation with different regulatory models.³¹⁵ Some experts argue that European Union regulations have become globally applicable standards for companies.³¹⁶ In October 2022, the EU adopted Regulation 2022/2065 on a single market for digital services (Digital Services Act). This instrument aims to regulate a digital environment in which fundamental rights are protected, and highlights the importance of taking actions to assess and mitigate the impact of risks to fundamental rights arising from the activities of digital platforms.³¹⁷
- 198.** The Office of the Rapporteur considers that the countries of the region can learn and capitalize on lessons from international experiences to develop their own strategies in line with the American Convention and the standards of the inter-American human rights system.³¹⁸ It is essential for the Americas to forge a regional approach that harmonizes regional and global consensus, norms, and standards, recognizing national and regional particularities, in a framework of broad multi-stakeholder dialogue. The Office of the Rapporteur also stresses the need for any adaptation of foreign regulations in the area of online freedom of expression to be consistent with the principles developed at the regional level for the protection of this right. The SRFOE agrees with the perspective that governance policies should take a collaborative and multi-sectoral approach that reflects regional and jurisdictional realities.³¹⁹
- 199.** Notably, the Inter-American Court has stated that, if the interpretation of a right protected by the American Convention proves to be more restrictive under another international legal framework, it does not justify the adoption of those more restrictive criteria in the context of the Convention.³²⁰ Likewise, although the European Union's approach is

³¹³ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, David Kaye, A/HRC/32/38, 11 de mayo de 2016, párr. 13.
³¹⁴ Al respecto, ALAI sugiere que: “la discusión sobre el desarrollo de nuevas regulaciones no implica que las leyes deban crearse rápidamente y sin sopesar todas las voces, todas las necesidades y todos los escenarios. Es cierto que existe un déficit y que se necesitan soluciones, pero también estamos ante la oportunidad de hacer las cosas bien: tomar ventaja de la experiencia acumulada en el mundo, aprovechar el espacio generado por el Diálogo de las Américas, discutir de forma seria y documentada, y honrar las reglas fundamentales de nuestras instituciones para garantizar los derechos humanos fundamentales y generar un impacto positivo en el proceso democrático y en el contrato social”. ALAI, *Convivencia digital y el debate público: desafíos y oportunidades*, 2022.

³¹⁵ Al Sur, *Hacia nuevos consensos regionales en materia de responsabilidad de intermediarios en internet*, abril 2021, p. 38; UNESCO, *Iniciativas de institucionalidad para la transparencia y la rendición de cuentas de las grandes plataformas digitales*, 2022; En Estados Unidos, la sección 230 de la Ley de Decencia de las Comunicaciones otorga inmunidad a los proveedores de servicios informáticos sobre el contenido de sus usuarios. Los proveedores no deben ser tratados como editores y al mismo tiempo se le reconoce derechos para moderar –o no hacerlo– de buena fe, sin importar si es contenido protegido por la Primera Enmienda.

³¹⁶ A. Bendiek, I. Stuerzer, *The Brussels Effect, European Regulatory Power and Political Capital: Evidence for Mutually Reinforcing Internal and External Dimensions of the Brussels Effect from the European Digital Policy Debate*, DISO, 2023.

³¹⁷ G. Frosio, C. Geiger, *Taking fundamental rights seriously in the Digital Services Act's platform liability regime*, *European Law Journal*, 2023.

³¹⁸ En Estados Unidos, se está cuestionando que la protección amplia a las empresas les ha permitido blindarse contra demandas por discriminación en prácticas publicitarias contra determinados grupos vulnerables. Además, y particularmente tras el conocido “deplatforming” del expresidente Donald Trump, se le acusa de impedir la transparencia, previsibilidad y coherencia en la aplicación de reglas de moderación. Otras discusiones como la posibilidad de diferenciar estas reglas a distintas capas de internet, la concentración de audiencias y obligaciones de common carrier, han sido parte de las temáticas que relucen para matizar la interpretación dominante de la sección 230. En Europa, diversas voces de la sociedad civil manifiestan que debe evaluarse con rigor su implementación y resultados, considerando, entre otras cuestiones, que “abundan imprecisiones en estos esfuerzos regulatorios, particularmente respecto al contenido que parece más problemático: desinformación, discurso de odio, terrorismo y discurso radicalizado”. Al respecto, véase: Al Sur, *Hacia nuevos consensos regionales en materia de responsabilidad de intermediarios en internet*, abril 2021; A pesar de lo anterior, la RELE toma nota de que la Corte Suprema estableció que no necesitaba abordar si la Sección 230 debía reinterpretarse para el caso *González v. Google*, y el caso *Twitter Inc. v. Taamneh*, ambos de mayo de 2023, manteniendo la jurisprudencia en sus términos actuales.

³¹⁹ UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023.

³²⁰ Corte IDH, Opinión Consultiva OC-5/85, La colegiación obligatoria de periodistas (Arts. 13 y 29 de la Convención Americana sobre Derechos Humanos), 13 de noviembre de 1985, Ser. A No. 5, párr. 51.

highlighted as a rights-based approach,³²¹ it should be borne in mind that the inter-American legal framework differs from that applicable under the founding treaties of the European Union and the European Convention on Human Rights in the sense that “the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas.”³²² This is not a discursive consideration, for while Article 10 of the European Convention allows “formalities, conditions, restrictions” that have been interpreted in favor of the imposition of prior censorship under strict scrutiny,³²³ Article 13.2 of the American Convention explicitly states that the exercise of freedom of expression “shall not be subject to prior censorship but shall be subject to subsequent imposition of liability.” Likewise, Article 13.3 of the ACHR provides explicit protection from indirect restrictions to freedom of expression, and neither the European Convention nor the International Covenant on Civil and Political Rights have comparable provisions.³²⁴ The SRFOE has also pointed out distinctions between the provisions of the ACHR and other international human rights treaties with respect to unprotected speech, such as hate speech, concluding that their application in the inter-American human rights system is stricter.³²⁵

- 200.** Having said the above, the Office of the Rapporteur emphasizes that, first, States have obligations to respect and ensure the full exercise of human rights in their jurisdictions.³²⁶ In relation to Article 13 of the American Convention, the obligation to respect rights requires States to refrain from unlawfully interfering with freedom of expression, whether directly or indirectly. Second, the obligation to ensure rights means that States must adopt legislative or other measures so that individuals may enjoy and exercise the right to freedom of expression through the means of their choice; this includes the State’s duty to act when it knows or should know of an infringement of the right and to take appropriate measures to prevent it.³²⁷
- 201.** In the digital realm, these obligations involve not only ensuring that all individuals can fully exercise their right to freedom of expression on the internet, but also ensuring that private companies that moderate online speech and information respect human rights in their products and services.³²⁸
- 202.** Under the case law of the Inter-American Court, States must take, where appropriate, necessary and reasonable measures to prevent violations and protect the rights of

³²¹ G. De Gregorio, *Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society*, Cambridge University Press, 2022.

³²² Corte IDH, Opinión Consultiva OC-5/85, La colegiación obligatoria de periodistas (Arts. 13 y 29 de la Convención Americana sobre Derechos Humanos), 13 de noviembre de 1985, Ser. A No. 5, párr. 50.

³²³ TEDH, *Case of Observer and the Guardian Vs. The United Kingdom*, App. No. 13585/88, Sentencia de 26 de noviembre de 1991, párr. 60.

³²⁴ Corte IDH, Opinión Consultiva OC-5/85, La colegiación obligatoria de periodistas (Arts. 13 y 29 de la Convención Americana sobre Derechos Humanos), 13 de noviembre de 1985, Ser. A No. 5, párr. 47.

³²⁵ CIDH, Informe Anual 2004, Informe de la Relatoría Especial para la Libertad de Expresión, Cap. VII: las expresiones de odio y la Convención Americana sobre Derechos Humanos. “Al mismo tiempo, la Convención Americana diverge de la Convención Europea y del PIDCP en un aspecto clave, y esta diferencia limita la aplicación de la jurisprudencia de la ONU y de la Unión Europea. El texto del artículo 13(5) examina las expresiones de odio que constituyen “incitación a la violencia o a cualquier otra acción ilegal similar.” Sugiere que la violencia es un requisito para cualquier restricción. La Convención Europea y el PIDCP, entretanto, no cuentan con un requisito tan delimitado. El PIDCP proscribía las expresiones que incitan a la “discriminación, hostilidad o violencia”, con lo que abarca una gama de expresiones que no llegan a la violencia. Entretanto, la Convención Europea admite condiciones y restricciones que sean “necesarias en una sociedad democrática” y enumera varios fines que pueden justificar estas restricciones, incluida la seguridad nacional, la integridad territorial y la seguridad pública. El mayor alcance del PIDCP y de la Convención Europea demuestra la voluntad de estos dos sistemas de justificar las restricciones al discurso que no caben en la estrecha categoría de la Convención Americana de “incitación a una violencia ilegítima”. De ello se deriva que, en tanto la jurisprudencia de la ONU y de la Unión Europea pueden ser útiles para la definición de “incitación” y “violencia”, no todas las restricciones a la libertad de expresión dispuestas por la ONU y la Unión Europea quedarían comprendidas en el artículo 13(5) de la Convención Americana. Algunas de las decisiones pertinentes de la Unión Europea y de la ONU que restringen la expresión con base en razones de seguridad nacional podrían estar justificadas en el marco del artículo 13.2 de la Convención Americana, que admite restricciones basadas en la seguridad nacional y el mantenimiento del orden público”.

³²⁶ Corte IDH, *Caso Velásquez Rodríguez vs Honduras*, Fondo, Sentencia de 29 de julio de 1988, Serie C No. 4, párr. 166 y ss.

³²⁷ La posible responsabilidad del Estado por omisión en su deber de debida diligencia para prevenir y proteger a las personas o a un grupo de personas frente a actos de particulares se desarrolla a partir del caso de la Corte IDH sobre la Masacre de Pueblo Bello Vs. Colombia. En dicho caso, la Corte IDH afirmó que los “deberes de adoptar medidas de prevención y protección de los particulares en sus relaciones entre sí se encuentran condicionados al conocimiento de una situación de riesgo real e inmediato para un individuo o grupo de individuos determinado y a las posibilidades razonables de prevenir o evitar ese riesgo”. La Relatoría considera que, en el contexto de las afectaciones a la libertad de expresión en internet por parte de empresas privadas, los Estados podrían ser responsables ante el conocimiento actual o potencial de los riesgos de vulneración y la falta de adopción de medidas razonables para evitar su materialización. Al respecto, ver Eduardo Bertoni, *Responsabilidad de Actores no Estatales por Violaciones a la Libertad de Expresión*, Observacom, noviembre de 2021.

³²⁸ CIDH, Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales, Empresas y Derechos Humanos: Estándares Interamericanos, OEA/Ser.L/V/II. CIDH/REDESCA/INF.1/19, ONU, Los Principios Rectores sobre las Empresas y los Derechos Humanos, adoptados por el Consejo de Derechos Humanos, A/HRC/17/31, 2011.

vulnerable persons in the exercise of freedom of expression.³²⁹ At the same time, the Inter-American Court has held that States have the duty to prevent human rights violations at the hands of private companies, which requires taking measures to prevent, punish, and redress violations that occur.³³⁰

203. The Office of the Rapporteur underscores that, in order to comply with the duties to respect and ensure human rights, the full functioning of democratic institutions is essential. Both duties depend on the actions of the three branches of government. As the Inter-American Court has noted, “[i]n a democratic society, the rights and freedoms inherent in the human person, the guarantees applicable to them, and the rule of law form a triad. Each component thereof defines itself, complements and depends on the others for its meaning.”³³¹ In particular, the SRFOE emphasizes that any person whose right to freedom of expression is allegedly violated must have access to “effective remedies overseen by independent and functional judiciary under the principles of the rule of law.”³³²

Inter-American legal framework on freedom of expression and the internet

a. The duty to respect the right to freedom of expression on the internet and to non-interference by the State

204. According to the inter-American case law, the first obligation assumed by the States Parties under Article 1.1 of the Convention is to respect the rights and freedoms recognized in that instrument. This means that “[t]he exercise of public authority has certain limits which derive from the fact that human rights are inherent attributes of human dignity and are, therefore, superior to the power of the State. The protection of human rights, particularly the civil and political rights set forth in the Convention, is in effect based on the affirmation of the existence of certain inviolable attributes of the individual that cannot be legitimately restricted through the exercise of, governmental power. There are individual domains that are beyond the reach of the State or to which the State has but limited access. Thus, the protection of human rights must necessarily comprise the concept of the restriction of the exercise of state power.”

205. In the area of freedom of expression, the obligation to respect rights means that States should refrain from adopting regulatory frameworks that restrict the right to freedom of expression on the internet. Thus, regulations governing the online content moderation should meet the criteria of legality, necessity, and proportionality in order to protect and preserve the democratic system.³³³ Consequently, rules that, for example, order platforms to restrict content protected by international human rights law without an examination of necessity and proportionality should be avoided. States should also avoid adopting regulatory models in which government agencies lacking independence or autonomy function as arbiters of content moderation standards or practices.³³⁴ The Office of the Rapporteur notes that the European Court of Human Rights has found that it is incompatible with freedom of expression and the rule of law to grant unfettered and

³²⁹ Corte IDH, Caso Ríos y otros Vs. Venezuela, Fondo, Reparaciones y Costas, Sentencia de 28 de enero de 2009, Serie C No. 194, párr. 107.

³³⁰ Corte IDH, Caso de los Buzos Miskitos (Lemoth Morris y Otros) Vs. Honduras, Fondo, Sentencia de 31 de agosto de 20221, Serie C No. 432, párr. 48.

³³¹ Corte IDH, Opinión Consultiva OC-28/21, La figura de la reelección presidencial indefinida en sistemas presidenciales en el contexto del Sistema Interamericano de Derechos Humanos, 7 de junio de 2021, Serie A No. 28, párr. 43.

³³² Relatora Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión; Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación; Relator Especial para la Libertad de Expresión de la Organización de Estados Americanos (OEA); la Relatora Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP) para la Libertad de Expresión y el Acceso a la Información en África, Declaración conjunta sobre la libertad de los medios de comunicación y democracia, 2023.

³³³ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 66.

