

Committee of experts on Internet intermediaries (MSI-NET)

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

**MSI-NET (2016)04
7 April 2016**

**1st meeting, 17-18 March 2016, 9:30-17:30
(Strasbourg, Palais de l'Europe, Room 7)**

Meeting Report

1. Mr Jan Kleijssen, Director of Information Society and Action Against Crime opened the meeting and welcomed the MSI-NET members and participants. In providing the MSI-NET with information of relevance to its work Mr Kleijssen referred to the Comparative study on blocking, filtering and takedown of Internet content, an initiative of the Secretary General as well as recently adopted texts, including the Recommendation [CM/Rec\(2015\)6](#) of the Committee of Ministers to member States on the free, transboundary flow of information on the Internet; Recommendation [CM/Rec\(2016\)1](#) of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality and Recommendation [CM/Rec\(2016\)3](#) of the Committee of Ministers to member States on human rights and business. Mr Kleijssen also highlighted ongoing work on a draft Recommendation on Internet freedom, a draft Recommendation on the protection of journalism and safety of journalists and other media actors and the draft Internet Governance Strategy 2016-2019.

2. The MSI-NET elected Mr Wolfgang Schulz (Germany) as its Chair and Ms Karmen Turk (Estonia) as its Vice-chair. Ms Tanja Kerševan-Smokvina (Slovenia) was appointed Gender Equality Rapporteur.

3. The agenda (Appendix 1) was adopted without any changes. The list of participants appears in Appendix 2. The gender distribution of the 40 participants was 19 women (47,5%) and 21 men (52,5%).

4. The MSI-NET took note of its [Terms of Reference](#) and the [Resolution CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods. It discussed about the results it is expected to deliver by the end of its mandate in December 2017.

Conclusions and decisions

5. With regard to the first expected result, namely a *draft Committee of Ministers recommendation on Internet intermediaries*, the MSI-NET had an exchange of views focusing on aspects such as the definition of intermediaries, their human rights responsibilities, namely in the fields of freedom of expression and privacy, intermediary liability regimes, procedural guarantees and applicable law and jurisdiction. The issue mapping non-paper prepared by the Secretariat with regard to the roles and responsibilities of Internet intermediaries (Appendix 3) served as a basis to structure discussions. After extensive debate about the range of actors to be included in the definition of intermediaries, it was agreed to start the work with a definition sufficiently broad and neutral. The discussion covered the different layers of human rights responsibilities of intermediaries taking into account the existence of relations between states and intermediaries; intermediaries and users or other private actors and among users themselves with the intervention of the intermediaries. The need for more transparency was also recurrent in the discussions. The MSI-NET agreed to appoint as rapporteur Mr Matthias Kettemann. Other members of the MSI-NET expressed the wish to support the rapporteur in a small working group.

6. With regard to the *study on human rights dimensions of automated data processing techniques (in particular algorithms) and possible regulatory implications*, the MSI-NET had an exchange of views as to the scope of the report and its relationship with the draft recommendation. Initial discussions identified the possible impact of algorithms in the following areas to be covered: content filtering, search engines, discrimination, fight against terrorism, profiling, surveillance, cloud providers, mobility and elections. The MSI-NET decided to appoint as rapporteur Mr Ben Wagner. Other members of the MSI-NET expressed the wish to support the rapporteur in a small working group.

7. The MSI-NET agreed to start work on both expected results in parallel in line with the draft roadmap proposed by the Secretariat (Appendix 4).

8. During the meeting presentations were given by the European Audiovisual Observatory, the Data Protection Unit and the Cybercrime Division of the Council of Europe, and Ranking Digital Rights and Article 19 on their areas of work which relate to the mandate of the MSI-NET. The need to ensure good coordination with other entities was emphasised.

9. The MSI-NET discussed participation in events with a view to ensuring multi-stakeholder input and participation in its work, notably in the context of the EuroDIG. It agreed to continue to invite stakeholders to its meetings in line with its Terms of Reference. A call was made to ensure further participation of representatives of Internet intermediaries and the technical community.

