

Transparency Reports

From CDT's *Making Transparency Meaningful: A Framework for Policymakers*

Many tech companies produce regular *transparency reports* about how their actions affect the speech, access to information, and privacy of their users with respect to government surveillance. These public reports may include aggregate data and qualitative information about the reporting entity's operations. One goal of transparency reporting is to increase companies' accountability by enhancing public understanding about how their services impact users, communities, and other stakeholders. While transparency reports published by tech companies are most common, other entities, including governments, may also issue transparency reports on issues that impact users' speech and privacy. Transparency reports can provide a better understanding of the overall environment for online speech and participation on a service and show how different content moderation practices and government demands for content restriction have changed over time.



Current State of Transparency Reporting

As of July 2021, 88 technology companies – including telecoms, social networks, search engines, and e-commerce companies – had issued transparency reports concerning free expression and user privacy.¹ In 2010, Google published the first transparency report, about government demands for user data. In subsequent years, other companies began publishing similar reports. Information about government demands for user data is now the most common element of tech company transparency reports.

Transparency reporting on other topics grew from these initial reports on government demands for user data. Now, transparency reports may also cover: government demands for content removals;² content removals and other content moderation by companies under their own terms of service (also known as “content policy enforcement”);³ advertising (including ad libraries);⁴ copyright and trademark

1 [Transparency Reporting Index](#), Access Now (last updated July 2021).

2 E.g., Twitter's transparency report on [Removal Requests](#) reports on “legal demands to remove content from Twitter and Periscope, and other requests to remove content based on local law(s) from around the world.”

3 E.g., TikTok publishes a quarterly [Community Guidelines Enforcement Report](#).

4 E.g., Google publishes a transparency report on [Political Advertising in the United States](#), which includes an ad library.

enforcement and other legal requests;⁵ and network shutdowns and disruptions.⁶

Content Policy Enforcement Transparency Reports

Voluntary reporting about content removals and other content moderation under companies' terms of service became more common starting in 2018 following publication of the Santa Clara Principles on Transparency and Accountability in Content Moderation, which promote due process and transparency as ways of ensuring that companies' enforcement of their content guidelines is more "fair, unbiased, proportional, and respectful of users' rights."⁷ The data in these reports varies because companies' content policies – and enforcement of those policies – differ widely. Generally, existing transparency reports about content policy enforcement provide data about the volume and nature of content removed. They sometimes also provide information about how violating content was detected or reported and the number and outcomes of appeals.

Recently, some countries have required (or strongly encouraged) online service providers to publish transparency reports about the removal of illegal content. For example, the German Network Enforcement Act (NetzDG) requires certain internet companies to publish semi-annual transparency reports with specific information about their content moderation practices with respect to content that is illegal under German law. Several companies have published separate transparency reports pursuant to NetzDG, in addition to their voluntary transparency reports.⁸

Government Transparency Reports

A few governments also publish selective transparency reports relevant to the speech and surveillance of users of telecommunications or online services. For example, in the United States, the Administrative Office of the United States Courts and the Director of National Intelligence are required by law to publish annual reports on the use of certain surveillance authorities.⁹ In another example, in Europe, the European Commission publishes reports monitoring the implementation of the Code of Conduct for Countering

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- 5 E.g., GitHub's annual transparency report includes [a section on takedowns under US copyright law](#); similarly, Microsoft's [Content Removal Requests Report](#) includes sections on both copyright removal requests and "right to be forgotten" requests.
 - 6 E.g., telecommunications companies Telefónica and Telenor disclose the number of network shutdown demands they receive, and AT&T provides "partial disclosure" of such demands. [2020 Ranking Digital Rights Corporate Accountability Index](#) at F10. Network shutdown (telecommunications companies) (last visited Dec. 7, 2021).
 - 7 [The Santa Clara Principles on Transparency and Accountability in Content Moderation](#) (last visited Nov. 21, 2021) [hereinafter "Santa Clara Principles"]. Content policy enforcement reports are published by [Facebook](#), [Twitter](#), [YouTube](#), [Reddit](#), [Pinterest](#), [SnapChat](#), [TikTok](#), [Twitch](#), and many other online intermediaries.
 - 8 Heidi Tworek & Paddy Leerssen, [An Analysis of Germany's NetzDG Law](#) at 10 (Apr. 15, 2019) (Appendix with links to NetzDG transparency reports from Google, Facebook, and Twitter).
 - 9 See 18 U.S.C. § 2519; 18 U.S.C. § 1873(a)(2) & (b). The information in these reports is limited, however, and some of it has been criticized as potentially inaccurate. See Albert Gidari, [Wiretap Numbers Don't Add Up](#), Just Security (July 6, 2015); Albert Gidari, [The Government's Wiretap Orders Still Don't Add Up](#), Just Security (July 17, 2015); Albert Gidari, [Wiretap Reports Not So Transparent](#), Ctr. for Internet and Society (Jan. 26, 2017).

