

# Note on OECD Draft Recommendation on Information Integrity

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This Note<sup>1</sup> was prepared by the Centre for Law and Democracy (CLD) in response to a public consultation by the Organisation for Economic Co-operation and Development (OECD) on their Draft Recommendation of the Council on Information Integrity (draft Recommendation).<sup>2</sup> It provides recommendations to better align the document with international standards, with a particular focus on freedom of expression.

## General Comments and Preamble

As a general comment, we note that a number of statements in the draft Recommendation refer to both notions of “press freedom” and “freedom of expression” (see, for example, the third preambular paragraph). There is nothing inherently wrong with this but it should be done with the understanding that international human rights law, for the most part, does not explicitly guarantee press freedom but, rather, sees it as being included within the wider notion of freedom of expression. As such, in general where double references are made, the wider notion of freedom of expression should come first, ideally with press freedom being expressed as being included in that.

A second general comment is that the term “access to information” is generally used in the draft Recommendation in its generic sense of improving the ability of individuals to gain access to information which others wish to share with them (see for example the 9<sup>th</sup> and 11<sup>th</sup> preambular paragraphs). Care needs to be taken here to ensure that this is not confused with

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<sup>2</sup> Available at: <https://www.law-democracy.org/live/wp-content/uploads/2024/11/OECD-Info-Integrity-Draft-Rec.Nov24.pdf>.

the more term of art usage of “access to information” to mean the right of individuals to access information held by public authorities. In addition, the preamble does not reference the important role of access to public information laws and practices as an antidote to disinformation and as a means of bolstering information integrity.

A final general comment is that the distinct focus on the draft Recommendation is on disinformation and misinformation. However, other forms of “lawful but awful” speech, in particular speech which attacks others on the basis of their identity (but does not rise to the level of illegal hate speech) or which is harassing (but again not to the level of illegality), sometimes referred to as malinformation, also have a very important impact on information integrity. There is only one reference to this idea in the preamble, namely in the 13<sup>th</sup> paragraph (referring to “technology-facilitated gender-based violence, image-based abuse and child cyberbullying”, among other things). Consideration should be given to integrating standards on this wider range of speech which undermines information integrity into the draft Recommendation.

The draft Recommendation contains a lengthy, two-page preamble. This generally is consistent with international standards, although some of the language could be tightened to be more precise. Specifically, the clause on page 1, “RECOGNISING that public policies are a tool to support information environments conducive to the availability of reliable, evidence-based, plural, and timely information sources that enable individuals to be exposed to a variety of ideas, make informed choices, and exercise their rights” could be revised to more accurately state that public policies *can* be a tool, in view of the differing qualities of different public policies.

Another clause that should be clarified is on page 2:

RECOGNISING that public policy responses related to specific types of content are particularly complex due to the difficulties in defining “disinformation” and the risks that legislation targeting legal but harmful content can be used to limit freedom of opinion and expression, requiring a nuanced approach with appropriate safeguards for freedom of opinion and expression.

Legislation which targets expressive content online will usually end up limiting freedom of expression in some way, although the limitations may be justified if they meet the tripartite test for restrictions which is outlined in Article 19(3) of the International Covenant on Civil and Political Rights (ICCPR). As a result, it would be better to refer here to risks that such legislation may *unduly* limit freedom of expression.

Another clause on page two which should be clarified is:

RECOGNISING that governments themselves undermine information integrity if they create or amplify disinformation and information manipulation contrary to obligations

that provide for the exercise of human rights, including freedom of opinion and expression;

As written, it is ambiguous whether governments undermine information integrity only when their actions in creating or amplifying disinformation is “contrary to obligations” or whether such actions are invariably contrary to those obligations. The latter is a correct statement of the international standards on this because disinformation campaigns violate the public’s right to seek and receive information and ideas, which is part of freedom of expression under Article 19(2) of the ICCPR.

Consideration should be given to rephrasing the clause “RECOGNISING that policies and decisions should respond to the specific risks posed by children’s engagement on online information platforms and should be designed to help children develop in an environment conducive to the full exercise of their universal human rights...” By referring to “risks posed by children’s engagement”, this suggests that the main driver of the risk is the decision of children to use such platforms, rather than the design of such platforms and insufficient risk-mitigation measures.