Any other business

10. The MSI-NET agreed to hold its next meeting in Strasbourg on 29 and 30 September 2016.

11. The Secretariat will prepare a draft meeting report to be sent to the Chair and the vice-Chair for consideration. Thereafter, the Secretariat will send the draft report to the MSI-NET with a deadline of 5 full working days allowing for comments. In the absence of comments the report will be deemed finalised and will be transmitted to the CDMSI for information. The progress of work of the MSI-INT will be reflected in its draft documents and the reports of its meetings. Therefore, it is considered not necessary to produce abridged reports of meetings.

Appendix 1

Annotated agenda¹

1. **Opening of the meeting**

Mr Jan Kleijssen, Director, Information Society and Action against Crime Directorate

2. **Election of Chairperson and Vice-chair person and appointment of a Gender Equality Rapporteur**

[Resolution CM/Res\(2011\)24](#) on intergovernmental committees and subordinate bodies, their terms of reference and working methods, with particular reference to Article 12.

3. **Adoption of the agenda**

4. **Information by the Secretariat**

Information on relevant standard-setting work and other activities with regard to the Internet, notably on the Comparative Study on blocking, filtering and removal of Internet content in the 47 Council of Europe member States.

5. **Discussion on deliverables under the MSI-NET Terms of Reference**

The MSI-NET will discuss on the results it is expected to deliver during its mandate, notably a draft recommendation by the Committee of Ministers on Internet intermediaries and a study on human rights dimension of algorithms. The Secretariat will provide a non-paper with suggested questions for discussion. In the context of its work the MSI-NET is expected to discuss the Human Rights guidelines for Internet Service Providers.

MSI-NET [Terms of Reference](#)
[Human rights guidelines for Internet Service Providers \(2008\)](#)
[Roles and responsibilities of Internet intermediaries - Issue mapping non-paper prepared by the Secretariat \(MSI-NET \(2106\)3\)](#)

6. **Other business**

¹ As it appears in document MSI-NET(2016)02rev.

Appendix 2

List of participants

Members

Mr Bertrand de la CHAPELLE – Co-founder and Director of the Internet & Jurisdiction Project, France

Ms Julia HÖRNLE – Professor of Internet Law, Queen Mary University of London

Ms Tanja KERŠEVAN-SMOKVINA – Principal Advisor to Director General, Agency for Communication Networks and Services, Slovenia

Mr Matthias KETTEMANN – Postdoc Fellow, Cluster of Excellence “Normative Orders” University of Frankfurt/Main

Ms Sabine MAASS – Head of Division ‘Legal framework for digital services, media industry’, Federal Ministry for Economic Affairs and Energy – Germany (apologised)

Mr Arseny NEDYAK – Deputy Director, Department of Media State Policy, Ministry of Telecommunication, Russian Federation

Mr Pēteris PODVINSKIS – Ministry of Foreign Affairs, International Organisations Directorate, Department for Public Policy related to Internet, Latvia

Mr Thomas SCHNEIDER – Deputy Director of International Affairs, International Information Society Coordinator, Federal Department of the Environment, Transport, Energy and Communication DETEC, Federal Office of Communications (OFCOM), Switzerland

Mr Wolfgang SCHULZ – Professor, Faculty of Law University of Hamburg / Hans-Bredow-Institut

Ms Sophie STALLA-BOURDILLON – Associate Professor in Information Technology / Intellectual Property Law, Director of ILAWS, Southampton Law School, University of Southampton

Ms Karmen TURK – Trinity Tallinn, Estonia

Mr Dirk VOORHOOF – Professor at Ghent University, member of the Centre for Media Pluralism and Press Freedom (CMPF) Scientific Committee (apologised)

Mr Benjamin WAGNER – Director of the Centre for Internet & Human Rights, European University Viadrina, Frankfurt/Oder

Council of Europe member States

Mr John DUNPHY, Department of Communications, Energy and Natural Resources, Ireland (apologised)