³³⁴ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 68.

unrestricted powers of discretion to the executive, and that the legal framework should provide legal protections against arbitrary interferences by public authorities and indicate with sufficient clarity the scope of any discretion conferred on the competent authorities.³³⁵

- 206.** The Office of the Rapporteur further stresses that States, given their responsibility to respect the right to freedom of expression, should not require or pressure platforms to violate human rights or interfere disproportionately and unnecessarily with the right to freedom of expression.³³⁶ Any requests that the State makes for the removal of content from platforms must meet the requirements of legality, legitimacy, and necessity set out in human rights treaties.³³⁷
- 207.** In the content moderation context, the increased use of recommendation algorithms and content filters on social media has renewed debates about government regulations on content moderation and the responsibility of internet intermediaries.³³⁸ Pressures from some civil society actors and citizens to hold large platforms accountable for their ability to disseminate and amplify content that may be classified as illegal have led to regulatory proposals to relax the liability regime or to adopt notice and takedown mechanisms.³³⁹ However, these regulatory reactions may be inadequate and incompatible with human rights standards and democratic principles.³⁴⁰ Thus, for example, the Office of the Rapporteur has observed that legislative initiatives to hold digital platforms responsible for the circulation of erroneous information can—even when well-intended—lead to the indiscriminate exclusion of content, resulting in private censorship.³⁴¹
- 208.** Intermediary liability must be aligned with respect for due process of law.³⁴² As the international mandates on the right to freedom of expression have held, injunctive regimes preserve freedom of expression by avoiding the imposition of monitoring obligations on the platforms, while strict liability regimes generate excessive oversight and private censorship, arbitrarily limiting freedom of expression.³⁴³ Liability regimes without judicial oversight are not effective strategies for addressing illegal content and upholding democratic values on the internet.³⁴⁴
- 209.** In addition, regimes that impose strict liability and hold intermediaries responsible for content on their platforms without judicial authorization or just cause encourage private monitoring and censorship by the platforms, giving rise to restrictions on freedom of expression that are incompatible with the Convention.³⁴⁵ Hence, requiring a court order for the removal of content may ensure due process.
- 210.** On this point, the Office of the Rapporteur reiterates that “the States should not exert unlawful pressure on intermediaries to restrict the circulation of content through private

³³⁵ TEDH, Case of Vladimir Kharitonov vs. Russia, App. No. 10795/14, Sentencia de 23 de junio de 2020, párrs. 37-38.

³³⁶ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/32/38, 11 de mayo de 2016, párr. 85.

³³⁷ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 101.

³³⁸ Freedom House, [Q&A: Section 230 is at the Supreme Court. Here's Why that Matters for Free Expression](#), 18 de mayo de 2023.

³³⁹ Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE) de la Universidad de Palermo, [La responsabilidad de intermediarios en las negociaciones de acuerdos comerciales de los países de América Latina](#), marzo de 2023; R3D y AISur, [La moderación de contenidos desde una perspectiva interamericana](#), marzo de 2022.

³⁴⁰ CIDH, Informe Anual 2022, Informe de la Relatoría Especial para la Libertad de Expresión, OEA/Ser.L/V/II. Doc. 50. rev.1, 6 de marzo 2023.

³⁴¹ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013; OEA, Relatoría Especial para la Libertad de Expresión, Guía para garantizar la libertad de expresión frente a la desinformación deliberada en contextos electorales, OEA/Ser.D/XV.22 OEA/Ser.G CP/CAJP/INF.652/19, Octubre de 2019.

³⁴² Dawn Carla Nunziato, “Preservar la libertad en internet en las Américas”, en Centro de Estudios en Libertad de Expresión y Acceso a la Información (CELE) de la Universidad de Palermo, [Hacia una internet libre de censura](#), 2012.

³⁴³ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013.

³⁴⁴ Principios de Manila sobre responsabilidad de intermediarios de internet, 2015.

³⁴⁵ Relator Especial de las Naciones Unidas (ONU) para la Libertad de Opinión y de Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relator Especial por la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relator Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y Pueblos (ACHPR), Declaración Conjunta Sobre Libertad De Expresión Y “Noticias Falsas” (“Fake News”), Desinformación Y Propaganda, 2017.

blocking or filtering, or indirectly use the terms of service or community rules to expand the legally established grounds for restriction.”³⁴⁶

- 211.** However, reversing this logic and imposing the need for a court order to remove content could prevent the removal of unlawful speech or speech that violates human rights, under the pretext of guaranteeing freedom of expression.³⁴⁷ In this regard, content that is manifestly illegal and violates human rights can be removed by intermediaries under strict conditions that respect the principles of legality, necessity, and proportionality, provided that there are oversight and review mechanisms to prevent abuses through this mechanism.³⁴⁸
- 212.** The removal of content without a court order could therefore be considered admissible in exceptional circumstances in which the content is unlawful and its circulation could cause immediate and serious harm to the rights of individuals. This would cover expressions prohibited by international human rights law, namely: cases of war propaganda, advocacy of hatred that constitutes incitement to violence, incitement to genocide, and child pornography. In short, in circumstances where there is a clear and present danger of significant harm, restrictions could be imposed preemptively. However, even in these cases, the principle of proportionality is key and the action of intermediaries should be as harmless as possible to freedom of expression.³⁴⁹ In this connection, the Office of the Rapporteur underscores that the case law of the European Court of Human Rights has established that web portals that operate spaces for the publication of user content for economic purposes are obligated to take action to prevent or remove publications of a clearly unlawful nature.³⁵⁰
- 213.** The Office of the Rapporteur stresses that online hate speech particularly affects people from vulnerable groups, reinforcing discrimination and violence due to structural obstacles.³⁵¹ Online violence against these groups of people can lead to physical violence and accentuate their exclusion in the public debate. In this same context, digital platforms are crucial for promoting the empowerment and autonomy of these groups.³⁵²
- 214.** The Office of the Rapporteur shares the vision of the UN Rabat Plan of Action, which emphasizes the importance of alternatives to banning speech in order to combat hate speech, highlighting training in human rights values and the promotion of intercultural dialogue. In this regard, digital literacy policies and human rights education are essential to participating critically in the digital civic space and to counteracting hate speech.³⁵³ The SRFOE also highlights the position established by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, according to which the response to phenomena such as hate speech should distinguish between three types of expression: (i) expression that constitutes an offense under international law and can be prosecuted criminally; (ii) expression that is not criminally punishable under international law but may be subject to civil restrictions; and (iii) expression that does not

³⁴⁶ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, OEA/Ser.L/V/II CIDH/RELE/INF.17/17, 15 de marzo de 2017.

³⁴⁷ CIDH, Relatoría Especial para la Libertad de Expresión, Comunicado de Prensa 237/21, [La Relatoría advierte sobre los riesgos para el derecho a la libertad de expresión en internet en Brasil ante la reforma del Marco de Derechos Civiles en internet](#), 9 de septiembre de 2021.

³⁴⁸ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Frank La Rue, A/HRC/17/27, 16 de mayo de 2011.

³⁴⁹ Principios de Manila sobre responsabilidad de intermediarios de internet, 2015; Electronic Frontier Foundation (EFF), [Platform Liability Trends Around the Globe: Taxonomy and Tools of Intermediary Liability](#), 25 de mayo de 2022.

³⁵⁰ Ver, por ejemplo, TEDH, Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt v. Hungary, App. No. 22947/13, Sentencia de 2 de febrero de 2016; TEDH, Høines v. Norway, App. No. 43624/14, Sentencia de 19 de marzo de 2019.

³⁵¹ Relator Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial para la Libertad de Expresión por la Organización de los Estados Americanos (OEA) y Relator Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR) para la Libertad de Expresión y Acceso a la Información, Declaración Conjunta sobre Libertad de Expresión y Justicia de Género, 2022.

³⁵² CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, CIDH/RELE/INF.17/17, 15 de marzo de 2017.

³⁵³ ONU, Informe del Alto Comisionado de las Naciones Unidas para los Derechos Humanos sobre los talleres de expertos sobre la prohibición de la incitación al racial o religioso, A/HRC/22/17/Add.4, 11 de enero de 2013, párr. 12.

give rise to criminal or civil penalties, but is still problematic in terms of tolerance and respect for others. Each category requires different legal, normative, and social responses.³⁵⁴

- 215.** As this Office has pointed out, measures such as the blocking of websites, platforms, domains, and IP addresses to combat disinformation are a form of censorship that limits access to information, affects journalistic work, and may conceal human rights violations. These measures are only justified when they are necessary to protect human rights or legitimate public interests and proportionate, that is, when there are no less invasive alternative measures that could preserve that interest.³⁵⁵
- 216.** The Office of the Rapporteur emphasizes that the courts, when deciding cases on restrictions to online content, must ensure that their decisions comply with the principles of legality, legitimate aim, necessity, and proportionality. These decisions must also be reasoned, and they must respect all due process guarantees. When penalties are assessed for the exercise of freedom of expression, States should avoid imposing disproportionate penalties, such as exorbitant fines, the closure of online accounts or profiles, or custodial sentences. On this point, moreover, the Office of the Rapporteur has stated that “measures intended to eliminate links, information and websites from the servers on which they are stored, all constitute restrictions that are prohibited and exceptionally admissible only strictly pursuant to the terms of Article 13 of the American Convention.”³⁵⁶
- 217.** The Office of the Rapporteur further underscores the need for the courts to examine the specific context of each case when assessing legal actions for the protection of rights. This includes determining whether the dispute arises from a platform’s decision to restrict content; an appeal challenging a platform’s decision that “after internal evaluation” chose not to restrict content, even though the plaintiff believes it should be restricted; or whether it is a lawsuit filed without prior recourse to the platform’s internal mechanisms.
- 218.** The variables may suggest different legal responses depending on the specific context of each case, even if the disseminated content is similar. A moderation decision made by a platform according to its own community standards might be appropriate in that context, but inappropriate if taken by the courts, especially in cases involving content removal. This is because the latter case concerns a direct intervention by the State, which must adhere to the standards of Article 13 of the American Convention on Human Rights, which protects the right to freedom of expression. Conversely, certain content that might be tolerable under a State assessment may be restricted by a platform’s policies, without this constituting a violation of the right to freedom of expression by the State. A judicial decision must weigh the scope of the duty to respect rights, discussed in this section, and the duty to ensure rights, which will be explored below.

b. The duty of the State to guarantee the right to freedom of expression on the internet

- 219.** The Inter-American Court of Human Rights has held that the guarantee obligation extends beyond the relationship between State agents and persons subject to their jurisdiction,

³⁵⁴ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Discurso de odio en línea, A/67/357, 7 de septiembre de 2012, párr. 2.

³⁵⁵ Relator Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial para la Libertad de Expresión por la Organización de los Estados Americanos (OEA) y Relator Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR) para la Libertad de Expresión y el Acceso a la Información en África, Declaración Conjunta sobre la Libertad de los Medios para la Comunicación y la Democracia, 2023.

³⁵⁶ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de expresión e internet, CIDH/RELE/INF. 11/13, 31 diciembre 2013, 31 de diciembre de 2013, párr. 84.

and encompasses the duty to prevent, in the private sphere, third parties from violating protected legal rights.³⁵⁷

- 220.** The State's guarantee obligations involve not only ensuring that all individuals can fully exercise their right to freedom of expression on the internet, but also ensuring that social media companies that moderate content and information on their platforms respect human rights in their products and services.³⁵⁸
- 221.** The Joint Declaration on Media Independence and Diversity in the Digital Age establishes that "States should ensure that any regulation of online platforms is in accordance with international standards, including in relation to due process, transparency and the rights to an appeal and remedy. Any liability imposed on intermediaries should be in accordance with international standards and any legal obligation on online platforms to regulate content should also be in accordance with international standards."³⁵⁹ In addition, the Joint Declaration on Media Freedom and Democracy establishes that States should "[adopt] measures to promote a diversified and decentralised environment for online content curation and news recommender systems where no single entity holds massive power on the information flows in society, nor on the diversity of exposure of individual users."³⁶⁰
- 222.** The Inter-American Court has considered that, in light of the obligation to guarantee, States are obliged to regulate that companies adopt actions aimed at respecting human rights. Thus, States should encourage social media platforms to adopt measures aimed at orienting their business activities towards compliance with human rights norms and standards. This may mean that States adopt measures to ensure that business enterprises have: (a) policies aimed at orienting business activity towards compliance with human rights norms and standards; (b) due diligence processes for the identification, prevention, and correction of human rights violations; and (c) processes that allow businesses to remedy human rights violations that result from their activities.³⁶¹
- 223.** States should also implement a framework of responsibilities for business consistent with the UN Guiding Principles on Business and Human Rights, supported by State oversight to mitigate human rights harms, through the development of commitments, policies, and public assessments of persistent human rights impacts.³⁶² It is necessary to develop "independent and multi-stakeholder oversight, transparency and accountability mechanisms to address private content rules that may be inconsistent with international human rights and interfere with individuals' right to enjoy freedom of expression."³⁶³ In this regard, the Guiding Principles also envisage roles for States to ensure respect for

³⁵⁷ Corte IDH, Caso de los Buzos Miskitos (Lemoth Morris y Otros) Vs. Honduras, Fondo, Sentencia de 31 de agosto de 2021, Serie C No. 432, párr. 44.

³⁵⁸ CIDH, Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales, Empresas y Derechos Humanos: Estándares Interamericanos, OEA/Ser.L/V/II. CIDH/REDESCA/INF.1/19 ONU, Los Principios Rectores sobre las Empresas y los Derechos Humanos, adoptados por el Consejo de Derechos Humanos, A/HRC/17/31, 2011.

³⁵⁹ Relator Especial de las Naciones Unidas sobre la promoción y protección del derecho a la libertad de opinión y expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relator Especial para la Libertad de Expresión de la Organización de los Estados Americanos (OEA), Relator Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR), Declaración Conjunta sobre la Independencia y Diversidad de los Medios en la Era Digital, 2018.

³⁶⁰ Relator Especial de las Naciones Unidas (ONU) para la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial para la Libertad de Expresión por la Organización de los Estados Americanos (OEA) y Relator Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (ACHPR) para la Libertad de Expresión y el Acceso a la Información en África. Declaración Conjunta sobre la Libertad de los Medios para la Comunicación y la Democracia, 2023.

³⁶¹ Corte IDH, Caso de los Buzos Miskitos (Lemoth Morris y Otros) Vs. Honduras, Fondo, Sentencia de 31 de Agosto de 2021, Serie C No. 432, párrs. 48 y 49.

³⁶² ONU, Los Principios Rectores sobre las Empresas y los Derechos Humanos, adoptados por el Consejo de Derechos Humanos, A/HRC/17/31, 2011, Principio 18.

³⁶³ Relator Especial de las Naciones Unidas (ONU) para la Libertad de Opinión y de Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial de la Organización de Estados Americanos (OEA) para la Libertad de Expresión y Relatora Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP). Declaración Conjunta del Vigésimo Aniversario: Desafíos para la Libertad de Expresión en la Próxima Década, elaborado por expertos en libertad de expresión, 2019.

human rights through the regulation and oversight of companies and to provide access to effective remedy mechanisms.³⁶⁴

- 224.** In view of the above, this Office considers that the imposition of duties on companies to moderate and remove content that is manifestly illegal and violates human rights can assist the State in fulfilling its duty to guarantee the rights protected by the ACHR. However, this must take place under strict conditions that respect the principles of legality, necessity, and proportionality, and always when there are oversight and review mechanisms to prevent abuses by this means.³⁶⁵ The need for a court order requiring companies to remove this type of content could prevent the removal of unlawful speech or expressions that violate human rights, under the pretext of guaranteeing freedom of expression.³⁶⁶ In any case, States should be cautious in their approach and recall that the legitimacy of the purpose does not necessarily mean that a restriction is legal,³⁶⁷ rather, the State must demonstrate “in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”³⁶⁸
- 225.** The duty to guarantee freedom of expression on the internet requires States to take the necessary measures to ensure that users have access not only to the rules about the content that platforms allow, but also to the criteria that define how content is distributed, prioritized, or limited on the internet. Citizens should have control over the content they access and post, as well as over the formal and informal rules governing the digital space. As in the analog public sphere, access to information and knowledge and freedom of expression on the internet should be made possible through democratic controls of accountability, transparency, and the independence of decision-making oversight bodies; this applies to both public authorities and private companies in their actions on the internet.
- 226.** Under Article 25 of the American Convention, States must also ensure that judicial or extrajudicial mechanisms are available to remedy human rights violations.³⁶⁹ This, in the area of content moderation, means that the platforms’ own mechanisms should not replace or condition the ability of competent, impartial, and independent national judicial authorities to intervene, in accordance with due process, in the event of violations of the right to freedom of expression or other rights arising from or in connection with the content moderation activities of digital platforms.³⁷⁰ These claims may involve situations in which restrictions on the circulation of certain content, as well as their absence, are questioned.
- 227.** When evaluating the content moderation decisions of digital platforms, States should consider the nature of the relationship between the parties involved. Even if the relationship is between private parties, the State is still the duty-bearer. It must examine possible restrictions on freedom of expression imposed by the platforms with consideration for the characteristics of this private relationship. In past decisions, the

³⁶⁴ CIDH, Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales (REDESCA), Empresas y Derechos Humanos: Estándares Interamericanos, OEA/Ser.L/V/III CIDH/REDESCA/INF.1/19, 1 de Noviembre de 2019, párr. 81.