The following clause on page two also should be clarified:

RECOGNISING that the design choices of search algorithms and recommender systems, and the increasing use of advanced Artificial intelligence (AI) systems, in particular generative AI, can have negative implications for information integrity and human rights through the potential for faster, less expensive, and easier creation of realistic content as well as a wider and more targeted dissemination of disinformation, and that this will involve a continued focus on the development of effective standards in this space aimed at guaranteeing human rights;

In mentioning that “this will involve a continued focus” it is unclear what “this” refers to, as the previous parts of the sentence focus on harmful uses of AI. Instead, consideration should be given to replacing this part of the sentence with “...these challenges call for a...”

The preamble concludes with the following clause:

RECOGNISING that strengthening information integrity requires public policy responses that evolve over time, with Members and non-Members having adhered to this Recommendation (hereafter “Adherents”) adopting initiatives and reforms at varying pace and in different orders, prioritising different policy areas in this Recommendation according to their specific circumstances while prioritising the necessity to keep an open civic space and safeguard freedom of opinion and expression;

The language of “prioritising the necessity” is somewhat unusual. The word “prioritising” can be replaced with “respecting” to better reflect that these are requirements under international human rights standards as opposed to mere policy priorities.

## Recommendations

- The draft Recommendation should recognise that, under international law, press freedom is protected as part of the wider guarantee of freedom of expression and adapt its language to reflect that position.
- Care should be taken in the draft Recommendation when referring to “access to information” in the wider sense of a right to access information which others wish to share with us, while a specific acknowledgement of the important role of access to public information (often referred to as the “right to information” or “freedom of information”) in supporting information integrity should be integrated into the draft Recommendation.
- Consideration should be given to integrating into the draft Recommendation in a far more structural way references to other forms of harmful information than just disinformation and misinformation, such as malinformation, attacks on others based on their identities and harassment of other speakers.
- Consideration should be given to amending the phrase “RECOGNISING that public policies are a tool to support information environments” to state instead ““RECOGNISING that public policies *can be* tool to support information environments”.
- In the clause “RECOGNISING that public policy responses related to specific types of content are particularly complex due to the difficulties in defining ‘disinformation’ and the risks that legislation targeting legal but harmful content can be used to limit freedom of opinion and expression, requiring a nuanced approach with appropriate safeguards for freedom of opinion and expression”, the word “limit” should be amended to “unduly limit”.
- The clause “RECOGNISING that governments themselves undermine information integrity if they create or amplify disinformation and information manipulation contrary to obligations that provide for the exercise of human rights, including freedom of opinion and expression” should be amended to make it clear that such actions are inherently contrary to human rights obligations.
- Consideration should be given to revising the clause which begins with “RECOGNISING that policies and decisions should respond to the specific risks posed by children’s engagement” to make it clear it is not the children’s engagement which is responsible for generating the risk.
- The end of the clause on the design choices of search algorithms and recommender systems should be revised to read “and that these challenges call for a continued focus on the development of effective standards in this space aimed at guaranteeing human rights”.

- Consideration should be given to replacing the reference to “prioritising the necessity” to “respecting the necessity” in the last preambular clause, on strengthening information integrity.

## Definitions

Section II of the draft Recommendation outlines definitions for 14 terms. Some of these definitions should be refined to provide further clarity.

The definition of “Co-ordinated inauthentic behaviour” refers to “the artificial amplification of the reach or engagement of content”. The likely intention was to refer to “engagement with content” instead of “engagement of content”. In addition, the definition of this term ends by noting that the purpose of this behaviour is “to manipulate public discourse, deceive users, and pursue illicit activity for financial gain”. The “and” should be replaced with an “or” to clarify that not all of these motives must be present.

“Disinformation” is defined as referring to:

verifiably false, manipulated, or misleading content that is knowingly and intentionally created and / or shared, including through co-ordinated inauthentic behaviour, to deliberately deceive, manipulate or inflict harm on a person, social group, organisation or country.

A key distinguishing characteristic of disinformation from misinformation is that the former is created and/or shared with knowledge that it is false. While the definition mentions that the content is “knowingly and intentionally created and/or shared”, it is not clear what the knowledge requirement refers to. It would be better if the definition explicitly stated that the content was created and/or shared with the knowledge that it was false. A similar lack of precision is found the first part of the definition of “misinformation”, which refers to “verifiably false or misleading information that is shared unknowingly”, instead of specifying that those sharing this information are unaware of its false nature of the content (as opposed to being unaware they are sharing information).

The term “Foreign information manipulation and interference (FIMI)” is defined as follows:

deliberate and co-ordinated efforts within the information ecosystem by, or on behalf of, a foreign power or its proxy, in order to interfere, disrupt, confuse, or corrupt the decision-making processes and public discourse in an attempt to further the interests of that foreign power.