Ms Francesca PELLICANO, Autorità per le Garanzie nelle Comunicazioni, Italy

Ms Marta KACZMARSKA, Deputy to the Permanent Representative, Permanent representation of Poland to the Council of Europe

Mr Jorge CANCIO, International Relations, Federal Department of the Environment, Transport, Energy and Communication DETEC, Federal Office of Communications (OFCOM), Switzerland

Mr Hasan Ali ERDEM, International relations Dept, Radio and Television Supreme Council (RTÜK), Turkey

Mr Ahmet YANIK, International relations Dept, Radio and Television Supreme Council (RTÜK), Turkey

Participants

Mr Benjamin Bollendorff, Legal Officer, European Union External Action Service

Mr Matthew Rabet, Press and communications officer (trainee), European Union External Action Service

Ms Irene ROCHE LAGUNA, Legal officer, DG for Communications Networks, Content & Technology, European Commission (apologised)

Ms Maja CAPPELLO, Head of Department for Legal Information, European Audiovisual Observatory

Mr Francisco CABRERA BLÁZQUEZ, legal analyst, Department for Legal Information, European Audiovisual Observatory

Ms Sophie VALAIS, legal analyst, Department for Legal Information, European Audiovisual Observatory

Mr Frane MAROEVIC, Director, Office of the Representative on Freedom of the Media, OSCE

Ms Deniz YAZICI, Adviser, Office of the Representative on Freedom of the Media, OSCE

Civil society and representatives of business, technical, professional and academic communities

Mr Allon BAR, Engagement and Partnership Manager, Ranking Digital Rights

Ms Siobhan CUMMISKEY, FACEBOOK (apologised)

Ms Gabrielle GUILLEMIN, Legal Officer – Freedom of Expression, Media Regulation, Freedom of Information, ARTICLE 19 – London

Ms Aleksandra KUCZERAWY, Legal Researcher, Centre for IT & IP Law – iMinds, KU Leuven, Belgium

Mr Marco PANCINI, GOOGLE (apologised)

Mr Michael ROTERT, Honorary Spokesman, EuroISPA (European Internet Service Provider Association) (apologised)

Ms Karen WHITE, TWITTER (apologised)

Observers

Mr Alejandro MARTINEZ PERALTA, Deputy Permanent Observer of Mexico to the Council of Europe

Mr Diego SANDOVAL PIMENTEL, Deputy to the Permanent Observer of Mexico to the Council of Europe

Ms Naoual JOUIHRI, Vice-Consul, Consulate General of the Kingdom of Morocco

Ms Meriem El HILALI, Vice-Consul, Consulate General of the Kingdom of Morocco

Ms Chanaz el AKRICHI, Head of Cooperation division, Ministry of Communication of Morocco
(apologised)

Mr Mounir el JIRARI, Head of audio-visual medias services, Cinema and TIC Division, Ministry of Communication of Morocco
(apologised)

Mr Abdelhakim el MRABET, Senior Manager, audio-visual medias services, Cinema and TIC, Ministry of Communication of Morocco
(apologised)

Council of Europe Secretariat

Mr Jan KLEIJSEN, Director, Information Society and Action against Crime Directorate

Mr Patrick PENNINGX, Head of Information Society Department

Ms Silvia GRUNDMANN, Head of Media and Internet Division, Information Society Department

Ms Elvana THAÇI, MSI-NET Secretary, Media and Internet Division, Information Society Department

Ms Ana GASCÓN MARCÉN, MSI-NET Administrator, Media and Internet Division, Information Society Department

Ms Elisabeth MAETZ, MSI-NET Assistant, Media and Internet Division Division, Information Society Department

Ms Onur ANDREOTTI, Secretary to MSI-MED Committee, Media and Internet Division, Information Society Department

Ms Sophie KWASNY, Head of Data Protection Unit, Information Society Department

Mr Alexandru FRUNZA, Programme Officer, Cybercrime Division, Information Society Department

Mr Rüdiger DOSSOW, Committee on Culture, Science, Education and Media, Parliamentary Assembly, Council of Europe

Appendix 3

Roles and responsibilities of Internet intermediaries Issue mapping non-paper prepared by the Secretariat²

This non-paper has been prepared by the Secretariat to facilitate discussions of the MSI-NET at its first meeting. The issues and questions identified here are not exclusive and are open to further elaboration during meeting discussions. Together with references to documents and reading materials they are aimed at guiding reflections and preparing discussions. The indicated times are of an advisory nature.

