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**1st Council of Europe Conference of Ministers
responsible for Media and New Communication Services
A new notion of media?
(28 and 29 May 2009, Reykjavik, Iceland)**

Political declaration and resolutions

ADOPTED TEXTS

Political declaration

The ministers of states participating in the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, held in Reykjavik on 28 and 29 May 2009, make the following political declaration:

1. Free, independent and diverse media are essential for a democratic society. This is why the Council of Europe has developed a large body of standards over the years that seek to protect the media from interference, in compliance with Article 10 of the European Convention on Human Rights (ETS No. 5). Those standards also explore duties and responsibilities which equally stem from Article 10. Thanks to constant review and updating, their relevance has persisted over the years, even in a changing media landscape.

2. The ways in which information is gathered, content is created and the methods by which both are made available and sought have changed with technological developments. Users have ready access to, and create content for, means of mass communication which employ diversified communication platforms for both existing and newly developed media or comparable media-like mass-communication or information services. The relations between the media or other providers of those services and users or consumers have also evolved. It is therefore an opportune moment to review the notion of the media, understood as certain forms of mass communication that are transmitted by means of print or broadcasting involving ethical standards and editorial responsibility.

3. Like traditional media, new providers of media-like mass-communication services also should strive to promote and respect certain fundamental values. New modes of content creation and expression as well as seeking and imparting information in a mass-communication setting reinforce but may also challenge fundamental rights and freedoms. Existing media-related standards that were developed for traditional forms of mass communication may well apply to new services and service providers. However, additional tailored guidance to member states may be necessary. Further, new service providers should be made aware of their rights and also their duties and responsibilities.

4. Public service media, having genuine editorial independence and institutional autonomy, contribute to media diversity and help counterbalance the risk of misuse of power in a situation of strong concentration of the media and new communication services. They are therefore a fundamental component of the media landscape in our democratic societies. However, in a changing environment, public service media face major challenges which may threaten their very survival. Reflection on possible responses to these challenges should be pursued.

5. Growing numbers of people rely on the Internet as an essential tool for everyday activities (communication, information, knowledge, commercial transactions, leisure), ultimately improving their quality of life and well-being. People therefore expect Internet services to be accessible and affordable, secure, reliable and ongoing. Access to these services also concerns the enjoyment of human rights and fundamental freedoms, as well as the exercise of democratic citizenship. Council of Europe member states might therefore explore together the follow-up to be given to the Committee of Ministers' Recommendation CM/Rec(2007)16 on measures to promote the public service value of the Internet.

6. Media or media-like services have growing cross-border importance. The revision of the European Convention on Transfrontier Television (ETS No. 132) is a welcome Council of Europe response to the diversification of communication platforms and information services. The revision process should be completed at the earliest opportunity. A broader legal response to the need to protect the cross-border flow of media and media-like content and, more generally, Internet traffic should be explored having regard to Article 10 of the European Convention on Human Rights. Steps may also be required to ensure that critical infrastructure and resources, which are essential for people's access to Internet services, are preserved in the public interest.

7. The question of the dignity of persons exposed to or affected by media or media-like services should be central to developing standards for those services. In this context, particular attention should be paid to children, young people and other groups with special needs or characteristics. Access by all these groups to media and media-like services is an important matter. Gender-related issues should also be mainstreamed with regard to these services. Users should be empowered to participate actively in the new communication environments, aware of their rights and responsibilities and adequately protected from possible harm.

8. In the interest of the required protection of the right to private life, the processing of personal data in new communication and information environments, and more particularly on the Internet, also needs to be addressed, including profiling practices.

9. There is ongoing concern about the effective implementation of Council of Europe standards on the freedom of expression and information and the freedom of the media. This implementation requires careful follow-up in the context of technological developments and market conditions. Threats derive also from crisis situations, be it terrorism, war or financial turmoil, as well as technological developments and market conditions which affect the position of journalists in information processes. There is, in particular, growing concern about the impact of terrorism, and of actions taken by member states to combat it, on those freedoms. Efforts have to be redoubled to ensure that these freedoms, underpinned by the rule of law, do not fall victim to these circumstances. Respect for Council of Europe standards on freedom of expression and information as well as freedom of the media in practice should therefore be an ongoing endeavour.