If the term “proxy” is retained in this definition, a definition for this term should be provided due to the risk of over labelling civil society groups as proxies for foreign powers.

Information is defined as “content that is processed, disseminated, and brought to the attention of the public in general or to a large group of individuals and that is used to make sense of the world”. The last part of this definition is too limiting – or, to put it another way, the notion of making sense of the world is too grand – and should be dropped.

“Information integrity” is defined as:

the result of an information environment that promotes access to accurate, reliable, evidence-based, and plural information sources and that enable individuals to be exposed to a variety of ideas, make informed choices, and better exercise their rights.

It is unusual to define a term as “result” of something else, as there can be many potential results flowing from something. Consideration should be given to changing “result” to “existence”.

Something more is needed in the definition of media, so as to distinguish it in a positive sense (and not just through the exclusions in the second part of the definition) from non-media content. The reference to “usually with editorial oversight” is a very important element here, but it is not mandatory (which is positive since a professional blogger can serve a similar social role, in particular vis-à-vis information integrity, as a radio or television station). So there needs to be some wider reference to the qualities which editorial oversight is supposed to bring, such as an effort to report accurate, evidence-based information or a commitment to professionalism.

The definition of “media and information literacy”, which refers to the idea of this incorporating the ability to engage “effectively” with platforms, is too strong, since even the most sophisticated users will sometime fail to reach this standard. This should be reworded to reflect the idea of bringing a critical and thoughtful lens to information interactions rather than invariably succeeding in them.

The definition of “Strategic Lawsuits Against Public Participation (SLAPP)” includes a statement that their goal is “to drain resource, intimidate, silence, or restrict the targets’ freedom of expression and information regarding matters of public interest or social significance”. Consideration should be given to adding “the public’s right to receive” before “information” to highlight that the right to receive information is a human right. In addition, as defined here is it limited to cases against “journalists or civil society organisations” but this is too narrow and should be expanded to cover all cases where the driving motivation of the case is to silence a speaker rather than redress rights violations.

## Recommendations

- In the definition of coordinated inauthentic behaviour, the phrase “of the reach or engagement of content” should be modified to read: “of the reach or engagement with content”.
- The definitions of “misinformation” and “disinformation” should be amended to clarify their respective knowledge requirements, as noted above.
- If the definition of “Foreign information manipulation and interference” retains a reference to the term “proxy”, a definition should be provided for it.
- The definition of “Information” should be revised remove the reference to it being “used to make sense of the world”.
- The phrase in the definition Information integrity which reads “the result of an information environment” should be revised to read: “the existence of an information environment”.
- An additional element should be added to the definition of media, perhaps to be articulated with the notion of editorial oversight (i.e. as an “either/or”), which refers to a commitment to accuracy or wider media professional standards.
- The definition of “media and information literacy” should be amended to reflect the idea of bringing a critical and thoughtful lens to information interactions rather than invariably succeeding in such interactions.
- Consideration should be given to adding “the public’s right to receive” before “information” in the definition of SLAPPs and to expanding the scope of this to cover all cases where the driving motivation of the case is to silence a speaker rather than redress rights violations.

## Strengthen societal resilience

The part of the draft Recommendation titled “Strengthen societal resilience” contains a number of recommendations to further this goal. It may be noted that section III(1) includes a number of recommendations to enhance media and information literacy but does not appear to include any reference to the idea of bolstering the ability of individuals and organisations to enhance their digital security, which is also very important in this area.

In section III(1)(a), which discusses the ability to “evaluate sources of information”, it would be clearer to specify “evaluate the reliability of sources of information”. The draft Recommendation recommends that Adherents “[c]reate mechanisms and tools for the public to report malicious or inauthentic online activities affecting information integrity” (section



III(1)(h)), but it is unclear from this to whom these reports would be destined (for example, a government body, a civil society organisation or to online platforms).

The draft Recommendation suggests that an information sharing infrastructure be provided to monitor potential “integrity risks” but that certain measures should be in place to limit risks to privacy, including “by limiting data access to independent, vetted researchers who meet specific requirements, which increase with data sensitivity...” (section III(2)(b)). It would be helpful to include some minimum requirements for such researchers within the draft Recommendation.

Section III(3)(b) refers to the idea of transparency about content moderation so as to “help ensure that their [platforms’] actions are consistent with their own guidelines and policies”. This is useful but it is also important to be transparent about content moderation so that users can adapt their user experience so as to conform to terms of service (also an important way of contributing to information integrity).