³⁶⁵ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Frank La Rue, A/HRC/17/27, 16 de mayo de 2011.

³⁶⁶ CIDH, Relatoría Especial para la Libertad de Expresión, Comunicado de Prensa 237/21, [La Relatoría advierte sobre los riesgos para el derecho a la libertad de expresión en internet en Brasil ante la reforma del Marco de Derechos Civiles en internet](#), 9 de septiembre de 2021.

³⁶⁷ Corte IDH, Caso Usón Ramírez Vs. Venezuela, Excepción Preliminar, Fondo, Reparaciones y Costas, Sentencia de 20 de noviembre de 2009, Serie C No. 207, párr. 66.

³⁶⁸ ONU, Comité de Derechos Humanos, Observación General N° 34 - Artículo 19 Libertad de opinión y libertad de expresión, CCPR/C/GC/34, 12 de septiembre de 2011, párr. 35.

³⁶⁹ Corte IDH, Caso Velásquez Rodríguez vs Honduras, Fondo, Sentencia de 29 de julio de 1988, Serie C No. 4, párr. 91; Corte IDH, Caso de los Buzos Miskitos (Lemmoth Morris y Otros) Vs. Honduras, Fondo, Sentencia de 31 de Agosto de 2021, Serie C No. 432, párr. 50.

³⁷⁰ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párrs. 66 y 68.

Inter-American Court has weighed these elements, for example, when analyzing the State's actions vis-à-vis companies that penalize their employees for exercising freedom of expression, applying the three-part test analysis adapted to these contexts of subsequent liabilities.³⁷¹

- 228.** Arguments based on broad discretion clauses in contracts between private parties, or the existence of supposed legal powers to act privately, are insufficient to conclude that the State should abstain from assessing the decisions of private companies. Regulations governing private-to-private relations should not be used as a “veil of legality” to allow the State to tolerate conduct by companies that does not respect human rights.³⁷²
- 229.** Faced with an alleged improper content restriction by a platform, the State must analyze the relationship between the platform and the users, and the degree to which human rights have been respected. In its role as guarantor of human rights, it should hold the platform liable if an abusive practice is identified. State authorities should supervise the actions of companies within their private relationships, whether they concern labor or commercial relations, or the supply of products or services, ensuring compliance with both inter-American and international human rights standards.³⁷³
- 230.** When platforms are criticized or called into question for not restricting certain content, it is crucial to recall that any decision made by judicial or administrative authorities with judicial functions must adhere to the principles of legality, legitimacy, and necessity that govern the imposition of restrictive measures on freedom of expression. In this regard, States must refrain from requiring platforms to act in a manner contrary to respect for freedom of expression, or to adopt measures that ignore their own duty to respect human rights.³⁷⁴
- 231.** The State should not impose any measures without a rigorous analysis of the three-part test to determine intermediary liability for third-party content. State regulation of platforms should focus on the due diligence of those platforms with respect to content. Platforms cannot be held liable for content generated by third parties unless they specifically intervene in that content or refuse to comply with a court order for its removal, when they are in a position to do so. Claiming before a government authority that content should not be available on a platform is not sufficient to hold the platform liable for the dissemination of that content. This position holds even if the authority determines that the content should be removed under international human rights standards. In this context, the platforms' obligation to remove content should be interpreted as an obligation to take the necessary measures to achieve an outcome, rather than to ensure such an outcome per se. This means that platforms must take reasonable and effective measures to identify and manage content that is not protected by the right to freedom of expression.³⁷⁵
- 232.** Accordingly, a platform can only be liable if it fails to implement adequate due diligence processes to identify, prevent, and correct violations of the right to freedom of expression; or if, even with these processes in place, it declines to remove content, either without adequate justification or acting in bad faith. The platform's failure to act in these cases

³⁷¹ Corte IDH, Caso Lagos del Campo Vs. Perú, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 31 de agosto de 2017, Serie C No. 340.

³⁷² Corte IDH, Caso Vera y otros Vs. Chile, Sentencia de 1 de octubre de 2021, Serie C N° 439, párr. 85.

³⁷³ Corte IDH, Caso Oliveira Fuentes Vs. Perú, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 4 de febrero de 2023, Serie C N° 484, párr. 109.

³⁷⁴ CIDH, Marco Jurídico Interamericano sobre el derecho a la libertad de expresión, 2009, párr. 67.

³⁷⁵ En este sentido, la UNESCO ha considerado que “[l]as plataformas digitales no deben ser consideradas responsables cuando actúen de buena fe y con la debida diligencia, cuando realicen investigaciones voluntarias o tomen otras medidas destinadas a detectar, identificar, eliminar o inhabilitar el acceso a contenidos prohibidos en virtud del Artículo 20 del PIDCP, o que hayan sido restringidos según lo estipulado por el Artículo 19(3) del PIDCP”. Ver UNESCO, [Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas](#), 2023.

may be interpreted as a specific and unwarranted intervention in the circulation of content, which undermines the general rule of non-liability for third-party content.³⁷⁶

- 233.** The mere discrepancy between government authorities and the platform as to whether the content should be restricted is insufficient to establish that the platform is liable. To act otherwise could be construed as a breach by the State of its duty to guarantee human rights since, in doing so, it undermines its duty to respect freedom of expression by encouraging the indiscriminate exclusion of content by platforms at the discretion of the authorities.
- 234.** Lastly, the Office of the Special Rapporteur notes that digital platforms were originally conceived as forums for the transmission of information. Except in situations where they deliberately intervene in content, they function as means for the circulation of information generated by third parties. This means that the proper exercise of the duty to ensure public debate online should not be limited to regulating and supervising the platforms. It is also essential to define the responsibilities of users in cases where the platform should not be held liable for the dissemination of certain content, as well as in those cases of co-liability where both the platform and the user may be liable.

Responsibility of digital platforms to respect and ensure the right to freedom of expression

- 235.** Within the inter-American legal framework, the American Convention on Human Rights and the American Declaration of the Rights and Duties of Man establish obligations for States in relation to the actions of non-State actors, including business enterprises. Article 1.1 of the ACHR obliges States to respect the rights and freedoms recognized in the Convention and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination. Article 2 requires States to adopt such legislative or other measures as may be necessary to give effect to the rights or freedoms enshrined in the American Convention. These State obligations are manifested in the need to ensure that companies not only refrain from violating human rights but also take active measures to prevent, mitigate, and should they occur, remedy any harm to human rights.³⁷⁷
- 236.** According to the Inter-American Commission on Human Rights and its Rapporteurship on Economic, Social, Cultural and Environmental Rights (REDESCA), “a violation of the human rights protected by the Convention [gives rise to] the international responsibility of a State Party not only when the violation is perpetrated by its own agents or institutions, but also [may give rise to] international responsibility when the acts or omission that violate a certain right are committed by an individual, such as businesses or economic actors, provided that the State has acted with a lack of diligence to reasonably prevent the violation or deal with it in accordance with what the Convention establishes.”³⁷⁸ The Commission has also stressed that, in certain circumstances, a State may be responsible for the conduct of non-State actors under the legal obligations derived from the American Declaration.³⁷⁹

³⁷⁶ UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023.

³⁷⁷ CIDH, *Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales, Empresas y Derechos Humanos: Estándares Interamericanos*, OEA/Ser.L/V/II/CIDH/REDESCA/INF.1/19, 1 de noviembre de 2019, párr. 54 y siguientes.

³⁷⁸ CIDH, *Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales, Empresas y Derechos Humanos: Estándares Interamericanos*, OEA/Ser.L/V/II/CIDH/REDESCA/INF.1/19, 1 de noviembre de 2019, párr. 58.

³⁷⁹ CIDH, *Relatoría Especial sobre los Derechos Económicos, Sociales, Culturales y Ambientales, Empresas y Derechos Humanos: Estándares Interamericanos*, OEA/Ser.L/V/II/CIDH/REDESCA/INF.1/19, 1 de noviembre de 2019, párr. 58.

237. Within the framework of responsibility defined by the inter-American human rights system, and in light of the United Nations Guiding Principles on Business and Human Rights, States have an obligation to ensure that internet companies carry out their content moderation activities in a manner consistent with human rights. This duty even extends to adopting legislative and other measures necessary to ensure that these companies' operations do not infringe on fundamental rights, such as the right to freedom of expression.³⁸⁰
238. Lack of adequate State oversight over these practices can result in violations attributable to the State, particularly if it fails to act with due diligence to prevent or address rights abuses. This includes the responsibility of companies to avoid contributing to human rights harms, and to respond appropriately when they occur. In this context, States should establish clear and effective mechanisms for victims of content moderation-related abuses by internet companies to obtain redress, in line with the principles of access to effective remedies, as set out in the UN Guiding Principles on Business and Human Rights.
239. In this spirit, the SRFOE believes that internet companies should mitigate the effects of their business models and adopt and implement measures based on the UN Guiding Principles on Business and Human Rights and international human rights law remedies.
240. The Office of the Rapporteur recalls that the Guiding Principles on Business and Human Rights establish “global standards of conduct applicable to all business enterprises” that should govern all business operations regardless of where they operate.³⁸¹ The SRFOE advocates for their adoption and implementation while recognizing the vitally important role that platforms play in public life and democratic debate.³⁸²
241. The Guiding Principles that should guide the actions of companies in respecting human rights include:
- a. Avoid infringing on the human rights of others and address adverse human rights impacts with which they are involved, including taking adequate measures for their prevention, mitigation and, where appropriate, remediation (Principles 11 and 12);
 - b. Seek to prevent or mitigate adverse human rights impacts directly related to operations, products or services provided by their business relationships, even when they have not contributed to generating them (Principle 13);
 - c. Adopt a public commitment at the highest level to respect the human rights of users and ensure that it is duly reflected in the operational policies and procedures necessary to embed it throughout the business enterprise (Principle 16);
 - d. Conduct due diligence activities that identify and explain the actual and potential human rights impacts of their activities (impact assessments), including through regular analysis of the risks and impacts of their operations, substantive consultation with potentially affected groups, human rights experts, and other stakeholders, integrating the findings of their assessments into their internal processes, and adopting monitoring measures to

³⁸⁰ ONU, Oficina del Alto Comisionado para los Derechos Humanos, [Principios Rectores sobre las empresas y los derechos humanos](#), 2011.

³⁸¹ ONU, Oficina del Alto Comisionado para los Derechos Humanos, [Principios Rectores sobre las empresas y los derechos humanos](#), 2011, Principio 11.

³⁸² ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 10.

prevent or mitigate such impacts based on appropriate and publicly reported qualitative and quantitative indicators (Principles 15 to 20);

- e. Provide appropriate remedies, including through operation-level grievance mechanisms, for those potentially affected by the companies. These mechanisms should help to determine actual or potential adverse impacts on rights, identify systemic problems, if any, and prevent further harm. To be effective, these mechanisms should meet criteria of legitimacy, accessibility, predictability, fairness, and transparency; they should focus on rights; and stakeholder groups should be consulted on their design and performance (Principles 22, 29 and 31).
- f. Protect human rights when faced with conflicting legal requirements. This means, among other actions, relying on cross-sectoral consultation formulas within the same business enterprise and/or on independent experts using a multi-stakeholder approach, for the purpose of addressing problematic local requirements. The business enterprise should engage in prevention and mitigation strategies to comply with human rights to the greatest extent possible and demonstrate its efforts in this regard, since the duty of business enterprises to respect rights exists independently of the capacity or willingness of States to comply with their own human rights obligations (Principle 23).

242. The above principles require an interpretation applicable to platforms and content moderation and curation that is supported by the standards developed by the inter-American system. The SRFOE considers that the platforms, with regard to their duty to respect human rights, i.e., to refrain from infringing them and to address the adverse consequences of their activities on human rights,³⁸³ should mainly address the following considerations: (a) bringing content moderation rules into line with international human rights standards; (b) the application of the three-part test to companies' actions that restrict the free circulation of online content and the need to establish due process and review mechanisms; (c) strict adherence to standards of transparency and due diligence in their operations; and (d) specific standards applicable to companies and platforms for the protection of the rights of children and adolescents.

243. Below, the report will address these three issues, which are crucial for intermediary companies in fulfilling their responsibility to respect human rights, refrain from infringing on the human rights of third parties, and address the adverse human rights impacts in which they have any involvement.³⁸⁴

a. Bringing content moderation rules into line with human rights standards

244. The SRFOE notes that the adaptation of community standards and platform moderation procedures from a human rights approach is essential for the protection of freedom of expression. In the Americas, this objective should be pursued through compliance with inter-American human rights standards. In this regard, the UNESCO Guidelines for the Governance of Digital Platforms: Safeguarding Freedom of Expression and Access to Information through a Multi-Stakeholder Approach state that “[d]igital platforms should ensure that human rights and due process considerations are integrated into all stages of the design process, as well as in content moderation and curation policies and practices.”³⁸⁵

³⁸³ ONU, Oficina del Alto Comisionado para los Derechos Humanos, [Principios Rectores sobre las empresas y los derechos humanos](#), 2011, Principio 11.

³⁸⁴ ONU, Oficina del Alto Comisionado para los Derechos Humanos, [Principios Rectores sobre las empresas y los derechos humanos](#), 2011, Principio 1.

³⁸⁵ UNESCO, [Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas](#), 2023.

