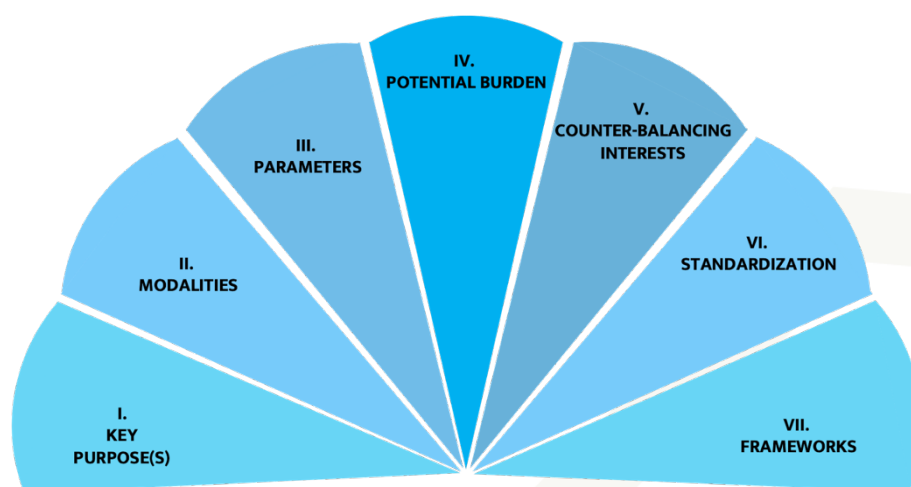


FRAMING BRIEF: MEANINGFUL TRANSPARENCY

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Transparency is seen as something constructive and desirable by all stakeholders. It is an essential element in ensuring the rule of law, due process and monitoring of human rights.¹ While it is a tool that is often used within the context of regulation, transparency can have many uses and should not be seen only as something imposed but also as the right thing to do, because, if well implemented, its benefits outweigh its implementation costs. It is frequently presented as a panacea to address illegal or harmful content online and often as an end in itself. However, presenting it as such paints an incomplete picture of the effects of transparency; it should be understood not only as an outcome, but as a series of processes and measures to identify who needs to know what, when, how, and for what purpose, in a way that is proportionate and meaningful.

While transparency is useful to all stakeholders, not everything is useful or meaningful for everyone. There are different obligations and expectations regarding transparency of different stakeholders, whether they are public authorities, private organizations, charitable entities or other bodies. Choices have to be made about who needs to provide what information in which format, in particular concerning authorship of the request for information, quality and quantity of information provided, regulatory requirements, etc. Developing and

¹ Human rights as defined in international legal frameworks ([UDHR](#), [ICCPR](#), [ICERD](#), [ICESCR](#), [CAT](#), [CRC](#), [ICMW](#), [CPED](#) and [CRPD](#)).

implementing meaningful transparency regimes² properly reconciling freedom of information, privacy, security, and confidentiality requires the engagement of a multitude of stakeholders. Such regimes can also play an essential role in determining the appropriate distribution of tasks or responsibilities among public and private actors through shared taxonomy(ies) and an agreed understanding on a basic set of standards. An analogy could be drawn with other areas, such as accounting, where all stakeholders have a shared understanding of the presented information and obligations, and thus tools to make informed decisions and govern their behavior.

There are many important principles³, indicators⁴, guidelines, standards and other documents setting out and defining transparency standards and procedures for governments and internet intermediaries, within the framework of the rule of law and human rights. This multistakeholder I&JPN Contact Group outcome on Meaningful Transparency is different: it is not a normative document, nor does it seek to prescribe specific metrics and standards to be adhered to by actors. Instead, it offers a basic shared taxonomy and a set of structuring elements to aid the design, exploration, development and implementation of meaningful transparency measures, informing both public and private actors of the components that need to be considered. It is divided into seven sections highlighting key issues to be addressed by all involved in planning, establishing, and working on transparency. These seven sections are listed sequentially, however they inform and feed into each other in the design and implementation of meaningful transparency regimes.