1) Definition of Intermediaries (60 min)

- What is an Internet intermediary? Access providers, hosting providers, both, applications, connected-economy operators, any others? How to define intermediaries, should we use a broad or strict definition? Are there any clear dividing lines?
- How to categorise intermediaries? Should we treat them differently in the recommendation?

* Short presentation by European Audiovisual Observatory.

Relevant documents

Report "[Fostering Freedom Online: The Role of Internet Intermediaries](#)" (UNESCO)
[OECD The economic and social role of Internet intermediaries](#)

2) Human rights responsibilities³ (90 min)

- What are the human rights implications of intermediaries' actions?
- What are their responsibilities according to the ECtHR, international standards?
- How do these stand vis-à-vis states' obligations to secure human rights?
- How to address them in a recommendation?
- Human rights impact assessment.
- Co-operation between States and intermediaries: challenges and practical solutions.

* Presentation by EuroISPA

Short presentation by Ranking Digital Rights

Relevant documents

[UN Guiding Principles on Business and Human Rights](#)

[Recommendation of the Committee of Ministers to member States on Human Rights and business](#)

[ICT Sector Guide on Implementing the UN Guiding Principles on Business and Human Rights](#)

² As it appears in document MSI-NET(2016)03, dated 7 March 2016.

³ Only two sub-sections have been created dealing with freedom of expression and privacy and data protection, this does not mean that these are the only human rights affected. The activities of intermediaries also have an impact in the exercise of other rights and freedoms such as the freedom of association or assembly, for example, or participation in a democratic society.

[Human rights guidelines for Internet service providers \(Council of Europe/EuroISPA\)](#)
[Recommendation CM/Rec\(2014\)6 of the Committee of Ministers to member States on a Guide to human rights for Internet users](#)
[Recommendation CM/Rec\(2012\)3 of the Committee of Ministers to member States on the protection of human rights with regard to search engines](#)
[Recommendation CM/Rec\(2012\)4 of the Committee of Ministers to member States on the protection of human rights with regard to social networking services](#)
[Judgment of the ECtHR K.U. v. Finland \(case no. 2872/02\).](#)

2.1 Freedom of expression (90 min)

- Role of Internet intermediaries in implementing limitations of access to the Internet.
- Restriction of content: blocking, filtering and takedown. What kind of content can be removed? How to define illegal content? What happens with content that may "offend, shock or disturb"? How to avoid over-blocking?
- Are intermediaries acting as gatekeepers and assuming a "judge" role?
- Are measures foreseeable? Terms of service: need for availability and clarity (also when they are modified).
- How can we ensure compliance with article 10 ECHR?
- Role of intermediaries in the creation of a public sphere.

Relevant documents

[Recommendation CM/Rec\(2008\)6 of the Committee of Ministers to member states on measures to promote the respect for freedom of expression and information with regard to Internet filters](#)
[Recommendation CM/Rec\(2016\)1 of the Committee of Ministers to member States on protecting and promoting the right to freedom of expression and the right to private life with regard to network neutrality](#)
[Judgment of the ECtHR Yildirim v. Turkey \(case no. 3111/10\)](#)
[Judgment of the ECtHR Cengiz and Others v. Turkey \(cases nos. 48226/10 and 14027/11\)](#)
[Ways to tackle online hateful content proposed by the German Task Force against illegal online hate speech](#)

2.2 Privacy/Data protection (90 min)

- Are privacy policies of Internet intermediaries clear and accessible?
- Are users aware of what can be done with their data/also when it could be transferred to third countries?
- Are users able to have access to the information processed and are able to ensure its correction or deletion?
- What are the processes to give information about users to third parties (law enforcement/private parties)? Is a court order necessary?
- How can we ensure compliance with article 8 of ECHR and the data protection principles of Convention 108?