245. States are empowered to require platforms to moderate content prohibited by international law. At the same time, the platforms are empowered to moderate and curate other types of content. However, both regimes must be consistent with human rights protection standards.
246. The exercise of the regulatory power of moderation by internet platforms, especially large platforms, should be aligned with the principles of human rights, the promotion of public debate, and the consolidation of democracy in the Americas.³⁸⁶ They should not only adhere to the norms of the inter-American system, but also align their power with standards of transparency and accountability, based on equality and nondiscrimination. This is essential to create an online environment that respects human rights and is free, open, and inclusive, and that fosters the autonomy and rights of users.³⁸⁷
247. International human rights law provides platforms with a framework for transforming content moderation from an activity that has been predominantly ad hoc and reactive to a structured and principled activity.³⁸⁸ At the same time, aligning moderation practices with human rights standards provides tools to assess the actual and potential human rights impacts of such activity and may even provide arguments that allow platforms to explain and justify their moderation practices through the use of a common language.³⁸⁹
248. In a similar vein, the UN Rapporteur on the promotion and protection of the right to freedom of opinion and expression has asserted that “human rights standards, if implemented transparently and consistently with meaningful user and civil society input, provide a framework for holding [...] companies accountable to users across national borders.”³⁹⁰ Platforms committed to applying human rights standards in all their activities stand on firmer ground when they seek to hold States accountable for abuses that may arise from excessive regulation or arbitrary interference.³⁹¹
249. The position that has begun to emerge is that technological platforms have a relevant regulatory power in the administration and management of the terms and conditions of use.³⁹² Thus, when the exercise of that regulatory power carries with it the potential to affect fundamental rights, such as due process, companies are subject to the obligation to respect such rights.³⁹³
250. The formulation of standards must also consider the broad participation of groups that could be affected by the content moderation activities of the platforms.³⁹⁴ Therefore, in applying a human rights approach to content moderation, it has been considered necessary to involve users, communities, and civil society actors in the formulation of guidelines, as it allows companies to analyze the impact of their activities from different perspectives.³⁹⁵

³⁸⁶ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 43.

³⁸⁷ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 42.

³⁸⁸ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

³⁸⁹ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020; ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 43.

³⁹⁰ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 41.

³⁹¹ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 42.

³⁹² Corte Constitucional de Colombia, Sentencia T-534 de 2023, 5 de diciembre de 2023, párr. 117.

³⁹³ Corte Constitucional de Colombia, Sentencia T-534 de 2023, 5 de diciembre de 2023, párr. 117.

³⁹⁴ ONU, Oficina del Alto Comisionado para los Derechos Humanos, *Principios Rectores sobre las empresas y los derechos humanos*, 2011, Principio 18 y comentarios.

³⁹⁵ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 54.

251. In addition to formulating rules from a human rights approach, platforms should conduct an assessment of the human rights impact of their moderation activities.³⁹⁶ They should also integrate the conclusions of their assessments into content moderation regulations with a view to preventing and mitigating adverse human rights consequences.³⁹⁷
252. If assessments carried out after an activity has begun to be implemented reveal other, previously unconsidered risks to human rights, platforms should, within the scope of their duties, implement risk mitigation measures that are proportionate, reasonable, and effective. This may mean that content moderation processes may have to be adapted in terms of their speed, range of measures, or decision-making mechanisms, among other considerations.³⁹⁸

b. The three-part test in the context of content moderation and curation

253. Article 13.2 of the ACHR establishes that the exercise of the right to freedom of expression may not be subject to prior censorship but may be subject to subsequent imposition of liability, which must be expressly established by law and be necessary to ensure respect for the rights or reputations of others, or the protection of national security, public order, or public health or morals. This legal framework means that, with a view to harmonizing the rules of content moderation and curation with inter-American standards, platforms can restrict freedom of expression only under strict conditions of legality, necessity, and proportionality. According to the Joint Declaration on Freedom of Expression and the Internet, “[f]reedom of expression applies to the Internet, as it does to all means of communication” and that approaches to regulation “need to be specifically designed for it.”³⁹⁹

i. Prohibition of prior censorship

254. The Office of the Rapporteur also underscores that, in the inter-American human rights system, the restriction of content ex ante is incompatible with the right to freedom of expression, as it constitutes prior censorship. Mechanisms that may be prior censorship in the framework of the inter-American system are so-called “upload filters,” i.e., tools that detect and block ex ante a user’s posts on the platform. The Court of Justice of the European Union referred to these tools in the action for annulment brought by the Republic of Poland against Article 17(4)(b) and (c) of the Copyright Directive (EU) 2019/790.⁴⁰⁰ Article 17(4) holds platforms liable for the unauthorized distribution of copyrighted content on their services. As an exemption from liability, Article 17(4)(b) provides that platforms shall use their “best efforts to ensure the unavailability” of such content as identified by the content owners prior to uploads by third parties. Article 17(4)(c) exempts liability where platforms “have acted expeditiously, upon receiving a sufficiently substantiated notice from the rightholders, to disable access to, or to remove from their websites, the notified works or other subject matter, and made best efforts to prevent their future uploads.”

³⁹⁶ ONU, Oficina del Alto Comisionado para los Derechos Humanos, [Principios Rectores sobre las empresas y los derechos humanos](#), 2011, Principio 18 y comentarios.

³⁹⁷ ONU, Oficina del Alto Comisionado para los Derechos Humanos, [Principios Rectores sobre las empresas y los derechos humanos](#), 2011, Principio 19 y comentarios.

³⁹⁸ Parlamento Europeo y Consejo de la Unión Europea, Reglamento 2022/2065 relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales), 19 de octubre de 2022, artículo 34.

³⁹⁹ Relator Especial de las Naciones Unidas (ONU) sobre la Promoción y Protección del Derecho a la Libertad de Opinión y Expresión, Representante para la Libertad de los Medios de Comunicación de la Organización para la Seguridad y la Cooperación en Europa (OSCE), Relator Especial por la Organización de Estados Americanos (OEA) para la Libertad de Expresión, y Relator Especial sobre Libertad de Expresión y Acceso a la Información de la Comisión Africana de Derechos Humanos y Pueblos (CADHP), Declaración Conjunta sobre Libertad de Expresión e Internet, 2011.

⁴⁰⁰ TJUE, Recurso de anulación — Directiva (UE) 2019/790 — Artículo 17, apartado 4, letras b) y c), 2022.

- 255.** The Republic of Poland filed an action for annulment challenging these two articles on the grounds that they require platforms to carry out a “prior automatic review (filtering) of content uploaded by users,” which constitutes “preventive monitoring measures” that, in its opinion, “undermine the essence of the right to freedom of expression and information and do not comply with the requirement that limitations imposed on that right be proportional and necessary.”⁴⁰¹ For his part, the advocate general argued that the articles in question forced the implementation of filtering measures that, in practical terms, constitute “preventive measures” or “prior restraints.”⁴⁰² In its decision, the Court found that this rule did indeed establish that platforms should use automated filters for the detection of copyright infringing content in order to avoid liability for uploads made by third parties. However, this did not violate freedom of expression, insofar as it complied with the principle of proportionality, under which measures limiting rights may not go beyond what is appropriate and necessary to meet the legitimate objectives pursued.⁴⁰³ The Court similarly held that “a filtering system which might not distinguish adequately between unlawful content and lawful content, with the result that its introduction could lead to the blocking of lawful communications, would be incompatible with the right to freedom of expression and information.”⁴⁰⁴
- 256.** The Court further established that “the legislation which entails an interference with fundamental rights must lay down clear and precise rules governing the scope and application of the measure in question and imposing minimum safeguards, so that the persons whose exercise of those rights is limited have sufficient guarantees to protect them effectively against the risk of abuse. That legislation must, in particular, indicate in what circumstances and under which conditions such a measure may be adopted, thereby ensuring that the interference is limited to what is strictly necessary. The need for such safeguards is all the greater where the interference stems from an automated process.”⁴⁰⁵
- 257.** The Office of the Rapporteur considers that, although the position put forward by the Court of Justice of the European Union provides elements of balance such as proportionality and strict necessity, in addition to the prohibition of mechanisms that lack the technical capacity to distinguish legal from illegal content, the fact that upload filtering tools constitute a prior censorship mechanism is, at the very least, problematic in the context of the inter-American system. The SRFOE has established that “[c]ontent filtering systems put in place by governments or commercial service providers that are not controlled by the end-user constitute a form of prior censorship and do not represent a justifiable restriction on freedom of expression.”⁴⁰⁶
- 258.** The Inter-American Commission and Court have been emphatic in pointing out that the appropriate response to a possible abuse of the right to freedom of expression is the imposition of subsequent liability, and that prior censorship is prohibited save in exceptional circumstances such as child pornography.⁴⁰⁷ On this point, the Office of the Special Rapporteur has stated that it is in principle legitimate to restrict content not covered by the right to freedom of expression (art. 13.5 ACHR): war propaganda and the advocacy of hatred that constitutes incitement to violence, direct and public incitement

⁴⁰¹ TJUE, Recurso interpuesto el 24 de mayo de 2019 — República de Polonia / Parlamento Europeo y Consejo de la Unión Europea, Asunto C-401/19.

⁴⁰² TJUE, Conclusiones del abogado general Sr. Henrik Saugmandsgaard Øe presentadas el 15 de julio de 2021, Asunto C-401/19, 2021.

⁴⁰³ TJUE, Recurso de anulación — Directiva (UE) 2019/790 — Artículo 17, apartado 4, letras b) y c), 2022.

⁴⁰⁴ TJUE, Recurso de anulación — Directiva (UE) 2019/790 — Artículo 17, apartado 4, letras b) y c), 2022.

⁴⁰⁵ TJUE, Recurso de anulación — Directiva (UE) 2019/790 — Artículo 17, apartado 4, letras b) y c), 2022.

⁴⁰⁶ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 91.

⁴⁰⁷ Corte IDH, Caso “La Última Tentación de Cristo” (Olmedo Bustos y otros) Vs. Chile, Fondo, Reparaciones y Costas, Sentencia de 5 de febrero de 2001, Serie C No. 73; CIDH, Relatoría Especial para la Libertad de Expresión, Marco Jurídico Interamericano sobre el derecho a la libertad de expresión, OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, 30 diciembre 2009, párrs. 57-60.

to genocide, and child pornography.⁴⁰⁸ In these cases, platforms should ensure that the measure is subject to a strict proportionality test and is carefully designed and clearly limited so as to not affect legitimate speech that deserves protection.

259. However, it is important to note that the inter-American system, even in the case of prohibited speech, has been limited in the application of prior censorship mechanisms. The Office of the Rapporteur has analyzed the phrase “[a]ny propaganda for war and any advocacy of [...] hatred [...] shall be considered as offenses punishable by law” in Article 13.5 of the Convention and has concluded that, due to textual aspects, as well as the context and the interpretation of the Inter-American Court, this refers to subsequent penalties, not prior censorship.⁴⁰⁹ Likewise, with regard to direct and public incitement to genocide, it is noted that Article III of the Convention on the Prevention and Punishment of the Crime of Genocide establishes that, rather than being subject to prior censorship, this is a punishable offense. Lastly, child pornography is subject to prior censorship, among other reasons, because of the obligation of States to “prevent (...) [t]he exploitative use of children in pornographic performances and materials” provided for in Article 34.c of the Convention on the Rights of the Child, which read in conjunction with Article 19 of the American Convention, under which “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state,” means that child pornography, as a form of speech harmful to the prevailing rights of children and their best interests, must be excluded from the scope of protection provided by freedom of expression.⁴¹⁰
260. In applying restrictions to this type of content, the Office of the Rapporteur has stated that “[filtering] or blocking should be designed and applied so as to exclusively impact the illegal content without affecting other content. The measures must be authorized or put in place pursuant to the appropriate procedural guarantees, in the terms of articles 8 and 25 of the American Convention. In this regard, the measures should only be adopted after the illegal content to be blocked has been fully and clearly identified, and when necessary to achieve a pressing aim.”⁴¹¹

ii. Legality

261. The legality of platform policies presents a conceptual challenge. The Inter-American Court of Human Rights has held that the word “laws” in the American Convention refers to “normative acts directed towards the general welfare, passed by a democratically elected legislature and promulgated by the Executive Branch,”⁴¹² which would exclude the possibility of imputing a legality analysis to content moderation and curation policies. The Inter-American Court has also said that regulatory power may be delegated “provided that such delegations are authorized by the Constitution, are exercised within the limits imposed by the Constitution and the delegating law, and that the exercise of the power delegated is subject to effective controls, so that it does not impair nor can it be used to impair the fundamental nature of the rights and freedoms protected by the Convention.”⁴¹³
262. Under the internet regulatory framework, States have taken different steps in different scenarios to delegate the power to take regulatory measures for the resolution of disputes

⁴⁰⁸ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 88.

⁴⁰⁹ CIDH, Informe Anual 2004, Informe de la Relatoría Especial para la Libertad de Expresión, Capítulo VII (Las expresiones de odio y la convención americana sobre derechos humanos), OEA/Ser.L/V/II.122. Doc. 5 rev. 1., 23 febrero del 2005, párrs. 29 y 30.

⁴¹⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Marco Jurídico Interamericano sobre el derecho a la libertad de expresión, OEA/Ser.L/V/II CIDH/RELE/INF. 2/09, 30 diciembre 2009, párr 60.

⁴¹¹ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 88.

⁴¹² Corte IDH, OC-6/86, La expresión “leyes” en el artículo 30 de la Convención Americana sobre Derechos Humanos, 9 de mayo de 1986, Ser. A No. 6, párr. 35.

⁴¹³ Corte IDH, OC-6/86, La expresión “leyes” en el artículo 30 de la Convención Americana sobre Derechos Humanos, 9 de mayo de 1986, Ser. A No. 6, párr. 36.

involving freedom of expression on the internet.⁴¹⁴ The Office of the Rapporteur is aware that this phenomenon is a result of the particular dynamics of the internet and is consistent with the inter-American position that “human rights treaties are living instruments, the interpretation of which must evolve over time in view of existing circumstances.”⁴¹⁵ However, the Office of the Rapporteur underscores the Court’s statement that acts of delegation must have effective controls in order to avoid undermining the fundamental nature of conventional rights and freedoms.

- 263.** The Office of the Rapporteur recognizes that not all regulatory frameworks in the region provide for this type of delegation to platforms. However, there are two important factors in this context: (i) first, as noted above and independent of de jure delegation, platforms exercise regulatory power over their users; (ii) second, such regulatory power constitutes private control over the exercise of freedom of expression. In this regard, the Office of the Rapporteur emphasizes that the Inter-American Court has established that States have the obligation to ensure that violations of freedom of expression “do not result from the ‘private controls’ mentioned in Article 13.3.”⁴¹⁶
- 264.** Accordingly, the regulatory power of the platforms must be guided by minimum parameters of legality. The jurisprudence of the inter-American system has been clear in explaining that the degree of precision required for rules restricting freedom of expression “depends significantly on the subject matter.”⁴¹⁷ In the context of content moderation and curation, legality requires that the aforementioned policies be clear, specific, and transparent, so that users can be certain of what content is allowed on the platforms and what is not.⁴¹⁸ Platforms should provide precision and information about different actors’ participation in the formulation of rules, the content that will be subject to moderation, the different moderation activities that are conducted when content violates community standards, and the review or appeal procedures available to users.⁴¹⁹
- 265.** The legality requirement for content restrictions also means that companies should proactively publish clear and precise policies, accessible to users, on how and when they will act on content or accounts.⁴²⁰ This includes detailed information and concrete examples to guide the interpretation and application of these policies.⁴²¹ Exceptions to the application of the rules to certain content, such as the public interest of the content posted, should also be specified. In particular, with respect to the public interest exception, platforms should clearly explain the factors that are considered in its assessment.⁴²²
- 266.** Establishing community standards on platforms also often presents problems such as fragmentation across different microsites, language differences, and broad

⁴¹⁴ Ejemplo de esto es el mencionado Reglamento de Servicios Digitales, que establece en su artículo 14(4) que “[l]os prestadores de servicios intermediarios actuarán de manera diligente, objetiva y proporcionada para aplicar y hacer cumplir las restricciones a que se refiere el apartado 1, con la debida consideración de los derechos e intereses legítimos de todas las partes implicadas, incluidos los derechos fundamentales de los destinatarios del servicio, como la libertad de expresión, la libertad y el pluralismo de los medios de comunicación y otros derechos y libertades fundamentales amparados por la Carta.” Asimismo, la Sección 230 de la Ley de Decencia de las Comunicaciones de los Estados Unidos establece que no existirá responsabilidad de los intermediarios por las acciones voluntarias tomadas de buena fé para la restricción de acceso o disponibilidad de material que el intermediario considere obscenas, lascivas, asquerosas, extremadamente violentas, acosadoras u objetables. Por su parte, la Corte Constitucional Colombiana determinó en la sentencia SU 420 de 2019 que “las plataformas de aplicaciones o redes sociales establecen pautas de autorregulación, de acuerdo con procesos internos tendientes a determinar si una cuenta está desconociendo las mismas, por lo que los usuarios cuentan con la posibilidad de “reportar” contenido que se considere inapropiado para esos canales. Es este un mecanismo de autocomposición para la resolución de este tipo de controversias al que se debe acudir, en primer lugar, a fin de lograr la dirimir las diferencias entre los particulares en el mismo contexto en el que se produjo, esto es, en la red social”.