Illegal Hate Speech Online, which includes aggregate data about reports made to technology companies under the Code.¹⁰ In general, however, most government entities around the world have no habit or legal requirement to produce publicly available reports about governmental efforts to restrict online speech or obtain the information or data of users of telecommunications or online services.

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Enhancing Transparency Reporting: Considering Tradeoffs

Would increasing voluntary transparency reporting, or mandating transparency reporting, enhance technology companies' accountability to the public?

Some experts and advocates are skeptical of the benefits of transparency reporting, arguing that self-reported aggregate data often do not offer true insight into how content practices work and therefore cannot be used to hold companies accountable for their decisions and impacts.¹¹ Transparency reports do not typically reveal the underlying content discussed in them, which some argue is necessary for accountability-enhancing transparency.¹² Moreover, because companies control collection and reporting of the data in many transparency reports, others have questioned whether that data is accurate and how it can be validated.¹³ Even when reports are issued by governments, the data included may not be particularly meaningful; for example, the European Commission's reports on the Code of Conduct for Countering Illegal Hate Speech Online have been criticized for focusing on the rate and speed of content removals rather than an analysis of the type of content removed.¹⁴ These concerns may be partially addressed through efforts to incentivize or mandate transparency reports that contain specific data which would provide meaningful transparency. However, the value of transparency reporting has limits, and they are one method among several of improving tech company accountability.

10 Barбора Bukovská, [The European Commission's Code of Conduct for Countering Illegal Hate Speech Online: An analysis of freedom of expression implications](#), Article 19 at 7-10 (May 7, 2019).

11 See, e.g., Ethan Zuckerman, [I read Facebook's Widely Viewed Content Report. It's really strange.](#), ...My heart's In Accra Ethan Zuckerman's online home, since 2003 (Aug. 18, 2021); Laura Edelson, [Facebook's political ad spending numbers don't add up](#), Medium (Oct. 12, 2020); Davey Alba, Catie Edmondson & Mike Isaac, [Facebook Expands Definition of Terrorist Organizations to Limit Extremism](#), N.Y. Times (Sept. 17, 2019) (quoting evelyn douek).

12 See Zuckerman, *supra* n.11.

13 See Eric Goldman, [RightsCon 2021 Lightning Talk: Validating & Enforcing Transparency Reports](#), YouTube (June 7, 2021).

14 Bukovská, *supra* n.10 at 9. See also Jens-Henrik Jeppesen, [First report on the EU Hate Speech Code of Conduct shows need for transparency, judicial oversight, and appeals](#), Ctr. for Democracy & Tech. (Dec. 12, 2016).

What qualitative and quantitative data and information should be disclosed in transparency reports?

Publishers of transparency reports – or lawmakers who would mandate them – must determine the specific data that should be included. It is infeasible for tech companies to track and report all possible data, and such an approach would raise concerns about user privacy and the costs imposed on smaller and newer companies.

In making this determination, the first consideration is what data can be collected and reported. If a company's or government's systems and processes are not designed to track particular data, it will not be able to report it. While it may sometimes be possible to redesign these systems and processes to allow for tracking and reporting of specific data, in other cases it will not. For example, companies that offer end-to-end-encrypted services will be unable to capture certain data concerning user-generated content that is technically inaccessible to them. In other cases, the way a service operates will make it profoundly difficult to collect certain data, even if it is not technically impossible. For example, Wikipedia may not be able to capture and report aggregate data about content removed by its hundreds of thousands of volunteer editors under its content policies. Finally, decisionmakers should understand that, in some cases, companies are legally prohibited from disclosing particular data or information.¹⁵

The intended audience of a transparency report is another important consideration in deciding what data should be provided and in what format. An expert audience may appreciate transparency reports with granular and deeply technical data, whereas lay audiences will find reports with narrative information and additional explanations of quantitative data more accessible.