10. In light of the above, the ministers:

Agree to pursue co-operation on media and new communication services with a view to providing common responses to developments regarding the media and the provision of media-like services, in particular as regards the respect for freedom of expression and information, the right to private life and the dignity of human beings;

Adopt the resolution "Towards a new notion of media" and the corresponding action plan, and the specific resolutions on "Internet governance and critical Internet resources" and the "Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information" which are appended to this political declaration and request the Committee of Ministers of the Council of Europe to take steps to implement the actions mentioned in those documents;

Ask the Committee of Ministers of the Council of Europe to continue to explore ways of enhancing the respect for freedom of expression and information and freedom of media standards in practice.

Resolution

Towards a new notion of media

The ministers of states participating in the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, held in Reykjavik on 28 and 29 May 2009, adopt the following resolution:

1. The purpose of media or comparable media-like mass-communication services remains on the whole unchanged, namely the provision or dissemination of information, analysis, comment, opinion and entertainment to a broad public. The underlying objectives also remain comparable: to provide news, information or access to information; to set the public agenda; to animate public debate or shape public opinion; to contribute to development or to promote specific values; to entertain; or to generate an income or, most frequently, a combination of the above.
2. However, the content itself is evolving due to the way in which information is gathered and content is created, disseminated or distributed, sought, selected and received. This is due both to technical reasons, related to the communication platforms used, and to the presentation of content, which offers a perception of enhanced choice and interaction. In terms of income, new business models have been developed for associating revenue-generating activities to the dissemination of content through the means of mass communication.
3. These developments call for an in-depth analysis of our understanding of media, including the criteria and assumptions that underlie this understanding. It would therefore be desirable to explore the notion of media and, if necessary, review the concept itself. This would permit the establishment of criteria for distinguishing media or media-like services from new forms of personal communication that are not media-like mass-communication or related business activities.
4. Fundamental rights and freedoms and other Council of Europe values and standards, in particular the right to freedom of expression and information and its corollary freedom of the media, have to be promoted and protected, regardless of changes in the media and media-like landscape. The freedom of expression and information also carries with it certain duties, responsibilities and, in certain cases, can be subject to restrictions which are prescribed by law and necessary in a democratic society. Consequently, all media and media-like service providers have to respect certain benchmarks, and they should be adequately informed of their responsibilities.
5. Within an intergovernmental co-operation framework, the Council of Europe should consider the extent to which requirements of media or journalistic professionalism, editorial independence and editorial responsibility apply or should apply to new services or to media-like service providers. If appropriate, it should also provide guidance on the modalities of application of those standards to the operators of new services and business activities. More generally, it should explore whether and how Council of Europe standards that were developed with traditional forms of mass communication in mind apply to the new services or service providers. Those standards may have to be adapted, or new ones will have to be elaborated, for the new media-like service providers.

6. As for traditional media, self-regulation should be a key element for ensuring compliance with standards while respecting editorial independence; where necessary, self-regulation can be supported or underpinned by co-regulation. As a form of interference, regulation should be subject to the limits and conditions established by the European Convention on Human Rights and the relevant case law of the European Court of Human Rights and meet the tests elaborated by the latter. Media or media-like regulatory or accountability mechanisms, whether self- or co-regulatory or, if necessary, state driven, must be effective, transparent, independent and accountable. The Council of Europe should explore how to improve the functioning of those mechanisms, in particular how to improve the access to those mechanisms for persons or groups who consider that their rights have been breached by media or media-like service providers.

7. A people-centred approach also requires that individuals are allowed to exercise their right to free expression and information and use new communication services to participate in social, political, cultural and economic life and to do so without infringing the human dignity or the rights of others. The Council of Europe, in consultation and co-operation with relevant stakeholders, should provide member states with guidance, benchmarks and tools for the media and media-like mass-communication service providers that allow individuals to seek, create and distribute information without fearing breaches to their own human dignity or rights. The question of how rights and responsibilities should be apportioned in appropriate cases between the content creator and the distributor or service provider should also be explored.