⁴¹⁵ Corte IDH, Caso de los “Niños de la Calle” (Villagrán Morales y otros) Vs. Guatemala, Fondo, Sentencia de 19 de noviembre de 1999, Serie C No. 63, párr. 193.

⁴¹⁶ Corte IDH, Opinión Consultiva OC-5/85, La colegiación obligatoria de periodistas (Arts. 13 y 29 de la Convención Americana sobre Derechos Humanos), 13 de noviembre de 1985, Serie A No. 5, párr. 48.

⁴¹⁷ Corte IDH, Caso Fontevecchia y D’Amico Vs. Argentina, Fondo, Reparaciones y Costas, Sentencia de 29 de noviembre de 2011, Serie C No. 238, párr. 89.

⁴¹⁸ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 46.

⁴¹⁹ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

⁴²⁰ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

⁴²¹ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 46.

⁴²² ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 46.

formulations.⁴²³ This hinders the legal certainty required for the use of platforms. Faced with this difficulty, platforms should clearly inform users of their terms of service and community standards at the time of registration and any updates, and they should ensure easy access to community standards at all times in different languages in line with their global reach.⁴²⁴

iii. Legitimate aim

267. On this point, the Office of the Rapporteur first recalls that the wording of Article 13 of the American Convention differs significantly from Article 10 of the European Convention and is more similar to Article 19 of the Covenant. The article of the European Convention is drafted in very general terms, and without the specific reference to what is “necessary in a democratic society,” it would have been very difficult to delimit the long list of restrictions authorized under that standard.⁴²⁵ Indeed, Article 13 of the Convention contains a shorter list of restrictions than the European Convention and the Covenant.⁴²⁶ In this regard, Article 13 states that legitimate purposes for restricting freedom of expression include: (i) respect for the rights or reputations of others; and (ii) the protection of national security, public order, or public health or morals. Platforms should align their content moderation and curation policies with these purposes.

268. Platforms may invoke other relevant purposes to restrict content, but must demonstrate how these align with the legitimate purposes of Article 13.2 of the ACHR. The Office of the Rapporteur has observed that companies sometimes use arguments such as copyright, child protection, or gender equality in order to restrict the circulation of certain content. For example, the SRFOE has considered copyright protection a legitimate aim that may lead to the imposition of limitations on the right to freedom of expression.⁴²⁷

269. While measures taken to address alleged copyright infringement, child protection, and equal rights violations may pursue legitimate objectives, the Special Rapporteur calls on platforms in the Americas to ensure that such measures are imposed with due process for users, and to consider the necessity and proportionality of the restriction.⁴²⁸ The SFROE underscores that the imposition of restrictions on freedom of expression gives rise to an obligation to “demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat.”⁴²⁹

iv. Necessity and proportionality

270. Necessity and proportionality require, as a general principle, that business enterprises apply the least restrictive measures to freedom of expression. The geographic reach of platforms, as well as the use of automated content moderation mechanisms and the range

⁴²³ Por ejemplo, la RELE ha observado que las categorías de contenidos que con mayor frecuencia se utilizan para restringir contenido se trata de aquellas que implican fenómenos sociales complejos, como los discursos de odio, la desinformación, la apología del terrorismo y el contenido considerado contrario a la moral y buenas costumbres. La Relatoría entiende que este tipo de categorías complejas requieren claridad en su regulación, y deben ser contenidos sujetos a revisión por personas humanas con competencias para realizar una evaluación rigurosa del contexto.

⁴²⁴ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

⁴²⁵ Corte IDH, Opinión Consultiva OC-5/85, La colegiación obligatoria de periodistas (Arts. 13 y 29 de la Convención Americana sobre Derechos Humanos), 13 de noviembre de 1985, Serie A No. 5, párr. 45.

⁴²⁶ Corte IDH, Opinión Consultiva OC-5/85, La colegiación obligatoria de periodistas (Arts. 13 y 29 de la Convención Americana sobre Derechos Humanos), 13 de noviembre de 1985, Serie A No. 5, párr. 45.

⁴²⁷ CIDH, Relatoría Especial para la Libertad de Expresión, Estándares para una internet libre, abierta e incluyente, CIDH/RELE/INF.17/17, 15 de marzo de 2017, párr. 144.

⁴²⁸ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

⁴²⁹ ONU, Comité de Derechos Humanos. Observación General N° 34 - Artículo 19 Libertad de opinión y libertad de expresión, CCPR/C/GC/34, 12 de septiembre de 2011, párr. 35.

of curation and moderation activities, are factors that should be taken into account when considering the necessity and proportionality of a measure.⁴³⁰

- 271.** As a practice, companies should adapt their content moderation and curation policies and practices to the realities of communities or groups that have historically been excluded from public debate.⁴³¹ It is also essential for companies to understand the contextual framework for defining whether a measure is proportional to social, historical, political, cultural, and linguistic nuances.⁴³²
- 272.** In some cases, algorithms may invalidate legitimate content by detecting words or images considered violent, indecent, or provocative.⁴³³ These algorithms—although in some cases they seek to prevent the promotion of violence and direct paid content to targeted users—have adverse effects on freedom of expression, fragmenting and polarizing public debate.⁴³⁴ Some studies have suggested that these filters differentially affect groups that have been historically subject to discrimination, exacerbating gender and racial violence online and silencing marginalized voices.⁴³⁵
- 273.** In the opinion of the Office of the Special Rapporteur, these decisions affect the dissemination of content about events of public interest, such as elections, protests, and controversial political discussions.⁴³⁶ These mechanisms can encourage self-censorship, also affecting creativity, artistic freedom, and access to crucial information on digital platforms.⁴³⁷
- 274.** Accordingly, companies must weigh the potentially disproportionate impact of content restrictions on vulnerable groups, conducting contextual and cultural analyses specific to each case. As the IACHR has noted, “[l]imitations imposed on freedom of expression must not perpetuate prejudice or promote intolerance.”⁴³⁸ Under Principle 2 of the Declaration of Principles on Freedom of Expression of the IACHR, “[a]ll people should be afforded equal opportunities to receive, seek and impart information by any means of communication without any discrimination for reasons of race, color, sex, language, religion, political or other opinions, national or social origin, economic status, birth or any other social condition.”
- 275.** Along these lines, one crosscutting challenge is that of restrictions to public debate arising from the use of automated content moderation systems.⁴³⁹ It is crucial to integrate a human rights perspective into artificial intelligence mechanisms. Therefore, the Office of the Rapporteur considers that the use of artificial intelligence tools by platforms in

⁴³⁰ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

⁴³¹ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 48.

⁴³² Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

⁴³³ Según el Relator Especial de Libertad de Expresión de las Naciones Unidas, “en los últimos años, los Estados han obligado a las empresas a retirar casi inmediatamente los contenidos, exigiendo que desarrollen filtros que impidan que se suban contenidos considerados nocivos. Se presiona para que haya instrumentos automatizados que sirvan como una forma de censura previa a la publicación. Problemáticamente, el requisito de tener un filtro de subida permitiría bloquear el contenido sin ninguna forma de debidas garantías procesales incluso antes de que se publique, invirtiendo la presunción bien establecida de que los Estados, y no los individuos, son los que deben justificar las restricciones a la libertad de expresión”. ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y de expresión, Discurso de odio en línea, A/74/486, 9 de octubre de 2019, párr. 34.

⁴³⁴ Manuel Larrondo y Nicolás Grandi, *Inteligencia artificial, algoritmos y libertad de expresión*, Universitas, Revista de Ciencias Sociales y Humanas, 2021.

⁴³⁵ Daphne Keller, *Dolphins in the Net: internet content filters and the Advocate General’s Glawischnig-Pieczek v. Facebook Ireland opinion*, Stanford Center for Internet and Society, 2019.

⁴³⁶ Meta’s Oversight Board, *Colombian police cartoon*, 2022.

⁴³⁷ R3D, *Instagram atribuye eliminación de publicaciones sobre protestas en Colombia a fallo en actualización*, 11 de mayo de 2021.

⁴³⁸ CIDH, *Relatoría Especial para la Libertad de Expresión*, Marco Jurídico Interamericano sobre el derecho a la libertad de expresión, OEA/Ser.LV/II, CIDH/RELE/INF. 2/09, 30 diciembre 2009, párr. 93.

⁴³⁹ Carlos Bernal, *Derechos fundamentales e inteligencia artificial*, ICON International Journal of Constitutional Law, 2022; Relator Especial de las Naciones Unidas (ONU) sobre la Protección y Promoción de la Libertad de Opinión y Expresión, Representante de la Organización para la Seguridad y la Cooperación en Europa (OSCE) para la Libertad de los Medios de Comunicación, Relator Especial para la Libertad de Expresión de la Organización de Estados Americanos (OEA), Relatora Especial de la Comisión Africana de Derechos Humanos y de los Pueblos (CADHP) para la Libertad de Expresión y Acceso a la Información, *Declaración Conjunta sobre libertad de expresión y justicia de género*, 2022.

decision-making must be subject to criteria of necessity and proportionality.⁴⁴⁰ At the same time, platforms should take proactive measures to ensure that their algorithms have a human rights perspective, so that they respect the right to freedom of expression, nondiscrimination, and the right to personal integrity.⁴⁴¹

- 276.** Companies should avoid using algorithms and automated systems that disproportionately restrict freedom of expression and lead to discriminatory outcomes. They should develop systems that counter historical biases and promote the inclusion of marginalized groups in the design and operation of these tools.⁴⁴²
- 277.** Experts have argued that platforms should implement actions to diversify the range of measures to combat the spread and influence of content such as hate speech or disinformation rather than to inhibit speech.⁴⁴³ However, decisions other than blocking or suppression, such as reducing its reach, demonetization, and others, although less harmful, should be applied with caution; while they do not prevent users from providing certain information or expressing themselves through online platforms, they have the potential to affect its availability, visibility, accessibility, and impact.⁴⁴⁴ On this point, we recall that the Inter-American Court has established that the expression and dissemination of thought are indivisible, thus protecting people’s freedom to choose “any appropriate means to make [their] ideas and opinions reach the maximum number of people and, in turn, allowing these people to receive this information.”⁴⁴⁵
- 278.** There are also studies that refer to secretive or hidden moderation or curation practices about which users do not receive any kind of notification. These are known as “shadow-banning.” Initially, this category was considered to be moderation that opaquely removes content, making the user believe that he or she was still visible.⁴⁴⁶ Now, experts have opted to use this category as a term that frames other opaque content moderation actions.⁴⁴⁷ It includes, for example, actions such as hiding content, hashtags, or accounts within search engines or suggestions, as well as the use of downranking or de-prioritization algorithms that affect the reach of content by preventing it from being available in the recommendation sections of the platforms.⁴⁴⁸
- 279.** These practices tend to isolate platform users, as the actions taken against them diminish their ability to influence public debate and to know the impact of their content; this is amplified by the fact that they are unaware that they are being subjected to such measures. They also tend to particularly affect populations historically subject to discrimination as well as those who use social network platforms to generate income. In addition, network users have expressed that these opaque practices hinder their participation in current events and their ability to find or create communities within the platforms.⁴⁴⁹

⁴⁴⁰ UNESCO, [Recomendación sobre la ética de inteligencia artificial](#), 23 de noviembre de 2021, párr. 11.

⁴⁴¹ UNESCO, [Recomendación sobre la ética de inteligencia artificial](#), 23 de noviembre de 2021, párr. 13.

⁴⁴² Como ejemplo, el “perfilamiento de la pobreza” o el “perfilamiento racial” son fenómenos que refuerzan la desigualdad al tratar de manera a ciertas poblaciones por la mera situación en la que se encuentran, además de que puede establecer sistemas indirectos de vigilancia sobre las expresiones y los modos de vida de las mismas. Ver V. Eubanks, *Automating Inequality: How High-Tech Tools Profile, Police and Punish the Poor*, St. Martin’s Press, 2018, pp. 110-152.

⁴⁴³ Barrie Sander, [Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation](#), *Fordham International Law Journal*, 2020.

⁴⁴⁴ Parlamento Europeo y Consejo de la Unión Europea, Reglamento 2022/2065 relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales), 19 de octubre de 2022, artículo 3.

⁴⁴⁵ Corte IDH, *Caso Palamara Iribarne Vs. Chile*, Fondo, Reparaciones y Costas, Sentencia de 22 de noviembre de 2005, Serie C No. 135, párrs. 72-75.

⁴⁴⁶ X Blog, [Setting the record straight on shadow banning](#), 26 de julio de 2018.

⁴⁴⁷ Gabriel Nicholas, [Shedding Light on Shadowbanning](#), *Center for Democracy & Technology*, 26 de abril del 2022.

⁴⁴⁸ Gabriel Nicholas, [Shedding Light on Shadowbanning](#), *Center for Democracy & Technology*, 26 de abril del 2022.

⁴⁴⁹ Gabriel Nicholas, [Shedding Light on Shadowbanning](#), *Center for Democracy & Technology*, 26 de abril del 2022.