Civil society organizations have provided guidance on the data that voluntary transparency reports should include. While these recommendations may be a useful starting point for policymakers considering requiring tech companies to publish transparency reports, they are not model legislation and should not be incorporated wholesale into proposals that would mandate transparency reporting. Examples of civil society guidance on voluntary transparency reports include:

- New America's Open Technology Institute's two transparency reporting toolkits, one focused on government requests for user data¹⁶ and the other

¹⁵ For example, prior to the passage of the USA FREEDOM Act in 2015, companies' ability to report on national security letters and orders they received under the Foreign Intelligence Surveillance Act (FISA) was severely restricted. The USA FREEDOM Act loosened these restrictions, though reporting about NSLs and FISA orders is still limited. Companies' ability to disclose information about network shutdowns and other disruptions may also be limited by law.

¹⁶ Liz Woolery, Ryan Budish, & Kevin Bankston, [The Transparency Reporting Toolkit: Reporting Guide & Template for Reporting on U.S. Government Requests for User Information](#), New America & The Berkman Klein Center For Internet & Society (Dec. 2016).

on content takedown reporting,¹⁷ which recommend best practices for transparency reports and the type and granularity of data that internet and telecommunications companies should provide;

- CDT and Global Network Initiative's recommendations about the data and information that governments should report concerning surveillance and content removal and restriction, as well as the information that governments should permit tech companies to disclose,¹⁸ and
- The Santa Clara Principles, which set forth basic standards for transparency reporting on content policy enforcement and specify the minimum data that these transparency reports should include.¹⁹

How should data in transparency reports be categorized and counted?

Publishers of transparency reports must also decide how to categorize and count the data they report. Even reports on the same topic may categorize and count data differently. For example, in reports about government demands for user data, some companies provide the numbers of demands for each separate category of legal process used – such as pen registers, wiretaps, or search warrants – while others report numbers for combined categories of legal processes, and others still report only a single number for all government demands for user data, regardless of the type of legal process used. Similar issues arise in transparency reports about content policy enforcement. Many companies organize these reports around the categories in their content policies, which differ from company to company.

In addition, even when companies use similar categories, they may not count data in the same way.²⁰ For example, if a post is removed for violating multiple provisions of a company's content policy, it could be counted as a single removal or separately under each provision for which it was removed.

Policymakers could specify how data regarding lawful orders for content restriction or user data are to be categorized and counted in transparency reports, but doing so may influence how companies conduct the processes on which they are reporting and may limit the development of new methods of categorization and counting that could provide clearer or more meaningful information.

17 Spandana Singh & Kevin Bankston, [The Transparency Reporting Toolkit: Content Takedown Reporting](#), New America (Oct. 24, 2018).

18 Emma Llansó & Susan Morgan, [Getting Specific About Transparency, Privacy, and Free Expression Online](#), Ctr. for Democracy & Tech. (Nov. 5, 2014).

19 Santa Clara Principles, *supra* n.7.

20 See Daphne Keller, [Some Humility About Transparency](#), Ctr. for Internet & Society (Mar. 19, 2021) (linking to a [Google Doc](#) in which Keller sets forth a partial list of logistical and operational questions that arise when building a transparency report); see also Andrew Puddephatt, [Letting the sun shine in: transparency and accountability in the digital age](#), UNESCO at 15 (2021) (raising questions about transparency reporting, including “how is an ‘item’ of data defined? How is a URL containing thousands of illegal images counted?”).

Is standardization of transparency reports possible or desirable?

Some critics of transparency reports note that a lack of standardization across reports makes comparison between tech companies difficult. Calls for standardization of transparency reports must consider two questions: Is standardization possible? And is it desirable? As discussed above, companies report different data in their transparency reports, and, even when they appear to report the same data, they may categorize and count it differently. Standardizing precisely how to categorize and count data can be difficult, especially given differences in the services offered, content moderation rules and processes, advertising models, and other facets of companies. Moreover, most categories of speech that a company might restrict lack a standard definition that applies across cultural and national contexts; there is not, for example, a single definition of “extremist content” or “sexual imagery” that could be applied across all services, even if many companies restrict those general categories of content.