Section III(3)(c) refers to the idea of internal appeals (“within the platform”). This should also be expanded to refer to the idea of independent appeals, perhaps qualified by a reference to “as appropriate” to avoid placing undue obligations on smaller operators.

The draft Recommendation recommends, where necessary and appropriate, in order to mitigate risks of foreign interference and foreign information manipulation that consideration be given to:

[P]utting in place mechanisms to increase the disclosure, the denunciation, or the legal disablement of affiliations and activities that are intended to use information operations to influence the national public debate or public officials carrying out the decision-making process, such as through transparency registers for foreign influence activities providing a means for establishing whether non-registered activities constitute information operations (Section III, 4(c))

While such measures can be important means of combatting foreign interference and information manipulation, there is also a risk that overbroad laws could be abused to target civil society organisations which receive grants from abroad or which are affiliated with international civil society organisations, particularly as the recommendation countenances the “legal disablement” of activities, which is quite strong language. For example, it is quite common for international human rights or environmental CSOs to try to “use information operations to influence the national public debate” and there is nothing wrong with this. As such, additional language cautioning against the misuse of such measures should be added (and this also highlights the need, expressed above, for a very carefully tailored definition of FIMI. It also needs to be very clear from the outset of this clause that this is limited to the context of FIMI actions (that only comes up later in the clause as an example of a measure which could be taken).



## Recommendations

- A reference to the idea of bolstering the ability of individuals and organisations to enhance their digital security should be added to section III(1).
- Consideration should be given to revising section III(1)(a) to refer to “evaluate the reliability of sources of information” instead of “evaluate sources of information”.
- The reporting mechanism in section III(1)(h) should be clarified.
- Consideration should be given to setting out minimum requirements for independent researchers in section III(2)(b).
- Section III(3)(b) should also ground the need for transparency about content moderation in the idea of helping users to adapt their user experience so as to conform to terms of service.
- The reference in section III(3)(c) to the idea of internal appeals should be expanded to refer to the idea of independent appeals, “as appropriate”(to accommodate smaller platforms or smaller country operations).
- Language cautioning against the abuse of laws targeting foreign influence to curtail freedom of expression and association should be introduced into section III(4)(c) and this clause should make it clear from the beginning that it limited to FIMI actions (carefully defined).

## Enhance the transparency, accountability, and plurality of information sources

Section IV of the draft Recommendation is dedicated to recommendations to enhance the “transparency, accountability, and plurality of information sources”. It may be noted, as a general point, that the hat to section IV(1) refers to the ideas of independence and pluralism in relation to public interest media but not the idea of freedom, which is equally important (i.e. freedom from excessive content, administrative and other restrictions). This idea is also largely absent from the text under section IV(1). Section IV(1)(b), for example, refers broadly to an enabling environment but then fails to refer to freedom from undue operating restrictions, apart from the general idea of non-interference, in its elaboration of this.

Section IV(1)(e) refers to whistleblowers but a reference to the need to protect the right of journalists not to reveal their confidential sources is missing.

Section IV(1)(f) refers to the idea of promoting “dialogue” “regarding remuneration models for journalistic content shared on online information platforms”. This is weak and experience

around the world suggests that dialogue alone is not going to be enough to promote fair compensation models in this space. Something stronger, albeit sufficiently general to be adapted to different circumstances, is needed here, such as the “implementation of measures” or “measures to promote agreement on”.

Section IV(1)(g) refers to transparency to address media owners’ conflicts of interest. Consideration should be given to adding a reference here to the idea of encouraging the putting in place, on a voluntary basis, of systems to protect editorial independence against such conflicts. There is a reference to “editorial independence” in section IV(1)(h), but it focuses more on conflicts of interest involving journalists than owners.

The hat to section IV(2) refers to the idea of strengthening co-operation but most of the clauses which appear below this are not founded on the idea of cooperation.

Section IV(2)(a) recommends encouraging or requiring platforms to adopt “a human rights-respecting approach and employ business practices that contribute to information integrity”. Consideration should be given to requiring platforms to do this, as opposed to leaving open the possibility that they could simply be encouraged to do so, consistent with the move towards imposing binding obligations on platforms in many jurisdictions.

Section IV(3) includes a lot of useful recommendations but it fails to call on online information platforms to consider tweaking their content recommendation systems where these are responsible for promoting harmful disinformation.

The draft Recommendation also suggests “encouraging or requiring online information platforms, as appropriate, to: (a) Prevent the spread of disinformation...” (section IV(3)(a)). A more realistic ask would be to “reduce” as opposed to “prevent” the spread of disinformation.

