

**Organization for Security and Co-operation in Europe
Office of the Representative on Freedom of the Media**

Expert workshop on surveillance business model

7 July 2021

CONCEPT NOTE

The data-harvesting business models of large internet intermediaries enable the advertising industry to develop data-driven targeting strategies. Through this approach, companies identify and exploit users' behavioural patterns and characteristics. The main focus of this expert group is on the impact on freedom of opinion and expression of so-called "surveillance-based advertising", understood as a blanket term for digital advertising that is targeted at individuals, usually through tracking and profiling based on personal data. The context of where a specific ad is placed can be random, because as it is targeted at individuals, it can follow them around in different contexts.¹

Due to the unprecedented technological possibilities to access, process and analyze users' data, internet intermediaries record their digital footprint and collect information about users almost constantly. As a result, they build profiles on each individual that uses their service. This information is used for delivering tailored services that, arguably, make users' online experience more enjoyable and convenient. At the same time, however, this personalised experience may infringe on media freedom, and on our human rights in numerous ways. Indeed, hidden behind the convenient recommendations lurks a dark side of sophisticated manipulation. Algorithmic content distribution decisions are determining which ads users may see. Thereby, users' online activities feed into their own profiles, but also determine other people's online experiences.

The work of the expert group should focus on three key elements to protect the absolute right to freedom of thought and opinion that is significantly affected by technology:

1. The right to keep one's thought and opinions private;
2. The right not to have one's thought and opinion manipulated; and
3. The right not to be penalised for one's thoughts and opinions.

While the first two aspects are negatively impacted by surveillance-based advertisement that lies at the core of data-harvesting business models of large internet intermediaries, the third element

¹ Norwegian Consumer Council (2021), Time to ban surveillance-based advertising: The case against commercial surveillance online. Retrieved from <<https://www.forbrukerradet.no/wp-content/uploads/2021/06/20210622-final-report-time-to-ban-surveillance-based-advertising.pdf>>.

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is strongly linked to state mass surveillance that has a chilling effect on freedom of expression and media freedom as it intersects with the right to privacy online and offline.

The international human rights framework prohibits states from violating the absolute right to freedom of thought and opinion. In addition, it also places positive obligations on states to protect it from activities of private actors by creating an adequate regulatory framework establishing and enforcing strong safeguards. In recent years, a number of studies have shown how the use of surveillance by governments and the private sector specifically impacts the right to freedom of expression and media freedom, including by imposing a chilling effect on journalistic work and on human rights defenders voicing their views and opinions online. For example, the 2018 report of Citizen Lab documents that the mere perception of potentially being listened to, would lead to self-censorship, including of journalists and their sources.² Both state and corporate surveillance risk to profoundly damage the free flow of information and ideas, and to significantly affect individuals' online behaviour. Studies also show that there is a real risk that the communications of journalists, human rights defenders, whistle-blowers or other communications may be passed on to a foreign government with further risks of retaliation for the individuals concerned.³

The main outcome of the experts' working group should be human rights-based recommendations addressed to OSCE participating States that will focus on the manipulative practices stemming from the surveillance-based advertisement model. These recommendations should aim to address the negative impact on the absolute right to freedom of thought and opinion caused by human rights abusive operations and methods deployed by internet intermediaries. In addition, the expert group will also provide a set of general principles that states should comply with in order to prevent human rights-abusive surveillance methods, often in direct or indirect cooperation with large internet intermediaries, and to safeguard freedom of opinion, expression and media freedom.

In most cases, surveillance-based advertising is part of a fully-automated process, where each individual ad is chosen and placed in a matter of milliseconds. This means that neither the publisher (e.g. the owner of a website or app) nor the advertiser (e.g. the owner of the brand that is promoted) chooses which ads to show to whom, or where to display them. This is automatically

² Elizabeth Stoycheff, Under Surveillance: Examining Facebook's Spiral of Silence Effects in the Wake of the NSA Internet Monitoring, *Journal of Mass Communication Quarterly*, 93(2), 296-311.

³ See, e.g., Association for Progressive Communications, The protection of sources and whistleblowers Submission to the United Nations Special Rapporteur on the Right to Freedom of Opinion and Expression, 29 June 2015; ARTICLE 19, Response to the Special Rapporteur Consultation on Protection of Journalists' Sources and Whistleblowers, July 2015; or Center for Constitutional Rights, Written Submission on the Protection of Sources and Whistleblowers to the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 22 June 2015.