* Short presentation by the Data Protection Unit of the Council of Europe.

Relevant documents

[Handbook on European data protection law](#)

[The right to privacy in the digital age](#) (Report of the Office of the United Nations High Commissioner for Human Rights)

[Judgment of the CJEU, Maximillian Schrems v Data Protection Commissioner, case C-362/14.](#)

[Judgment of the CJEU, Digital Rights Ireland Ltd v Minister for Communications, Marine and Natural Resources and Others \(C-293/12\) and Kärntner Landesregierung and Others\(C-594/12\)](#)

3) Intermediary liability regimes (90 min)

- Are notice-and-take-down systems enough? How do they work in practice? What are the main loopholes in terms of ensuring human rights protection?
- Should some Internet intermediaries have a more active role in the fight against illegal content?
- Do intermediaries play a role in content production and dissemination similar to publishers? Do they have an editorial role? How to distinguish it from a technical intermediary role?
- How do knowledge-based liability regimes for illegal content operate?

* Short presentation by Article 19 of the Manila Principles on Intermediary Liability.

Relevant documents

[Recommendation CM/Rec\(2011\)7 of the Committee of Ministers to member states on a new notion of media](#)

Report "[Internet intermediaries: Dilemma of Liability](#)" (Article 19)

["Manila Principles on Intermediary Liability"](#) (different civil society organisations)

[Cyberhate: an issue of continued concern for the Council of Europe's Anti-Racism Commission](#)

[Governance of Online Intermediaries: Observations from a Series of National Case Studies](#)

[Judgment of the ECtHR Delfi AS v. Estonia \(case no. 64569/09\) \(2015\)](#)

[Judgment of the ECtHR Magyar Tartalomszolgáltatók Egyesülete and Index.hu ZRT v. Hungary \(case no. 22947/13\)](#)

[Offensive Online Comments - New ECtHR Judgment – commentary by Dirk Voorhoof and Eva Lievens](#)

4) Procedural guarantees (90 min)

- Transparency and accountability;
- Availability of mechanisms to report illegal content;
- Process for third party claims;
- Notification of restrictions;
- Alternative dispute resolution;
- Judicial remedies;

- Do intermediaries have the opportunity to react against State orders that may endanger human rights?

Relevant documents

[Ranking Digital Rights](#)

5) Applicable law and jurisdiction (60 min)

- Which laws apply to intermediaries which are incorporated in one country and offer their services in other countries? How does the location of data stored in different countries affect the applicable law issues?
- What happens when various laws could be applied that do not have the same standards of protection of freedom of expression or data protection?
- Which jurisdiction is competent to solve a controversy in these cases?
- How can court judgments be effectively enforced if the Internet intermediary is located in another country or it is not clear where the data is located? How to avoid legal uncertainty for users but also Internet intermediaries?

* Short presentation by Cybercrime Division of the Council of Europe (work of the Cloud Evidence Group)

Relevant documents

[Criminal justice access to data in the cloud: challenges](#)

[Welcome to the Jungle: the Liability of Internet Intermediaries for Privacy Violations in Europe](#)

[Judgment of the CJEU Google Spain SL, Google Inc. v Agencia Española de Protección de Datos \(AEPD\), Mario Costeja González \(case C-131/12\)](#)

6) Human rights aspects of algorithms (120 min)

- Definition of algorithms, what are their functions? What decisions do they make typically? What are the decision-making criteria built in algorithms? Are these criteria fair and non-discriminatory?
- How do algorithmic decisions impact the exercise and enjoyment of human rights and the public interest? What is the significance of errors in algorithmic decisions?
- Transparency of algorithmic decision-making – do people who are affected by such decisions have information about their consequences?
- Should we focus on specific algorithms, e.g. predictive policing (how can it be reconciled with basic criminal law principles like presumption of innocence or due process)? E.g. how can we ensure the right to receive information and media pluralism against the danger of an information bubble?
- Algorithmic power accountability - how to hold decisions made by algorithms accountable?
- How can we ensure the effectiveness of the principle of non-discrimination on the decisions taken by algorithms?

