

Professor Jaap de Hoop Scheffer
Chairman of the Advisory Council
on International Affairs
P.O. Box 20061
2500 EB
The Hague

Date 27 May 2019
Re Request for advisory report on regulating online content

Dear Professor De Hoop Scheffer,

Both domestically and internationally, the Netherlands' internet policy is aimed at protecting and promoting an open, free and secure internet. Human rights, such as the right to freedom of expression and the right to protection from arbitrary or unlawful interference with one's private life, are as applicable on the internet as anywhere else. Any restriction of these rights online must be in line with international agreements. The Netherlands is working actively to ensure this.

Some aspects of the Netherlands' pioneering role in this regard are set out in the Dutch Digitalisation Strategy, which was published in June 2018, including strengthening the resilience of the public and organisations and protecting fundamental rights and ethics in the digital era.¹ In addition, the Netherlands' National Cybersecurity Agenda,² published in April 2018, highlights the protection of values and fundamental rights in the digital domain as a vital part of cybersecurity. The International Cyber Strategy³ published in February 2017 argues that the Netherlands would benefit from worldwide protection of human rights online, while the updated human rights policy⁴ of May 2018 stresses the importance of promoting respect for universal human rights (online and off) and cites freedom of expression (online and off) as a priority of Dutch foreign human rights policy.

However, recently, there have been growing concerns about the production and dissemination of online content that poses a threat to vulnerable groups in society, democratic processes or incumbent governments.

Many countries consider the existence and dissemination of such content a security issue and are developing legislation to limit the scope for exercising human rights online, which will impact how the internet is used around the world.

¹ Parliamentary Paper 26 643, no. 541, which is also in line with motion 26 643, no. 566 on emphasising fundamental rights and ethics in the Dutch Digitalisation Strategy.

² Parliamentary Paper 26 643, no. 536.

³ Parliamentary Paper 26 643, no. 447.

⁴ Parliamentary Paper 26 643, no. 447.

Regulating the internet is a challenging issue, since the Netherlands believes in minimal regulation and a free internet market. Both the internet's infrastructure and content are in private hands. The Netherlands believes this is the best way to ensure the internet stays free, open and secure. In many democratic countries governments expressly emphasise the responsibility of these companies to regulate themselves in order to combat the dissemination of undesirable online content.

However, calls for governments to regulate online content at international level are growing louder. International and national regulation in other countries is expected to have a potential impact on an open and free global internet and on Dutch internet users' scope for expression. It is vital that the Netherlands anticipate this by exploring regulatory options while at the same time exercising restraint with regard to the regulation of online content.

Within the EU and international forums, the Netherlands has the potential to lead the way in advocating an approach to regulating online content that is based on the rule of law and takes an inclusive view of human rights. Such an approach would complement the Netherlands' existing position as an international authority on implementing and applying international law, including human rights, in cyberspace. Given the interwoven nature of domestic and foreign internet policy, any efforts in this area must be recognisably Dutch in their outlook and implementation in order to be internationally effective.

A promptly issued advisory report from the AIV containing guidance in the form of policy recommendations would add value to the Netherlands' international efforts in this area and could also complement national policymaking processes. This report can build on the AIV's advisory report 'The Internet: A Global Free Space with Limited State Control', particularly by further developing recommendation 8 (on entering into a dialogue with internet companies) with a view to the specific challenge of regulating undesirable online content.

The government therefore requests an advisory report from the AIV on the following questions:

1. What international developments should the Netherlands be aware of regarding the regulation and dissemination of online content, including in the multilateral domain? What options does the Netherlands have? What is the best way the Netherlands can influence international developments at multilateral and bilateral level?
2. In light of the AIV's responses to the above questions, what options do governments have in terms of regulating online content? Can regulation be designed in a way that takes account of human rights, so that democratic values and human rights online can be guaranteed? What are the downsides of regulation? What approach would best suit Dutch legal practice and the Netherlands' traditional preference for restraint?
3. Given their importance in the implementation of regulation, how can private internet companies be given guidance and direction?

I look forward to receiving your advisory report before the end of the year.

Yours sincerely,

[signature]

Stef Blok
Minister of Foreign Affairs of the Kingdom of the Netherlands