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decided by technological systems that are often controlled by third party intermediaries (so-called ‘adtech’ companies).⁴

This data-harvesting business model has thrived unchecked for a long time, and its externalities and impacts are increasingly visible. From discriminatory ads on housing⁵ and job markets,⁶ to domestic and foreign interference in elections and untraceable money flowing into politics, the consequences are tangible. Not much research, however, has been **focusing on these models’ impact on the right to freedom of opinion and expression, or their impact on media pluralism and public debate**. The work of this expert group should address the following issues:

- **Lack of transparency:** Personalization of surveillance-based advertising means that different individuals will see different ads based on a number of factors, including time, context, demographics, personal characteristic and behavioural patterns. However, algorithmic systems that are being fed with users’ data are profoundly opaque, often referred to as “black-boxed”. Hence, the surveillance-based advertising is near to impossible to understand by users (or regulators). As a consequence, users lack any meaningful understanding of when they are being shown a particular ad and how their personal data is shared and used in the process.
- **Manipulative marketing practices:** Surveillance-based advertisement has significantly contributed to exploitation of particular characteristics to increase the persuasiveness of a message. In the same vein, this technique helps manipulate individuals into making decisions they would have otherwise not have made. Advertising can exploit users’ vulnerabilities even without directly identifying those vulnerabilities. For example, through the use of so-called “lookalike audiences”, advertisers can duplicate user groups with certain characteristics in order to reach new users that share the same characteristics. While nudging has been a component of advertising since its invention, technological tools and the dominance of a few intermediaries has enabled greater manipulation as all users – and every single one – can be targeted at all times, and at any time.
- **Discrimination:** Algorithms optimizing ads may be automatically facilitating discriminatory bias. This may lead to automated discrimination, for example by making geolocation a proxy for protected attributes such as ethnicity, sexual orientation or religious beliefs, because statistic models show that some groups of people have overlapping attributes.

⁴ Norwegian Consumer Council (2020), Out of control: How consumers are exploited by the online advertising industry. Retrieved from <<https://fil.forbrukerradet.no/wp-content/uploads/2020/01/2020-01-14-out-of-control-final-version.pdf>>.

⁵ Katie Benner, Glenn Thrush and Mike Isaac, Facebook Engages in Housing Discrimination With Its Ad Practices, U.S. Says. Retrieved from <<https://www.nytimes.com/2019/03/28/us/politics/facebook-housing-discrimination.html>>.

⁶ The Guardian, Women less likely to be shown ads for high-paid job on Google, study shows. Retrieved from <<https://www.theguardian.com/technology/2015/jul/08/women-less-likely-ads-high-paid-jobs-google-study>>.

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Even if a system does not allow targeting individuals based on their religious beliefs, the fact that an individual regularly visits the geolocation, for example a mosque, or uses a certain prayer-app, may be used as a proxy for the attribute "muslim", which, in turn, may lead to the exposure to specific content and ads, and exclusion of others.

- **Amplification of potentially harmful content:** Surveillance-based advertisement lies at the core of data-harvesting platforms and shapes users' online experience. It allows large platforms to try to determine and speculate on people's personal preferences and behaviours. Because they harvest an unprecedented amount of personal data, they are able to boost user engagement and derive profit by prioritizing or quantifying the popularity of certain types of sensational content, including potentially harmful content such as disinformation. Sensational content is known to boost user engagement as it increases the likeliness of clicks and time spent on the service. In other words, surveillance-based advertising contributes to the financial incentives to prioritize sensational, polarizing and potentially also decisive or hateful content. This harmful practice has been intensified due to decreased economic revenue from advertisement that falls into the hands of few dominant players in the digital advertising market. In addition, this significantly impacts legacy media, including public service media, who is also competing for attention and advertising revenue. In order to "survive", media publishers are often also compelled to take part in the clickbait economy and surveillance-based advertisement, impacting the quality of news and content.

From privacy violations to content curation, surveillance-based advertisement may seriously harm the right to freedom of expression and opinion. Surveillance-based advertisement has far-reaching impacts on individuals' personal communication and interactions, consumer choices, and participation in democratic debates that should be addressed by the work of this expert group. The experts should closely look at measures intended to increase transparency and whether it can help to better understand the scale of the issues. However, the expert group should consider other forms of systemic responses that can help to prevent and mitigate the human rights abuses stemming from these practices, including intrusive targeting and personalisation of content.

The expert group should provide a set of human rights centric recommendations addressed to OSCE participating States with the aim to identify effective ways to adhere to human rights obligations, due diligence standards, and adequate public oversight that can effectively prevent risks to freedom of expression and media freedom.