I. KEY PURPOSES

Transparency serves a diversity of purposes and any set of measures should ideally define clear objectives along the following three complementary and non-hierarchical dimensions. The following purposes focus on public and corporate actors, however academics, researchers, civil society and users play an essential role in their fulfillment. Clear understanding of the different audiences for each of the purposes and the dimensions below can help the design of subsequent measures and choice of modalities.

- **Ensuring predictability and trust.** Transparency provides all stakeholders with shared and standardized information and predictable environments. It is an essential component of democratic governance and legitimacy for public authorities regarding functioning of the rule of law, the rules they adopt and

² The notion of regime is taken here by analogy with the definition by Stephen Krassner in international law as: “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area (of international relations)” See: Krasner, Stephen D. (1982). “[Structural Causes and Regime Consequences: Regimes as Intervening Variables](#)”. *International Organization*. 36 (2): 185–205.

³ [Guiding Principles on Business and Human Rights](#), [Santa Clara Principles On Transparency and Accountability in Content Moderation](#), [Manila Principles on Intermediary Liability](#) [UNESCO Letting the sun shine in: transparency and accountability in the digital age](#).

⁴ Ranking Digital Rights - [Indicators for the 2020 RDR Index](#).

decisions they make. For corporate actors, a commitment to increase transparency both strengthens the sense of responsibility towards their stakeholders, helps build trust and enhances their reputation by providing clarity on internal decision-making procedures and practices.

- **Enabling oversight and accountability.** Transparency of actions and decisions by both public and private actors is an essential instrument for oversight and monitoring of their behavior, in terms of compliance with laws and rules, respect of due process, and protection of different human rights⁵.
- **Supporting analysis.** Analysis of raw data and/or aggregated information can provide evidence to public authorities, to evaluate and improve the effectiveness of their regulatory frameworks, and to private actors, to monitor and refine the ongoing functioning of their systems and algorithms. The data made available can also help assess potential risks and threats, as well as the nature, prevalence or virality of different types of harms. Transparency can also, inter alia, support analysis of the competition landscape, promoting consumer protection, fair business practices, and user choice.

II. MODALITIES

Transparency information can be provided or made available in different ways and be tailored to the needs of the different audiences. The following options are not mutually exclusive and each may need to be curated in line with the key purpose(s).

- **Documenting:** An often overlooked - yet important - component of transparency is the public documenting of the status of rules and procedures (e.g., laws, regulations or terms of service), organizational structures (including decision-making procedures), as well as information about specific actions (e.g., implementation of court or regulatory decisions, companies' decisions (including both by humans or AI), other redress mechanisms, including private dispute resolution procedures⁶).
- **Reporting:** The voluntary or compulsory production of reports, at predetermined intervals, regarding ongoing operations, according to various formats (including raw or aggregated data, syntheses or trend analyses), is a common approach to transparency.
- **Contextualizing:** Providing clarification, illustration or context for how and why things are done, offering additional insights to aid the understanding of the impact and implications of rules, regulations, decisions or actions for users and other stakeholders.

⁵ Human rights as defined in international legal frameworks ([UDHR](#), [ICCPR](#), [ICERD](#), [ICESCR](#), [CAT](#), [CRC](#), [ICMW](#), [CPED](#) and [CRPD](#)).

⁶ Facebook's Oversight Board for instance, provides detailed information about its cases.

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- **Availability⁷:** In addition to proactive publishing or reporting, raw or aggregated datasets can be made accessible publicly or to specific third parties (e.g., researchers) and users, in bulk or through various APIs. Specific rules may apply to transferability and reusability of this data.
- **Auditability:** Additional access to internal information can be granted or imposed, on a regular or ad hoc basis, and under clear provisions. For instance, for the purpose of certification or investigation. This may require appropriate preservation of records.