The draft Recommendation also suggests encouraging or requiring platforms to:

Minimise the risk of harm from misinformation, disinformation and other forms of information manipulation, technology-facilitated gender-based violence, image-based abuse, and deepfake pornography on online information platforms by thoroughly evaluating the risk levels associated with their products and services (section IV(3)(d)).

This recommendation would be stronger if it required platforms to make changes to their services, including any automated recommender systems, in response to the risk evaluations.

The draft Recommendation suggests “encouraging or requiring online information platforms, as appropriate depending on children’s age”, to, among other things:

Reflect with government and civil society on initiatives and voluntary efforts from online information platforms to promote children’s appropriate use of online information

platforms; reflect on the merits of stricter limitations on children’s access to and use of online information platforms, through, for example and as appropriate, establishing minimum age requirements for the use of platforms without parental consent; developing and applying age verification tools to limit platform access, recognising the need for safeguards to respect individuals’ privacy, personal data protection, and maintain equitable access to an open and free internet; and labelling risks to children (Section IV(4)(c)).

It is helpful that the draft Recommendation refers to the need for platforms to make efforts to protect children, but it should also be emphasised that children have their own right to freedom of expression and that any measures in this area should not unduly restrict their freedom of expression. As a related point, measures in this area should not compromise encryption or weaken other security protocols. At the same time, it should be emphasised that certain addictive algorithms have particularly harmful effects on children. Consideration should be given to the need to ensure any automated recommender systems do not have a deleterious impact on children’s well-being and to consider the possibility of daily time limitations on use of some platforms by children.

### Recommendations

- Section IV(1) should integrate a reference to media freedom into the introductory hat for the section and then add a clause elaborating on this idea, ideally with a reference to the three-part test for restrictions on expression under international law.
- A reference to the right of journalists not to reveal their confidential sources of information should be added to section IV(1).
- Stronger language, as suggested above, is needed in section IV(1)(f).
- Consideration should be given to adding a reference to section IV(1)(g) to the idea of encouraging the putting in place, on a voluntary basis, of systems to protect editorial independence against media owners’ conflicts of interest.
- The hat to section IV(2), and in particular the reference to “strengthening co-operation”, should be tweaked to more closely reflect the content which appears below.
- Consideration should be given to recommending binding human rights responsibilities in section IV(2)(a), rather than leaving open the possibility for non-binding measures alone.
- Consideration should be given to adding a recommendation to section IV(3) calling on platforms to adjust their content recommender systems where these promote harmful disinformation.
- Consideration should be given to replacing the reference to “prevent” with “reduce” the spread of disinformation in section IV(3)(a).

- Section IV(3)(d) should incorporate with an explicit requirement that the platforms make changes to their services, including any automated recommender systems, in response to risk assessments.
- Section IV(4)(c) should include a reference to the need to uphold children’s freedom of expression by not unduly limiting their access to age-appropriate online platforms or weakening encryption or other security protocols. At the same time, consideration should also be given to the need to ensure that any automated recommender systems do not have a deleterious impact on children’s well-being and to consider the possibility of daily time limitations on the use of some platforms by children.

## Upgrade institutional architecture and open government practices

Section V is dedicated to recommending upgrades to “institutional architecture and open government practices”. Overall, Section V lacks any proper reference to the need to adopt and then implement properly, strong access to public information laws, in accordance with Sustainable Development Goal 16.10.2. This form of mandatory government transparency is an important complement to more discretionary forms of public transparency, and both play an important role in ensuring a flow of reliable information to the public, including via the media. There is a reference in section V(8)(c) to “[l]owering barriers for journalists and citizens to access public information” and section V(8)(d) calls for the promotion of open government by “[u]pholding or updating, as needed and required, access to information laws, open government and data standards”. It would, however, be preferable to have a more direct call for Adherents to improve their access to information laws, as needed, and to devote appropriate levels of resources, as well as political will, to implementing those laws properly.

Section V(2)(c) mentions the need for processes and guidelines for officials to help “avoid undue pressure on freedom of expression”. This is somewhat unclear language, and it would be preferable to replace “pressure” with “restrictions” or “limitations”.

### Recommendations

- Section V should include a call for Adherents to improve their access to information laws, as needed, and to devote appropriate levels of resources, as well as political will, to implementing those laws properly.

- Consideration should be given to replacing the reference to “undue pressure on freedom of expression” with “undue restrictions on freedom of expression” in section V(2)(c).