Transparency reporting standardization may also have unintended negative side effects. Requiring tech companies to provide specific metrics in transparency reports could stifle innovation in reporting and sharing of other data that turn out to be more meaningful for a particular service.²¹ Highly prescriptive transparency requirements may also force or encourage intermediaries to standardize their content policies or content moderation practices, creating a more homogeneous online environment and decreasing the variety of options for online services from which users can choose.

Does mandatory transparency reporting about content policy enforcement incentivize over-removal of speech or otherwise influence content enforcement?

Requiring companies that host user-generated content to report certain data about content removals under their content policies may encourage them to remove speech, even if it is legal and does not violate the companies’ content policies, in at least two ways. First, services that must comply with reporting obligations concerning content moderation may respond by adopting “simpler, blunter content rules” that are either overly broad or narrow to make it easier to classify and explain their decisions.²² Second, a service may feel pressured to report high numbers of removals of certain kinds of speech and respond by removing more speech than is actually prohibited under its content policy. For example, a company that publishes the number of posts removed as terrorist content may err on the side of removing gray-area content that does not actually advocate for terroristic violence so its transparency report will show a high number of removals under that category. As a result, content that is in the public interest – such as news reports about terrorism – may be overremoved.

21 Spandana Singh, [A Spotlight on Transparency: An Overview of How the Practice of Transparency Reporting Has Emerged Across Different Industries](#), *New America* at 12-17 (Apr. 2020).

22 Keller, *supra* n.20; see also Puddephatt, *supra* n.20 at 15 (raising the question of whether “adoption of rules for disclosing content moderation make companies adopt simpler rules that do not take account of nuance”).

Mandatory content policy enforcement transparency reporting may also encourage companies to devote a disproportionate amount of resources to the types of content contained in the report and fewer resources to other types of problematic content on which they are not required to report. For example, if a company must report the number of content items it removes as a result of its hate speech policy but not as a result of a policy against disinformation, it may devote more resources to hate speech detection and removal and fewer to disinformation. Similarly, a requirement that companies report data such as the length of time it took them to remove particular content may incentivize them to make content removal decisions faster, even if that means more errors.

What is the impact of transparency reporting on smaller and startup companies?

Transparency reporting can be expensive and labor intensive. Detailed and far-reaching requirements for transparency reporting, in particular, can negatively impact smaller tech companies, entrench dominant companies, and decrease competition and pluralism among providers. As a result, it may be necessary to exempt smaller or newer companies from transparency reporting mandates or make distinctions about what data or how much data they must report. These distinctions can be based on metrics such as the age of the company, number of employees, revenues, or consumer usage, with benefits and downsides to each metric that can be used.²³ Another approach would be to implement high-level principles for transparency, rather than detailed metrics, that all companies could meet.²⁴

Can transparency reporting be mandated in the United States consistent with the First Amendment?

American lawmakers considering mandates for transparency reporting should examine whether doing so is consistent with the First Amendment. In general, strict scrutiny applies to statutes that compel speech by private speakers, including “not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid.”²⁵ At least one court has struck down a state law that would have required online platforms to publish certain information about political advertising,²⁶ a holding which could be extended to transparency reporting. In addition, lawmakers should consider whether requiring content policy enforcement reports, which would require hosts of user generated content to disclose data about their decisions to publish or remove content, would impinge on their First Amendment right to exercise editorial discretion over the content they host.²⁷

23 Eric Goldman & Jess Miers, [Regulating Internet Services by Size](#), CPI Antitrust Chronicle, Santa Clara Univ. Legal Studies Research Paper (May 2021).

24 See Puddephatt, *supra* n.20 at 2.

25 *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp. of Boston*, 515 U.S. 557, 573 (1995).

26 *Washington Post v. McManus*, 944 F.3d 506 (4th Cir. 2019).

27 *Herbert v. Lando*, 441 U.S. 153 (1979); *Miami Herald v. Tornillo*, 418 U.S. 241 (1974).

This brief is a part of the December 2021 CDT report, *Making Transparency Meaningful: A Framework for Policymakers*.

Additional CDT work on this topic: <https://cdt.org/insights/report-making-transparency-meaningful-a-framework-for-policymakers>

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