

GEOGRAPHIC SCOPE OF CONTENT RESTRICTIONS



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The principle of **proportionality**, along with other principles including necessity and legality, is well established in jurisprudence, especially in cases related to restrictions on speech and expression.

However, the **global accessibility of content** posted online by users makes it subject to a plurality of national laws with potentially different or even conflicting regulatory obligations.

This calls for additional criteria regarding the **geographic scope or reach** of content restrictions to become an integral part of the proportionality test in determining an appropriate course of action.

As public authorities and private actors increasingly have to define the territorial scope of restrictions, the following **operational norm**¹ of ‘geographically proportionate and relevant action’ and two corresponding criteria can inform their decision making.

GEOGRAPHICALLY PROPORTIONATE AND RELEVANT ACTION²

*“Decisions by public authorities and private actors
preserve the broadest availability of legitimate content.”*

The two following criteria of ‘International normative coherence’ and ‘Default action by service providers’, further detailed on the next page, can provide a conceptual framework to operationalize this norm on a case-by-case basis and help determine the necessary and proportionate geographic scope of restrictions:

International normative coherence	Default action by service providers
which categorizes the degree of convergence among legislations across jurisdictions.	expected when a piece of content is deemed illegal or contrary to community guidelines.

This approach is intended to help guide a **diversity of stakeholders**, be it for judges in the treatment of cases submitted to them, policymakers in the development of corresponding legislation, content moderators in implementing either legislations or practices of particular platforms, and platforms themselves when developing their terms of service and community guidelines.

¹The notions of “operational norm” and “criteria” and these formulations come from the work of the multistakeholder Content & Jurisdiction Program Contact Group that worked in 2018-19 in the perspective of the 3rd Global Conference of the Internet & Jurisdiction Policy Network in Berlin on 3-5 June 2019.

² The original formulation of “Geographically proportionate action and international normative consistency” was rephrased by Stakeholders as part of the Berlin Roadmap which was an outcome of the 3rd Global Conference of the Internet & Jurisdiction Policy Network in Berlin on 3-5 June 2019. See Content & Jurisdiction Operational Approaches, p. 17. (<https://www.internetjurisdiction.net/uploads/pdfs/Papers/Content-Jurisdiction-Program-Operational-Approaches.pdf>)

International Normative Coherence

The following categories can be used to ascertain the degree of normative convergence on illegal content across jurisdictions. The frontiers between these different categories are however not rigid. Debates exist regarding where some topics fall.



1

There IS universal agreement that the content/behavior is illegal AND there is strong substantive convergence around the world on the corresponding threshold criteria.

Example: child sexual abuse material



2

There IS universal agreement that the content/behavior is illegal, BUT significant national variations exist in the criteria determining illegality.

Example: defamation



3

The content/behavior IS NOT universally considered as illegal, BUT the application of specific domestic laws on the local territory is considered acceptable by other countries, in particular for historic reasons.

Example: criminalization of Holocaust denial



4

The content/behavior IS NOT universally considered as objectionable AND some countries even consider that it should not be allowed to make it illegal.

Example: laws discriminating against or criminalizing certain sexual orientation

Note: The maps above illustrating normative coherence (particularly in 2 above) are not intended to be geographically accurate and are simplified representations.

Default Action by Service Providers

The normative basis invoked for a content restriction has a direct relation to its geographic scope, as illustrated by the table below, which can help identify the default action associated with each case:

	Geographically limited restriction	Global restriction
Illegal according to local laws	Unless the rationale for the request is clearly contrary to international human rights standards, by default, the content item is restricted locally by the provider (for instance through geo-IP filtering).	A global restriction can exceptionally be implemented by the provider in response to a request/order if a multi-factor evaluation meets a sufficient threshold including high international normative coherence.
Contrary to ToS/ Community Guidelines	Taking into account the context, including local circumstances, content is restricted in the most geographically proportionate manner.	The content is generally globally restricted when clearly in violation of the ToS/ Community Guidelines, except if a court issued a local stay-up order.

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