280. Finally, considering the different content moderation and curation practices, platforms should only block content and suspend or close accounts as a last resort. Before restricting freedom of expression, they should weigh the benefits against the costs of the limitation and its impact on public debate.⁴⁵⁰

v. Prohibition of indirect censorship

281. Article 13.3 of the American Convention prohibits restrictions to freedom of expression through “indirect methods or means” that the Inter-American Court has considered as “subtle forms of restriction of the right to freedom of expression by State authorities or individuals.”⁴⁵¹ Thus, the Declaration of Principles for Freedom of Expression states that measures such as “The exercise of power and the use of public funds by the state, the granting of customs duty privileges, the arbitrary and discriminatory placement of official advertising and government loans; the concession of radio and television broadcast frequencies, among others, with the intent to put pressure on and punish or reward and provide privileges to social communicators and communications media” violate freedom of expression.⁴⁵²

282. The Inter-American Court has stated that the description of indirect restrictions in instruments such as the American Convention or the aforementioned Principles is not exhaustive and therefore does not prevent the consideration of “any” other means.⁴⁵³ In this regard, it has affirmed that Article 13.3 considers that indirect mechanisms of restriction can come from individuals⁴⁵⁴ and be derived from the use of technological means.⁴⁵⁵

283. In the content moderation context, the SRFOE notes with concern that there are practices that could amount to methods of indirect censorship insofar as they subtly restrict dissemination and reach, taking advantage of structural aspects of the platforms that are neutral on their face and not designed with the express purpose of censoring legitimate content.

284. The Office of the Rapporteur has learned of organized attacks that bombard some platform users with complaints or reports of violations of use policies in order to silence certain speech, often triggering automated moderation actions against the user who is the target of such practice.⁴⁵⁶ Civil society organizations have warned about the existence of such practices on platforms where different users organize en masse to generate illegitimate copyright alerts in order to silence information of public interest.⁴⁵⁷ There have also been cases of public authorities playing music while conducting their activities in order to take advantage of copyright filters to keep recordings of their activities from spreading online.⁴⁵⁸ In other scenarios, the reporting of accounts or content is used to target specific communities or groups.⁴⁵⁹

⁴⁵⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Libertad de Expresión e internet, OEA/Ser.L/V/II. CIDH/RELE/INF. 11/13, 31 de diciembre de 2013, párrs. 53, 55 y 63.

⁴⁵¹ Corte DH, Caso Granier y otros (Radio Caracas Televisión) Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 22 de junio de 2015, Serie C No. 293, párr. 162.

⁴⁵² CIDH, Relatoría Especial para la Libertad de Expresión, Declaración de Principios sobre Libertad de Expresión, 2000, Principio 13.

⁴⁵³ Corte DH, Caso Granier y otros (Radio Caracas Televisión) Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 22 de junio de 2015, Serie C No. 293, párr. 162.

⁴⁵⁴ Corte DH, Caso Granier y otros (Radio Caracas Televisión) Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 22 de junio de 2015, Serie C No. 293, párr. 162.

⁴⁵⁵ Corte DH, Caso Granier y otros (Radio Caracas Televisión) Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 22 de junio de 2015, Serie C No. 293, párr. 163.

⁴⁵⁶ Corte DH, Caso Granier y otros (Radio Caracas Televisión) Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 22 de junio de 2015, Serie C No. 293, párr. 163.

⁴⁵⁷ Ver: [Iglesia de María Luisa Piraquive bloquea contenidos periodísticos en YouTube](#), (Colombia, FLIP, 2014); [Los derechos de autor como arma de censura](#), (Ecuador, Derechos Digitales, 2014)

⁴⁵⁸ CNN, [Police play Disney tunes to prevent video of them on patrol being posted online, California lawmaker claims](#), 27 de abril de 2022.

⁴⁵⁹ Jezebel, [A Troll's Alleged Attempt to Purge Porn Performers from Instagram](#), 17 de abril de 2019.

285. These measures could amount to indirect restrictions to freedom of expression⁴⁶⁰ when, contrary to Article 13.3 of the American Convention, they constitute “forms of direct or indirect interference or harmful pressure on the rights of those who are trying to contribute to the public debate by expressing and imparting their thoughts.”⁴⁶¹ This concept should also be read in conjunction with that of indirect discrimination, on which the Inter-American Court has held that “a violation of the right to equality and non-discrimination also occurs in situations and cases of indirect discrimination reflected in the disproportionate impact of norms, actions, policies or other measures that, even when they are or appear to be neutral, or their scope is general and undifferentiated, have negative effects on certain vulnerable groups.”⁴⁶² In view of this, the Office of the Rapporteur considers it essential that the platforms establish mechanisms to prevent abuse of complaint, reporting, or filtering mechanisms, so that their use does not result in the intentional and malicious limitation of legitimate content by third parties.⁴⁶³

c. Strict adherence to standards of transparency and due diligence in their operations

286. The Office of the Rapporteur has referred to the guarantee of due process as a requirement for the imposition of restrictions on freedom of expression on the internet, an aspect that must be analyzed from “a systemic digital perspective.”⁴⁶⁴ In this regard, the Office of the Rapporteur recalls that the Inter-American Court has held that due process is a guarantee applicable in any “procedure whose decisions may affect the rights of persons.”⁴⁶⁵ The UN Human Rights Committee has also considered that the protection of due process “often plays an important role in the implementation of the more substantive guarantees.”⁴⁶⁶

287. Hence, in developing community standards or other regulations from a human rights approach, platforms should apply such standards within the framework of procedural guarantees that include, at a minimum:

- a. User consent: Platforms should establish adequate procedures to obtain the free, prior, and informed consent of users to their content moderation rules, policies, and practices, including service changes or updates, avoiding abusive or ambiguous clauses.⁴⁶⁷
- b. Adequate notice: Platform users should receive adequate, timely, and prompt notice regarding the application of any type of content moderation activity, from content blocking or removal to less harmful controls such as demonetization or even those that could be considered indirect censorship.⁴⁶⁸ Notice should provide

⁴⁶⁰ CIDH, Relatoría Especial para la Libertad de Expresión, Marco Jurídico Interamericano sobre el derecho a la libertad de expresión, OEA/Ser.L/V/II, CIDH/RELE/INF. 2/09, 30 diciembre 2009, párr. 154.

⁴⁶¹ Corte DH, Caso Granier y otros (Radio Caracas Televisión) Vs. Venezuela, Excepciones Preliminares, Fondo, Reparaciones y Costas, Sentencia de 22 de junio de 2015, Serie C No. 293, párr. 195.

⁴⁶² Corte IDH, Caso Pueblos Indígenas Maya Kaqchikel de Sumpango y otros Vs. Guatemala, Fondo, Reparaciones y Costas, Sentencia de 6 de octubre de 2021, Serie C No. 440, párr. 136.

⁴⁶³ La UNESCO ha considerado que “Las compañías deben esforzarse por evitar el uso indebido del sistema de reporte por comportamientos coordinados no auténticos.” Ver UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023. Asimismo, el Reglamento de Servicios Digitales dispone el establecimiento de mecanismos de sanción para personas “que envíen con frecuencia notificaciones o reclamaciones que sean manifiestamente infundadas”.

⁴⁶⁴ CIDH, Informe Anual 2013, Informe de la Relatoría Especial para la Libertad de Expresión, Capítulo IV (Libertad de Expresión e internet), OEA/Ser.L/V/II.149. Documento 50, 31 de diciembre de 2013.

⁴⁶⁵ Corte IDH, Caso Baena Ricardo y otros Vs. Panamá, Fondo, Reparaciones y Costas, Sentencia de 2 de febrero de 2001, Serie C No. 72, párr. 127.

⁴⁶⁶ ONU, Comité de Derechos Humanos, Observación General N° 32 - El derecho a un juicio imparcial y a la igualdad ante los tribunales y cortes de justicia, CCPR/C/GC/32, 23 de agosto de 2007, párr. 58.

⁴⁶⁷ Parlamento Europeo y Consejo de la Unión Europea, Reglamento 2022/2065 relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales), 19 de octubre de 2022, artículo 3, numeral 5.

⁴⁶⁸ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, Fordham International Law Journal, 2020.

a clear, complete, and consistent decision based on the content moderation rules, and also should provide information regarding: (1) the use (or not) of automated decision-making mechanisms;⁴⁶⁹ and (2) available appeal mechanisms, how to access them, and the terms under which appeals are decided.⁴⁷⁰

- c. Access to an accessible review or appeal mechanism: Platforms should provide users with an effective and easily accessible appeal or review mechanism.⁴⁷¹ This mechanism should provide a prompt and specific time limit for resolution.⁴⁷² When the review requires greater contextual analysis due to the quality of the content, the sociopolitical or cultural conditions, or the severity of the measure imposed, platforms should provide the opportunity to have the review conducted through human intervention.⁴⁷³ This is without prejudice to users' ability to avail themselves of the courts to determine the compatibility of the platform's measures with the right to freedom of expression.
- d. Access to effective remedy: Platforms should provide accessible and effective redress mechanisms for content removal decisions or other moderation activities.⁴⁷⁴ Remedial measures consisting only of content or account reinstatement may sometimes be sufficient; at other times, public apologies, guarantees of non-recurrence, or compensation may be required.⁴⁷⁵
- e. Special safeguards for the use of automated moderation mechanisms: In addition to the above, and in view of the special risks posed by the use of automated mechanisms, platforms should: (1) provide transparency about their use in decision-making, the way they operate, and the information they are fed;⁴⁷⁶ and (2) ensure the involvement of highly qualified human personnel to improve systemic flaws, which could occur, for example, through the review of statistically representative samples or significant content moderation decisions.⁴⁷⁷

288. The SRFOE notes that some social media platforms have created independent internal bodies to review content moderation decisions. Meta is a notable example, with the creation of its Oversight Board. This is an independent body that selects specific cases, after an appeals process, to review content moderation decisions from Facebook, Instagram, or Threads. It determines, through a binding analysis, whether the decisions adhere to the company's policies and values regarding content and, consequently, whether to uphold or reverse the initial decision.⁴⁷⁸ These initiatives, aimed at promoting freedom of expression and strengthening procedural guarantees for users, have proven to be a tool for transparent and independent decision-making by companies.⁴⁷⁹ However, their decisions and recommendations are isolated and ad hoc, and their reasoning and scope in terms of ensuring freedom of expression online are not yet clearly defined.⁴⁸⁰

⁴⁶⁹ G. Frosio, C. Geiger, Taking fundamental rights seriously in the Digital Services Act's platform liability regime, *European Law Journal*, 2023.

⁴⁷⁰ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, *Fordham International Law Journal*, 2020.

⁴⁷¹ ONU, Oficina del Alto Comisionado para los Derechos Humanos, *Principios Rectores sobre las empresas y los derechos humanos*, 2011, Principio 29 y comentarios.

⁴⁷² Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, *Fordham International Law Journal*, 2020.

⁴⁷³ R. Griffin, E. Stallman, A Systemic Approach to Implementing the DSA's Human-in-the-Loop Requirement, 22 de febrero de 2024.

⁴⁷⁴ En razón de su dominio de mercado, las grandes plataformas deben garantizar el debido proceso incluso proporcionando opciones independientes de resolución de conflictos y asegurar que la moderación considere las lenguas, tradiciones y culturas locales. ONU, Oficina del Alto Comisionado para los Derechos Humanos, *Principios Rectores sobre las empresas y los derechos humanos*, 2011, Principio 29 y comentarios.

⁴⁷⁵ Barrie Sander, *Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation*, *Fordham International Law Journal*, 2020.

⁴⁷⁶ G. Frosio, C. Geiger, Taking fundamental rights seriously in the Digital Services Act's platform liability regime, *European Law Journal*, 2023.

⁴⁷⁷ R. Griffin, E. Stallman, A Systemic Approach to Implementing the DSA's Human-in-the-Loop Requirement, 22 de febrero de 2024.

⁴⁷⁸ Meta, Oversight Board Charter, febrero de 2023.

⁴⁷⁹ ONU, Oficina del Alto Comisionado para los Derechos Humanos, *United Nations Human Rights Report*, 2021, p. 58.

⁴⁸⁰ Evelyn Douek, The Meta Oversight Board and the Empty Promise of Legitimacy, *Harvard Journal of Law & Technology*, 2024.

Although the decisions are based on international human rights standards,⁴⁸¹ they are binding only for the specific cases to which they apply, and the recommendations are optional for Meta.⁴⁸² Therefore, the Office of the Rapporteur considers that, although this mechanism incorporates fundamental aspects of the application of human rights standards to content moderation, it still faces challenges in terms of its systemic impact.

- 289.** Other platforms have opted for content moderation systems with an open and cooperative approach, whereby users themselves can participate in and regulate platform governance.⁴⁸³ On Wikipedia, all users have the capacity to act as moderators and edit, add, revert, and remove content or flag articles for noncompliance with community standards and for further joint discussion on their possible deletion.⁴⁸⁴ Reddit, after facing consistent criticism about the publication of content that was extremist, discriminatory, and even an incitement to violence,⁴⁸⁵ strengthened its content policies and decentralized content moderation by delegating it to its users. It even designed an automated moderation tool that users can edit and customize.⁴⁸⁶ The Office of the Rapporteur highlights these moderation models as mechanisms that empower users and strengthen participation in democratic processes within the platforms.
- 290.** The Office of the Rapporteur cites these two models as best practices in content moderation, but does not consider them to be perfect solutions or the only solutions. The Office of the Rapporteur encourages platforms to establish and strengthen dialogue processes among themselves and with the different stakeholders to build and enhance moderation models that incorporate the benefits of existing models and counteract the challenges they pose.
- 291.** Platforms' human rights due diligence process should be initiated as early as possible in the undertaking of any type of activity, and carried out at regular intervals during the life cycle of the activity.⁴⁸⁷ Since the human rights impact assessment functions as the basis of the due diligence process, the SRFOE considers that the human rights approach should be adopted from the formulation of a platform's standards and architecture in order to ensure the lowest possible human rights impact of moderation activities.
- 292.** Moreover, for users to be able to make informed decisions about their participation on platforms, they must be able to understand how the platforms work and the challenges that moderation poses for human rights.⁴⁸⁸ This requires a radical improvement transparency and genuine accountability.⁴⁸⁹
- 293.** The Office of the Rapporteur also underscores that the ability of States to develop appropriate and effective public policies that ensure freedom of expression online depends on the solutions adopted being framed by a multi-stakeholder technical dialogue. This dialogue should ensure that platforms understand the importance of transparency about how they operate, including algorithmic transparency and transparency about application programming interfaces.⁴⁹⁰ Transparency helps enable academia and specialized civil society actors to conduct effective analysis, which in turn

⁴⁸¹ Meta, Oversight Board Charter, febrero de 2023.

⁴⁸² Meta, Oversight Board Charter, febrero de 2023.

⁴⁸³ James Grimmelmann, *The Virtues of Moderation*, Cornell Law School, 2019.

⁴⁸⁴ Wikipedia, *Wikipedia is not a forum*, sin fecha.

⁴⁸⁵ New York Times, *Reddit's I.P.O. Is a Content Moderation Success Story*, 21 de marzo de 2024.

⁴⁸⁶ Reddit, *Content Moderation, Enforcement, and Appeals*, 2024.

⁴⁸⁷ ONU, Oficina del Alto Comisionado para los Derechos Humanos, *Principios Rectores sobre las empresas y los derechos humanos*, 2011, Principio 18 y comentarios.

⁴⁸⁸ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 52.

⁴⁸⁹ ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 64.

