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EUROPEAN COMMITTEE ON CRIME PROBLEMS
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31st COUNCIL OF EUROPE CONFERENCE OF MINISTERS OF JUSTICE

(Vienna, Austria, 19-21 September 2012)

ELEMENTS for
DRAFT RESOLUTION

**Safeguards for human rights and fundamental freedoms with regard to responses
to the use of the Internet for acts of urban violence**

**Document prepared by the Secretariat of the Committee on Media and
Information Society (CDMSI) and to be examined by the CDMSI Bureau
on 29-30 May 2012**

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Elements for a draft Resolution

Safeguards for human rights and fundamental freedoms with regard to responses to the use of the Internet for acts of urban violence

Draft as of 21 May

The Ministers of Justice participating in the 31st Council of Europe Conference of Ministers of Justice, held in Vienna on 19 and 21 September 2012, adopt the following resolution:

1. People rely significantly on the Internet and information and communication technologies (ICTs) as essential tools for their everyday activities such as communication, information, knowledge, commercial transactions and numerous others. As a result, they have a legitimate expectation that Internet services are accessible and affordable, secure, reliable and ongoing. The Recommendation CM/Rec(2007)16 of the Committee of Ministers to member states on measures to promote the public service value of the Internet affirms that the exercise of human rights and fundamental freedoms, such as the right to freedom of expression and access to information, the right to education, the right to association and assembly, and the right to free elections is significantly enhanced by the use of the Internet and ICTs.

2. Communication and collaboration tools which are built on the Internet platform provide opportunities for active participation of individuals and communities in governance and public debates of common interest. Also, they have potential for progressive change; events related to the Arab spring demonstrated that online interactions and communications can contribute to positive real-life political and social change.

3. Having regard to the changes that the Internet brought in the media ecosystem in particular by way of enabling new actors to perform mass-communication functions the Council of Europe has adopted Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media. This document provides detailed guidance in relation to policy frameworks which are needed to guarantee an appropriate level of protection for new media actors as well as a clear indication of their duties and responsibilities, in line with Council of Europe standards.

4. It is nonetheless understood that ICTs can be used as vehicles for carrying out and facilitating illegal activities such as child abuse, terrorism, incitement of violence and hate speech. In the context of civil unrest and urban violence, ensuring preventive action and adequate and robust responses to criminal activities which use mobile technologies, social media or the Internet broadly speaking as well as holding perpetrators accountable are considered as priorities by member states.

5. These responses, however, should provide a holistic approach to the protection of the fundamental rights and freedoms. Any interference with the right to private life, the right to freedom of expression and the right to freedom of assembly and association must be prescribed by law and be a proportionate response to a pressing social need related to the limited exceptions set out in Articles 8, 10 and 11 of the European Convention on

Human Rights, as interpreted by the European Court of Human Rights. Moreover, ICTs and in particular social media, provide tools and opportunities for positive use by law enforcement authorities to fulfill their obligations in tackling criminal and illegal activities.

6. Ensuring the levels of safety to which people are entitled on the one hand and protecting their fundamental rights and freedoms in Internet and digital environments on the other hand are not irreconcilable nor should they be traded-off for each other. These constitute principal legal obligations of states and the rule of law is their underlying condition.

7. The requirements of the Budapest Convention on Cybercrime and the principles of the Convention for the protection of individuals with regard to automatic processing of personal data should be fully respected. A number of other Council of Europe declarations and recommendations provide guidance on measures to protect fundamental rights and freedoms in Internet environments.¹

8. Concerns over privacy intrusion, online communications' monitoring and citizens' surveillance have been expressed in connection with some specific measures contemplated or proposed to be introduced in different member states to tackle situations of urban violence and civil unrest. These range from new legislation criminalising certain uses of social media which raises questions related to the organisation of peaceful and legitimate demonstrations to reinforcement of the law enforcement authorities' capacities to access and analyse communications' data.

9. In online and digital environments societal values of security on the one hand and the safeguarding of fundamental rights and freedoms on the other hand are inextricably linked. Responses to the emerging challenges to one set of values should provide balanced solutions and incorporate safeguards for others and always put the protection of fundamental rights and freedoms first.

10. Against this background, we draw attention to the risks to the full enjoyment and exercise of human rights and fundamental freedoms associated/linked with measures to tackle the use of the Internet and ICTs in situations of urban violence and social unrest, and in this context:

¹ [Declaration](#) on freedom of communication on the Internet [Declaration](#) of the Committee of Ministers on human rights and the rule of law in the Information Society; [Recommendation Rec\(2006\)12](#) of the Committee of Ministers to member states on empowering children in the new information and communications environment; [Recommendation CM/Rec\(2007\)11](#) of the Committee of Ministers to member states on promoting freedom of expression and information in the new information and communications environment; [Recommendation CM/Rec\(2007\)16](#) of the Committee of Ministers to member states on measures to promote the public service value of the Internet [Declaration](#) on protecting the dignity, security and privacy of children on the internet; [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\(2009\)5](#) of the Committee of Ministers to member states on measures to protect children against harmful content and behaviour and to promote their active participation in the new information and communications environment; [Declaration](#) of the Committee of Ministers on the management of the Internet protocol address resources in the public interest, adopted on 29 September 2010; [Declaration](#) of the Committee of Ministers on network neutrality, adopted on 29 September 2010

- *Re-affirm* our commitment to ensure in law and in practice the necessary safeguards for the protection and promotion of the right to private life, the right to freedom of expression and the right to freedom of assembly and association as enshrined in Articles 8, 10 and 11 of the European Convention on Human Rights and the relevant case law of the European Court of Human Rights;
- *Undertake* to carry fully-fledged human rights and fundamental freedoms impact assessments of new national legislation and/or other measures which relate to the use of the Internet and ICTs by citizens in order to ensure their consistency with Council of Europe standards;
- *Underline* that judicial and law enforcement authorities who are adequately trained and skilled in Internet policy matters can contribute to counterbalancing the risks to the protection of human rights and fundamental freedoms;
- *Ask* the Council of Europe to assist member states, where needed and requested, in respect of the matters addressed above;
- *Emphasise* the usefulness of multi-stakeholder dialogue involving the ICT sector and civil society as a means of contributing to identify and operationalise new balanced measures and responses to the use of Internet for urban violence and other criminal activities, which in turn permits competent authorities to keep abreast of technological developments, assess risks with the necessary degree of proportionality and identify suitable preventive and remedial action;
- *Undertake* to promote closer co-operation between law enforcement authorities on the one hand and Internet service providers on the other hand in order to facilitate prevention of urban violence as well as gathering of evidence and accountability of violence instigators while ensuring full compliance with the safeguards provided by law and the relevant case of the European Court of Human Rights.