COUNCIL CONSEIL
OF EUROPE DE L'EUROPE

Strasbourg, 15 November 2010

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

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**2nd meeting
8 and 9 November 2010
Agora Building
Room G05
Strasbourg**

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Report of the Meeting

Executive summary

The MC-S-CI decided to propose to the Steering Committee on the Media and New Communication Services (CDMC) to prepare a draft Committee of Ministers' declaration on general principles of Internet Governance and a draft Committee of Ministers' recommendation on states' shared responsibilities in respect of resources that are critical for the functioning of the Internet in a cross-border context. It decided to submit to the CDMC a report on the work and activities carried out during 2010 which incorporates an analysis of its proposals. It also agreed to recommend to the CDMC to organise a dedicated event to discuss with stakeholders the content of these proposals as well as further action.

While the official membership of the Group (5 persons) is 100% male, the gender distribution of the 12 participants in the meeting was 7 men (58 %) and 5 women (42 %).

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

1. The MC-S-CI had its second meeting under the chairmanship of Wolfgang Kleinwächter on the first day and of Michael V. Yakushev on the second day. The agenda was adopted unchanged, as set out in Appendix 1. The Group had invited a number of external experts and representatives of stakeholders to participate in the meeting. The list of participants appears in Appendix 2.

Item 2: Information of interest to the work of the MC-S-CI

2. In respect of texts it had submitted to CDMC for consideration, the Group noted that, on 26 May 2010, the Committee of Ministers adopted the declaration on enhanced participation of member states in Internet governance matters[1] and, on 29 September 2010, the declarations on the digital agenda for Europe[2] and on the management of the Internet protocol address resources in the public interest[3]. The Group also noted that the CDMC had agreed to extend its terms of reference to 31 December 2011 and that adoption of this decision by the Committee of Ministers was expected on the second half of November. The Secretariat of the Committee of Experts on Terrorism (CODEXTER) informed the Group that Mr Vladimir Andreyev who attended the meetings of the Group on behalf of this committee is no longer with the CODEXTER and that a replacement would soon be designated.

3. The Group referred to its activities in the framework of the third edition of the European Dialogue on Internet Governance (EuroDIG) (Madrid, 29 and 30 April 2010). In particular, it recalled the workshop 'Sovereignty of states and the role and obligations of governments in the global multi-stakeholder Internet environment' organised by the Group and its discussion paper "A conceptual approach for setting a standard of care for cross-border Internet".

4. The Group reflected on discussions with stakeholders at the fifth edition of the Internet Governance Forum (IGF) (Vilnius, 14 to 17 September 2010). It took stock of exchanges of views in the framework of the workshop it organised 'A proposal for setting a standard of care in international law for cross-border Internet'. It noted the interest generated by its discussion paper 'Draft Elements for a Framework of General Principles of Internet Governance and Duties of States with Respect to the Protection of Critical Internet Resources in a Cross-border Context' which was considered by some media as a blueprint for a "global treaty on the Internet".

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[1] The Declaration on enhanced participation of member states in Internet governance matters –
Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN) was adopted by the Committee of Ministers on 26 May 2010
at the 1085th meeting of the Ministers' Deputies and is available at
https://wcd.coe.int/ViewDoc.jsp?id=1627399
[2] The declaration was adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers' Deputies and is available at
https://wcd.coe.int/ViewDoc.jsp?id=1678251&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383.
[3] The Declaration on the management of Internet protocol address resources in the public interest was adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers' Deputies and is available at https://wcd.coe.int/ViewDoc.jsp?id=1678299.

Item 3: Examination of item (i) of the Terms of Reference

5. The Group referred to the content of the discussion paper that it had prepared for the IGF. There was general agreement on the overall approach of the paper, which focuses on the principles of Internet governance and shared responsibilities of states with respect to the preservation of critical Internet resources and the cross-border flow of Internet traffic. International cooperation frameworks should be capable to offer innovative solutions which accommodate the realities of the multistakeholder nature of Internet governance.

6. Members of the Group and other experts present discussed numerous aspects of the substance and taxonomy of the general principles of Internet governance. The Group revised the wording contained in the discussion paper, so as to define concepts more clearly and to reflect awareness of different approaches of different stakeholders. The Group agreed that they should be enriched further with additional elements (e.g. new emerging rights such as the right to virtual identity, the right to anonymity, and also transparency, accountability and jurisdiction) and supported with legal analysis and examples from other fields of international law.

7. The Group decided to propose to the CDMC to draft a declaration for possible adoption by the Committee of Ministers on the general principles of Internet governance. This declaration should be an affirmation of the highest values and principles of the Council of Europe member states in respect of Internet governance. It is desirable that the resulting document and the principles contained therein be open for stakeholders in general to embrace, expressing their engagement and commitment thereto. They should lay the ground for building new relationships in the future.