III. PARAMETERS

Several parameters determine the scope of transparency measures, in relation to the purpose. Transparency measures can be classified on multiple axes, including:

- **QUANTITATIVE <-----> QUALITATIVE**
 The definition of clear quantitative metrics (with different degrees of granularity, as detailed below) allow for mainly statistical reporting. But more qualitative indicators can be appropriate, for instance to highlight trends, document procedures, or explain policies and decisions.
- **ONE-OFF <-----> REAL-TIME PROVISION**
 Information can be provided once or made accessible at regular intervals up to real-time. Periodicity can be adapted to different audiences, even on the same data.
- **PUBLIC <-----> RESTRICTED INFORMATION**
 The degree of openness of the data and the level of detail can vary in relation to the recipients, ranging from fully public information to restriction to selected recipients, in particular regulators, public authorities, auditors, or even users.
- **AGGREGATED <-----> RAW DATA**
 The provision of raw data can be supplemented by summaries or trend analyses. For detailed data, various levels of granularity can be set, including regarding topics (e.g., finely distinguishing between various types of content or harms), geographic scope (e.g. by region or by country), language or periods (e.g. monthly, quarterly or yearly reporting). An important factor is the format in which the information is provided, and particularly whether it is in open formats, machine-readable and categorized or tagged to easily enable third-party analysis.
- **GENERAL <-----> COMPREHENSIVE**

⁷ A transparency regime might not necessarily include ad-hoc requests for information, which can be covered by different rules regarding access to information.

To what extent is the information comprehensive and exhaustive, and provides all necessary details and parameters about the rules, decisions or actions, or if it is general guidance setting out their aim or intent.

IV. POTENTIAL BURDEN

In setting up the different parameters described above, additional aspects should be evaluated to ensure that the transparency measures provide value and empower stakeholders in due proportion of the burden they necessarily impose, and relative to the risk of specific product or service.

- **Technical feasibility:** Is the information or data already available or will providing it require additional technical developments or data collection?
- **Financial and human resources:** What are the direct and indirect costs associated with particular transparency measures, including the resources required to provide the quantity and the level of detail to be collected in order to comply with transparency regimes?
- **Information overload:** Mandatory reporting that generates vast amounts of data or documents that are not structured or organized in a clear way to promote discoverability can actually make it more difficult to identify and understand the relevant information. Multiple modes of accessing the information may have to be tailored to the relevant audiences.
- **Information security:** Protecting from unintended use, misuse or accidental dissemination of sensitive information, especially raw data. Ensuring that the information or data provided in confidence for very specific purposes are not used or abused for other purposes. (e.g., reuse of research data).

Generally speaking, the measures should be properly tailored to the size of the entity (e.g., number of users, market share, volume, size of staff) and, more importantly, the nature and risks associated with the specific service or product (particularly for entities with several different product lines). If transparency measures are legally mandated, the requirements should be tailored to prevent creating barriers to entry for newcomers (“policy capture”).

V. COUNTERBALANCING INTERESTS

Various factors need to be taken into account to ensure that the justified goal(s) of transparency do not run contrary to other legitimate interests, including:

- **Security:** Pending proper justification, some information/data may be classified, or even subject to national security⁸ restrictions.

⁸ As set out in Article 19(3) of the [ICCPR](#).

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- **Privacy:** Privacy concerns and legislation may prohibit certain personal information (including medical, police or other protected records) from being collected or made publicly accessible. Additional safeguards may be needed especially when handling raw data as it may have privacy implications. Anonymization may be useful or required before sharing or publication. Lack of clarity about potential conflict between privacy laws and transparency requirements can be a disincentive or a hurdle to providing information. It might be useful to consider ‘Safe harbor’ privacy regimes for some areas of transparency reporting.
- **Sensitive Business Information:** Companies may wish to keep certain information, including trade secrets, confidential, as their disclosure could cause harm to the owner, its business partners or clients, or be advantageous to a rival.

Risk of abuse: There are various ways transparency may be abused by various stakeholders, for example, misusing transparency regulation to obtain information or data which can be used for other purposes, including to endanger individuals’ safety or human rights. Additionally, providing detailed information on decision-making criteria for restrictions may enable malicious actors or users to more easily devise strategies and tools to abuse the system or evade detection.

