



Strasbourg, 25 October 2010

MC-NM(2010)007_en
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COMMITTEE OF EXPERTS ON NEW MEDIA

(MC-NM)

3rd meeting
27 – 28 September 2010
Agora Building
Room G 05

Meeting report

Executive summary:

The MC-NM considered in detail the revised draft recommendation on a new notion of media and its appendix and agreed to amend the text, in the light of the discussions held, with a view to its finalisation at the next meeting.

The Committee took note with regret that, due to staff shortage, the consultations on the draft recommendation and guidelines on the protection of human rights with regard to search engines and on the draft recommendation and guidelines on social networking services would be postponed until 2011.

The gender distribution of the 22 participants in the meeting was as follows: 9 women (41%) and 13 men (59%).

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1. Opening of the meeting and adoption of the agenda

The MC-NM had its third meeting under the Chairmanship of Mr Thomas Schneider (Switzerland).

The Committee adopted the draft agenda as set out in Appendix 1 to this report. The list of participants appears in Appendix 2.

2. Information of interest to the work of the MC-NM

The Secretariat informed that the Committee of Ministers was expected to adopt the Declaration on network neutrality -prepared by the MC-NM- on 29 September 2010, together with a Declaration on the Digital Agenda for Europe and a Declaration on the management of Internet protocol address resources in the public interest. Information was also provided on the organisation, in Paris on 29 October 2010, of a Ministerial Conference on freedom of expression and opinion on the Internet, at the initiative of the French and Dutch authorities.

The MC-NM noted with regret the consequences of severe staff shortage in the Media and Information Society Division on the progress of their work. In particular, the consultation procedures with stakeholders on the draft recommendation and self-regulatory guidelines on protecting and promoting human rights on social networking services as well as the draft recommendation and guidelines on search engines had to be postponed. It agreed that priority had to be given to the finalisation of the draft recommendation on a new notion of media. The Secretariat indicated that all drafts mentioned above were to be finalised for consideration by the CDMC and adoption by the Committee of Ministers in 2011.

Ms Maja Rakovic informed the Committee about the workshop on Freedom of expression and Internet intermediaries at the Internet Governance Forum (IGF) in Vilnius (14 to 17 September 2010) in which she and the Chair of the MC-NM took an active part. The workshop was organised by a large number of partners including the Council of Europe, industry and civil society organisations and was very well attended. The workshop discussions showed that intermediaries are manifold, very different in nature and subject to legal regimes which lack coherence and transparency. It concluded that the absence of a clear definition of the role and responsibilities of intermediaries created legal uncertainty with regard to their liability and, as a consequence, a chilling effect on freedom of expression. While self-regulation was not believed to bring a satisfactory solution to address illegal content, overregulation should also be avoided. Instead, the aim should be to ensure a minimum level of interference by developing a new, well targeted form of regulation, taking into account the specific nature and role of different intermediaries.

Ms Rakovic also informed the Committee about the next European Dialogue on Internet Governance (EuroDIG) which will be held in Belgrade on 30 and 31 May 2011.

3. Examination of the Draft Recommendation on the new notion of media and its appendices

The MC-NM examined the proposals for amendment to the draft Recommendation on the new notion of media and its toolkit/appendix ([MC-NM\(2010\)001rev](#)) as prepared by Karol Jakubowicz. It was recalled that these proposals had been submitted for comments to the Committee during August and had subsequently been subject to some amendments.

The MC-NM, welcomed the very interesting and comprehensive proposals by Mr Jakubowicz, and held an in-depth discussion on the new notion or definition of media. There was general agreement that the definition proposed in the draft recommendation should be less traditional and well adapted to the characteristics of new media. A new notion of media should be drafted from a broad and prospective viewpoint, based on the societal functions of media in a democracy as referred to in the Reykjavik Resolution “towards a new notion of media”. Several members underlined that the functions of media should be made clear, distinguishing the societal functions of the media for democratic processes from the functions within the media system for the aggregation or production of content, for providing access to it or for its dissemination. Both “functions” should be considered from a right to freedom of expression and information (Article 10 of the European Convention on Human Rights - ECHR) perspective. For many, the impact and influence on the society was a determining factor for identifying “media”.

Referring to the MC-NM’s terms of reference, the members of the committee recalled that the draft recommendation should not only elaborate on a new notion of media as indicated above but also contain a general, possibly timeless, reply to the question whether, and if so how, existing Council of Europe norms - including privileges and responsibilities derived from article 10 ECHR and its case law- should apply to new media. Attention should be paid to their specificity, in particular the disaggregation of responsibilities within the new media system, and the need to promote a differentiated and proportionate application of norms. The specific nature and impact of new media actors, characterised by high level of communication capacity (while the impact of traditional media was linked to pervasiveness and invasiveness), should lead to self-regulatory approaches while its interactivity with users should lead to shared responsibility and legal liability.

The Committee recalled that the body of the Recommendation should be very short while the appendix should include an explanatory memorandum and a practical toolkit to give further guidance to member states in respect of the present media landscape. The toolkit should contain a matrix allowing to identify new media actors as well as the applicable norms. When considering the toolkit, the MC-NM agreed that the first draft of the document examined at the previous meeting could also be a valuable source of inspiration, although it lacked criteria for the identification of media. The Committee agreed that the identifying criteria should be adapted to a new notion of media, in particular those referring to the editorial process. It should also be made clear that new online media services are on-demand. Examples given should refer to well-known global media actors. Professional standards, including ethical considerations, with regard to expectations of the society were also felt to be essential.

The Committee agreed that, based on the discussion, the Secretariat would propose a revised draft of the recommendation and appendix.

4. **Future work on the Draft Recommendation and self-regulatory guidelines on the protection of human rights with regard to search engines**
5. **Future work on the Draft Recommendation and self-regulatory guidelines on social networking services.**

The delegation of the United Kingdom indicated that there were a few elements in the above draft recommendations which were in need of consultation at a national level, namely: the recognition of all IP addresses as private data in the draft Recommendation on search engines and some factual difficulties with the reference to “illegal content” in the draft

Recommendation on social networking services. An official position would be sent to the Secretariat within a few weeks time. The delegation of Germany would also send its position.

The European Commission representative recalled in this context the relevance of Directive 2002/58/EC Directive of 12 July 2002 on privacy and electronic communications and of Directive 95/46/EC of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data.

The Committee agreed that during the consultation on the draft texts, to be launched early 2011, the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) should be asked for an opinion.

6. Next meetings

The MC-NM agreed to have its next meeting in February or March 2011. The exact dates would be decided by e-mail exchange.

7. Other business

No issues were raised.

Appendix 1

Agenda

1. Opening of the meeting and adoption of the agenda
2. Information of interest to the work of the MC-NM
3. Examination of the Draft Recommendation on the new notion of media and its appendices
4. Future work on the Draft Recommendation and self-regulatory guidelines on the protection of human rights with regard to search engines
5. Future work on the Draft Recommendation and self-regulatory guidelines on social networking services
6. Next meetings
7. Other business

Appendix 2

LIST OF PARTICIPANTS

MEMBERS

Albania/Albanie

Andorre/Andorra

Armenia/Arménie

Austria/Autriche (Vice-Chair)

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Denmark/Danemark

Estonia/Estonie

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Finland/Finlande

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Ireland/Irlande

Italy / Italie

Latvia/Lettonie

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