8. The general principles of international cooperation as regards prevention and management of and response to Internet disruptions and interferences (Part II of the discussion paper) should be linked to the general principles of Internet governance and should incorporate recognition of the roles and responsibilities of stakeholders. The responsibilities of states in respect of preserving the integrity, the ongoing functioning and openness of the Internet are distinct from the issue of state responsibility for failure to fulfil international obligations that are recognised in international law, particularly those in respect of the maintenance of peace which are set forth in the United Nations Charter.

9. States should support and facilitate the development and implementation of common standards, rules and practices on Internet resilience and stability as well as their effective implementation. These standards should be based on multi-stakeholder participatory processes.

10. Moreover, state commitments on information exchange, coordinated action and mutual assistance are of a due diligence nature; reasonableness is built in the mutual expectations of inter-state cooperation. In respect of transnational management of resources, state commitments should provide a solid basis for arrangements that may emerge or be identified in the future. The Group decided to propose to the CDMC to draft a Committee of Ministers recommendation on states' shared responsibilities in respect of resources that are critical for the functioning of the Internet in a cross-border context.

11. The Group also agreed to prepare an interim report of its activities during 2010 which should incorporate its analysis of proposals for international and multi-stakeholder cooperation on cross-border Internet. This report should be submitted to the CDMC meeting for consideration during its 16-19 November 2010 meeting (MC-S-CI(2010)006).

Item 5: Examination of item (ii) of the Terms of Reference

11. The desirable policy objective under this item is to have in place Internet-related policies that recognise the global nature of the Internet and seek responses that enable users' access to content, services and applications of their choice. The Committee of Ministers' Declaration on network neutrality was recalled in this context.[4] Decisions taken in one jurisdiction should not interfere with users' access to content, services or applications in other jurisdictions. The Group agreed to continue to examine measures that should be taken to implement the stated policy objective.

5.   Dates of next meetings

11. The Group decided to have its third meeting on 21 and 22 February 2011 in Strasbourg.

6.   Other business

14. No other business was discussed.

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[4] The Declaration on network neutrality was adopted by the Committee of Ministers on 29 September 2010 at the 1094th meeting of the Ministers' Deputies and is available at https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&Instranet Image=1647862&SecMode=1&DocId=1631194&Usage=2

Appendix 1

Agenda

1. Opening of the meeting and adoption of the agenda

2. Information of interest to the work of the MC-S-CI

3. Examination of item (i) of the Terms of Reference

4. Examination of item (ii) of the Terms of Reference

5. Dates of next meetings

6. Other business

Appendix 2

List of participants

I- MEMBERS

1.   **Wolfgang Kleinwächter** (Chair, 8 November)
     Professor, University of Aarhus
     International Association for Media and Communication Research (IAMCR)

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

3.   **Rolf Weber**
     Professor, Faculty of Law, University of Zurich

4.   **Michael V. Yakushev** (Vice-Chair)
     Chairman of Board, Coordination Center for the ccTLD '.ru'

II – PARTICIPANTS

5.   **Albina Ovcearenco** (9 November)
     On behalf of the Secretariat of CODEXTER

III – OTHER PARTICIPANTS

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

IV – OBSERVERS

7.   **Meryem Marzouki** (Apologised)
     European Digital Rights Initiative (EDRI)

V – REPRESENTATIVES OF MEMBER STATES

8.   **Ihsan Durdu**
     Advisor to the Minister of Transportation and Communication of Turkey

9.   **Manuel Ropes Rocha** (Apologised)
     Attorney Society - Portugal

VI - EXTERNAL EXPERTS

10. **Maeve Dion**
    Faculty of law – University of Stockholm

11. **Joanna Kulesza**
    Faculty of law and administration – University of Lodz

12. **Bertrand de La Chapelle** (Apologised)
    Program Director at the International Diplomatic Academy

13. **Anton Battesti** (Apologised)
    Internet governance advisor – French Ministry of Foreign and European Affairs

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

15. **Yuliya Morenets**
    TaC- Together against Cybercrime, Strasbourg

16. **Athina Fragkouli**
    RIPE NCC Community

17. **Chris Buckridge**
    RIPE NCC Community

18. **Michael Rotert** (8 November)
    Vice President, the European Internet Service Providers Association (EuroISPA)
    ECO (the German Internet Business Association)

VII - SECRETARIAT

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

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

21. **Corinne Gavrilovic**
    Assistant, Media and Information Society Division, Directorate General of Human
    Rights and Legal Affairs of the Council of Europe