8. In this context, media literacy should be considered essential. It should be recognised as part of the education for democratic citizenship. It is a particularly important tool in optimising children's and young people's comprehension, critical thinking, citizenship, creativity and critical awareness of the media. Their sense of responsibility when they create, use and distribute content is of key importance. Member states will also have to address other threats to children's dignity, security and privacy, in particular the question of the removal of content that children and young people create or place on the Internet and that challenges their dignity, security and privacy or otherwise renders them vulnerable now or at a later stage in their lives.

9. It is also necessary to explore whether and to what extent data retention, the processing of personal data and profiling techniques or practices challenge unrestricted participation and people's rights to freedom of expression and information and other fundamental rights. Appropriate guidance should be provided to protect users' rights.

10. The plurality of sources of information and media and media-like services has to be ensured. Individuals' right to receive information can be challenged and democracy can be threatened by negative and significant market distortion as a result of media concentration; lack of diversity and pluralism; manipulative messages; new forms of content aggregation; the management and prioritisation of flow of content and of access and limited connectivity, or lack of access, to broadband services. Measures have to be proposed to address these risks. Part of the answer lies in the recognition of the public service value of the Internet and the resulting responsibilities for states.

11. Another important element for ensuring access to trustworthy sources of information is genuine, independent and adequately resourced public service media. At present, not all Council of Europe member states offer public service media that are able to attract and to serve all segments of society and contribute to people's full participation in political, social and cultural life. Developing the role of public service media may well involve public expenditure on cutting-edge media and media-like services and technologies. The modalities of expenditure on public media or information services may also need to be reviewed. The Council of Europe could provide a forum for discussion and, where appropriate, propose guidance on the manner in which public service media can discharge its duties, including by exploring innovative governance approaches.

12. We therefore:

Affirm the relevance of Council of Europe values, principles and standards for the media and media-like actors that operate within an evolving landscape of media services and information and communication technologies, and the need to explore the desirability of adapting existing and/or developing new standards or regulatory frameworks;

Agree to explore, in close co-operation with media professionals, in particular journalists, the roles and responsibilities they may have in the context of the provision of media or media-like services in the new information and communication environments;

Reaffirm our support for technology-neutral public service media, including public service broadcasting, which enjoy genuine editorial independence and institutional autonomy;

Reaffirm the importance of copyright protection and acknowledge the need to explore further, in close co-operation with relevant stakeholders, issues deriving from the use of copyrighted material or the exploitation of user-generated content by media-like services to protect and promote the freedom of expression and information;

Undertake to continue to resolutely support Council of Europe standard-setting work in the fields of freedom of expression and information and freedom of the media and to provide political backing to ensure that those freedoms are upheld as individual human rights and as essential components of a democratic society;

Acknowledge the need to put particular emphasis on ensuring the rights of children, young people and other groups with special needs or characteristics in the process of developing standards for media and media-like services;

Recognise the need to promote the implementation and respect of Council of Europe standards on freedom of expression and information and freedom of the media, and the positive impact that such efforts could have in the new information and communications environments;

Reiterate our support for action, within a Council of Europe context, to enhance users' media literacy so that they are able to express and inform themselves in a manner which makes them critical, competent and responsible when using media and media-like services;

Agree on the need to remain attentive to the risks involved in a situation of strong concentration of media and media-like mass-communication services, and to the role of those services, including public service and community media, in facilitating intercultural dialogue and promoting a culture of tolerance in multicultural societies;

Adopt the action plan set out below and request the Committee of Ministers of the Council of Europe to take all necessary steps to facilitate its implementation, acknowledging that this is a continuation of work carried out from the previous European Ministerial Conferences on Mass Media Policy.

Action Plan

I. Towards a new notion of media and its consequences

1. Examine whether our understanding of media and mass-communication services remains valid in the new information and communications environment. If appropriate, elaborate a policy document reviewing the concept of media itself to include relevant new media and media-like mass-communication services and service providers.
2. Having regard to the results from this review, establish criteria for distinguishing media or media-like services from other forms of personal communication.
3. Examine whether and how the requirements of journalistic professionalism, editorial independence and editorial responsibility apply or should apply to operators of new media and media-like mass-communication services and service providers.
4. In consultation with relevant stakeholders, examine the need for, the modalities (such as self-regulation, co-regulation or regulation) and the subject of regulatory activities required to ensure respect for Council of Europe values in the framework of new media and media-like mass-communication services. If appropriate, provide guidance as to the application of existing Council of Europe standards to these new services.