VI. STANDARDIZATION

Standardization in transparency would present obvious benefits, including:

- **Comparability:** Clear parameters facilitate comparisons among actors in a sector, be it for the external monitoring of their compliance or their own internal evaluations of performance.
- **Coordination:** Standardized metrics allow a diversity of actors to base their analyses on the same evidence and coordinate when appropriate, for instance in addressing abuses.
- **Mutualization:** Developing metrics and procedures for transparency requires dedicated efforts that are alleviated, especially for smaller actors, if an external framework is provided.
- **Correlation:** The provision of harmonized statistical data by both public and private actors (e.g., regarding requests/orders for content restrictions) allows all parties to ascertain its accuracy.
- **Regulatory convergence:** Common criteria reduce the risk for global service providers to be subject to divergent transparency regulations in several jurisdictions.
- **Cooperative development:** The development of standards is inherently a collaborative effort, and this effort provides opportunities for bringing together a diversity of stakeholders.
- **Reusability:** Machine-readable and standardized data facilitate research and analysis.

However, efforts at standardization of transparency frameworks have some limitations, including:

- **Technical diversity:** It can be difficult to take into account a variety of hard-to-compare activities undertaken, including within a single operator.
- **Regulatory competition:** In the absence of a recognized standardization process or body(ies), as is the case for accounting, various authorities naturally set their own rules, which may prove conflicting.
- **Rigidity:** The choice of specific approaches or metrics needed to build a standard can quickly lose its relevance as circumstances, issues, or technologies rapidly evolve.
- **Low standards:** The setting of minimum standards may not incentivise greater openness, limiting the development of more advanced criteria.
- **Company Diversity:** Setting the standard too high may place a disproportionate burden on new entrants to the market or smaller actors, and setting it too low may fail to account for the greater impact of larger services on the public.
- **Political risk:** Standard setting processes and related implementation (e.g., via private auditing) may be subject to capture, corruption, political influence rendering them undemocratic and unaccountable.

VI. FRAMEWORKS

A first step in designing a meaningful transparency regime is defining who will be involved in its development. The proper set of measures, taking into account the elements above, can be established through a variety of familiar approaches:

- **Statutory regulation:** Where detailed rules defined by law, and potentially refined by sub-legal instruments, are then enforced by regulators and/or courts.
- **Self-regulation:** Where an industry establishes a set of rules, codes of conduct or standards, which it then monitors and enforces, including through an independent body it funds.
- **Voluntary policies:** Where standards are established by individual companies, of their own initiative.

Yet, different combinations of the above can exist, such as incentivization of self-regulation, statutory self-regulation (State-established regulatory bodies and industry-led development and enforcement of some rules), or even multistakeholder co-regulation (joint development of the regime between companies and non-company actors). A key question is which of the transparency approaches described above are most appropriate to be set in legislation, regulation, voluntary standards or companies' terms and conditions in accordance with whatever needs may arise. In any case, the broader the range of actors involved in defining regime parameters, the more legitimate the outcome is likely to be and potentially higher the chance of alignment of incentives and of efficient implementation.

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A second dimension, irrespective of the regulatory approach(es) chosen in the development of the regime, it needs to clearly describe the modalities of its iterative revision, as well as the respective roles and responsibilities of the different actors, be they public or private, in the course of its implementation.

Finally, a well-designed regime can trigger and benefit from the emergence of a distributed ecosystem of actors, including new entities, that can leverage the available information to provide analysis, monitoring, standardization, or auditing.

CONCLUSION

As different States separately adopt legislations imposing transparency requirements regarding online content and private actors develop their own voluntary standards, it may become increasingly difficult to achieve comparable standards and information, or to avoid burdensome or even conflicting requirements. There is a need to strengthen cooperation between all actors in the area of transparency relating to online content. A multistakeholder process fostering a more coordinated approach, with some standardization where possible and applicable, would help ensure stronger interoperability between different transparency regimes⁹. This would help move the discussion from seeing transparency as a unilateral objective or obligation for each individual actor, to it being addressed as a mutually beneficial tool for the governance of our shared digital space.

⁹ The [Action Coalition on Meaningful Transparency](#) and is a notable effort towards building such a multistakeholder process.