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Comparative study on *blocking filtering and take-down of Internet content*

The Comparative Study on blocking filtering and take-down of Internet content across member states that the Secretary General commissioned to the Swiss Institute of Comparative Law had been delivered. It is a study that contains both country reports of the 47 member States of the Council of Europe and Comparative considerations. It describes the law and practice (legal framework, procedures, etc.) which are quite fragmented and makes an assessment as to the compatibility with the case-law of the European Court of Human Rights.

Call for comments

The Secretary General presented it the 11th of February to the Deputies SG/Inf(2016)5[1]. Each member state has an opportunity to comment the chapter regarding their country by the 31st of March, before the full study is released. Based on the analysis and the state's comments the Secretary General will present his final assessment of the situation at the Ministerial meeting in May, together with some follow-up proposals.

Preliminary conclusions (extract from the Secretary General speech 10.02.16):

- Some states, measures to block, filter and take-down Internet content fail to meet the conditions of Article 10 of the Convention, according to which any restrictions on freedom of expression must be legal, legitimate and necessary in democratic society. There are also states where the picture is not clear due to the lack of transparency and information on blocking and filtering procedures.

- Some member states are failing to define what is and isn't acceptable online in a sufficiently precise way. This leaves too much room for interpretation, which can in turn lead to arbitrary blocking or removal of content. In some cases states intervention to restrict content is based on loosely defined concepts, such as "public morals" or "extremism".

- The study shows that, in general, there is a lack of judicial oversight. Administrative authorities, police authorities or public prosecutors are given specific powers to request that Internet Service Providers block access, for example, when national security is threatened.

- However, the European Court of Human Rights makes it very clear that any such acts must be taken on the basis of a clear and precise law, with the opportunity for judicial review in order to prevent abuses and guarantee freedom of expression. This is not always the case.

- Finally, the role of Internet Service Providers in regulating content varies a lot across national jurisdictions; this is an issue that needs to be looked into more deeply.

- In some states, most of what is removed results from self-regulation by the service provider. In others, there are voluntary co-operation agreements between these companies and state authorities, such as the police. Some countries have a system whereby service providers remove alleged illegal content after receiving notification from a harmed party.

- Protections for service providers from liability for third-party content vary a great deal too. These protections are, for obvious reasons, an important safeguard for the free flow of information online.

Given the mixed and complex nature of this picture, the Secretary General expressed the need to go into it more deeply with the help of intergovernmental structures. He pointed out that this is an area where the case law of the Court is evolving too. This issue will, therefore, be looked at as part of a **draft recommendation on Internet intermediaries**, under the remit of the Steering Committee on Media and Information Society (CDMSI).

[1] https://wcd.coe.int/ViewDoc.jsp?Ref=SG/Inf%282016%295