



Strasbourg, 23 April 2010

MC-S-CI(2010)005_en
[Français](#)
[PDF](#)

**Ad-hoc Advisory Group on Cross-border Internet
(MC-S-CI)**

**1st meeting
1 and 2 March 2010
Paris**

Report of the Meeting

Executive summary

During the meeting, the MC-S-CI:

- elected its Chairperson and Vice-Chairperson;
- examined item (i) and (ii) of its Terms of Reference;
- decided to prepare a paper for the European Dialogue on Internet Governance (EuroDIG);
- agreed on the elaboration of draft Committee of Ministers declarations on (i) member states' active participation in the Governmental Advisory Committee (GAC) of ICANN and (ii) the management of IP address resources in the public interest;
- decided on how to pursue its work on the implementation of items (i) and (ii) of its Terms of Reference which should be given further impulse at a meeting to be held on the margins of EuroDIG (Madrid, 29 and 30 April 2010).

While the official membership of the group (5 persons) is 100% male, the gender distribution of the 15 participants in the meeting was 12 men (80 %) and 3 women (20 %).

Item 1: Opening of the meeting and adoption of the agenda

1. The Secretariat opened the meeting and informed the participants about the preparatory process in anticipation of this meeting which included a number of conference calls among the members of the group. The agenda was adopted without changes (MC-S-CI (2010)OJ1). The list of participants is attached in Appendix 1.

Item 2: Election of Chairperson and Vice-Chairperson

2. Having regard to informal arrangements made during the preparatory process, the MC-S-CI, elected Mr. Wolfgang Kleinwächter as Chairperson and Mr. Michael Yakushev as Vice-Chairperson of the group. Their mandate is of one year.

Item 3: Information of interest to the work of the MC-S-CI

3. The Secretariat informed the MC-S-CI that the Committee of Experts on New Media (MC-NM) is examining the issue of network neutrality, which will be considered at the second meeting of the MC-NM on 25 and 26 March 2010.

Item 4: Examination of international cooperation in relation to protection of critical Internet resources, with particular focus on:

- shared or mutual responsibilities of states in ensuring that critical Internet resources are managed in the public interest and as a public asset;

- proposals relating to the prevention and management of events, including malicious acts, falling within member states' jurisdictions or territories, which could block or significantly impede Internet access to or within fellow members of the international community.

Reflection on the mandate of the Group

4. The Chairperson recalled that the Terms of Reference of the MC-S-CI (Appendix 2) flow from the Resolution on Internet Governance and Critical Internet Resources adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, 28 and 29 May 2009). The Committee of Ministers subsequently invited the CDMC, to which the MC-S-CI reports, "to give priority attention to the elaboration of legal instruments designed (i) to preserve or reinforce the protection of the cross-border flow of Internet traffic and (ii) to protect resources which are critical for the ongoing functioning and borderless nature and integrity of the Internet (i.e. critical internet resources)."

5. The Group agreed that the affirmations and goals of the Tunis Agenda for the Information Society (Tunis Agenda), in particular with respect to the working definition of Internet governance, multistakeholderism, as well as the responsibilities for international Internet-related public policy issues,¹ should be considered as fundamental principles for its work. Reference was made to the Report of the Working Group on Internet Governance (WGIG) which identifies the public policy issues of relevance to Internet governance and develops a basic common understanding of the respective roles and responsibilities of the main stakeholders².

6. It was noted that the goal of enhanced cooperation contained in the Tunis Agenda encompasses enhanced communication and enhanced coordination among all stakeholders. This should be kept in mind when exploring interaction between state and non-state stakeholders. The Group agreed that, when developing a legal instrument, it should also consider other types of arrangements that can provide for such interaction. These may include principles that can be embedded in the framework policies of non-state stakeholders.

7. The Group recalled the possibility for Council of Europe treaties to be opened for accession by non-European countries and underlined the potential for a global reach. No-harm type principles of international cooperation are generally more acceptable than international legal frameworks that contain enforcement and monitoring mechanisms.

Issues related to the protection of critical Internet resources

¹ The working definition of Internet governance as noted in the Tunis Agenda (see paragraph 33 thereof) is "the development and application by governments, the private sector and civil society, in their respective roles, of shared principles, norms, rules, decision-making procedures, and programmes that shape the evolution and use of the Internet".

² WGIG Report, at pg. 5, 8, available at <http://www.wgig.org/docs/WGIGREPORT.pdf>.

8. The Group discussed risks and vulnerabilities of the underlying physical infrastructure of the Internet, including root servers, the telecommunications infrastructures and backbone structures. It agreed that issues concerning their functioning, stability and resilience should be examined in conjunction with those concerning the security and stability of the logical layer of the Internet.