II. Public service

5. Pursue work on the role of public service media in a democratic society. In particular, examine the modalities for delivery to the widest possible public, including young audiences, of trustworthy, diverse and pluralistic media and media-like services, paying attention to the way in which information and media or media-like services are sought and received and to the challenges of obtaining quality or trustworthy content.
6. In this connection, explore and, if appropriate, elaborate a policy document containing guidance for member states on governance approaches for public service media that will contribute to achieving the above objectives. This could extend to reflecting on other (organisational, financial and technical) features of the public service provision of media and media-like services.
7. Continue to develop the notion of the public service value of the Internet. In this context, explore the extent to which universal access to the Internet should be developed as part of member states' provision of public services. This may include policies for redressing market failure where market forces are unable to satisfy all legitimate needs or aspirations, both in terms of infrastructure and the range and quality of available content and services.

III. The individual and the media and media-like mass-communication services

8. Explore how newer or emerging modes of mass dissemination of and access to content, and the associated retention, processing and exploitation of data, affect the rights protected under Article 10 of the European Convention on Human Rights. If necessary, give guidance on how to strengthen the protection of those rights.

9. Examine how the status and rights of creators or providers of content can change, in particular when others associate that content to their own media or media-like services or income-generating activities (for example, advertising) in a mass-communication environment. If appropriate, elaborate guidance on the matter, including on the legal control of creators and providers over their content and the attribution of responsibility (such as when legal liability arises from the broad dissemination of such content).
10. Pursue reflection on possible means of ensuring the effective, transparent, independent and accountable operation and functioning of complaints bodies and procedures for media and media-like mass-communication services.
11. In consultation with relevant stakeholders, including education specialists, pursue work on media literacy with the aim of making users, creators and distributors of content (in particular children and young people) responsible, informed and critical participants in the information society. Attention should be paid, as appropriate, to non-formal education as well as to the role of media themselves.
12. Continue to address other challenges to individuals' (in particular children's and young people's) rights to freedom of expression and information, privacy and other fundamental rights, as well as to their dignity and security on the Internet. In particular, explore possibilities for the removal of content that children create or place on the Internet. Pursue standard-setting work on the processing of personal data and profiling techniques or practices, explore common standards on privacy settings and examine the threats that could derive from systems designed to identify and track objects. In consultation with relevant stakeholders, develop appropriate guidance, benchmarks and tools to protect users' rights.
13. Explore the question of the possible use of newer or emerging services of mass communication to shape opinion and consumption of different groups in society in a surreptitious, subliminal or otherwise manipulative manner and, with due regard to Articles 8 and 10 of the European Convention on Human Rights, explore ways in which to protect the users or public from such use.

Resolution

Internet governance and critical Internet resources

The ministers of states participating in the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, held in Reykjavik on 28 and 29 May 2009, adopt the following resolution:

1. Fundamental rights and Council of Europe standards and values apply to online information and communication services as much as they do to the offline world. This stems, *inter alia*, from Article 1 of the European Convention on Human Rights whereby member states undertake to “secure to everyone within their jurisdiction” the rights and freedoms protected by the Convention (without the online/offline distinction). This approach has been confirmed in a number of Council of Europe standard-setting instruments.
2. Member states can be held to account for the rights involved before the European Court of Human Rights. The very nature of the information society and, to an even greater extent, of the Internet, has significant cross-border implications. Article 10 of the European Convention on Human Rights is especially relevant in this respect given that the rights and freedoms protected therein are guaranteed “regardless of frontiers”.
3. The question of fundamental rights online is compounded by users’ significant reliance on the Internet as an essential tool for their everyday activities (communication, information, knowledge, commercial transactions, leisure). As recalled in paragraph 5 of the preceding political declaration, this has led the Committee of Ministers of the Council of Europe to recognise the public service value of the Internet. People have a legitimate expectation that Internet services should be accessible and affordable, secure, reliable and ongoing. The notion of positive obligations developed in the case law of the European Court of Human Rights is particularly relevant in this context.
4. Various entities and persons, some state but mostly non-state actors, have contributed over the last few decades to shaping the development and use of the Internet. Their goodwill and ongoing efforts to promote the universality of the Internet and to ensure the robustness and resilience of its networks should also be acknowledged and welcomed. They are contributing to the Internet’s safety, stability and continued functioning while helping to unleash economic potential and develop democratic processes.
5. The Internet relies on a variety of resources which are indispensable for its functioning and which, because of their very nature, can at any one time have a considerable impact on the ability of large numbers of users to access or fully benefit from the Internet. These critical resources include, for example, 13 so-called “root servers” (which permit the routing of most information and communications on the Internet) and the Internet’s backbone structures (large-scale channels for data transit) which are controlled by a variety of government authorities, including re-designated defence agencies, academic institutions and private/business entities.
6. The Internet Corporation for Assigned Names and Numbers (ICANN), a not-for-profit entity established in 1998 under the laws of the State of California, in the United States of America, is also a key component in managing the technical management of critical Internet resources worldwide. Although its constitutional documents and by-laws require it to co-operate with relevant international organisations and to carry out its activities in conformity with relevant principles of international law and applicable international conventions and local law, there are no related formal accountability arrangements.

7. The borderless and universal nature of the Internet depends, *inter alia*, on arrangements that ensure full compatibility or interoperability. The use of different alphabets should not represent an obstacle to the enjoyment of the rights and freedoms protected under Article 10 of the European Convention on Human Rights "regardless of frontiers". Equally, choices made in respect of Transmission Control Protocols/Internet Protocols (TCP/IP) should not lead to fragmentation or barriers to seamless communication.

8. Council of Europe member states share the responsibility to take reasonable measures to ensure the ongoing functioning of the Internet and, in consequence, of the delivery of the public service value to which all persons under their jurisdiction are entitled. Interstate co-operation and solidarity is of paramount importance to the proper functioning, stability and universality of the Internet. By working together, member states can help each other to prevent or manage events, including malicious acts, falling within their jurisdictions or territories, which could block or significantly impede Internet access to or within fellow members of the international community. Such events may have significant implications on Article 10 of the European Convention on Human Rights.

9. In their standard-setting work, member states are inspired by the Tunis Agenda for the information society and the United Nations-led Internet Governance Forum (IGF) which facilitates the development and application of shared principles, norms, rules, decision-making procedures and programmes that shape the evolution and use of the Internet by governments, the private sector and civil society in their respective roles. Internet governance is an example of organisational innovation and mutual adaptation between society and technology around the world in pursuit of the objective of ensuring the openness and neutrality of the Internet.

10. Pan-European discussions on Internet governance are also important for member states. European Union directives and communications on information society matters, including the European Parliament Resolution on the second Internet Governance Forum, held in Rio de Janeiro from 12 to 15 November 2007, which encourages the organisation of a "European IGF", provide an important starting point for such dialogue. Among other initiatives, the European Dialogue on Internet Governance (EuroDIG) is a welcome arrangement that responds to this need.

11. We therefore:

Support Pan-European efforts for enhanced co-operation on Internet governance, having due regard to the Council of Europe's values and standards on human rights, democracy and the rule of law, and the need for a multi-stakeholder approach to it;

Welcome, in this connection, the steps taken by the Council of Europe to facilitate, in co-operation with other stakeholders, the organisation of IGF-like meetings at the pan-European level and ask the Council of Europe to make more lasting arrangements for dialogue on Internet governance;

Call on all state and non-state actors to explore ways, building upon current arrangements, to ensure that critical Internet resources are managed in the public interest and as a public asset, ensuring the delivery of public service value, in full respect of international law, including human rights law;

Call also on these actors to ensure full compatibility and interoperability of TCP/IP so as to guarantee the ongoing universal nature and integrity of the Internet;

Invite the Council of Europe to explore the feasibility of elaborating an instrument designed to preserve or reinforce the protection of the cross-border flow of Internet traffic;

Undertake to explore further the relevance of Council of Europe values and, if necessary, ways in which to provide advice to the various corporations, agencies and entities that manage critical Internet resources that have a trans-national function in order for decisions to take full account of international law including international human rights law and, if appropriate, to promote international supervision and accountability of the management of those resources.

