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Introduction speech – Access to Internet and fundamental rights

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Professor Paul Starr eloquently portrayed the impact of the Internet on free expression when he wrote:

“The digital revolution has been good for freedom of expression because it has increased the diversity of voices in the public sphere.

“The digital revolution has been good for freedom of information because it has made government documents and data directly accessible to more people and has fostered a culture that demands transparency from powerful institutions.

“But the digital revolution has both revitalized and weakened freedom of the press.”

Other panels will consider threats to journalism, and pluralism, diversity and quality in the new media ecosystem. Here I would like to focus on the benefits and challenges to democracy of widespread use of the Internet across Europe.

We all know the Court of Human Rights pays the “utmost attention” to freedom of expression, which its *Handyside* judgment called “one of the essential foundations of [a democratic] society”, essential for progress and the development of every individual. Equally important to democracy are the fundamental rights of privacy, free assembly and association, and a fair trial.

As the Committee of Ministers has noted, people increasingly depend upon online media “to access and exchange information, publish content, interact, communicate and associate with each other”. In particular, search engines “enable a worldwide public to seek, receive and impart information and ideas and other content in particular to acquire knowledge, engage in debate and participate in democratic processes”, while social media “promote the exercise and enjoyment of human rights” and “offer great possibilities for enhancing the potential for the participation of individuals in political, social and cultural life.”

In considering how to advance democracy in the digital age, the first major challenge for the Council and its Member States is to agree the best way to encourage the provision of Internet access to all Europeans, so that they can take advantage of these new possibilities. Last year, 72% of EU households had broadband Internet access - but this fell to half in some eastern European countries.

This gap presents a challenge both to courts – which have increasingly found that Internet access is an essential component of the right to access information – and governments, who need to generate the investment in Internet infrastructure necessary to make universal access a reality.

A second major challenge relates to the private ownership of most of the infrastructure and services that users depend upon to exercise their democratic rights online. The Council of Europe has recognised this with its emphasis on dialogues between states, the private sector, and civil society, and development of guidelines for Internet companies.

The private sector has been left to decide many rules impacting on users' rights, such as the types of objectionable but legal content banned from social networking sites, or the conditions under which ISPs will voluntarily block access to websites containing allegedly illegal material. An important issue for the future is to ensure that such "self-regulatory" measures protect the substantive and procedural rights of those affected. For example, blocked sites should be notified and given the opportunity to appeal decisions in full judicial proceedings.

Alongside freedom of expression, the Committee of Ministers has declared that: "The right to freedom of assembly and association is equally essential for people's participation in the public debate and their exercise of democratic citizenship, and it must be guaranteed in full respect of Article 11 of the Convention... (without any online/offline distinction)." The Committee has particularly emphasised the potential of social networking services to "facilitate democracy and social cohesion", and recommended these companies "ensure accessibility to their services to people with disabilities, thereby enhancing their integration and full participation in society."

To further encourage companies to respect human rights, and assist in remedying breaches, additional development of the UN's Guiding Principles on Business and Human Rights for Internet companies will be crucial. The European Commission's recent report on this topic lays a strong foundation, as does the Council's recent work on shared commitments to transparency.

Finally, the ongoing revelation of mass surveillance by the USA and many European states presents the starkest long-term challenge to the democratic potential of the Internet.

The fundamental rights to freedom of expression, association and assembly, as well as privacy, are of course qualified ones. European states undoubtedly continue to face serious threats – from terrorist groups and others – to national security and public safety.

But we should perhaps thank the US National Security Agency and its European allies for presenting us with such a clear vision when it comes to Internet communications – NSA Director General Keith Alexander's "collect it all". We should certainly thank whistle blower Edward Snowden for revealing this vision

to the world. He should be offered asylum in a European state, as should other future whistle blowers that reveal activities so at odds with international law.

Strict democratic oversight and legal control of intelligence agencies will be one important way to ensure such awesome capabilities are not abused. But without going too far into a discussion of Articles 17 and 18 of the Convention, free expression, association, assembly and privacy cannot remain meaningful concepts if every communication, meeting, movement and website visit can be potentially monitored and analysed.

As the Internet develops further, almost every activity – whether offline or online – will leave a digital trace. Thanks to Mr Snowden, we know that many of those traces are already being copied into government databases.

Such mass surveillance, going far beyond the “strategic” surveillance considered by the Court in cases such as *Klass* and *Kennedy*, is undoubtedly subversive of Convention rights.

Even before the Snowden revelations, UN Special Rapporteur Frank La Rue had identified “an alarming trend towards the extension of surveillance powers beyond territorial borders”. He concluded that: “Communications surveillance should be regarded as a highly intrusive act that potentially interferes with the rights to freedom of expression and privacy and threatens the foundations of a democratic society.” Extraterritorial surveillance also violates the sovereignty of the target state.

If even Cabinet Ministers remain unaware of such significant intrusions, and newspapers are threatened with criminal prosecution for discussing them – both of which we have seen in the UK this summer – can a democratic remedy really be said to exist?

The national courts, as well as the Court of Human Rights, will have to consider these questions in the coming months as they decide the numerous cases that have already been filed. It may be appropriate for the Commissioner of Human Rights to use his power to intervene in these cases, given the wider issues they raise.

The Parliamentary Assembly has already passed a resolution recalling the Court’s *Leander* judgment that “States may not, in the name of the struggle against espionage and terrorism, adopt whatever measures they deem appropriate” given “the danger such a law poses of undermining or even destroying democracy on the ground of defending it”. The Secretary General must now decide whether to act on their request for him to launch an inquiry under Article 52 of the Convention.

I look forward to hearing your thoughts on how the Council of Europe and its members can ensure a bright future for freedom of expression and democracy.