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Expert Workshop on content curation and surveillance-based business model

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AGENDA

10:00 - 10:10

Welcome by OSCE RFoM and Access Now

- Teresa Ribeiro, OSCE Representative on Freedom of the Media
 - Welcoming remarks
- Eliska Pirkova, Global freedom of expression lead, Access Now
 - Introducing the agenda and objectives of the working group
 - Housekeeping rules

10:10 - 11:00

Tour de table

- Name and affiliation (and your favorite dessert)
- What are, in your view, two utmost priorities that this workshop should tackle regarding the impact on the right to freedom of thought, opinion and expression, caused by intrusive methods of surveillance-based advertisement and dominance of a few large internet intermediaries?

11:00 - 11:10

Coffee break

11:10 - 12:00

Session 1: The absolute right to keep one's thoughts and opinions private

Automated systems used as a part of surveillance-based advertisement can undermine users' right to keep their thoughts and opinions private by making inferences about those thoughts, feelings and opinions, often without users' knowledge, let alone their consent. Such interferences may lead to self-censorship and a chilling effect of online expression, risking to significantly impede the free flow of information.

- Introduction by the Chair covering the main areas for this session
- Discussion among experts
 - How should states design appropriate and proportionate measures to ensure that effective legal guarantees are in place against illegitimate interferences with users' right to keep their opinions and thoughts private?

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- What are some existing international standards, and practices, that would apply (or could be replicated) to protect and enable the right to freedom of opinion and expression?
- Can you think of concrete examples of technologies and methods used by internet intermediaries, whose deployment essentially results in manipulating users' opinion formation process?
- How can users' be empowered and made aware about what type of and how much data is generated and how it is processed by internet intermediaries through algorithmic processes?
 - Can you think of concrete examples of technologies and methods that empower users by protecting and enabling their thoughts, opinions, and expression?

12:00 - 13:00

Lunch break

13:00 - 13:50

Session 2: The absolute right not to have one's thought and opinion manipulated

Surveillance-based advertisement has significantly contributed to the exploitation of people's particular characteristics and behaviour to increase the persuasiveness of a message and therefore, to unjustifiably interfere with one's absolute freedom to form an opinion. People who are using platforms' services may be manipulated to think in certain ways or to take decisions they would have otherwise perhaps never made.

- Introduction by the Chair covering the main areas for this session
- Discussion among experts
 - In which ways can surveillance-based advertising models impact users' freedom to form an opinion, and their right to freedom of expression?
How can states enable democratic decision-making and peaceful societies in the context of surveillance-based advertising architectures?
 - Do you think that there is a need to develop additional regulatory and co-regulatory protective standards that go beyond existing data protection and privacy frameworks in order to adequately address manipulation and other negative impacts of surveillance-based advertisement methods? If so, what policy guidance is needed in this regard?
 - Can meaningful transparency (based on enhanced and legally mandated criteria) provide sufficient safeguards or should states consider certain bans of manipulation that exploits users' vulnerabilities, e.g. behavioural targeting?

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13:50-14:00

Coffee break

14:00-14:50

Session 3: The absolute right not to be penalised for one's thoughts and opinion

Newer and more sophisticated forms of discrimination that penalise for one's thoughts and opinions are possible in light of newly developed technologies, such as, for instance, emotion recognition that is gradually deployed by the advertisement industry. At the same time, these new technologies can also be used and abused for state surveillance that may (in)directly profit from internet intermediaries' unprecedented access to users' behavioural data. Surveillance-based technologies can incentivize "conformational" online behavior to the detriment of diversity of opinions and views expressed, including by chilling online debate, criticism or public scrutiny.

- Introduction by the Chair covering the main areas for this session
- Discussion among experts
 - How can both internet intermediaries and states penalise individual users for their thoughts and opinions in the online environment?
 - How can practices and techniques that threaten to undermine the right not to be penalised for one's thought impact social cohesion and democratic decision-making? How do corporate surveillance-based (advertising) technologies chill online behavior to the detriment of pluralism, and how should this be addressed?
 - Which safeguards should states adopt in order to prevent societal harm stemming from surveillance-based technologies at scales?

14:50 - 15:05

Coffee break

15:05 - 15:55

Closing remarks:

- Brief discussion on areas not covered by this workshop which would need additional attention (in the scope of the specified subject matter: surveillance-based business models and the right to freedom of opinion and expression)
- Summarising the takeaways, seeking to identify technical recommendations from the "how to" discussions in the three sessions
- Explaining the next steps



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