Resolution

Developments in anti-terrorism legislation in Council of Europe member states and their impact on freedom of expression and information

The ministers of states participating in the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services, held in Reykjavik on 28 and 29 May 2009, adopt the following resolution:

1. Terrorism has a devastating effect on the enjoyment of human rights. This is true for the right to life, but also for other fundamental rights and freedoms that Council of Europe member states have undertaken to protect. Terrorism is not only a threat to the individual but also poses considerable threats to the state, democracy and the rule of law.
2. Freedom of expression and information risk falling victim to terrorism, due to a climate of fear that terrorism can create or as a side effect of anti-terrorism legislation or measures. This would be a double success for the terrorists. The freedom of expression and information is, on the one hand, an essential part of the values that terrorism seeks to destroy and, on the other, indispensable to fighting terrorism effectively.
3. People have a right to be informed of terrorist attacks and of the authorities' action to combat terrorism. However, there are cases where it is inappropriate for the media to disseminate – or disseminate immediately – particular information in order to prevent terrorist acts or to protect the safety of victims or in the interests of an ongoing investigation or to protect the administration of justice. This calls for the observance of professional standards and responsibilities. However, the mere fact of reporting on terrorism cannot be equated to supporting terrorism. It is also legitimate to engage in open dialogue and public debate about the causes of terrorism or about political issues surrounding it.
4. The Committee of Ministers of the Council of Europe has adopted important standard-setting texts designed to assist member states in this respect, including: Guidelines on human rights and the fight against terrorism (11 July 2002); Declaration on freedom of expression and information in the media in the context of the fight against terrorism (2 March 2005); Guidelines on protecting freedom of expression and information in times of crisis (26 September 2007).
5. Any interference with the freedom of expression and information must be prescribed by law and be a proportionate response to a pressing social need related to the limited exceptions set out in Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights.
6. However, concerns have been raised that, in some cases, anti-terrorism legislation restricting freedom of expression and information is too broad, fails to define clear limits to authorities' interference or lacks sufficient procedural guarantees to prevent abuse.
7. Concerns have also been raised about undue restrictions on media professionals' access to information, interference with their rights to privacy (including home and professional premises) and communications, and the protection of journalistic sources. There have also been concerns about what may be undue limits on the media reporting, commenting and giving opinions about proscribed organisations. Such restrictions could have an adverse effect on the exercise of the right to freedom of expression and information.
8. It has been alleged that restrictions are sometimes also applied under anti-terrorist pretences without a legal basis in line with Council of Europe standards. Accession to the Council of Europe Convention on the Prevention of Terrorism (CETS No. 196), which prescribes the criminalisation of certain acts, and its appropriate application with particular regard to the provisions of Article 12, should help member states avoid these risks.

9. Given that news is a perishable commodity, it is claimed that legal remedies for abuses are often inadequate or not timely where media or media professionals are concerned.

10. We therefore:

Reiterate our commitment to the right to freedom of expression and information as defined by Article 10 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights;

Resolve to pursue and redouble co-operation and efforts to protect effectively, in law and in practice, the right to freedom of expression and information while vigorously combating terrorism;

Resolve to review our national legislation and/or practice on a regular basis to ensure that any impact of anti-terrorism measures on the right to freedom of expression and information is consistent with Council of Europe standards, with a particular emphasis on the case law of the European Court of Human Rights¹;

Underline the importance of judicial authorities and law-enforcement officials involved in implementing anti-terrorism measures being trained in these Council of Europe standards;

Ask the Council of Europe to assist, when requested, member states to implement the policies recommended above;

Encourage the media to train its staff on their rights and responsibilities according to national anti-terrorism legislation and Council of Europe standards on freedom of expression and information.

¹ The Delegation of the Russian Federation made a reservation in respect of this paragraph. It indicated that the subject matter dealt with in it does not fall entirely under the competence of the authorities of the Russian Federation responsible for media and mass communication.