⁴⁹⁰ M. Rotenberg M, *Artificial Intelligence and the Right to Algorithmic Transparency*, en Ienca M, Pollicino O, Liguori L, Stefanini E, Andorno R (eds.), *The Cambridge Handbook of Information Technology, Life Sciences and Human Rights*, Cambridge University Press, 2022.

helps all stakeholders to better understand the challenges and alternatives for overcoming them.⁴⁹¹

294. The UN Guiding Principles clearly state that business enterprises with operations that involve serious risks of human rights impacts should report on these and on the measures they take to address them. The corporate duty to respect human rights requires business enterprises to communicate, provide transparency, and be accountable.⁴⁹²

295. With regard to transparency in content moderation, the SRFOE considers that platforms should:

- a. Make information available in all languages, including Indigenous languages, and make such information accessible to persons with disabilities, using clear language and avoiding technical terminology.⁴⁹³
- b. Provide clear information on users' rights regarding the publication of content and the policies applied by the platform in this regard, including criteria and examples to help users understand the application of moderation rules and the intervention of automated or human processes in this task.⁴⁹⁴
- c. Disclose content moderation criteria used by algorithms, explaining their impact on content visibility and differentiating between those that can and cannot be controlled by users.⁴⁹⁵
- d. Publish reports on events of high public impact, such as mass protests, disturbances to public order, civil unrest, elections, and others. These should detail whether there have been contacts with State entities, the specific moderation mechanisms implemented, and the impact of such mechanisms.⁴⁹⁶
- e. Provide information on the use of personal data and its impact on users' rights.
- f. Report advertising agreements with candidates for public office or political parties.⁴⁹⁷
- g. Report on requests from State entities for user data and content removal, as well as the reasons given for such requests.⁴⁹⁸

⁴⁹¹ Mark McCarthy, Transparency Requirements for Digital Social Media Platforms: Recommendations for Policy Makers and Industry, Transatlantic Working Group, 2020.

⁴⁹² ONU, Oficina del Alto Comisionado para los Derechos Humanos, Principios Rectores sobre las empresas y los derechos humanos, 2011, Principio 21.

⁴⁹³ Barrie Sander, Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation, Fordham International Law Journal, 2020.

⁴⁹⁴ Barrie Sander, Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation, Fordham International Law Journal, 2020.

⁴⁹⁵ Otras propuestas complementarias pueden ser de utilidad. Artículo 19 propone que los reguladores debiesen obligar a las plataformas con un cierto nivel de poder de mercado a separar sus funciones de alojamiento y curación de contenidos, permitiendo a terceros acceder a estas plataformas para que presten el servicio de curación de contenidos a los usuarios y usuarias, y dejar que estos decidan libremente, en cualquier momento, qué servicio de curación de contenido quieren utilizar o si desean cambiar de proveedor. Artículo 19, Cómo limitar el poder de las grandes tecnológicas: proteger la libertad de expresión de todos y todas, sin fecha. Es posible consensuar estándares balanceados entre la protección de intereses privados y los intereses públicos relativos a conocer el funcionamiento y los efectos de los algoritmos en el proceso de moderación para analizar su compatibilidad con los estándares interamericanos de derechos humanos. Organizaciones de la sociedad civil sugieren al respecto "(...) atribuir a un grupo determinado de personas la función de auditar los algoritmos, incluyendo los definidos por aprendizaje de máquinas y/o inteligencia artificial, garantizando a los responsables acceso total bajo confidencialidad, que proteja [el] secreto comercial". Observacom, Estándares para una regulación democrática de las grandes plataformas que garantice la libertad de expresión en línea y una internet libre y abierta, julio de 2020.

⁴⁹⁶ Parlamento Europeo y Consejo de la Unión Europea, Reglamento 2022/2065 relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales), 19 de octubre de 2022, artículo 27.

⁴⁹⁷ Barrie Sander, Freedom of expression in the age of online platforms: the promise and pitfalls of a human rights-based approach to content moderation, Fordham International Law Journal, 2020.

⁴⁹⁸ Organizaciones de la sociedad civil señalan que la información requerida abarca, aunque no se limita a, estos requerimientos: "A. Cuántos pedidos de datos de usuarios fueron hechos. B. Qué motivos se argumentaron para justificar tales pedidos. C. En qué marcos legales se apoyan las solicitudes realizadas. D. En qué casos se solicitaron medidas específicas de moderación de contenido tales como la remoción. E. Cuál fue la respuesta de las empresas en cada caso. F. Cuántas publicaciones fueron removidas o limitadas en su alcance y cuántas de ellas fueron rehabilitadas". Observacom, Estándares para una regulación democrática de las grandes plataformas que garantice la libertad de expresión en línea y una internet libre y abierta, julio de 2020. Otra iniciativa añade que es necesario conocer "detalles de cualquier norma o política, ya sea de aplicación global o en determinadas jurisdicciones, que trate de reflejar los requisitos de las leyes locales. Detalles de cualquier relación y/o acuerdo de trabajo formal o informal que la empresa tenga con actores estatales cuando se trata de marcar contenidos o cuentas o cualquier otra acción tomada por la empresa (...)". Ver Principios de Santa Clara, 2021.

- h. Publish transparency reports with detailed information on content restrictions, including actions on government and private requests.⁴⁹⁹ This should account for each stage of the operation from rulemaking to the adoption of measures and their outcomes.
- i. Report any evaluations by external and/or independent third parties on the human rights compliance of content moderation processes, and the company's response to resulting recommendations.⁵⁰⁰
- j. Report on guidelines that consider the ethical development of artificial intelligence processes with the potential to affect the rights of users.⁵⁰¹
- k. Engage in dialogue with civil society organizations and other sectors, and refrain from entering into secretive agreements with States on content standards and their implementation.⁵⁰²
- l. Open forums for participation and advocacy that consider input from multiple stakeholders throughout the content moderation process, including on content curation, in order to generate better regulatory, co-regulatory, and self-regulatory initiatives around relevant policies and business practices.⁵⁰³
- m. Publish transparency reports with detailed information on content restrictions, including actions in response to government and private requests.⁵⁰⁴
- n. Conduct periodic risk assessments of operations, in consultation with affected groups, human rights experts, and other stakeholders, examining the compatibility of policies and practices with human rights standards.⁵⁰⁵

296. These duties of transparency and accountability should be understood as evolving principles, aimed at fundamental objectives such as users' autonomous access to and use of digital platforms, research and auditing of the information used by these platforms, and accountability in their operation.

297. A crosscutting approach to transparency is essential to formulate evidence-based perspectives on content moderation and curation, paving the way for regulatory, technological, and public policy solutions from a multi-stakeholder perspective.

⁴⁹⁹ Organizaciones de la sociedad civil sugieren al respecto que "los intermediarios deben incluir en los informes de transparencia, por lo menos, la siguiente información: i) la cantidad total de notificaciones recibidas; ii) el tipo de entidades que las emitieron, incluidos entes privados, organismos administrativos o tribunales; iii) las razones para la determinación de la legalidad del contenido o cómo este infringe los términos de servicio; iv) plazos concretos para el envío de la notificación al proveedor de contenido antes de que se lleve a cabo una acción, para la presentación de una contra notificación, el tiempo exacto que pasará antes de que el contenido sea restringido, y el plazo para iniciar un proceso de apelación; v) la cantidad de apelaciones recibidas y cómo estas se resolvieron. Access Now, [26 recomendaciones sobre gobernanza de contenido: una guía para legisladores, reguladores y encargados de políticas empresariales](#), 2020.

⁵⁰⁰ Parlamento Europeo y Consejo de la Unión Europea, Reglamento 2022/2065 relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales), 19 de octubre de 2022, artículo 42.

⁵⁰¹ UNESCO, [Dejar entrar el sol: transparencia y rendición de cuentas en la era digital](#), 2021, p.13.

⁵⁰² ONU, Informe del Relator Especial sobre la promoción y protección del derecho a la libertad de opinión y expresión, A/HRC/38/35, 6 de abril de 2018, párr. 71.

⁵⁰³ Véase al respecto Intervención de Catalina Botero, [Transparencia, Moderación de Contenidos y Libertad de Expresión. Perspectivas multi-actor en América Latina](#), en Internet For Trust: Towards Guidelines For Regulating Digital Platforms For Information As A Public Good, UNESCO Global Conference, 21 de febrero de 2023.

⁵⁰⁴ Organizaciones de la sociedad civil sugieren al respecto que "los intermediarios deben incluir en los informes de transparencia, por lo menos, la siguiente información: i) la cantidad total de notificaciones recibidas; ii) el tipo de entidades que las emitieron, incluidos entes privados, organismos administrativos o tribunales; iii) las razones para la determinación de la legalidad del contenido o cómo este infringe los términos de servicio; iv) plazos concretos para el envío de la notificación al proveedor de contenido antes de que se lleve a cabo una acción, para la presentación de una contra notificación, el tiempo exacto que pasará antes de que el contenido sea restringido, y el plazo para iniciar un proceso de apelación; v) la cantidad de apelaciones recibidas y cómo estas se resolvieron. Access Now, [26 recomendaciones sobre gobernanza de contenido: una guía para legisladores, reguladores y encargados de políticas empresariales](#), 2020.

⁵⁰⁵ Parlamento Europeo y Consejo de la Unión Europea, Reglamento 2022/2065 relativo a un mercado único de servicios digitales y por el que se modifica la Directiva 2000/31/CE (Reglamento de Servicios Digitales), 19 de octubre de 2022, párr. 79.

- 298.** Multi-stakeholder governance should extend to all policies, processes, procedures, and structures related to content moderation and curation, ensuring that human rights criteria are central to the business models of large platforms, complementing efforts in competition regulation, artificial intelligence, human rights, and personal data protection.
- 299.** Protection of the rights of children and adolescents in the context of content moderation and curation
- 300.** When it comes to developing and implementing actions aimed at protecting human rights, there are populations for which special considerations are required. For example, there is no question that digital technologies influence the lives of children and adolescents. It has been said that the best interests of children and adolescents can only be served if they have knowledge and access to digital media that allow them to use and navigate the internet in a way that enables them to draw maximum benefit from connectivity and prevent the harm to which they may be exposed.⁵⁰⁶
- 301.** In the digital sphere, it has been recognized that children and adolescents are exposed to different risks. The SRFOE has reported that the growing access of children and adolescents to the internet heightens traditional dangers such as bullying and creates new forms of child exploitation and abuse.⁵⁰⁷ UNICEF has categorized them as: (i) content risks, referring to scenarios in which a child is exposed to inappropriate content such as “sexual, pornographic and violent images; some forms of advertising; racist, discriminatory or hate-speech material; and websites advocating unhealthy or dangerous behaviours, such as self-harm, suicide and anorexia;”⁵⁰⁸ (ii) contact risks, where a child participates in risky communication, such as with individuals seeking to contact the child for sexual purposes or to persuade him or her to take part in unhealthy or dangerous behaviors;⁵⁰⁹ (iii) conduct risks, where a child behaves in a way that contributes to risky content or contact.⁵¹⁰
- 302.** Even when children and adolescents face these risks, their participation on the internet is also a tool that could provide them with different benefits. For example, UNESCO identified that it can bring greater access to educational, cultural, and economic opportunities.⁵¹¹ Children’s access to digital environments plays a role in identity development and self-knowledge, and contributes to the formation of bonds in early stages of life.⁵¹²
- 303.** In view of the above, organizations such as UNESCO and UNICEF have raised the need to develop standards and practices that protect and benefit children online.⁵¹³ The SRFOE considers that the protection and safeguarding of the rights of children and adolescents should be aimed at prevention, risk mitigation, and the empowerment of children and adolescents and their environment. Accordingly, States should ensure that children and adolescents have equitable and effective access to digital environments and should promote measures to prevent their digital exclusion.⁵¹⁴

⁵⁰⁶ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017.

⁵⁰⁷ CIDH, Relatoría Especial para la Libertad de Expresión, Niñez, libertad de expresión y medios de comunicación en las Américas, CIDH/RELE/INF.23/19, febrero de 2019, párr. 212.

⁵⁰⁸ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017.

⁵⁰⁹ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017.

⁵¹⁰ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017.

⁵¹¹ UNESCO, *Seguridad de los niños en línea: minimizando el riesgo de la violencia, el abuso y la explotación en línea*, 2019.

⁵¹² UNESCO, *Niñas, niños y el uso de internet en São Paulo y Buenos Aires: estudios a partir de una perspectiva de igualdad de género*, 2020.

⁵¹³ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017; UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023.

⁵¹⁴ UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023, párr. 28.

304. To this end, UNESCO specified that governments should “disseminate information and conduct awareness-raising campaigns on the rights of the child in the digital environment, including their right to freedom of expression, focusing in particular on those whose actions have a direct or indirect impact on children;”⁵¹⁵ and “facilitate educational programmes for children, parents and caregivers, the general public, and policymakers to enhance their knowledge of children’s rights in relation to the opportunities and risks associated with digital products and services.”⁵¹⁶
305. States should ensure that where digital platforms are likely to be accessed by children, they should provide all children with equal and effective access to information, and ensure the protection of their freedom of expression and privacy.⁵¹⁷ This means that the “platform companies should write their terms and conditions and privacy policies in clear language that children can understand and provide them with easy ways to report breaches of privacy or other concerns.”⁵¹⁸ States should provide safeguards to ensure that platforms that manage children’s data protect them in accordance with international standards.⁵¹⁹

⁵¹⁵ UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023, párr. 79.

⁵¹⁶ UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023, párr. 79.

⁵¹⁷ UNESCO, *Directrices para la gobernanza de las plataformas digitales: salvaguardar la libertad de expresión y el acceso a la información con un enfoque de múltiples partes interesadas*, 2023, párr. 121.

⁵¹⁸ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017.

⁵¹⁹ UNICEF, *Estado mundial de la infancia. Niños en un mundo digital*, diciembre de 2017.

Conclusions and recommendations

- 306.** Taking into account the various considerations set forth throughout this report, the SRFOE has a number of non-exhaustive recommendations for the States to respect and guarantee the right to freedom of expression on the internet, in keeping with Articles 1 and 2 of the American Convention on Human Rights. The Office of the Rapporteur emphasizes that the protection of this right depends on the creation of an environment conducive to its exercise. An open and plural public debate requires the active participation of various actors in society, not only the State. However, as the main guarantors of individual rights, it is primarily the responsibility of States to implement the essential measures to ensure the full realization of this right.
- 307.** This report is based on the premise that the internet and social networks are catalysts for democracy and the guarantee of human rights. However, it also recognizes that the expansion and reach of digital platforms can generate unexpected and often adverse impacts.
- 308.** However, the focus of this report is not to propose restrictions or limit the development of the internet and social networks, but rather to promote the implementation of safeguards and guarantees that ensure that it continues to support democratization and the strengthening of human rights. Furthermore, this report assumes that “the guarantees contained in the American Convention regarding freedom of expression were designed to be more generous and to reduce to a bare minimum restrictions impeding the free circulation of ideas.”⁵²⁰ This means that the State “must not only minimize restrictions on the dissemination of information, but also extend equity rules, to the greatest possible extent, to the participation in the public debate of different types of information, fostering informative pluralism.”⁵²¹
- 309.** Lastly, this report reinforces that the approach to the region’s main challenges in this area requires managing the governance of online content and reflecting on the role played by leading voices in democracies and the differentiated responsibilities that the State and public actors must assume when using social networks to disseminate information. At the same time, it highlights the importance of digital literacy initiatives that foster civic skills, enabling citizens to consume information critically and participate actively in the digital environment.
- 310.** Accordingly, the Office of the Rapporteur makes the following recommendations to the States:

Regarding the deterioration of public debate

- 311.** Take the necessary measures to prevent public spokespersons from using digital platforms to spread false or misleading information, to stigmatize people for political reasons, or to express themselves in a discriminatory or intolerant manner against individuals or groups of people based on gender, racial or cultural identity, religion, language, or national origin, in a way that may constitute a direct or indirect interference or pressure harmful to their rights;

⁵²⁰ Corte IDH, La colegiación obligatoria de periodistas (Arts. 13 y 29 Convención Americana sobre Derechos Humanos). Opinión Consultiva OC-5/85, 13 de noviembre de 1985, Serie A No. 5, párr. 50.