9. Despite the fact that there is trust in the network as it is organised at present, the Group underlined that there are no arrangements to ensure a political commitment that there will be no interference with the underlying physical or logical infrastructure of the Internet and that its functioning will be based on the public interest. The Group agreed to examine the role of states in relation to preventive and preparedness measures concerning technical failures of the network infrastructure and backbone, risks or accidents as well as mitigation of their effects.

10. The Group furthermore stressed that decisions made in connection with the management of the Internet Protocol (IP) address resources may have implications for the exercise and enjoyment of fundamental rights and freedoms. IP addresses are used as identifiers of Internet users and their activities on the Internet. Consequently, their treatment raises concerns for the protection and safeguards of users' privacy as established in Article 8 the European Convention of Human Rights (ECHR) and interpreted by the European Court of Human Rights. The Group agreed that the unique identifier features embedded in the IP addresses should be treated as personal data.

11. The Group felt that the scarcity of IP version 4 resources raises concerns for users' access to the Internet. Challenges related to the process of migration to IP version 6 should be addressed effectively and timely. Council of Europe member states should promote the public service value of the Internet³. Member states can play a key role in encouraging and providing incentives for the private sector to migrate to IPv6. In view of the above, the Group agreed to prepare elements for a political statement of the Committee of Ministers on the management of IP resources in the public interest (which could take the form of a Committee of Ministers declaration).

12. It was noted that the allocation of new generic top level domains (TLDs) and Internationalised Domain Names (IDNs) may have a bearing on the exercise of freedom of expression or of assembly as protected by Articles 10 and 11 of the ECHR. The information contained in the WHOIS databases is available and accessible to anyone who has an interest in it. This has possible private life implications for certain Internet users. The issue of management of country code TLDs was also discussed.

13. The Group underlined that states can play a key role to promote respect for human rights and fundamental principles in the framework of ICANN's Governmental Advisory Committee (GAC) and that their active participation in GAC would therefore be desirable. The Group agreed to propose elements for the elaboration of a political

³ Recommendation CM/Rec (2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet

statement of the Committee of Ministers on this matter (which could take the form of a Committee of Ministers declaration).

14. Human rights and fundamental freedoms stand at the intersection between public policy authority, incumbent on states, and technical coordination and resource management of the domain name space and IP address space, incumbent upon private operators. The Group agreed that this perspective should be examined further.

15. The Group recalled that critical Internet infrastructure can be interfered with, damaged or destroyed by deliberate cross-border acts of cyber-attacks or terrorism, computer hacking and other forms of malicious behaviour. Other risks concern situations of natural disasters, negligence, accidents and technical failure.

16. In this respect, the Group agreed to examine shared responsibilities of states and mechanisms for their implementation such as exchange of information, consultation, mutual assistance, cooperation, good faith negotiation and other preventive measures.

17. It was agreed that existing international law standards on wrongful acts of states or on failure to intervene against actions taking place within their jurisdiction which are contrary to the rights of other states might be helpful to determine the shared responsibilities of states for the protection of critical Internet resources.

Item 5: Examination of the feasibility of drafting an instrument designed to preserve or reinforce the protection of cross-border flow of Internet traffic, openness and neutrality.

18. Considering that the MC-NM is examining the issue of network neutrality the Group decided to address this issue after the second meeting of the MC-NM. Nevertheless, it agreed that the cross-border aspects of network neutrality should continue to be examined.

19. The Group also agreed to pursue examination of the feasibility of drafting an instrument designed to preserve or reinforce the protection of cross-border flow of Internet traffic openness and neutrality.

Item 6: Preparation for participation in European Dialogue on Internet Governance (EuroDIG)

20. The Group decided to elaborate a conceptual paper on the issues examined during this meeting. This paper will be submitted as an input for discussions that will take place in EuroDIG (Madrid, 28 and 29 April 2010) and will be the key element for consultations of the MC-S-CI with stakeholders and experts during this event. The Group will meet informally on 1 May to reflect on the feedback received during EuroDIG.

21. The Group decided to take stock after EuroDIG of the implementation of items (i) and (ii) of its Terms of Reference and decide on further action needed. If appropriate, this will include proposals for legal instruments and other arrangements for multistakeholder

participation. The Group also agreed to participate in the Internet Governance Forum (IGF) (Vilnius, 14 to 17 September 2010) and exchange on these subjects with stakeholders).

Item 7: Other business

22. The Group agreed to have its second meeting after the IGF (as regards informal meetings, see paragraph 20).

Appendix 1

List of participants

I- MEMBERS

1. Mark Kelly
Director of the Irish Council for Civil Liberties

2. Wolfgang Kleinwächter (Chairperson)
Professor, University of Aarhus
International Association for Media and Communication Research (IAMCR)

3. Christian Singer
Director Department III/PT2 Telecommunications Law, Federal Ministry of Transport,
Innovation and Technology of Austria

4. Rolf Weber
Professor, Faculty of Law, University of Zurich

5. Michael V. Yakushev (Vice-Chairperson)
Chairman of Board, Coordination Center for the ccTLD ‘.ru’

II – PARTICIPANTS

6. Vladimir Andreyev

Vice- Chair of the Committee of Experts on Terrorism, CODEXTER
Deputy Director of Department of New Challenges and Threats, Ministry for Foreign
Affairs of the Russian Federation.

