Policy recommendations

Balancing human rights and public safety
The opportunity

Essential to personal dignity and the development of human potential, freedom of expression is an internationally recognized human right that must be protected by the rule of law. Today, social networks, mobile apps, and other cloud services are enabling new ways to access, create, and publish news and information. These are providing new opportunities to foster freedom of expression. Societies benefit in innumerable ways, including a more informed and engaged citizenry, expanded economic opportunities, and more connected communities.

The challenge

Any technology, including the cloud, can be misused to disseminate illegal or offensive content, whether in photos, videos, audio files, or text. This raises new issues for governments and citizens as they seek to protect freedom of expression and the right to receive and impart information while preserving public safety and personal privacy. As governments and communities seek to strike the right balance while combating terrorism and extremism, it is important to recognize that public safety and freedom of expression are complementary values that often reinforce each other.

Policy recommendations

To best serve their citizens, governments should adopt clear laws and regulations that are interpreted and administered under the rule of law. This will enable governments to preserve freedom of expression, protect public safety and promote trust, while creating the conditions that will make it possible to realize the benefits that technology can bring to societies and economies.
In particular, governments should consider the following principles:

**Respect the rule of law.** In regulating online content, governments should be fully committed to the rule of law. This means adopting clear rules that are codified in statutes and regulations. It also means acting openly and transparently so the public understands the rules and how they are applied. Finally, it means individual enforcement decisions should be subject to judicial or independent approval and review, while allowing affected companies and individuals to appeal decisions against them.

**Protect freedom of expression and access to information.** It is a fundamental role and responsibility of governments to protect public safety. This sometimes requires access to digital information or the removal of online content. But freedom of expression should not be restricted by governments except in narrowly defined circumstances based on internationally recognized laws. When restrictions are necessary, they should be consistent with international human rights standards and the rule of law and should be proportionate to the relevant purpose. Governments should take care to ensure that laws regulating online content do not prevent people from sharing ideas—even ideas that are unpopular.

**Respect rights to privacy online.** Governments have long sought to ensure that grants of authority for national security or law enforcement surveillance of citizens are responsible and proportionate. This same balance needs to be reflected in laws, regulations, and practices related to online surveillance. Governments should be transparent about how they enact and apply laws that govern surveillance of online activities. Failure to do so could drive a wide range of activities to other forms of communication, which would limit the benefits of cloud computing for public safety, human development, and economic advancement.
Adopt a principled approach to online content regulation. In cases where governments require technology companies to remove online content, they should do so transparently and pursuant to legislation that clearly defines what constitutes illegal content and the types of services that must remove it. Amongst other things, legislation should require: removal pursuant to a “notice-and-takedown” approach rather than requiring proactive monitoring by technology companies; notices to remove content be specific, narrowly tailored, and sufficiently detailed to enable companies to precisely identify the content to be taken down; content removal demands be subject to judicial review and appeal. They should also allow internet companies to inform the public about removal demands that they receive.

Respect national sovereignty through international cooperation. Given the global nature of the internet, demands to remove content or disclose digital evidence will often affect foreign citizens and cross international borders. If countries act unilaterally and without regard to the legitimate sovereignty interests of nations, it will weaken public safety and the exercise of fundamental rights. Governments should focus on strengthening international cooperation and adhering to international norms. Where existing rules for cross-border cooperation are outdated or cumbersome, governments should update them so they are appropriate to current technology and adequate to address new challenges.

Noninterference with technology companies. Online services where users post content usually include terms of use designed to meet the service provider’s legitimate business interests, including protecting their brand and providing experiences that are appropriate to the nature of the service and the communities they serve. Many companies also have processes that enable
users or others to report content that may violate the terms of use and procedures to review and remove content if necessary. Governments should not pressure companies to change their terms of use or interfere with the way they are enforced.

Evidence and further reading:

Microsoft on the Issues Blog: Microsoft’s approach to terrorist content online

For links to this and other resources, please visit: http://www.microsoft.com/cloudforgood