- How is algorithmic power used by governments and companies? What does it mean for society? While legislative regulation of algorithms takes time what mechanism should there be in place to check and balance algorithmic power.

Relevant documents

[Recommendation CM/Rec\(2010\)13 of the Committee of Ministers to member states on the protection of individuals with regard to automatic processing of personal data in the context of profiling](#)

Report "[The Ethics of Algorithms: from radical content to self-driving cars](#)" (Center for Internet and Human Rights)

[Algorithmic Power and Accountability in Black Box Platforms](#)

[France: An Algorithmic Power](#)

[Predictive Policing. Can data analysis help the police to be in the right place at the right time?](#)

Appendix 4**Roadmap - MSI-NET****2016****17-18 March****1st MSI-NET meeting**

Constitution of the Committee of Experts, selection of the chair, vice-chair and gender rapporteur.

Discussion about the topics to be covered and issued to be addressed by the recommendation on Internet intermediaries. Designation of rapporteur to prepare draft recommendation.

Discussion on the topics to be covered by the study on human rights dimensions of algorithms and designation of rapporteur to prepare a draft study.

Discussion of possible updating of the Human rights' guidelines for ISPs. Discussion and agreement on work plan and timetable for delivering on expected results.

19-20 May**9th CDMSI Bureau meeting**

Report on the 1st MSI-NET meeting.

28 June-1 July**10th CDMSI Plenary meeting**

Report on MSI-NET work progress, CDMSI orientation on deliverables and timetable.

29-30 September**2nd MSI-NET meeting**

Discussion of a draft recommendation on Internet intermediaries.

Discussion of a first draft of the study on human rights dimensions of algorithms and agreement to seek comments from relevant CoE steering and conventional committees.

5-6 October**10th CDMSI Bureau meeting**

Report on the 2nd MSI-NET meeting and overall work progress. Invitation to CDMSI members to submit comments on the draft recommendation and draft study at the next plenary meeting.

29 Nov – 2 Dec**11th CDMSI Plenary meeting**

Report on MSI-NET work progress and CDMSI comments on draft recommendation and draft of the study on human rights dimensions of algorithms.

2017**TBD****3rd MSI-NET meeting**

Discussion of a revised draft Committee of Ministers recommendation to member States on Internet intermediaries; agreement to consult with steering and conventional committees and open consultations with other stakeholders. Discussion and possible finalisation of the study on human rights dimensions of algorithms taking into account comments from the CDMSI and other committees.

TBD**11th CDMSI Bureau meeting**

Report on the 3rd MSI-NET meeting and overall work progress. Discussion of a possible draft Committee of Ministers recommendation to member states on Internet intermediaries, inviting comments by CDMSI members at the next plenary meeting. Discussion of study on human rights dimensions of algorithms as prepared by the MSI-NET.

TBD**12th CDMSI Plenary meeting**

Report on work progress and discussion of a draft Committee of Ministers recommendation to member states on Internet intermediaries (followed in the next months by written comments). Discussion of the report on the impact of algorithms on human rights.

TBD**4th MSI-NET meeting**

Discussion and finalisation of a draft Committee of Ministers recommendation to member states on Internet intermediaries.

TBD**12th CDMSI Bureau meeting**

Discussion of a draft Committee of Ministers recommendation on Internet intermediaries and transmission of proposal for approval to CDMSI Plenary.

TBD**13th CDMSI Plenary meeting**

Possible approval of draft Committee of Ministers recommendation on Internet intermediaries.