III – OTHER PARTICIPANTS

7. Michael Niebel, (*apologised*)
Head of Unit - INFSO.A3 (Internet; Network and Information Security)
European Commission - DG Information Society

IV – OBSERVERS

8. Meryem Marzouki, (*apologised*)
European Digital Rights Initiative (EDRI)

V – REPRESENTATIVES OF MEMBER STATES

9. Anton Battesti

Internet governance advisor, French Ministry of Foreign and European Affairs

10. Thomas Schneider
Federal Office of Communications, Switzerland.

VI - EXTERNAL EXPERTS

11. Bertrand de La Chapelle
Special Envoy for the Information Society, French Ministry of Foreign and European Affairs

12. Milton Mueller (*apologised*)
Professor, Syracuse University School of Information Studies
XS4All Professor, Delft University of Technology

13. Massimiliano Minisci
Manager, Regional Relations – Europe
Internet Corporation for Assigned Names and Numbers (ICANN)

4. Yuliya Morenets

TaC- Together against Cybercrime, Strasbourg

VII - SECRETARIAT

15. Jan Malinowski
Head of Media and Information Society Division, Directorate General of Human Rights and Legal Affairs of the Council of Europe

16. Lee Hibbard (*apologised*)
Administrator, Media and Information Society Division, Directorate General of Human Rights and Legal Affairs

17. Elvana Thaçi
Administrator, Media and Information Society Division, Directorate General of Human Rights and Legal Affairs of the Council of Europe

18. Franziska Klopfer
Programme advisor, Media and Information Society Division, Directorate General of Human Rights and Legal Affairs

Appendix 2

Terms of reference of the Ad hoc Advisory Group on Cross-border Internet (MC-S-CI)

1.	Name of Committee:	Ad hoc Advisory Group on Cross-border Internet (MC-S-CI)
2.	Type of Committee:	Ad Hoc Advisory Group Res(2005)47
3.	Source of terms of reference:	Steering Committee on the Media and New Communication Services
4.	Terms of reference:	
		Having regard to:
-		Resolution Res(2005)47 on committees and subordinate bodies, their terms of reference and working methods;
-		Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe member states (Warsaw, 16-17 May 2005; CM(2005)80 final 17 May 2005), in particular chapter I.3. “Strengthening democracy, good governance and the rule of law in member states”;
-		Resolution on “Internet governance and critical Internet resources” adopted at the 1st Council of Europe Conference of Ministers responsible for Media and New Communication Services (Reykjavik, 28-29 May 2009);
-		Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet, adopted on 7 November 2007;
-		the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5), its additional protocols and the case law of the European Court of Human Rights.
		Under the authority of the Steering Committee on the Media and New Communication Services (CDMC) and in relation to the implementation of Project 2008/DGHL/1415 “Standard-setting and policy assistance on topical issues concerning the media and new communication services”, the Group is instructed to:
i.		examine the shared or mutual responsibilities of states in ensuring that critical

	Internet resources are managed in the public interest and as a public asset, ensuring delivery of the public service value to which all persons under their jurisdiction are entitled. Make proposals, in particular, relating to the prevention and management of events, including malicious acts, falling within member states' jurisdictions or territories, which could block or significantly impede Internet access to or within fellow members of the international community with the objective of guaranteeing the ongoing functioning and universal nature and integrity of the Internet;
ii.	explore the feasibility of drafting an instrument designed to preserve or reinforce the protection of cross-border flow of Internet traffic openness and neutrality.
5.	Composition of the Committee:
5.A	Members
	The Group shall be composed of five specialists in international law and internet governance, to be appointed by the Secretary General. The Council of Europe budget will bear their travel and subsistence expenses incurred in connection with their participation in meetings of the Group.
5.B	Observers
	European Digital Rights (EDRI).
6.	Working methods and structures
	<p>In order to carry out its tasks, the Group may, where necessary, within the limits of available budgetary appropriations, seek advice of external experts, have recourse to consultants and consult with relevant governmental and/or non-governmental organisations and other members of civil society, as well as other pertinent bodies.</p> <p>The MC-S-CI is entitled to invite other participants and/or observers to meetings of the Group, without the right to vote or defrayal of expenses. Member states may be able to designate representatives to attend and present their position at meetings, without the right to vote or defrayal of expenses. The MC-S-CI will have to request the necessary authorisation from the CDMC for the admission of observers.</p>
7.	Duration: These terms of reference will expire on 31/12/2010.