

# Communication & Privacy

## Israel has adopted its first comprehensive policy document examining the regulation of online social platforms



On December 14<sup>th</sup>, 2022, the Ministry of Communications [published](#) the report of the advisory team to the Minister of Communications examining the regulation of digital content platforms, the recommendations of which were adopted by the Minister of Communications (the “**Report**” and the “**Team**”, respectively). This is the first time a coherent policy regarding the regulation of digital content platforms has been drafted.

The Report notes the existing asymmetry between technological development and its regulation. As mentioned in the Report, the operators of the significant social media platforms have taken on a key role in public discourse. Accordingly, the Team suggested to appoint a regulator for this topic (the “**Regulator**”), and to formulate regulation that imposes responsibility and liability on the operators of the platforms regarding the content being published on such platforms, while focusing on the significant effects of illegal and harmful content, as well as the imbalance of power between the social media platform operators and the user community.

The following summarizes the main recommendations detailed in the Report:

- Application: The Team proposed that the regulation shall be applied to social media platforms that have a **number of users that exceeds five percent of Israel’s population**. In this aspect, such social media platforms will be defined as platforms that provide hosting and distribution services for content that is aimed at the general public in addition to being predominantly user-created, whereby access to the content is provided by search and recommendation services, such as i.e., Facebook, Twitter, Instagram, YouTube and more.
- Handling harmful and illegal content: The proposed regulation seeks to establish guidelines for the sake of protecting users from **harmful and illegal content** (as cumulative conditions, and in accordance with a definitive list to be determined) that is distributed throughout the social media platforms, while paying special attention to content that includes intimate images or videos as well as content that is considered as bullying minors.  
In that regard, it has also been proposed to impose a **general obligation** upon the platform operators to minimize the distribution of and the exposure to illegal and harmful content; require said operators to establish and initiate a notification system regarding such content; impose legal liability upon the platform operators in cases where they fail to reasonably and promptly handle content that is distinctly **illegal and offensive**; and authorize courts to issue orders on this matter.
- Classifying social media platforms as “Hybrid Organizations” and applying principles from public law upon social platform operators: The Team proposes to impose an obligation upon the platform operators to act reasonably, objectively and with proportionality when dealing with users. This includes notifying the users of restrictions imposed upon them; establishing a user-friendly online mechanism for the purpose of appealing decisions of content restriction and removal; making the community guidelines accessible in terms of language and content; and classifying sponsored content.
- Transparency: Imposition of **annual reporting obligations** to the Regulator. The Regulator will **publish** the findings once a year.

- Appointing representatives in Israel: The Report proposes to require the platform operators, which will be subject to the proposed regulation, to **establish legal representation in Israel** that will be required to comply with the applicable regulatory provisions and will be responsible for conveying information to the Regulator in accordance with the Regulator's requirements.
- Risk management: It is proposed to authorize the Regulator to list risks that are unique to Israel (alongside global risks) and require the platform operators to take such risks into consideration in their risk assessment and to take action to minimize them accordingly. As such, it was proposed to require the platform operators to **publish the primary systemic risks** to the public and to propose "best practices" to deal with such risks.
- Jurisdiction and governing law: It is proposed to explicitly state that **Israeli law** will be the governing law in disputes with users of the social platforms who have entered into a uniform contract with the platform operators, and that such disputes shall be resolved in **Israeli courts**.

At this stage, the Report is only a proposal and it is quite possible that changes will be made before the proposal will be approved and adopted as binding legislation. Nonetheless, the proposal indicates the position of the Ministry of Communications on the matter, which appears to align with similar regulations recently adopted in the EU and other countries.

Insofar as this proposal does in fact mature to legislation, the platforms to which the regulation will apply will be required, among other things, to:

- Be proactive in reducing distribution of and exposure to illegal and harmful content. It should be noted that platform operators will apparently only be liable for content that is **distinctly** illegal and harmful. Accordingly, platform operators will be required to perform in-depth legal and factual inquiries when classifying content;
- Establish mechanisms to report illegal and harmful content and to appeal decisions to remove or otherwise restrict content or users;
- Publish clear and concise community guidelines and terms of use in Hebrew and in Arabic, and adapt the aforementioned terms and guidelines to the platform's target audience (for example, children and teenagers), all the while taking into account that the governing law applied in potential disputes arising with users will be Israeli law;
- Publish the primary risks inherent to using the platform, as well as offer solutions to deal with such risks;
- Retain certain data regarding the use of the platform and the posting of illegal and harmful content on the platform (such as, data regarding the scope of harmful content in Israel, the restrictions imposed upon Israeli users, and the measures used to deal with such content);
- Classify sponsored content shown on the platform, so that it can be easily and clearly identified;
- In case of a foreign entity – establish an Israeli company that will serve as a local representative when dealing with the Regulator, and will be charged with the responsibility of fulfilling the legislative obligations.

**Please feel free to contact us with any questions that you may have on this matter.**

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