⁵²¹ Corte IDH, Caso Kimel Vs. Argentina, Fondo, Reparaciones y Costas, Sentencia de 2 de mayo de 2008, Serie C No. 177, párr. 57.

- 312. Establish a legal liability framework to impose penalties on those who use digital platforms from an official position to promote intolerance, discrimination, or misinformation;
- 313. Enact domestic laws that require political parties to have their own mechanisms explicitly stating that their members have a duty not to contribute to disinformation, violence, or discrimination and allow for the resolution of disputes in the event of noncompliance with such provisions;
- 314. Ensure, prior to their dissemination, the reasonable ascertainment of the circumstances and facts on which the public statements of government authorities and State institutions are based;
- 315. Implement effective mechanisms for correction or reply in application of Article 14 of the American Convention to address speech based on false, misleading, incorrect, or erroneously verified facts, providing special protections to the affected person when such speech comes from special spokespersons;
- 316. Enact domestic laws that strengthen the legal frameworks on transparency in electoral advertising and personal data protection, as well as on the rules for the use and placement of official advertising on digital platforms by State institutions;
- 317. Adopt policies to combat the deterioration of public debate as a result of hate speech or disinformation coming from public figures. Such policies should be aligned with international human rights standards, especially the three-part test of legality, legitimate aim, and necessity and proportionality.

Regarding universal access and digital literacy

- 318. Develop and ensure the financing of digital literacy policies and programs, adapted to the specific needs of different populations in vulnerable situations, focused on the civic skills necessary for people to engage with ICTs autonomously, responsibly, and critically;
- 319. Promote universal access policies that prioritize the sustainable expansion of network infrastructure, focusing on closing digital divides and respecting the principle of net neutrality;
- 320. Promote inclusion and ownership of digital technologies for groups of people in vulnerable situations, including women, the elderly, people with disabilities, Afrodescendants, LGBTI people, migrants, and Indigenous peoples.

Regarding content governance

- 321. Refrain from establishing domestic laws that hold intermediaries liable for the circulation of content on their platforms, except in cases where the intermediary refuses to comply with a court order requiring its removal, where the intermediary has specifically intervened in content, or where it is proven that the intermediary acted without due diligence;

322. Establish transparency mechanisms that allow public access to data on government requests or orders for the removal of online content, providing clear information on the legal basis for each request and the entity from which it originates;
323. Train judicial authorities on the scope and particularities of the exercise of freedom of expression in digital environments, so that their decisions on the governance of online content are aligned with international human rights law standards;
324. Enact the necessary domestic laws to ensure that, in accordance with their operating conditions, digital platforms apply the three-part test and afford procedural guarantees in their content moderation practices; institute risk assessment mechanisms, due diligence, and procedures for handling complaints related to the circulation of content not protected by the right to freedom of expression; and apply such procedures diligently and in good faith;
325. Ensure that regulatory initiatives for the operation of digital platforms consider international human rights standards, and that they are widely discussed in advance, ensuring openness and citizen participation;
326. Promote and support independent initiatives—from academia, ombudsperson’s offices, organized civil society, think tanks, platform oversight bodies, and others—to evaluate and identify best practices on governance;
327. Increase the technical capacities of institutions involved in internet governance issues, allowing for ongoing participation in multilateral dialogues and international forums on this topic.

Reasoned opinion

Reasoned dissenting opinion of commissioner Stuardo Ralón Orellana

1. First of all, and without prejudice to the dissent that I will proceed to express with respect to one point of this report, I must thank the Office of the Rapporteur for Freedom of Expression for the work developed in this document. Evidently, the Internet has become a tool that has revolutionized the exercise of the right to freedom of expression, which has more and new channels through which to guide its exercise. Despite the problems that may arise in this context, I believe it is necessary not to lose sight of this point when considering possible responses to the problems that may naturally arise in this new scenario.
2. Precisely, in its work, the Office of the Special Rapporteur addresses one of the complications that often arise in the context of the interaction between social networks and freedom of expression. This problem is related to the possibility that the networks may be used by certain individuals to abuse their right to freedom of expression. In this regard, it should be noted that the text of Article 13 of the American Convention on Human Rights is sufficiently flexible to address this eventuality. Indeed, according to Article 13(2) of the treaty, the exercise of freedom of expression may only be limited by national legislators in those cases in which it is necessary to: (i) safeguard "respect for the rights or reputations of others", or (ii) to protect "national security, public order, or public health or morals". The Inter-American Court of Human Rights has referred on multiple occasions that these grounds must be interpreted restrictively. Similarly, the limits established to the exercise of the freedom in question could not mean in any way to establish a "prior censorship", or to establish a kind of "indirect censorship" through which the State, by any means, adopts measures that may eventually mean "preventing the communication and circulation of ideas and opinions". All this, as established in Article 13.2 and 13.3 of the Convention.
3. Any analysis of the possible abusive use of social networks must take into account the criteria expressly stated in the Convention. That is: (i) national legislators may not establish restrictions on the exercise of freedom of expression in digital spaces for reasons other than those expressly contemplated in Article 13(2) of the Convention; and (ii) the establishment of restrictions aimed at preventing possible abuses of freedom of expression through digital media could in no case imply establishing mechanisms that, in practice, operate as a mechanism of prior censorship, whether direct or indirect. Necessarily, fidelity to the text of the treaty agreed by the States requires States to respect these limitations not only in the exercise of freedom of expression in the more traditional media, but also in those of a digital nature. This is because conventional protection extends to the exercise of this freedom "whatever [the] (...) procedure of (...) choice" chosen by the individual to express his opinions and ideas.
4. The criteria adopted by this Honorable Commission and by its Rapporteurship for Freedom of Expression have permanently honored the criteria of Article 13 of the Convention. Evidently, to review each of the instances in which this Commission and the Rapporteurship have done so exceeds the scope of this dissenting vote. However, and

only by way of example, consider the tripartite statement made by the then Rapporteur for Freedom of Expression of the Commission, the United Nations Special Rapporteur for Freedom of Opinion and Expression and the Representative on Freedom of the Media of the Organization for Security and Cooperation in Europe in 2020. It was entitled "Freedom of Expression and Elections in the Digital Age". In this declaration, it was stated that States cannot prevent possible abuses of freedom of expression that may be committed on the networks by establishing censorship mechanisms that prevent or restrict people's access to the Internet. Similarly, the declaration recommended that states should not establish "general or ambiguous laws on disinformation, such as prohibitions on the dissemination of 'falsehoods' or 'non-objective information'". The reason for this is offered by the same Rapporteurship: "only in the most extreme cases is it possible to determine in a relatively simple manner when information is clearly false and when it is not (...) Outside such obvious cases, most of the time labeling the truth or falsity of certain information or opinions can be very complex", an issue that, naturally, would not be adequately addressed with the adoption of "restrictive and punitivist regulatory measures" (Disinformation, Pandemic and Human Rights, para. 30).

5. Precisely because of all of the above it is so striking that the Office of the Special Rapporteur in this report on freedom of expression and social media suggests to the States the adoption of criteria that are so dissimilar to those historically developed within this Commission. In this sense, the characteristics of social networks -naturally different from those of the traditional media of the twentieth century- cannot lead us to modify or substantially alter the criteria established by the States in Article 13 of the Convention regarding freedom of expression. This is especially true if the States themselves provided at the time of agreeing the text of the treaty that the protections offered to this freedom apply to "any procedure" that a person chooses to express an opinion or broadcast information.
6. In Chapter III of the report, which offers recommendations on network governance, the report states that States, in light of the provisions of Article 13 of the Convention, should establish rules that oblige Internet service intermediaries to "moderate and remove Internet content that is clearly illegal and violates human rights" (para. 218). In this regard, the report states that it would not be logical for the removal of such content to take place only when there is a court order. This is because such a condition "could prevent the removal of illegal expressions or expressions that violate human rights, under the pretext of guaranteeing freedom of expression" (para. 218).
7. Naturally, in the event of a breach of a legal duty, the infringer may be held liable under the law. In this regard, the report states that "a platform may only be liable [for the eventual breach of duty] if it fails to implement adequate due diligence processes to identify, prevent and correct violations of the right to freedom of expression" or "if it decides not to act to remove content without adequate justification or acting in bad faith" (para. 218). Accordingly, a possible failure by the intermediary company to comply with the requirement to "moderate content", without providing "adequate justification", could naturally lead to civil or criminal liability, which is not identified in the document. Although the report on this point is careful to demand that these responsibilities be established by law and that they operate following criteria of necessity and proportionality, they are, in fact, incompatible not only with the text of Article 13 of the Convention, but also with the doctrine that both this Commission and the Rapporteurship have developed in this regard.

8. Indeed, Article 13 of the Convention prevents the creation of prior censorship mechanisms that prevent people from expressing their opinions and informing freely by any means. This is particularly true if such censorship operates due to the content of the opinion or information. This Commission and the Rapporteurship have repeatedly stated, for example, that the possible falsity of certain information or opinions cannot justify, in any way, the establishment of prior control mechanisms that prevent the expression of such information or opinions. Therefore, in light of the criteria adopted by the States in 1969, the falsity or incorrectness of an information or opinion cannot justify its prohibition. But even more. The correctness or incorrectness of an information or opinion cannot be a criterion that justifies the establishment of restrictions on the exercise of freedom of expression. Indeed, Article 13.2 mentions in very clear terms the grounds that a State may legitimately invoke to limit the exercise of this freedom. In principle, the need to prevent the expression of opinions that may be false is not one of the grounds contemplated in Article 13(2) of the Convention.
9. It is clear that the report does not recommend that States establish some sort of governing body to "moderate" the content of social networks. This would have been absolutely grotesque and radically contrary to the principles of the Convention on freedom of expression. Indeed, such a mechanism would openly imply the establishment of a form of direct censorship by the State. However, the report recommends that States adopt indirect censorship mechanisms, which are just as prohibited by Article 13 of the Convention as those of a direct nature. Indeed, transferring to Internet intermediation companies the task of "identifying" content that is "manifestly illegal and violates human rights" in order to "prevent" its publication on the networks, or "correct" such publication by removing it, represents a form of indirect censorship of content that is assumed to be socially inappropriate or, in current terminology, "politically incorrect". On the other hand, the grounds that would allow the intervention of speech on social networks are so open and indeterminate that they would obviously give rise to eventual abuses by the "moderating" body. In fact, when could an expression posted on social networks be "manifestly" contrary to the law or to human rights? Who defines the criterion of sufficiency in this case? On the other hand, when is an expression "illegal"? There are absolutely obvious cases, but, in most situations, there is ample room for discussion and debate. The same applies to the definition of what is manifestly "contrary to human rights". What should be understood as such in our diverse and pluralistic societies? Once again, the opening of these concepts generates spaces for potentially abusive and censoring situations that are not consistent with the requirements of Article 13 of the Convention, nor with the doctrine of this Commission on the matter.
10. In fact, it will not be up to the company, but to the State to define when a speech is, based on its contents, "manifestly illegal or contrary to human rights". This, in the context of the procedures defined by the State itself to enforce corporate responsibility in the context of eventual non-compliance. Indeed, it is highly probable that, if the recommendations offered by the Office of the Special Rapporteur are adopted by the States, complaints will arise from individuals against the companies before the administrative or judicial bodies of the State accusing them of not having "prevented" the appearance of certain contents, or of not having "corrected" them once they have been published. In the context of these proceedings, it will be the State itself -and not the companies- that will define a posteriori which content is "manifestly illegal and violates human rights". This is precisely to determine whether or not the company in question complied with its duty to moderate content.

11. Within the scheme suggested by the Office of the Special Rapporteur to the States, the latter transfer to the companies the unpleasant task of restricting the dissemination of certain contents, reserving, in practice, the power to define a posteriori the criteria on the basis of which the companies will proceed to fulfill their task. Thus, the mechanism recommended by the Rapporteurship to the States allows to glimpse, in fact, the emergence of censorship mechanisms of a clearly direct nature. This is simply because it will be the State that will define the categories of improper content whose dissemination must be prevented or corrected by the companies. The latter will simply act as its agents, enforcing the definitions adopted a posteriori by the authorities.
12. All of the above is absolutely inconsistent with the criteria previously developed by the Office of the Rapporteur itself. In the first place, the Office has expressed its opposition to invoking excessively open and general terms -such as falsehood-, not only to prohibit the broadcasting of certain contents, but also to restrict their circulation. But not only that. The same Rapporteurship has reiterated to the States that it is not advisable to impose legal liability on Internet intermediaries for the publication of certain opinions or information disseminated through the networks. Indeed, the Office of the Special Rapporteur has stated that "Inter-American human rights standards have insisted on the need for intermediaries not to be held responsible for content produced by their users, due to the incentives of "private censorship" that such rules would generate" (Disinformation, Pandemic and Human Rights, para. 44). In another document, the same Office of the Rapporteur stated that it is not possible to establish "the responsibility of intermediaries for the expressions of third parties" (Standards for a free, open and inclusive Internet).
13. The mechanism proposed by the Office of the Special Rapporteur in this report recommends to the States, precisely, to implement the policy that, a few years ago, it suggested they reject because of the risks that this policy posed to freedom of expression in the continent. Indeed, in this report, the Office of the Special Rapporteur recommends that States hold responsible those content intermediation companies that do not comply with their duty to "prevent" or "correct" speech on social networks that may eventually be "manifestly illegal and violate[s] human rights. This, unless they provide the State authorities with an "adequate justification", a concept that is not defined in the report either, an indeterminacy that, in the end, will also be resolved by the State itself, which, through its administrative and judicial bodies, will specify what type of justifications are "adequate" or "inadequate". We fail to understand why the Office of the Special Rapporteur decided, with regard to this report, to erase the scope of a doctrine whose criteria had not only enjoyed reasonable stability for many years, but also one that had been positively recognized by both States and experts in the field.
14. In conclusion, a mere reading of the recommendations made by the Office of the Special Rapporteur to the States in the specific area evaluated in this vote leads to the conclusion that they are incompatible with the text of Article 13 of the Convention and with the doctrine that both this Commission and the Rapporteurship have established in this area. This is extremely delicate. Forcing Internet service intermediation companies to apply, in practice, criteria of political correctness defined by the State itself, necessarily leads to the construction of a perverse public-private apparatus whose operation challenges the classic distinction between direct and indirect censorship mechanisms. In my opinion, and with the utmost respect for the criterion expressed by the majority vote cast by my colleagues, this alone justifies dissenting from this report.